

# BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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November 13, 2019

Town Board  
Town of Chester  
1786 Kings Highway  
Chester, NY 10918

**RE: Introductory Local Law No. 2 of 2019 – A Local Law Adding Chapter 66  
Entitled “Noise Pollution Control” to the Town Code of the Town of Chester**

Dear Town Board Members:

My firm represents E. Tetz & Sons, Inc. (“Tetz”). Please accept this comment letter on behalf of Tetz regarding the above referenced proposed noise control local law scheduled for public hearing today. We learned of this public hearing only on Monday of this week from the notice published in the newspaper on Sunday, November 10. Therefore, the following are only preliminary comments, and we ask that the public hearing be held open to allow further review and comment on this local law which may have substantial negative impacts on local businesses.

Tetz is an important business in the Town, providing a source of local employment and a substantial tax base, and there have not been any noise complaints about its operations. The proposed noise control local law could have a detrimental effect on Tetz’s ability to continue to do business in the Town and the ability to attract businesses into locations such as the Tetz Industrial Park.

There are many noise control laws and regulations already in effect that regulate local businesses and activities, and this local law would have implications for legally operating businesses that have already been subjected to lengthy and costly environmental reviews including noise assessment review. We believe that another layer of regulation is unnecessary and would discourage business in the Town.

The Town has established industrial and commercial areas as well as areas that have been classified during the Comprehensive Planning and zoning process as industrial and commercial, including the industrial zoning district where Tetz’s Chester Mine is located. Lawful operation of existing or future commercial or industrial facilities, such as Tetz’s Chester Mine, should not be subjected to or should be exempted from the proposed noise control local law, particularly in areas zoned for such uses and where the use has already been subjected to lengthy and costly permitting procedures and environmental review, which includes noise assessment review.

The following includes examples of state and federal laws that already regulate noise for commercial and industrial operations. The New York State Vehicle and Traffic Law, including Section 386, sets noise limits with which all heavy vehicles must comply and already regulates trucks serving Tetz's business and other businesses in the community. Laws such as the Occupational Safety and Health Act ("OSHA") already regulate sound levels at commercial and industrial facilities. The State Environmental Quality Review Act ("SEQRA") already provides a procedure for the Town to require a detailed noise study for potential projects requiring Town approvals. The proposed noise control local law may conflict with such laws, which will not only increase financial costs to the Town and its taxpayers but is also fraught with other enforcement problems.

The proposed noise control local law may be preempted by state and federal laws that already regulate noise of industrial and commercial operations such as the New York State Mined Land Reclamation Law ("MLRL"). This will further complicate the implementation of the variance and enforcement procedures set forth in the proposed local law.

Operations such as Tetz's mining facility in the Town are subject to stringent environmental controls described in the plans, including noise impact assessments, submitted for a New York State Department of Environmental Conservation ("NYSDEC") mining permit, and the MLRL has a supersedure clause stating that regulation of mining is done by NYSDEC. The mining permit requires compliance with these plans. All mining permit applications are subjected to a stringent environmental review under SEQRA and the NYSDEC Noise Policy. The Noise Policy requires the preparation of a detailed noise impact assessment study prepared by a qualified expert that includes the identification of potential receptors, detailed measurements of ambient sound levels and equipment sound levels, modeling of sound levels and determination of expected worst-case increases in sound levels at potential receptors at various stages of the mining operation. These studies are extremely detailed and can cost thousands of dollars to complete. Sound levels from mining operations must be mitigated through the application of best management practices so that sound levels do not significantly increase at potential receptors. By issuing the NYSDEC mining permit and completing the SEQRA process, the NYSDEC has already determined that there will not be any potential noise impacts associated with the mining operation that have not already been mitigated to the maximum extent practicable. Therefore, further regulation by the Town is preempted and not needed.

There are also typos and issues as to definitions in the proposed noise control local law, including a lack of definitions of terms or inconsistency in how terms are defined in Section 66-4 and then used in the text of the law, including but not limited to the definition of the term "Town enforcement officers".

