



Board of Appeals

Minutes of Monday, January 31, 2011

Chairman Mann called the meeting to order at 7:02 p.m.

Board of Appeals members present: Gerald Mann, Lisa Berkman, Martin Mahoney, Donald Turner, alternate and Osa Flory, alternate.

Applicant Present: Erica Verillo and Richard Evans, Attorney

Public Present: Numerous, attached sheet

Verillo Hearing

Chairman Mann opened the hearing at 7:02 p.m. in regards to the application of Erica Verillo of 6 Nichols Road to appeal a decision made by the building inspector in his failure to enforce Section 4.0 of the Williamsburg Zoning Bylaw, which prohibits use of land for any purposes harmful to public health, safety and comfort by reason of noise and other causes. The property the complaint was lodged against is located at 74 Village Hill Road, Williamsburg, Assessors Map C, Parcels 89 and/or 90. The property is owned by Thomas Hodgkins, Robert Hodgkins, Knowlton Hodgkins & Merry Hodgkins. The applicant is represented by Attorney Richard Evans. The appeal is in accordance with Section 13.3 of the Zoning Bylaw, and Section 8 and 15 of Chapter 40A of the General Laws. The building inspector in a written response to the complaint stated there was nothing he could do.

Chairman Mann asked Mr. Evans to speak of the application. Mr. Evans represents Ms. Verillo and Sondra Thatcher of 6 Hyde Hill Road. He stated the purpose of the appeal of the decision was based on Section 4.0 of the Williamsburg Zoning Bylaw. He stated the cause by the use of the land for heavy gun fire, high performance weapons, military assault- weapons, machine guns; grenade like explosions violated the bylaw. He stated Mr. Hasbrouck stated three reasons he did not act on the complaint. The first reason was it was not his job to enforce gun laws, the second was it was not his job to enforce environmental & public health laws and he was not qualified to, and the third reason was he was blocked by Chapter 214, Section 7B of the Massachusetts General Laws in regards to the complaint of noise. The M.G.L. Chapter 214, Section 7B is known as the "shooting range protection act" or the "sportsman's club protection act" according to Mr. Evans. The appeal is based on Mr. Hasbrouck's decision to refuse to enforce the bylaw.

Mr. Evans stated that the property in question is 74 Village Hill Road, Assessors Tax Map C, Parcels 89 and/or 90. The site has historically always been a place where people would come to shoot pistols and rifles, usually on weekends for an hour or two. The site was used responsibly and took the interest of the neighborhood into consideration. Mr. Evans noted the 30-40 letters the Board received explaining how the land had been used, how it is used now, and how the change has impacted their lives. He noted the letters had stories of people being thrown from horses, how people can not open their windows on a hot day due to the noise, how property owners have to leave town to escape the noise and get some peace, the stories of picnics that were ruined, farms & gardens that have gone untended, and animals that have been spooked. Many letters express the concern for public health due to lead in the soil and the groundwater, and the Mill River. There are also concerns about public safety regarding small children at the range and bullets "flying" around the area.

Mr. Mann noted the Board had received the letters, they would be entered into the records of the hearing, and the Board would read them before the decision hearing. (The members of the board all received copies).

Mr. Evans noted a log that Sondra Thatcher kept regarding shooting at the range. The log included the dates, the duration, and the type of noise. The board also received a copy of the log.

Mr. Evans noted that the noise is not from pistols or shotguns. He also noted if one wanted to hear what the noise was from, they could do so on a computer. There are videos on the websites of Irish Arms from Holyoke, MA and YouTube which shows them shooting machine guns and automatic weapons at the Village Hill site. There are also videos at Highland Security's website and Facebook page. Highland Security is in New Hampshire and is owned by Mr. Robert Hodgkins. They were posted by the people that were using the site. Mr. Evans then proceeded to show the videos to the board. He noted that "price tags were hanging from the gun". Someone from the gallery of people present asked "Are you sure of that?" Mr. Evans did not respond.

