

PORTSMOUTH TOWN COUNCIL MEETING

October 3, 2016

7:00 PM – TOWN COUNCIL CHAMBERS, TOWN HALL, 2200 EAST MAIN ROAD

MEMBERS PRESENT: Keith E. Hamilton, James A. Seveney, Kevin M. Aguiar, Michael A. Buddemeyer David M. Gleason, Elizabeth A. Pedro and Joseph W. Robicheau

**PLEDGE OF ALLEGIANCE**

A moment of silence for our men and women around the world in harm's way.

President Hamilton thanked Police Chief Lee and the Portsmouth Police force along with the RI State Police Force for taking care of the situation last night.

**SITTING AS THE PORTSMOUTH TOWN COUNCIL**

**OLD BUSINESS**

1. PUBLIC HEARING: Bill's Sales Firewood Sound Variance Application

- a. Petitioner's Memorandum 8/22/2016. / R. Lantz, Owner, Bill's Sales Firewood & A. Thayer, Esq., Sayer, Regan & Thayer
- b. Objection to Sound Variance Request of the Portsmouth Noise Ordinance – Bill's Sales, Robert Lantz. / Mr. & Mrs. Waring, 30 Crossings Court

Adam Thayer, Esq., Sayer, Regan and Thayer, representing the petitioner, Bill's Sales Firewood, addressed the Council stating that the petitioner is seeking a sound variance on the noise ordinance on a commercial lot abutting a residential property. They are asking for a sound variance during their normal working hours: Monday through Saturday from 7 am to 6 pm and Sunday from 8 am to 4 pm.

Mr. Thayer provided the following reasoning for the Council to approve the variance:

- Many corrective actions have been made by Mr. Lantz including the installation of a 14-foot cement wall, a sound barrier fence, and moving equipment away from the adjoining property line in attempts to lower the decibel level. However, it is improbable, probably impossible, to maintain the 65 decibel level required at the property line abutting a residential property;

- A commercial property sustains the town with its tax dollars, whereas a residential property costs the town more than its tax dollars;
- Testing has shown that area road noise is higher than 65 decibels and there must be an assumption that residents were aware of this level of noise before moving there and that it is to be expected;
- There are letters from four abutters supporting Mr. Lantz and his request.

Mr. Thayer suggested a 75 decibel limit during business hours.

In response to Mr. Robicheau as to whether noise measurements have been taken during business hours - yes, however, there are momentary spikes of noise that occur during the day.

In response to Mr. Aguiar on mitigation - arborvitae have been planted and a truck has been placed along the fence and these will remain in place. The 75 decibel limit would be maintained only when business is open and the work, processing wood, would not be done on Sundays or federal holidays, only retail would be occurring those days.

In response to Mr. Seveney on keeping it at the 55 decibels during evening hours - yes.

In response to Mr. Gleason on where the readings were taken - the sound points were taken while standing back from the road.

Should Bill's Sales exceed the 75 decibels, Municipal Court would not look favorably on it and the Town Council can review the variance if there are more violations.

Ms. Pedro stated that it is up to the Council to decide if they can operate on holidays and what hours to allow the variance daily.

Mr. Robicheau asked what was done when Mr. Lantz requested the new building variance.

Mr. Aguiar, who had been on the Zoning Board of Review at that time, stated that they were granted a special use permit which did not allow noise, smoke, odor or other objectionable features.

Mr. Robicheau stated that there is a stipulation for approval of a special use permit and that there should be none of those issues. The business would need to comply with that stipulation.

Mr. Thayer stated that the Zoning Officer has issued a letter stating there are no infractions.

Mr. Robicheau asked, “to be in compliance what does a business have to do?”

Mr. Aguiar stated the Zoning Board gets testimony and comments from abutters. Mr. Lantz has taken steps to mitigate the noise and found it can’t be done, so they are here asking for a variance.

Mr. Thayer stated, “This is a business that already existed, there was no changing of the character of the business and presumably houses purchased there were bought at a price reflecting that business in the area.”

Mr. Gleason said that in the 2010 and 2012 applications, the Lantz’s lawyer stated when applying for the variance “no nuisance or hazard.”

President Hamilton stated that they have taken steps to mitigate noise. He opened the public hearing for comments.

Terry Lorenz, 200 Prospect Farm Road, stated that she feels “noise is the problem, if we let this happen, will more businesses want the same variance? Who is this reasonable to? This is a residential property.”

Tarney Waring, 30 Crossings Court, played a video demonstrating the noise heard inside and outside his house. He objects to this noise variance. A noise variance should be for a specific purpose and time. The operation of the business is way too broad and compromises residents’ rights. There is screeching, dropping of wood and excessive banging, fumes and odors, and metal banging of a garbage dumpster 14 times in a row on June 2<sup>nd</sup> 2016. There were eight infractions over a half hour period each day of October 9<sup>th</sup> and 20<sup>th</sup>. If the business was under residential limits 90 per cent of the time it wouldn’t be an issue. They are in violation of the special use permit and they should conduct the business that was spelled out when applying for that permit. The 14-foot wall is only 14 feet in one area. It grades down. The Town should verify information. The arborvitaes are his, not Lantz’s. When they brought in the new kiln, the noise issues started. Often when the Police Department was called, a decibel meter was not available.

