

MINUTES OF TOWN OF BERKLEY SELECTMEN'S MEETING OF 9/6/2022

SELECTMEN IN ATTENDANCE: George F. Miller, Chairman, Dean R. Larabee, Clerk, Wendy F. Cochrane, Member

TOPIC		ACTION
	Meeting Convened at 6:00 p.m. in the Moitoza – Pettey Hearing Room	
Personnel Board (taken out of order)	Board to vote to post Assistant Accountant position. The Board voted to post the Assistant Accountant position for in-house and outside advertisement, with a closing date of September 20, 2022 by 2:00 p.m. The Board voted to take a brief recess to reconvene the meeting in the COA Room. The Board voted to reconvene the Board of Selectmen meeting of September 6, 2022 in the COA Room at 6:11 p.m.	Cochrane to motion to post, Larabee 2nd, voted. Cochrane to motion to recess, Larabee 2nd, voted. Larabee to motion to reconvene, Cochrane 2nd, voted. Larabee to motion to continue, Cochrane 2nd, voted.
Public Hearing	Board to vote to continue Public Hearing from July 20, 2022: Pursuant to Article 21, "Zoning," Section 7C, "Special Permits," of the General Bylaws of the Town of Berkley, the Board of Selectmen will hold a public hearing on July 20, 2022, at 6:30 pm in the Moitoza – Pettey Hearing Room at the Town Office Building, One North Main Street, Berkley, Massachusetts, regarding the application of Michael Ricardo for a special permit for a "private motocross track – club structure" at property known as and numbered 1 Ricardo Way, Berkley, Massachusetts, further identified in the Assessor's records at Map 16, Lot 0005. Interested parties are welcome to attend and comment; persons wishing to be heard should appear on the date and at the time and place designated above. Comments can also be sent to the Board of Selectmen either by mail, c/o Heather Martin, Town Administrator, One North Main Street, Berkley, Massachusetts 02779, or via e-mail, to selectmen@berkleyma.us, prior to the date and time of the public hearing. A copy of the referenced application is on file with the Town Clerk and is available for public inspection during the Clerk's regular business hours. Michael and Angela Ricardo were present. Mr. Ricardo stated he did research on his own about sound absorbing materials, and presented copies of the research to the Board. He stated based off the proposed construction of the sound barrier and the original track proposal, the sound absorbing material is going to cost approximately \$17K. He discussed the details of the construction, and how it has to be a solid wall otherwise the sound would penetrate the gaps. He then discussed details regarding the exhaust on his motorcycle (pictures of the exhaust were presented by Mr. Ricardo to the Board). He noted he plans on putting the sound absorbing material on the fence in areas of high acceleration, where the bikes would make the most noise. Mr. Miller asked if he consulted with any sound engineers. Mr. Ricardo replied he was consulting with a company called Accoustifence. Mr. Miller proceeded to open up the public discussion, and asked if anyone had any new information relevant to the hearing. Kevin Dooley of 57 Plain Street East stood up to speak, and presented to the Board paperwork from MassDEP regarding minors operating off road vehicles in MA State Forests, specifically referencing Freetown State Forest. Mr. Miller proceeded to read what he was presented with. He noted if a person is under 18, they must take an OHV safety responsibility course to legally operate in MA, and also noted he did not see anything in the letter referencing dirt bikes. Jake Helfenbein of 31 Beach Avenue in Somerset, MA stated his kids have that certificate, but would never bring them to Freetown State Forest to ride due to how unsafe it is. David Galante of 6 Edwards Avenue in Taunton, MA stated he also has 2 children that have taken the OHV class, and in order for children to ride in Freetown State Forest, they would have to be registered for a race event. If not, they must be with an adult and at least 13 years of age. All this information can be found on the OHV website, he noted. Mr. Miller stated they are looking for beneficial impacts to the town in regard to this special permit. He stated due to the limited amount of businesses in town, he doesn't feel the town would be enriched with the volume of people going to Mr. Ricardo's track. Mr. Ricardo noted due to the publicity that this special permit has received, more residents from Berkley are interested in potentially using the track.	

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Eve Lippold of 50 Plain Street East was present to speak on information she wanted entered into the record. Mr. Miller proceeded to read over the documents presented. Ms. Lippold presented screenshots of Mr. Ricardo's WhyNot apparel company, screenshots of their YouTube videos regarding the Ricardo Training Facility, and a screenshot of their 2014 Facebook page where Mr. Ricardo asked for a \$10 donation after they were told by the Board not to charge or ask for a fee, according to the May 10, 2014 meeting minutes. She then provided screenshots of Venmo account activity with deposits from riders of \$30. Mr. Miller entered the aforementioned documents into record, but noted it was not a deciding factor in the decision making.

Bruce Newcomb of 51 Plain Street East stood up to speak. He stated he does not see the proposed sound barrier as a viable solution to the problem, and feels the permit should be denied.

Karen Kulis of 51 Plain Street East stood up to speak. She stated with her experience in sound engineering, she would still be able to hear the noise from the track, even with sound barriers put in place. She respectfully requested that the Board deny this special permit.

