

## Memo

To: Planning Commission

Fr: Maura Wygmans, AIA

Dt: February 14, 2017

Re: Planning Commission Reporting Form for Municipal Bylaw Amendments

### **Question: Should the Planning Commission Recommend Against the Petitioned Performance Standard of 65 dBA? NO.**

**Explanation:** The Petitioners have proposed a 65 dBA maximum level for noise. This reduced level in the West Charlotte Village is appropriate. There are many reasons for this reduced noise level including the density of residential properties in the West Charlotte Village and the intensity and regularity of the noise from an Event Facility.

The Land Use Regulations define the purpose of the West Charlotte Village District (WCV) are

“(1) to allow for residential and neighborhood uses that reinforce the function of the West Charlotte Village as the Town Center, and (2) to ensure that new development is consistent with the district’s village character and pattern of development as expressed in the Charlotte Town Plan.”

The West Charlotte Village is predominantly a residential neighborhood, and is zoned accordingly. The Old Lantern predates zoning, and is an exception to the rule. However, most of the homes in the West Charlotte Village pre-date the Old Lantern. Most of the homes were built between 1796 and 1900. (See Exhibit A.) Five new homes have been built in the West Charlotte Village in the past 12 years. These homes are the direct result of the Town’s involvement with and development of the Burns Parcel.

The First Goal of the Proposed Town Plan is

“To balance property owner rights to reasonably use their land in keeping with overall public health, safety, welfare and the goals of this Town Plan;”

The current residents of the West Charlotte Village should be afforded some reasonable peaceful enjoyment of their properties. I spoke to one neighbor recently who has lived in her home since before the Old Lantern was built in 1960. And while she had fond memories of attending dances at the Old Lantern, she also indicated that she regularly hears the music from her property. I spoke to another neighbor who lives North of Ferry Rd. who also hears the music from the Old Lantern at her property.

The Proposed Town Plan also includes several Land Use Strategies specific to the West Charlotte Village District including:

1. The Town will develop a framework for moving forward with the work completed by the Charlotte Wastewater Committee.
2. The Town will consider the adoption of an Official Map for village areas which enables the reservation of lands for drainage, streets, parks, schools and other public facilities. To foster the

creation of “complete streets” (multi use) within the village areas, the Town should require the layout of infrastructure including roads to be in accordance with an Official Map.

4. The Town should consider establishing design guidelines for the existing village areas, which will be advisory only. The design guidelines could apply to site and building design and guide new development to protect the rural, historic character of the village areas.
6. The Town will encourage through its regulations and policies the development of a more economically active town center with business services to fulfill local needs and moderately priced housing.

These Land Use Strategies indicate that the West Charlotte Village District is an area of desired growth, both for commercial and residential development. In 2004-2005, the Town invested in a significant study of the Burns Parcel. Among the recommendations for the Burns Parcel were village housing, senior housing, village trails, and village-scale commercial development. The 2016 Proposed Town Plan continues to emphasize the possibilities of this type of development.

Unfortunately, property owners in the West Charlotte Village including the Town who owns the Burns Parcel could be facing significant challenges when trying develop and/or sell their properties, if the noise from the Old Lantern is not properly regulated. Careful consideration should be given to any change in the Land Use Regulations which may make residential development more difficult. As it stands, any landowner in the West Charlotte Village District should be prepared to disclose the amount of noise and activity which takes place at the Old Lantern.

**Should the Planning Commission be concerned that lowering the Performance Standard does not set a good precedent? NO**

**Explanation:** In the report, the Planning Commission expresses concern that “any future application within the Town for such a use might inherit this constraint.” The fact is that any future application will be required to apply for a Conditional Use Permit, a permit that is not being required of the Old Lantern. A precedent has already been set with the two recent applications for similar event facilities within the Town.

In ZBA-16-133-CU Conditional Use Review for Roman-Hardy for the re-use of a historic barn for weddings and other events, the Zoning Board of Adjustment stated the following:

“B. The character of the area is primarily single family residential and agricultural. The area is quiet.