Chairman Mann asked Mr. Evans how he knew they were at the Village Hill site. Mr. Evans stated they could recognize it by the furniture and beach umbrella. He stated it was quite clear it was filmed at 74 Village Hill. Mr. Evans also noted the date on the video; September 8, 2010 also corresponded with Mrs. Thatcher's log of heavy artillery fire taking place at the range that day.

Mr. Evans also noted at Highland Security's website, there is a button that states "Ranges & Classes", and if you press on it, it will bring up the Williamsburg site.

Mr. Evans also noted on the Highland Security's Facebook page that there are videos that were filmed on July 4, 2010 which also is in Mrs. Thatcher's log as a day with heavy gunfire that lasted from 10:30 a.m. to 5:30 p.m.

Mr. Evans noted Mr. Hasbrouck's decision that it was a non-conforming use that was grandfathered. Mr. Evans acknowledged this but also noted in the Williamsburg Zoning Bylaw that a non-conforming use cannot be enlarged, changed or extended.

Mr. Evans feels the shooting range has changed to a weapons range with much louder artillery, longer hours of shooting that goes all seasons, not just summer and early fall as it has in the past. He asked where is the yardstick of where the use changes. He cited Powers vs. Building Inspector. The first test is when the bylaw took effect. If the weapons being used were not being used at the time of the bylaw being written in 2003 then the use has changed. The second test is if the degree of automatic weapons changes so does the use and also includes the increased frequency of the shooting in this area. The third test is if the use has a different effect on the neighborhood than a previous use. If the affect of automatic weapons on the neighborhood is different than the affect of pistols and shotguns, the use has changed. Mr. Evans feels that the changes have occurred since 2005.

Mr. Evans stated that what Ms. Verillo seeks is the board to have a finding that prior to 2003 that the range was used primarily for sport shooting with pistols and rifles for a few hours a day, one or two days a week, primarily on the weekends and would like the range to have to return to what it was in 2003. The applicant would like a cease and desist for use of the premises that goes beyond the 2003 level of shooting at the range. They would also like it ordered to require the owners post the land with guidelines for responsible use of the range including an absolute prohibition of small children on the site. Finally they would like the board to request the Board of Health (under Chapter 111 Section 31C) look into a public safety hazard exists regarding the lead and arsenic going into the ground and take appropriate action, and a request of the Williamsburg Conservation Commission pursuant to Chapter 40 Section 8C, that it look at the environmental effects of activity at the site, regarding the impact on the water quality and wildlife and for the commission to take protective action and finally that they ask the board request that the Williamsburg Police Department adhere to enforcing the safety of the public especially regarding small children and stray bullets and take appropriate action.

Mr. Evans also feels that Chapter 214 Section 7B is inapplicable to this case as this range does not fall under the description of the type of range that chapter speaks of. He also feels it is inapplicable as this is not a civil action or criminal prosecution, it is a zoning issue, and thirdly it only seeks to protect owners of the land not users. Mr. Evans stated it is the use of the land that violates the bylaw.

Mr. Evans also feels that there is also a commercial use of the property which under the town bylaws is not allowed. He stated that it is not the commercial character of the use that is the problem though, it is the noise. He also stated they do not want to curb anyone's 2nd amendment right. It is the noise whether it is a shooting range or if they tested jet engines or exploded dynamite. He reiterated that they are not trying to limit a person's right to bear arms. He then closed his presentation.

Chairman Mann asked the Town of Williamsburg's Building Inspector, Mr. Hasbrouck, to speak on the matter.

Mr. Hasbrouck stated he received a letter of complaint from Mr. Evans, representing Erica Verillo on September 10, 2010. The complaint asked specifically for enforcement of the Town of Williamsburg Zoning Bylaw, Section 4.0. Mr. Hasbrouck stated that is the complaint he responded to on November 8, 2010. He stated there was an earlier request for enforcement that was addressed and an appeal was filed and then the appeal was withdrawn. Mr. Hasbrouck spoke about Mr. Evans speaking of the Powers Test. That was addressed in the first complaint and decision not the current decision before the board. Mr. Hasbrouck directed the board to the decision letter dated November 8, 2010 as the only decision that is being appealed before the board. In that decision in which Mr. Hasbrouck stated he would not take any further action, he consulted with the Williamsburg Police Department, the Environmental Protection Agency, the Massachusetts Department of Environmental Protection, and the Bureau of Alcohol, Tobacco and Firearms, to determine that all activities were legal within the jurisdictions of those departments, and within all the laws. He also referred to M.G.L. Chapter 214, Section 7B. The part he found most relevant was the last part that "no standards or rules of any state, city or town agency, for limiting levels of noise in terms of decibel levels which may occur in the outdoor atmosphere shall apply to the ranges exempted from liability under the provisions of this section." In that Mr. Hasbrouck feels that owners cannot be held liable for the noise except between the hours of 10:00 p.m. and 8:00 a.m.