In response to Ms. Pedro’s question “Why did you tell us last time that the noise was mitigated?” Mr. Waring stated, “that is why I believe the noises are controlled. The noise from trucks and

trash had been removed, but have started again.”

In response to Ms. Pedro saying you stated that the kiln had been okay, Mr. Waring stated he still hears noise from the kiln. Mr. Waring said his family is starting to feel ill effects. We are going crazy from the smell of the wood, and the noise makes us jumpy all the time. We are getting aggravated with all these sharp noises.

Ms. Pedro said, “You testified before that there was no noise before the building.”

Mr. Waring stated that they had no problem with noise before the building. The wood business started escalating with the building at the time of the application to the Zoning Board. If the company stated to the Town that they will control their noise, they should stay true to that statement.

Mr. Buddemeyer stated that he had lived there for two years with his family and infant and there was the same noise then.

Mr. Waring said he also didn't have an issue when they moved there. These are mobile noises that can be controlled and the company should stay true to the statement made as far as the business special use permit. He asked:

- By allowing the additional noise, can that put the Town in a liability situation from both sources because it wasn't there before?
- By allowing the additional noise through commercial property to residential property, should the Town reduce property taxes or give an abatement?
- How can the Town allow noise in one ordinance and disallow the noise in another?

Mr. Aguiar stated that the Zoning Ordinance refers to noise but there are no separate decibel readings. It refers to the Noise Ordinance. It is a separate issue tonight.

Mr. Robicheau asked what the metal noises would be - Mr. Thayer responded that there is no way of knowing what was recorded on Mr. Waring's video or where it took place. He noted the abutters' letters of support.

Mr. Robicheau stated there are noise readings from the traffic but no reference to any readings taken at the abutters.

Mr. Thayer said that readings were taken starting at the road, working all the way back.

Mr. Robicheau asked about the height of the cement wall and if the kiln was included in the special use permit - Mr. Lantz stated that the Town Solicitor at that time, Vernon Gorton, and the Building Official, George Medeiros, told him that as long as the kiln was put inside the building, they did not need a permit.

President Hamilton asked if it would be possible to do some of the business closer to East Main Road - Mr. Lantz replied that it would be too dangerous for their customers if it was done in the front.

Mr. Robicheau asked how many log loads were done each day before the new building - Mr. Lantz said he didn't know.

President Hamilton asked what made the most noise in the process, the logs being dumped into the conveyor belt process trough, or logs being cut and split inside the building - Mr. Lantz said the loading of the trucks with cut wood.

Ms. Pedro asked what made the squealing noise - Mr. Lantz responded that it's baskets going on the floor getting loaded.

President Hamilton said that a statement from a previous meeting was that seven truckloads were done per day in their slow time.

Mr. Lantz said that they had already moved the loading dock as far away from the property line as they can.

Mr. Robicheau asked Mr. Gavin if it is a liability for the Town if we grant a variance with the knowledge that it is not an acceptable limit for a residential area - Mr. Gavin responded that he doesn't believe so. The Council is having the hearing to weigh the hardship of the petitioner tonight.

Tom Grieb, 110 Thayer Drive, stated that the decibel scale used is a logarithmic scale. 65 decibels are equal to 10 times 55 decibels, and 75 decibels are equal to 100 times 55 decibels. The Town of Portsmouth created this problem and should be a part of the solution. The noise can be engineered out of the business process. He feels that Bill's Sales should be offered a property tax rebate to cover the cost to meet the requirements.

Nancy Howard, 16 Dianne Avenue, stated that the noise ordinance special use permit states that “activities shall not change.” This would establish a precedent for other businesses and she believes the Town could be held liable.

Mr. Waring said that the Police had readings over 80. The Water Department is a brick building. The one resident is on the other side of the Water Department. Area businesses are Rays and a Package Store. The company asked for 68 and now they have changed it to 75.

Joanne Slate, 275 Sea Meadow Lane, said she used to live on East Main Road. If you deny this, the stress put on the Lantz family will put us on track to keep more businesses from moving into town.

Laura Subodo, 28 Bracket Ave, Tiverton, manager of Bill’s, said a lawn mower would drown out their noise.

Mr. Waring said that the noise is too close to his property line whereas the noise from East Main Road is one and a half football fields away.

A motion by Ms. Pedro, seconded by Mr. Seveney, to close the Public Hearing. All voted in favor of the motion.

Mr. Robicheau stated that the Town created this problem and the Town needs to fix this problem. The Town needs to hire a sound engineer.