For all the foregoing reasons, we respectfully submit that the Town Board should not adopt the proposed noise control local law, or at the least should consider exempting established commercial and industrial uses located in commercial or industrial zoning districts that have already been through comprehensive environmental reviews, such as Tetz's Chester Mine. Finally, we ask that the Town Board continue the public hearing to allow for more time to submit further comments on this local law which may have substantial negative impacts on local businesses.

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Please include this letter in the record of your consideration of the proposed local law.  
Thank you for your attention and consideration.

Sincerely,

BROWN DUKE & FOGEL, P.C.

By: Michael Fogel  
Michael A. Fogel, Esq.

cc:

E. Tetz & Sons, Inc.

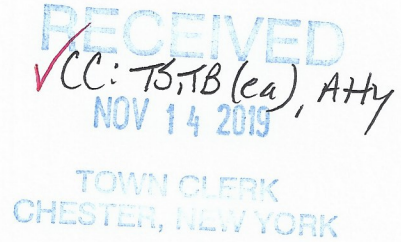
Town Attorney J. Scott Bonacic



Anthony Meluso  
61 Ferris Lane  
New Paltz, NY 12561  
(845) 256-9147

November 14, 2019

Mr. Robert Valentine, Town Supervisor  
1786 Kings Highway  
Chester, NY



**Re: Town of Chester - Proposed Noise Law**

Dear Mr. Valentine:

I was in attendance at last evenings open public meeting. Thank you for extending the public comment period until the next Town Board meeting. I would like to make a few points for your consideration in going forward from the first draft of a noise law to a more refined version that addresses the needs of the entire community, while giving due consideration to pre-existing uses and activities. There is a decent example in the Town of New Paltz code that allows for sporting events as there are two pre-existing shooting ranges and a culture of hunting in the town. The only activity that is not allowed is shooting a firearm in celebration, which deals with the low IQ people as well as density and safety.

As you may now be aware, I am a member of the Monroe Chester Sportsmens' Club. I have been the Archery Chairman for 16 years. The archery range generates no noise. There seem to be a few disconnects in the Town Code that specifically prevent "membership clubs", from outdoor shooting and archery. Archery ? Really ? Sounds as though the snowflakes are taking over. To maintain credibility, the town should fix this.

I have a degree in Forestry and Surveying and also Civil Engineering. I assert, that I can sit on the fence pretty well balanced when these pro-development versus environmental issues are discussed.

I have excerpted portions of the Town Code that arise out of the 2015 Master Plan and the suggestions in the Appendix under LU. It is quite clear the MP addresses revisions that favor residential development as opposed to agriculture and outdoor shooting ranges and other pre-existing businesses. Tetz Concretes' representative made a good point last evening as did Kelly Nyweing, our club forester and local dairy farmer.

Many of the persons admit they are seeking some form of noise ordinance to address leaf blowers generators and lawn mowers, (a sound that is pervasive while my three closest neighbors have their lawns mowed.) Admittedly and taking responsibility, I sold one of those lots to a new neighbor, who built a house and now they mow the grass and I had to relocate my archery practice range as well.



What was also apparent is the passion about the testimony that concerned those few, but not all, residents in close proximity to the MC Sportsmens' Club. They desire some form of compromise to limit the outdoor shooting activities. Clearly, as many of the speakers pointed out, these neighbors did not perform their due diligence prior to purchasing their home, may have paid less for it as a result and are now retired, spending more time at home, thinking about how the sale of their home will be affected by the sounds the MCSC. Sounds as though it is already baked into the casserole. I was the airport engineer at both Stewart and Republic airports and have been through noise studies. One activity our airport director performed was pretending to need to relocate to Farmingdale, Long Island. Many of the homes he was shown by realtors were in the approach to Runway 14 a high noise area, above 65 decibel contour, for the busiest, small airport in NY State. When the subject of noise came up, it was deflected. Realtors lie.

In the clubs defense, we have taken steps to limit our morning start times to 10:00 AM, installed fencing and baffles that attenuate sound as well. We have conducted noise studies and the sound at the property line is within legal limits. Many of the Ash trees on the property have died as a result of the emerald ash borer infestation and we are in the process of replanting sound attenuating pines as well as species that will favor habitat. Part of the property is dedicated to forestry and provides habitat for many species of flora and fauna.