Gerald Houde of 14 Susan Drive stood up to speak. He stated it's not only the level of the noise, it's the length that it happens. He stated it's a constant sound all day long.

Ted Lippold of 50 Plain Street East stood to speak. He stated he can hear the motocross from his house. He strongly urged the Board to deny the special permit to the Ricardo's based on it being in a residential neighborhood that's not intended for a track of that sort.

Mrs. Ricardo stated the track is not a professional track of any kind. She also stated they do not ride late into the night, which was suggested by one of the complainants. She stated they tend to ride 15 minutes at a time, not continuously.

Kevin Dooley of 57 Plain Street East was present to speak. He stated the narrow band of sound that comes from the track is very high pitched, and the difference can be heard when there are no leaves as opposed to many leaves on the trees. Mr. Miller asked Mrs. Ricardo when the earliest in the year they typically ride is. She stated generally late March until the end of October.

John Burke of 47 Plain Street East stood up to speak. He described the neighborhood as being very quiet, and the Ricardo family changed that. He noted he thinks that will affect the retail values of homes in the area.

A resident of 70 Plain Street East stood to speak. He stated he has no issues with the noise emanating from the Ricardo residence.

A resident from Freetown, MA stood to speak. She stated she doesn't believe the track will affect the retail values of homes due to her experience in trying to put in an offer for a home on that street for \$40K over asking price, and was still outbid.

Mr. Ricardo stated that he created requirements for safety gear, and improved the roadway onto his property for ease of emergency vehicle access. Mr. Miller noted the Board is very limited in terms of their analysis, and the specific criteria Town Counsel outlined at the last meeting is what the Board has to consider. Mr. Miller stated there is a distinction between people riding on trails as opposed to a track. Mrs. Ricardo stated they are being forced to obtain a special permit to ride as a family on their track, and that the cease and desist order does not say anything about operating a business. Adam Costa of Town Counsel was present to speak on the matter. He stated private recreational use is not defined in very great detail in the Town of Berkley's by-laws, so it's left to the Board of Selectmen as well as the Zoning Enforcement Officer Joseph Biszko as the Building Inspector to determine what that the definition should be. It is Mr. Costa's understanding that the definition has been applied in such a way that based upon the operations that have been historically and recently occurring as determined by the Zoning Enforcement Officer on this property, it constitutes a second principal use of the site. Mr. Costa explained the letter issued from Mr. Biszko stated the applicant had 2 choices; either challenge the determination from Mr. Biszko, or put an application in for the Board of Selectmen for private recreational use. Mr. and Mrs. Ricardo opted to do both; they appealed to the ZBA, and further appealed in court, and meanwhile made an application to the Board of Selectmen. Mr. Costa stated there's a discussion that can occur between the Board of Selectmen and the applicant during this process if the applicant were willing to reduce the extent of use it was requesting, or even if the applicant wasn't willing, the Board has the authority through conditions of approval if the Board opted to approve the use to condition it on more limited use of the property.

Mr. Miller asked Mr. Costa if there is a way to temporarily lift the cease and desist order so that the Board could go out and listen to the sound emanating from the track that the bikes

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produce, and would they have to go to court to do that. Mr. Costa replied for the purposes of an investigation, the Board can make a request with the Building Inspector if this could be allowed temporarily for the purpose of determining the noise level so the Board can better evaluate their decision with the Special Permit. Mr. Costa noted Mr. Biszko does reserve the right to refuse that request. Mr. Miller asked Mr. Biszko if the Board could be granted 1 day to be able to hear the motocross track in use. Mr. Biszko replied he'll consider it.

Ms. Kulis of 51 Plain Street East requested the Board to go to some of the homes where the noise happens to resonate the most, and that it was agreed upon at the last meeting. Mr. Miller stated the Board plans to go to neighboring properties, as well as the Ricardo property. Ms. Lippold of 50 Plain Street East echoed the same request, while also seeing if any members of the Board could see if the mufflers on the bikes were altered in such a way as to be silenced for the purpose of the sound test. Mr. Miller replied the Board will look into any issues presented as far as the bikes are concerned.

Derek Bissonette of 15 Brook Street, Carver was present. He noted one of the opposing neighbors allegedly can hear the track from his property, but couldn't hear Mr. Miller speaking to him.

Mr. Miller asked Mr. and Mrs. Ricardo if there is anything aftermarket that can temporarily be placed on the bike without significantly impacting the performance of the machine to minimize sound or reduce it. Mrs. Ricardo replied after 1996, all dirt bikes produced had to follow strict EPA sound laws, and can only get to 90 decibels at full acceleration.

Walter Bezaniuk of 45 Plain Street East was present via Zoom. He asked if there has been an environmental impact study done in regards to a business within a residential zone, to which Mr. Miller replied no.

Mr. Miller addressed the public hearing with the dates of Monday, September 19, 2022 or Tuesday, September 20, 2022 as potential dates for the sound test, beginning at 4:00 p.m., weather permitting. Mr. Ricardo asked if there would be any violations of public hearing laws if opposing neighbors were to communicate in any way with the Board while they were out on the sound test. Mr. Miller replied the Board will not be able to take in any input while out on the sound test from neighbors, as well as the applicant's property. Mr. Miller stated the Board plans to continue the public hearing until Wednesday, September 20, 2022.

