

**WEST TISBURY ZONING BOARD OF APPEALS
MINUTES WEDNESDAY JANUARY 19, 2011
HOWES HOUSE AT 5 PM**

PRESENT: Tucker Hubbell (Chair), Eric Whitman, Tony Higgins, Toni Cohen, Larry Schubert, Nancy Cole

ABSENT: Bob Schwier

ALSO PRESENT FOR ALL OR PART OF THE MEETING: (Many attendees are not listed, as they were not present when sign in sheet went around)

Jennifer McCann, Andrew Marek, Dean????, Josh Grant, Christopher Brooks, Mary Louise Williams, Phil Forest , Wendy Forest, Tom Dresser, Steve Maxner, Wayne Greenwell, Davina Porter, James Sepanara, Jill Jupen, Nick Puner, Bonnie Jackson, Robert E L Knight, Aaron Boyd, Jake Levett, Nathan Belain, Jonathan Belain, JJ Mendes, Babriel Bradley, Stephen Serusa, Robert Paul Levine, Richard Knabel, Matt Coffey, Cynthia Mitchell, Peter Bramen, Vincent Maciel, Ernie Mendenhall, Susan Silk, Skipper Manter, Joan Ames, George Kinsman, Jonathan Revere

BUSINESS

- The minutes of January 6, 2011 were approved.

HEARINGS

5:20 PM An Appeal by Christopher Brooks and Mary-Louise Williams, and ten co-applicants, of a November 4, 2010 decision of the West Tisbury Zoning Inspector. It was the Inspector's decision that according to the Zoning Bylaws, the organized use of an existing dirt bike track is 1) an accessory residential use, and not governed by Sections 8.5-1&2 of the West Tisbury Zoning Bylaws, as per complaint; and 2) does not rise to the level of a public nuisance or prohibited use under Section 3.2-1 of the Zoning Bylaws, as per complaint. The appellants believe the use is in violation of the Zoning Bylaws by creating unacceptable noise and disturbance and ask for enforcement: That this use on this property be prohibited. The subject property is Fisher's Farm, Assessors Map 11 Lot 46.1, 27 Davis Look Rd; RU Dist. The right to appeal is under Sects. 8 and 15 of MGL Ch. 40A. **The Co-Applicants are: Jennifer Powers, Christine Kinsman, George Kinsman, Bonnie Tilton Jackson, Emily Galligan, Paul Galligan, Lily Morris, Todd Powers, Wayne Greenwell, Stephen Maxner**

Correspondence: 1.) Ernie Mendenhall opinion; 2) Amy O'Brien, for; 3) Pete Costas, for; 4) Wayne Greenwell, against; 5) Cynthia Bloomquist, against; 6) Abutter Bonnie Jackson, against; 7) Christine Kinsman, against; 8) Thomas Dresser, against; 9) W. Fergus Porter, against; 10) Philip and Wendy Forest, against; 11) Steve Maxner, against; 12) Abutters Louisa Williams and Chris Brooks, against; 13) Steve Maxner letter to Fred and Betsy Fisher;

Autumn of 2010 Petition asking for use to be stopped signed by West Tisbury Residents and Abutters: Wayne Greenwell, Geoffry Borr, Bob Jahries, Paul Galligan, Todd Powers, George Kinsman, Christine Kinsman, Philippe Ezzanno, Madeleine Ezanno, Bonnie Jackson, Scott Campbell, Warren Morse, Janet Alley, Nadia Albanghini, Stuart Gardener, Stephen Maxner, Dorothy Fisher, Erin Leighton, Doug Seward, Sarah S Isenberg, Mary Wirtz, Fatiha Berichi, Louisa Williams, Christopher Brooks

Chair Tucker Hubbell opened the meeting and explained how the Board would proceed that evening. They would read correspondence aloud, take testimony, but they would not be voting that night. The hearing would be continued. He went on to say that this hearing was an appeal and therefore the ZBA would be voting to either uphold the Zoning Inspector's decision or reverse it. Another possibility would be to return it to the Building Inspector if it is decided that it is a use that should have been granted by Special Permit. The Board then read 13 pieces of correspondence to the room. Two were in support of the ZI's decision, 10 were against, one was Ernie Mendenhall's letter and one was a copy of a letter from Steve Maxner written to the Fishers.

Applicant Louisa Williams of 251 State Rd spoke of the 2 stroke motorbike track as an inappropriate use, a nuisance, and disruptive. She said it is a difficult issue, one that is disturbing peace and quiet. She and her husband were aware that the Fisher Farm had sold its developmental rights in the '80's and was to remain in perpetual agricultural use under an Agricultural Preservation Restriction. As they understand it, the Fishers would need a plan and permission to do any other use on the protected lands. The Town plays a part in the oversight of uses on this land. They used to hear the cows but about 5 years ago they started hearing motorbikes. They tried to talk it out with the Fishers, then decided to wait it out hoping it was a use the Fisher kids would outgrow. It is now much louder and an island wide recreation area.

Tucker said the ZBA is now aware of the APR issue, but it is not in their purview to be involved with deciding it. The Selectmen and the Conservation Commission have Town oversight of the APR. Louisa Williams asked, who's watching out for the town, who's minding the store? Why hasn't anyone done anything about this issue? She said Ernie Mendenhall is incorrect. This use should not be on this farm in a residential area. The Town should find a place for a motocross use. Louisa's husband, Christopher Brooks, spoke of the financial aspect of the motorbikes being close to their house. They have rented their house out in the summer, but no one would want to rent it now. Plus, they doubt they could sell their house with this very disruptive noisy use nearby. He added that if anyone has not heard the noise coming from the track, it is like an organized chain saw club.