Mr. Hasbrouck has received no allegations of shooting at night at the range. Mr. Hasbrouck asks that the board make a decision specifically on the appeal before them that was issued on November 8, 2010 and act only on that.

Chairman asked if there were any response from the property owners and there was none.

Chairman asked the members of the Board if they had any questions to ask of Mr. Evans or Mr. Hasbrouck. There were none. Mr. Mann then opened the floor up to the public for any questions which may or may not be answered or any statements that were relevant to the appeal of the Building Inspector's decision. He asked that they address the Board only and to state their name and address.

Mr. Arthur Dufresne from 27-2 Parsons Street, Easthampton spoke. He lived in Williamsburg previously and wanted to thank Tom Hodgkins for allowing the local law enforcement agencies to practice their skills and the range and keep the citizens safe. He also felt that the noise from Route 9 and chainsaws can be just as loud or louder. He asked if that will be a concern down the road. He also felt the neighbors who are complaining bought their houses knowing there was a shooting range there.

William Turner of 21 Lawton Hill Road, Williamsburg spoke to thank Tom Hodgkins and his family for the property being open to the public to use recreationally. He also spoke of when he was a child that there were automatic weapons that were used at 74 Village Hill at the shooting range. He feels the use of that property has not

changed and as an abutter, and having lived no more than ½ mile from it his whole life, he is in a position to say that.

Keith Dufresne of 113 Goshen Road, Williamsburg spoke. He has lived for 50 years at that address which is an abutter to the property in question. He also feels nothing has changed. He feels there has been a decrease, if anything, in the amount of use at the shooting range has recently. He noted there has been no shooting at all since December 6, 2010. His brother went there to site a rifle there on December 22, 2010. He is in the woods every day and he feels the shooting is sporadic but no more bothersome than Route 9.

David Gardner of 13 Plain Street, Easthampton came to speak as a former member of the Easthampton Zoning Board of Appeals. He read about the appeal in the newspaper. He also read our town bylaws. He feels the nature and purpose of the property is pretty much the same and is an asset to the community. He feels if the use has increased there is a change of use, especially if there is commercial use.

Martin Mahoney, from the board, spoke to Mr. Gardner and said there has been no determination that there is commercial use at the property. Mr. Mahoney feels there is no evidence they have been presented showing commercial use and the board cannot entertain that until there is a determination by the Building Inspector that there is commercial use at the property.

Mr. Gardner felt that the problem of noise should be checked out by professionals and maybe conditions could be put in place.

Robert Parker of Lawton Hill Road, Williamsburg stated he has lived for almost eight years as an abutter to the property.

He also thanked the Hodgkins family for use of the property. He has experience as a range officer in Easthampton and Southampton. He has been around guns from as early an age as he was to hold them. In watching the videos, his opinion is that it is just recreational shooting that is going on by “guys showing up after work”. One of the videos has him in it and it was only recreational shooting. He also stated that duly licensed machine guns are allowed on any shooting range in Massachusetts. As far as explosions at the site, he has heard none. He also spoke of copper jackets on bullets that protect the breakdown of the lead.

Peter Meleady from 144 Mount Warner Road in Hadley spoke next. He has been friends with the Hodgkins family for many years (1986) and has shot at the range. He feels the weapons used on the range are not heavy weapons by military standards. His best friend was Robert Hodgkins who is now deceased. He stated he fired machine guns on that range back in 1986. He feels the use is no different now than it was back in 1986. He also has been there to pick up fired shots to clean up the range.