Patricia Look of 28 Plain Street East was present. She asked if any members of the Board have come to the neighborhood on their own in the 7 years the Ricardo family has been there to hear what is going on. Mr. Miller stated he has been through the neighborhood at that time, but never onto anyone's property. Ms. Cochrane stated it used to be her grandparent's property, which she has made that disclosure many years ago, and there is no conflict. She stated that she walked Cotley Street approximately 5 or 6 times during paving construction.

Keith Goettlich of 24 Plain Street East was present. He asked if the town is bound by the CMR noise regulations. Mr. Costa stated the town is bound as a municipality in terms of its municipal functions by DEP noise policy. The town does not have a noise ordinance when it comes to private property. In the absence of a noise ordinance, the town isn't bound to enforce DEP policy, but has the authority to enforce the policy if it so chooses. Mr. Miller stated if Berkley passed a noise ordinance, then they would be bound by MA DEP regulations, and that a noise ordinance would have to go to a vote at Town Meeting. Mr. Goettlich asked what it will take to have a professional sound test done instead of a subjective one, and that it should go to the state level. Mr. Costa stated in the communities that have noise ordinances, as well as the communities that have opted to enforce DEP regulations do it through their Board of Health, as it is a form of air pollution. He explained the nature of special permits is that they are subjective to some respects, and that's why at the onset of this process he described the standard as 6 factors the Board of Selectmen need to consider. Noise could fall under 2 of those factors; it could be something that impacts the neighborhood character, or it could be something that constitutes an impact on the natural environment. He noted those are subjective factors. Mr. Miller asked if the Board of Health is allowed to vote and adopt CMR as it relates to sound. Mr. Costa stated the regulation defines noise in a very subjective manner. He explained that the DEP adopted a policy that better defines noise. It's a 2 part test, 1 part relates to decibels and ambience, and the other part relates to that octave rate. Mr. Miller stated to Mr. Goettlich the Board of Health can enforce the noise, but not adopt the state regulations.

David Destefano of 5 Plain Street East stated he submitted the state's noise DEP regulations to the Board to show that lawn mowers and chainsaws are specifically excluded from those regulations.

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Mr. Miller stated he still would like the Board to go out and listen to the track for themselves, but will still take all information presented tonight into consideration.

Mr. Goettlich asked if an official sound test would be done by a sound professional during the Board's sound test. Mr. Miller replied they would look into possibly getting a professional. Mr. Goettlich asked if someone from the DEP could be asked to go out there. Mr. Miller asked Mr. Costa this question. Mr. Costa replied those requests can be made, and that DEP in rare instances will come out to the site and they also have noise level meters that can be rented out. Mr. Miller noted he would prefer to have a professional do the readings than a sound meter to be rented.

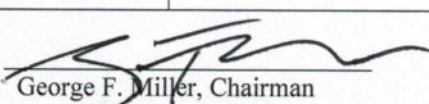
Ms. Kulis mentioned last time she submitted a letter from DEP that said they had not done the test, and the letter that was submitted did not pass.

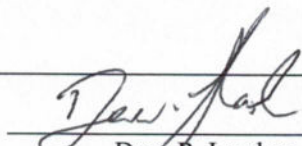
Mr. Miller noted he has the proposed dates and will coordinate it with Mr. and Mrs. Ricardo.

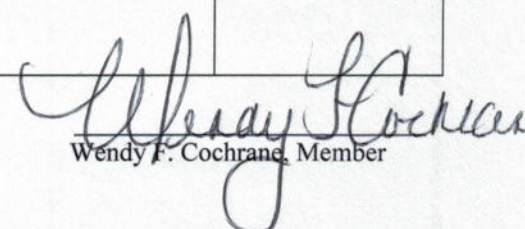
Mr. Partridge noted he will leave a signup sheet for any neighbors who are willing to have the Board listen to the track from their property.

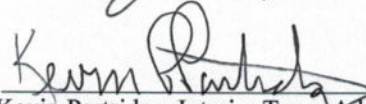
Mr. Costa reiterated that site visits are exempt from the open meeting law. He explained during the site visit, the only information the Board can be given is basic descriptive information or instruction, or vice versa. They can instruct that the dirt bikes be ridden at a certain time at a certain location at a certain acceleration. They can ask a property owner or neighbor if they are allowed to walk to certain areas of the property or into the home. There can't be anything that would constitute the liberation of an open meeting law. No deliberation can occur during the site visit. The Board voted to continue the public hearing to 6:00 p.m. on September 21, 2022. The Board voted to adjourn the meeting.

Larabee to motion to continue, Cochrane 2nd, voted.
Larabee to motion to adjourn, Cochrane 2nd, voted.


George F. Miller, Chairman


Dean R. Larabee, Clerk


Wendy F. Cochrane, Member


Kevin Partridge, Interim Town Administrator