C. Sound and voices carry in the area and that the additional sound from the proposed events will be easily heard at the neighbors’ homes. There are no commercial uses in the area. There are no uses in the immediate area that will generate volumes of traffic similar to the proposed event barn.

D. The noise and traffic generated by the proposed event barn is not consistent with the character of the area and will adversely affect the area.”

This application was DENIED. Interestingly, there are far fewer neighbors in the vicinity of the Roman-Hardy Barn than near the Old Lantern.(See Exhibit B)

In ZBA-15-16 Conditional Use Review of 1046 Ethan Allen Highway, the Zoning Board of Adjustment approved an event facility with the following conditions:

2. Event attendees shall be limited to 125 per event, not including staff;
3. Events shall be limited to the second floor and loft area of the barn, and shall not start before 9 AM, and shall terminate by 11:00 PM.
5. The temporary tent area proposed on the West side of the barn is NOT approved.
6. A maximum of 60 events will be allowed to be held on the property per calendar year...
7. There shall be no more than eight events in any one month
8. No amplified sounds or music shall be produced outside of the event barn. Doors of the event barn shall be closed by 9:00 PM, when amplified music is produced, except for ingress and egress of the building.
10. Parking shall be limited to 34 on-site parking spaces, this shall include staff parking...
12. The permittee shall have a continuing obligation to forthwith provide information requested by the Zoning Administrator in order to determine compliance with the conditions imposed by the Zoning Board of Adjustment in this conditional use approval, including, but not limited to, random sound tests that may be requested by the Zoning Administrator for verification of continued compliance. All costs, including reasonable attorney fees, of the Town of Charlotte, incurred determining and enforcing the compliance will be forwarded to, and paid within 30 days of receipt by the Applicant.

This Event Facility is ideally located along Rt. 7, an area with traffic and noise already inherent to the site. And yet the permittee is still facing numerous conditions to protect the neighboring properties. (See Exhibit C)

If the Old Lantern were a new event facility applying for a conditional use approval today, conditions would be applied to the permit in order to properly protect the residents of the West Charlotte Village District, as these other applications indicate. The Old Lantern has not been required to apply for a permit because it operates under a non-conforming grandfathered status. Because this Event Facility is not subject to conditions and because it is in the most densely populated area in Charlotte and an area designated for growth in the Town Plan, it is absolutely necessary to lower the performance standard to 65 DBA.

**Should the Planning Commission be concerned about collateral activities upon the property (e.g. lawn moving, or the unloading of a refrigeration truck, etc.) raising the decibel levels above 65 decibels (DBA)? NO**

**Explanation:** Music from the Old Lantern Events has been and continues to be the primary concern for residents of the West Charlotte Village, particularly those in close proximity. The Town has received numerous complaints. In 2015, former Town Planner Jeannine McCrumb notified the owners of the Old Lantern that they were in violation of the Section 3.12 (a) (1) of the Land Use Regulations when she measured noise exceeding 70 DBA. (See Exhibit D). The noise concerns are not about lawn mowing, truck deliveries, doors slamming or other intermittent noises that come along with an Event Facility. The noise concerns are about music and the use of outdoor PA systems on a regular basis for long periods of time.

The music emanating from the Old Lantern usually starts around 7:30 PM and continues until 11 PM. The events take place on most Fridays, Saturdays and Sundays from April through November. As

previously stated, this music can often be heard over 1 mile away. It is not only affecting the immediate neighbors adjacent to the Old Lantern. It is affecting the entire West Charlotte Village District.

**Should the Planning Commission recommend a weighted average sound level called “equivalent continuous” sound level (Leq) in the Land Use Regulations? NO**

**Explanation:** The Planning Commission should consider both the type of noise an Event Facility generates, as well as the specifics of measuring devices readily available on the market. Event Facilities rely on entertainment, most often in the form of live or DJ music. Noise levels for music tend to fluctuate up and down; songs build from a quiet introduction to a beat-filled chorus. Over the course of a song, the sound levels may start at 55 DBA, hold steady at 68 DBA, peak at 75 DBA for 20 seconds and then end, followed by 30-45 seconds of talking or quiet. Using the DBA Leq (5 minutes), this song would not exceed 65 DBA Leq (5 minutes), and it definitely would not exceed 70 DBA Leq. This pattern of noise levels rising and falling with brief interludes of quiet between could persist for several hours, and never exceed the allowable performance standard. Using the DBA leq standards does not meet the First Goal of the Town Plan.