Steve Maxner urged constructive political decision making. He decried the Town's lack of planning and reluctance to enforce zoning regulations as they relate to the Fisher Farm dirt bike track. He does not like being in the position of having to come to a Zoning Board meeting wherein he has to present arguments against his friends and neighbors. He would support an island wide initiative to develop an appropriately sited riding track. He does not take issue with the Fishers or the bike riders. He felt the Town knowingly chose to ignore local state and public health violations and found it hard to understand. The Town did not intervene when the track became operational. As a result, neighbor has been pitted against neighbor. He urged the Board to overturn Ernie Mendenhall's ruling which would lessen community tension and provide a safeguard against a similar future conflict.

Wayne Greenwell spoke. He referred to the 6 page brief the applicants had submitted and which the Board had read and to Section 3.3 (Accessory Uses) of the Zoning Bylaw. He called the dirt bike use a recreation facility, and that use should have gone through permitting. He feels there is a zoning implication re the APR also. People have endured thousands of hours of noise; why was this necessary? There has been no accountability of this use.

Nick Puner referred to Section 3.3 also. He said the motor bike use is not one that is subordinate and customarily incidental to a residential use...sheds, pools garages, etc are accessory

residential uses. And, there being no residences allowed on the property it is not a residential accessory use.

JJ Mendez spoke. When he took over as organizer at the track, he talked to the neighbors about the noise. He limited the use from 5 days to 2 ½ hours on Saturday and Sunday, and limited the number of riders to 20 people, plus their kids if any. They didn't touch any farmland. They shut the area down to put up fencing and trees, albeit the trees have some growing to do. He spoke of the decibel levels of the bikes and how mufflers could reduce the noise but not substantially. No one is allowed to ride alone, which is a safety rule in case of accident. He has rules, set hours, track maintenance, proper equipment, and no longer can just anyone come in and use the track. The riders sign a waiver with the Fishers.

Tucker asked him if there were membership dues? No. They do take a collection to give Fred Fisher a donation once a year. Tucker asked if the fence and tree improvements were paid for by the riders? Yes. JJ added that there are other active bike trails around for which the Fisher Farm bikers are being blamed for. Tony Higgins and Nancy Cole asked JJ about State Forest and County airport land. He said the State won't allow motorized uses in the Forest. There's a tract of land he tried for at the Airport, but the Steamship Authority controls it and they said no. JJ said he went to Ernie Mendenhall and the Police to make sure the use was OK.

Joan Ames said the key issue is how important are the decibel levels to the riders. If you silenced them, would that take the fun out? Clearly, she said, not all that is possible has been done to mitigate noise. One of the bikers spoke, she said she would muffle hers. Another, Andy Merrick, talked of how important the track is to him to practice for Championship races. He said it is noisy, and mentioned other noise issues on the Island. He also said that neighbors have talked about the stress caused by the use, but he becomes less stressed by riding his bike. The use of "snorkel" mufflers was briefly discussed.

Nancy asked what the noise is comparable to? Someone answered, a diesel truck going by when you're standing by the road. Someone else said you need to multiply that with how many bikes are riding at the same time. Jim Sepanara advocated an electric motorcycle organization. He also said he'd had past (negative) dealings with the ZBA and would share his experiences with anyone who'd like to know about it.

Paul Levine of Field View Lane said in principle he was not opposed to the bikes, but there must be compromises made in order for all to enjoy their lives. Wayne Greenwell addressed JJ Mendez, saying that the trees and fencing had not made a difference. He said the bike track is not on the residential portion of the Fisher property. It is on APR protected land so is not a residential use. Steve Maxner said, JJ said he'd gone to the Police and the Zoning Inspector. Who did he see and when? JJ said, he'd spoken with Dan Rossi and Ernie Mendenhall 3 years ago. He did not go back to see them until Wayne Greenwell's letters (to the Selectmen and the Gazette) of complaint. JJ then clarified that he had not talked to Mr. Mendenhall prior to the Greenwell complaints.

Someone pointed out a principle rebuttal argument in the applicants' brief; that the use was a public nuisance. Robert Eli of Davis Look Rd said he has never been bothered by noise from the track. He's 300 or so yards away from the track. Tucker said that one's location to noise makes a difference, citing that he lived next door to the Lambert's Cove Inn and he's never bothered by noise from big weddings, while people further away are.

Bonnie Jackson asked why Freddie Fisher was not at the hearing. JJ Mendez said he was there for him. Vince Maciel said there have been noise problems on the Island for years. The bikers at (James) Paquette's are very loud, and no one has ever taken action against them. As for the dirt bikes, yes they are loud. JJ however has been trying to organize, to do good rather than the unsupervised dirt biking on State Forest and other trails. George Kinsman said he found it hard to believe that Ernie Mendenhall did not find this track to be a nuisance. Every day at two, he said, it sounds like they are racing in his yard.

Eric Whitman suggested to JJ that Freddy Fisher look over his APR. As there was no more testimony, Tucker Hubbell told the room that the hearing would be continued. The ZBA will find the best way to deal with the appeal re zoning. It may be a Membership Club, which is a use that would require a Special Permit. Bonnie Jackson asked how this could be done without the Fishers applying? Julie Keefe explained that someone other than a landowner may apply for a Special permit, with the owner's permission. Nancy Cole said the ZBA in this case has to uphold or reverse Ernie's decision, it's not a Special Permit. Tucker said everyone has rights here. The APR issue will be taken up by the ConCom and the Selectmen, as they are the administrators along with the State. Skipper Manter said this will be on the selectmen's agenda. Continued to February 10 at 5 PM at the Town Hall.

OTHER CORRESPONDENCE:

Letter from MVC re new DRI checklist

The meeting was adjourned at 7:00 PM.

Respectfully submitted, Julie Keefe, Board Admin.