Stephen Snow of 36 Old Goshen Road was next. He is an abutter to the property. He lived in town for a long time as a child. He moved his family back here in 1986. He has been a long time friend with one of the owners. He feels the gunfire has increased from one or two days a week to five to six times a week. It used to be rifles and pistols and now it is explosions and automatic weapons. He complained that it causing a problem with his nerves. He runs a real estate office out of his home and is causing a problem with him getting his work done. He feels property values are going down and he has a responsibility as a realtor to let potential buyers know about the incessant shooting.

Sondra Thatcher of 6 Hyde Hill Road, Williamsburg spoke next. She asks the board only to be allowed to live out the rest of her life at her family home, where she has resided for 50 years, in peace.

Josh Simpson of Frank Williams Road in Shelburne spoke next. He owns the Snow Farm on Clary Road which is off of Hyde Hill Road in Williamsburg. The Snow Farm is an abutter to the property. He has a license to carry and has no problem with guns. He has no issue with the firing range per se, but does have an issue with the children that go to his summer programs at Snow Farm and the possibility of stray bullets. He also feels that the noise is frequent and at times excessive.

Jim Robator of 109 Goshen Road, Williamsburg stated that he has heard the shooting periodically. He is not home at all times as he works out of town. He has lived in town for three years. He does not think the shooting is excessive.

Lisa Schmitt of 8 Mountain Street, Haydenville was next. She lived at 6 Hyde Hill from 2009-2010 for two summers. She worked for the farm. She was affected by the sound coming from the shooting range while she was on the farm. She felt she was on a battlefield. She felt it was not conducive to a high quality of life in terms of peace of mind and connection.

Stephen Smith from 7 Old Goshen Road, Williamsburg spoke next. He stated he is not against the shooting range but if the use has escalated or not conform to the pre-conforming use, the board should take action.

Dave Snow from 107 Main Street, Charlemont spoke next. He lived at 7 Hyde Hill Road from 1958 to 1977. His son has a farm near the shooting range. He is not against them using firearms they own for target shooting as they did back when he lived there. He returned to help his son at the farm in 2008 and was astonished at the increase of shooting. He felt the noise was overbearing and he told his son he could not help on the farm as the "loud concussion of heavy explosives" really bothered him and caused his nerves to be on edge. He had to leave the property and feels it has destroyed the wonderful relationship he has had with his son in working in the gardens.

Jackie Compton of 10B Ice Road in Williamsburg was next. She lives a mile and one-half from the range. She feels the noise and frequency has increased immensely. She and her partner have had to leave their house to seek peace and quiet especially on the weekends. She stated there are laws to protect the citizens from dogs barking but not from this and it is not fair.

Raymond Rice who owns 96 Old Goshen Road, Williamsburg spoke. He moved out to Williamsburg as it was nice and quiet in the country and with the noise it is not conducive to a nice quiet country area.

Lynn Smith from 6 Hyde Hill Road, Williamsburg was next. She currently lives with Sondra Thatcher. She has seen how the increased noise has caused great distress for Mrs. Thatcher. She has heard explosions that sound like bombs going off. They are not coming from rifles. The noise is especially excessive in the summer and fall. She also reported on December 19, 2010, she heard gunshots that were fired very close to her while she was at 84 Goshen Road. There were approximately eight to ten shots. She then noted one of the owners came out of the woods and made a vulgar hand gesture at her and took pictures of her. She stated she felt threatened and called the police.

Margaret Misner of 73 Old Goshen Road, Williamsburg spoke of being in her yard and hearing gunfire "whiz" by her. She also spoke of friends who were on her property who also felt the bullets "whiz" by. The police were called and stated the berms were not high enough.

Jan Valego from 108 Strong Road, Southampton spoke next. Her ex son-in-law is Robert Hodgkins III. Her granddaughter is the little girl that can be seen in some of the videos that were taken at the shooting range. She is concerned there are no safety rules in place at the shooting range. Her granddaughter spends a lot of time on the

range. She feels no children under age 12 should be allowed on the shooting range. She also noted there was no ear or eye protection on her granddaughter.