The only performance standard that would properly protect the health, safety and welfare of residents of the West Charlotte Village is 65 DBA L-Max or lower. Successful implementation of noise standards means that everyone should be able to easily monitor noise levels. The owners of the Old Lantern, nearby residents, and town officials should all be able to monitor levels using simple hand held sound meter devices. It should be clear that under a certain level is acceptable, and over a certain level is in violation of the performance standards. 65 DBA L-Max is an easily achievable standard for an Event Facility, and an appropriate standard for an Event Facility in a densely populated community. This is the Performance Standard that is proposed in the Petition, and that petition signers supported. Any change from the wording of the original petition could be considered a violation of Vermont Law.

A precedent has been set that the Performance Standard 3.12 in the current Land Use Regulations refers to “maximum” DBA allowed. In ZBA-15-16 Conditional Use Review of 1046 Ethan Allen Highway, the findings of fact item 12 states that “the project will conform to the 70 dBA decibel **maximum** allowed at the property lines...” – bold added for emphasis. In Jeannine McCrumb’s letter dated June 10, 2015 to the owners of the Old Lantern, she states “On June 6, 2015, at approximately 9:30 p.m., noise from activities at the Old Lantern Event Facility **exceeded** 70 decibels in an area beyond your property line, which is a violation of Section 3.12 (A)(1) of Charlotte’s Land Use Regulations.” Ms. McCrumb took these sound level measurements using a hand-held device. There has never been an expectation in the town that Performance Standard 3.12(A)(1) in the Land Use Regulations refers to an “average” sound level. A change to the Land Use Regulations defining sound measurements in terms of an average sound over a 5 minute period would significantly change the meaning of the Performance Standard. Past and future decisions by the Zoning Board would be affected by this change.

**Has the Planning Commission addressed how Performance Standard 3.1.2(A)(1) is enforced? NO**

**Explanation:** The most important aspect of any regulation is the ability to enforce the regulation, and to know that there are repercussions for a violation to the regulation. Charlotte has a limited ability to enforce regulations. There is no Town law enforcement. The Planning and Zoning Departments are not typically available on Friday, Saturday and Sunday evenings to measure sound levels. If the Leq standard

is adopted, then expensive, specialized equipment will be needed to monitor the sound levels. Not only will these sound levels need to be monitored at the Old Lantern, but also at other locations around town that also must meet this “new” standard. In the ZBA-15-16 Conditional Use Review of 1046 Ethan Allen Highway, the permittees have an obligation to provide information, including sound tests, to prove compliance with the conditions set forth in the conditional use permit. Will these permittees now be required to purchase this new sound monitoring equipment to meet this new standard? The adoption of Leq as the standard for measuring sound will make this regulation unenforceable.

In closing, I am providing a list of sound levels from land use regulations for several cities. (See Exhibit E) These are larger cities, and, by definition, louder than a small, rural town in Vermont. And yet, many of these cities have much lower allowable dBA levels. For Instance, Colorado Springs has an allowable daytime sound level in residential areas of 55 dBA and a nighttime level of 50 dBA. Denver has the same allowable noise standards. Miami allows 60 and 55 dBA respectively. The commercial areas for these cities are slightly higher with Colorado Springs at 60 and 55 dBA, Denver at 65 and 60 dBA, and Miami at 65 and 65 dBA for daytime and nighttime. As Charlotte moves forward with planning for future development, including other Event Facilities, it should consider a noise ordinance that is appropriate for a quiet, rural community in Vermont.

“If a person throws any of his garbage into a neighbor’s yard, most communities are quick to respond. If a person throws a lot of his acoustical garbage (noise) into a neighbor’s yard, most communities are very slow to respond.” - Robert C. Chanaud, Ph.D., author of *Noise Ordinances Tools for Enactment, Modification and Enforcement of a Community Noise Ordinance*.