Mr. Aguiar suggested two conditions be added if we go forward:

1. Hours of operation: Monday through Friday 7 am to 6 pm and Saturdays 8 am to 4 pm  
There will be no processing of wood on Sundays or on Federal Holidays – New Year’s Day, Martin Luther King, Washington’s Birthday (Presidents’ Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day and Christmas Day.
2. The property owner or business owner would be responsible to maintain all sound mitigation measures which are currently installed, the block wall, sound screen, any vegetation, fences, and anything that has been installed to mitigate sound. Those mitigation measures should be maintained for the duration of the business. As long as

there is a wood processing operation going on, these mitigation measures need to be in place and maintained.

President Hamilton stated, as Mr. Waring said, the arborvitae are his, and to clarify this as any vegetation put in by Bill's Sales.

President Hamilton suggested that the hours be changed to start at 9 am. Trucks to load from 9 am to 5 pm Monday through Friday and 9 am to 4 pm on Saturdays.

Mr. Seveney asked if this would harm the business - Mr. Lantz stated that he cannot live with those hours and they actually start at 7:30 am, so 9 am would be too late.

Mr. Seveney said people residing on East or West Main Road are currently living with the average noise level of 75 decibels. So he will support allowing the level at 75 decibels.

Mr. Gleason stated that we have an ordinance and we need to start standing behind it. People should be calling the Police Department. The options for Mr. Lantz are to get a variance, reduce the noise level, move to a new location, sell out, or go out of business. The options for the neighbor are to sell and move or put in his own sound control methods. The special use permit was obtained but not adhered to. There is a certain precedence that we are setting for other businesses in town. The EPA recommended that the sound level be 55 decibels. We are already at 65. Mr. Gleason suggested a compromise to 70 decibels instead of 75 and reduced hours. Make the hours of operation a nine-hour day instead of an 11-hour day to begin at 8:30 am Monday through Friday and leave the hours the same on Saturday.

Mr. Robicheau suggested the Town do an RFP for a sound engineering firm.

President Hamilton believes a 200-foot buffer needs to be put in place for any commercial / residential venture and this issue needs to be addressed in the new Comprehensive Plan.

Mr. Aguiar said that reviewing hardships is what a variance hearing is for. There has been a pre-existing use there for over 40 years and it could have been louder before as this is wood processing. Mr. Lantz has gone the extra mile to reduce his noise. The process is the process. The man is cutting wood. Residential properties were created after the business was there. We need to find a compromise here. He has a sound engineer stating that it is at 73 along East Main Road. He's asking to go to 75 which is a commercial standard with normal business hours. Any

changes would impact business negatively and he supports the variance.

Ms. Pedro wants a compromise. We can't correct mistakes of the past. It's the same business, it just grew and is processing more wood. She asked if the dropping of wood into the truck can be mitigated in some way. Variance decisions need to be done on a case by case basis. We need to adjust the hours to at least give the neighbor weekends. And 70 db wouldn't be a bad idea either.

President Hamilton offered Monday through Friday 8 am to 5 pm and Saturday 9 am to 4 pm.

Sound Engineer Joseph Fattore of VIBRA Sciences, Inc., Branford CT stated that the wall is adequately high. Mr. Lantz did a very good job. He would need to look at the end of the wall and the property line. He hasn't taken readings on Mr. Waring's property. Density stops noise.

Mr. Gleason asked if 70 decibels is an achievable goal. He suggested rubber linings in trucks - Mr. Fattore said that has not been overly successful.

A motion by Mr. Seveney, seconded by Mr. Buddemeyer, that we allow 75 decibel limit during the daily business hours of 8 am to 5 pm, Monday through Friday, and 9 am to 4 pm on Saturday and revisit how it is going in one year just for the first year with no application fee. The business owner is to maintain all sound mitigation measures for the lifetime of the business.

A motion to amend by Ms. Pedro, seconded by Mr. Gleason, to not include the ten federal holidays for wood processing operating hours. The motion to amend carried 6 to 1 with Mr. Robicheau opposed.

A motion to amend by Mr. Gleason, seconded by Ms. Pedro, to set the limit to 70 decibels. The motion failed 4 to 3 with Mr. Hamilton, Mr. Seveney, Mr. Aguiar and Mr. Buddemeyer opposed.

The main motion as amended carried 6 to 1 with Mr. Robicheau opposed.

**FUTURE MEETINGS**

October 11 7:00 PM – Town Council Meeting (Tuesday)  
October 24 7:00 PM – Town Council Meeting  
November 3 Proposed Date: Matrix Tank Farm Study Presentation – Brief Council  
November 14 7:00 PM – Town Council Meeting

A motion by Mr. Seveney, seconded by Ms. Pedro, to adjourn. All voted in favor of the motion.

**ADJOURN**

Time: 10:10 PM

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Joanne M. Mower, Town Clerk