What I did not hear was a single person at the meeting raise the issue of tree die-off on their own property and with the leaves off in Autumn, allowing all sounds to be heard more clearly. I did not hear one affected homeowner say, they put up a fence, or a noise barrier or plantings. It appears, they did nothing. Made no effort to address their own situation and past choices. Noone offered to give the MCSC money to make another noise study, construct noise improvements or to purchase the property.

When the aspect of density due to residential development is discussed, the probability that more new residents moving into the area will complain is a no brainer. Having a noise ordinance is fine as long as it does not limit activities that are "rights". There is always the chance that any new noise law originally "advertised", to address wild parties at Camp Monroe, and inconsiderate neighbors, will be amended in the future. That is my concern as well.

I am suggesting that the SEQRA Long Form Section A- Site Description, *Question 10. which asks "Do hunting, fishing or shell fishing opportunities presently exist in the project area ?* be a larger part of the Towns site plan approval process in which certain legal notes, that run with the land, are included on any approved subdivision plat that is filed with the County. This would be similar to Agricultural District Notes, allowing harvesting 24-7 to ensure their continuance, with due consideration for any impacts the subdivision land clearing, road construction and house placement will destroy noise attenuating landscapes and then impact the ability to hunt, or shoot on a neighboring property given the DEC 's setbacks for rifle, muzzle loader and bow 500, 250 and 150 feet respectively. Consideration in the form of payments or set asides should be in the form of hunting easements similar to stormwater easements that impact an adjoining , or downstream property. Land banking of wetlands on developed properties that create conservation easements should then, by extension, allow hunting and fishing to achieve some form of balance.

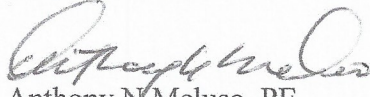
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In closing, it appears the Master Plan provides for increased residential housing density in an area with rocky landscapes, that will destroy noise attenuating trees and hilly landscapes. Suggesting a noise ordinance will solve this problem is not sufficient to address a self-fulfilling prophecy. Perhaps, each new home should be soundproofed and insulated by the developer who is creating a landscape, complete with plantings and screening that allows quiet enjoyment of properties they develop.

If you have any questions, comments or require additional information, please call me by telephone or by email.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Anthony N Meluso', written in a cursive style.

Anthony N Meluso, PE

Gardiner Engineering, PC



**EXCERPTS FROM TOWN OF CHESTER CODE**

**§ 98-8 Nonconforming buildings, structures and uses.**

The following provisions shall apply to all buildings, structures and uses existing on the effective date of this chapter, which buildings and uses do not conform to the requirements set forth in this chapter, and to all buildings, structures and uses that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof, and to all conforming buildings housing nonconforming uses:

**A.**

Nonconforming uses.

**(1)**

**Nonconforming uses may continue indefinitely except as indicated in Subsection C below.**

**(2)**

Nonconforming uses shall not be enlarged, extended, reconstructed or placed on a different portion of the lot occupied by such uses as of the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever.

**(3)**

Nonconforming uses shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals, and then only to a use which, in the opinion of said Board, is of the same or more restricted nature.

**(4)**

Nonconforming uses shall not be reestablished if such use has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

***(no mention of anything but signs)***

**C.**



Cessation of certain nonconforming uses and structures.

(1)

All nonconforming billboards, advertising signs and the structures on which they are located which have been erected in the Town shall be taken down and removed on or before the expiration of three years from the effective date of this chapter, and such lapse of time shall be deemed sufficient to amortize the cost thereof.

(2)

All flashing and moving signs shall be terminated and flashing lights on signs shall be removed on or before the expiration of one year from the effective date of this chapter, which period of time is deemed sufficient to amortize the cost of the lighting to be removed or replaced.

(3)

All signs which are nonconforming as to size or location on a lot or building shall be removed or relocated and/or decreased in size to conform to the requirements of this chapter on or before the expiration of three years from the effective date of this chapter, which period of time is deemed sufficient to amortize the cost thereof.