Chairman Mann told her that while they sympathize with her, this is not the issue before the board. They felt that what she was asking was way beyond the power that they have. They are a zoning board and only deal with issues with zoning. He stated the bylaws give the board very limited powers. The board is interested in the use of the property as it pertains to the zoning bylaw. Mr. Mann stated she may have a matter to bring to the Police Department or other Child Protection agencies and he is sorry it is not a matter they can deal with. Mr. Mann also felt it was beyond the scope of the hearing.

Ronald Neck from Shutesbury spoke next. He felt the issue had a lot to do with public safety.

Mr. Mann stated that at the beginning of the hearing, it was presented that the appeal had to do with the decision from the building inspector. That is all the board is allowed to consider. While there may be concerns the public has, they have to do with other agencies, such as the police, and state and federal agencies. The extent of the bylaw, does not address public safety to the extent the public is presenting.

Jennifer Scmitt from 17 Valley View Road, Williamsburg asked who determines what is allowed under Chapter 61A for recreational land. Mr. Mann stated she could look under Chapter 40 of the state regulations. She was given a copy from someone in the audience. Mr. Mann stated she could speak to the Assessors about how land is assessed.

Jody Nishman of 23 O'Neil Road, Haydenville was next. He noted there are a lot of allegations going back and forth. He feels what the board needs to decide is if there is a change of use of the land and base their decision on that.

David Valego of 108 Strong Road, Southamptton spoke next. He spoke about Mr. Hodgkins stating that he does not do commercial shooting in Massachusetts. He stated that Mr. Hodgkins does have a gun business in New Hampshire and was ordered by the Zoning Board of Adjustments in New Hampshire to do his testing in Massachusetts according to their minutes. His biggest concern is his granddaughter though and feels that any range that has no rules is dangerous. The pictures he held showed his three year old granddaughter with a gun directly in front of her. He reiterated the need for rules for safety on the range.

Ada Shaw from Bethel, CT spoke next. She visits Sondra Thatcher at 6 Hyde Hill Road in Williamsburg. She stated that sound pressure readings and testing was done on the noise at that property and at 84 Goshen Road and the decibels were in violation of OSHA standards.

James Snow who co-owns 6 Hyde Hill Road, Williamsburg spoke. He stated there is increased activity at the shooting range and the shooting has become more frequent which has increased the noise in the neighborhood. He also stated that in March 2007 in the Chesterfield, NH Zoning Board of Adjustment meeting minutes, that there "would be no client shooting in New Hampshire and that he (Robert Hodgkins) does all his shooting at a test facility in Massachusetts" and that he (Robert Hodgkins) "would take the larger arms there (MA)". Mr. Snow also disputed that Mr. Hodgkins does his testing at Smith & Wesson as they only allow pistols and rifles on their range.

Lauren Salva from 107 Goshen Road, Williamsburg was next. She has lived in Williamsburg for approximately 20 years. She noted that the noise has escalated in recent years. The shooting was mainly done on Sundays but now is done on all days and at all hours. She also noted she was not made aware of the range being there when she bought the house.

Colin Black from 119 Nash Hill Road, Williamsburg spoke. The noise does not necessarily bother him but he does see it affect his father-in-law who suffers with P.T.S.D.(Post Traumatic Stress Disorder). When the firing gets excessive his father-in-law cringes.

Mr. Evans was asked if he would like to speak before the Board closes the hearing. Mr. Evans stated that public safety is an element of Section 4.0 of the Williamsburg Zoning Bylaw and they would consider that element when they make their decision.

Mr. Hasbrouck was asked if he had anything further to say. He just reiterated to the Board that this appeal had to do with his decision of November 8, 2010 based on the complaint he received on September 20, 2010.

A motion was made by Lisa Berkman to close the public hearing. The motion was seconded by Donald Turner. Mr. Mann let the people in attendance know that no further testimony would be allowed and no other letters may come in to the Board. The meeting was adjourned at 8:30 p.m.

The decision hearing will be on February 7, 2011 at 7:00 p.m.

Respectfully submitted,

Brenda Lessard, Secretary