(4)

Notwithstanding any other provisions of this chapter, any nonconforming outdoor storage of materials, such as but not limited to scrap metal, used lumber or other waste, including burned or dilapidated buildings, trash, rubbish or discarded material or machinery or one or more wrecked, unregistered or partially dismantled vehicles not enclosed within a building, shall, at the expiration of one year from the date of enactment of this chapter, become a prohibited and unlawful use and shall be discontinued, and all such materials shall be removed.

(5)

Preexisting digital signs. A digital sign installed prior to the effective date of the amendment to this chapter, is permitted to remain until the sign is replaced; provided, however, such sign shall conform to the requirements of this subsection if these requirements can be complied with without replacing the sign. A preexisting digital sign is required to comply with all sign regulations that were in effect at the time the sign was installed but can upgrade with Planning Board review of condition, location, need and

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compliance with Town Comprehensive Plan; approval can be conditional if given.

[Added 3-25-2015 by L.L. No. 1-2015]

**§ 98-29 Special requirements for specific uses.**

These uses shall require site plan approval by the Planning Board:

**A.**

Annual membership clubs providing outdoor recreational facilities.

**(1)**

Membership clubs shall be conducted as a service to members and not as a business enterprise.

**(2)**

Permitted uses for a membership club include private playgrounds, golf clubs with or without restaurant facilities, swimming pools not closer than 150 feet to any lot line, tennis courts and clubhouses.

**(3)**

Prohibited uses for a membership club include the use of any kind of motorized vehicle such as stock cars, go-carts, motorbikes, ATVs, snowmobiles, etc., outdoor firing ranges and **outdoor use of firearms, outdoor archery**, outdoor paintball facilities and outdoor public-address systems. Nothing in this prohibition against the use of motorized vehicles shall be construed to forbid the use of motorized equipment such as lawn mowers and the like in the course of maintaining the facility; nor shall it be construed to prohibit the use of motorized golf carts for the use of golfers at golf course membership club.

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## NEW YORK

### Statute: NY CLS Gen Bus § 150

Mckinney's Consolidated Laws of New York Annotated Currentness

General Business Law (Refs & Annos)

Chapter 20. Of the Consolidated Laws

Article 10. Shooting Ranges (Refs & Annos)

#### § 150. Shooting ranges

1. In any action or proceeding commenced against an owner or user of a shooting range where one or more causes of action asserts a claim based on noise or noise pollution resulting from the inherent shooting activity on such shooting range, it shall be an affirmative defense that, at the time of the commencement of the action or proceeding, the shooting range is in compliance with any applicable noise control laws or ordinances, or, if the applicable noise control laws or ordinances have no legal force and effect against such owner or user or there are no applicable noise control laws or ordinances at the time of the effective date of this section, then the A-weighted sound level of small arms fire on the shooting range does not exceed 90 dB(A) for one hour out of a day, or does not exceed 85 dB(A) for eight hours out of a day measured at, or adjusted to, a distance of one hundred feet outside the real property boundary of the shooting range. An owner or user may move for judgment dismissing one or more causes of action asserted against him on the ground that a cause of action cannot be maintained because of such affirmative defense.
2. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a person under any other law.
3. Notwithstanding the provisions of subdivisions one and two of this section, no shooting range shall be operated during the period from 10:00 PM until 7:00 AM unless a local law or ordinance specifically authorizes the operation of a shooting range during all or any portion of such time period.
4. For the purposes of this section:
  - (a) "Shooting range" shall mean an outdoor range equipped with targets for use with firearms and shall include, but not be limited to, all rifle, pistol and shotgun ranges.
  - (b) "A-weighted sound level" shall mean the sound pressure level measured by the use of an instrument with the metering characteristics and A-weighting frequency response prescribed by sound level meters using the impulse response mode.



(c) "Sound pressure level" shall mean twenty times the logarithm to the base ten of the ratio of the root mean squared pressure of a sound to a reference pressure of twenty micropascals. The unit applied to this measure shall be the decibel (dB).

(d) "Small arms" shall mean projectile firearms of small caliber, including rifles, pistols, and shotguns.



RECEIVED  
CC: TS, TB(ea), Atty  
NOV 18 2019  
TOWN CLERK  
CHESTER, NEW YORK  
By Hand

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## MONROE CHESTER SPORTSMEN'S CLUB

PO Box 624, Monroe, New York 10949-0624

<http://www.monroechestersportsmen.org/>

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Mr. Robert Valentine, Supervisor  
Town Board  
Town of Chester  
1786 Kings Highway  
Chester, NY 10918

November 18, 2019

Dear Mr. Valentine

Re: Local Law Adding Chapter 66  
Entitled "Noise Pollution Control"

After attending and speaking at the Town of Chester Board meeting on Wednesday, November 13 and listening to the comments from our neighbors I felt as club President speaking for our members and specifically the 100+ members that reside in Chester, of which a number live adjacent to the club lands, I would like to add further targeted comments concerning the proposed new law.

There are six key areas that the club is focused on:

1. Safety. There is no higher priority in the club. We view the safe handling and hunting with firearms, bows and crossbows as the cornerstone of the club. Period.
2. The club is dedicated and committed to a long term strategy of replacing and upgrading all of the ranges for firearms, archery and crossbow plus a complete overhaul and modernization of the security infrastructure with all new technologies. The club strictly adheres to all town building codes. It should be noted as we move ahead the Town Board should be aware that the club is always looking for ways to mitigate sound problems where possible.
3. When I joined the Monroe Chester Sportmen's Club in the early 1980s the area where the club is located has changed dramatically but thanks to the club's efforts to maintain its 136 acres in a rural setting is testament to the members' concern for the environment and the ongoing long term effort to preserve a rural atmosphere. That is why the club joined and is still a part of the NYS



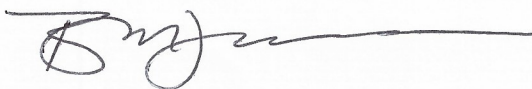
Forestry Program since 1992. Additionally the club is now a designated Tree Farm and employs a registered forester to oversee and maintain the club's land. Also it should be noted that our forested areas, when green, act as a natural sound barrier for all the ranges.

4. Looking ahead we view the club as constantly changing and adjusting to the needs of its members and the community. Two years ago we revamped our Youth Group and we now have over 133 dedicated youth members. They run their own meetings once a month to learn and participate in the different disciplines that the club offers. The club is also spearheading the effort to host the first recognized High School Trap Shooting Team in the county with an eye of participating in the New York State Championship matches next spring. At this time High School Trap Shooting is recognized as the safest high school sport in the nation for boys, girls and physically challenged youth.

5. We also recognize that we have a number of members in the senior category and we have increased our senior shooting sports activities with leagues and events that draw a large group twice a week for a variety of shooting competitions. We also have observed a large increase in women participating in the shooting sports.

6. The club has increased its emphasis on training and education. Our new Education Chairman and his committee are now offering a wide variety of classes for hunting education, the shooting sports and pistol licensing to the community at large. Our law enforcement members also have the option to work with members of their departments for one-on-one training in a variety of settings both indoors and outdoors.

In conclusion, we view the Monroe Chester Sportmen's Club as a major asset for our community and look to the Town Board to recognize that the club is an integral part of the recreation experience for Chester and its residents with zero cost to the town. That is a win/win for Chester and the surrounding communities.



Roy Zucca, President  
4 Stacey Lane  
Chester, NY 10918





# New York Police Combat Association



68 Dixon Ave Staten Island, New York 10302

**President:** Chris McCabe

**1<sup>st</sup> Vice President:** Mark Ruppert

**2<sup>nd</sup> Vice President:** Steve Albanese

**Chief Stat Officer:** Derrick Lopez



**Secretary:** Ron Dileo

**Treasurer:** Lloyd Jeffords

**Sgt. At Arms:** Dan Lee

Mr. Robert Valentine, Supervisor

Town Board

Town of Chester

1786 Kings Highway

Chester, NY 10918

Re: Local Law Number 2 of 2019, "Noise Pollution Control"

November 30, 2019

Dear Mr. Valentine,

I was in attendance at the 13 November Town of Chester Board meeting during which the concept and language of the proposed "Noise Pollution Control" ordinance was discussed. I am a member of the Monroe Chester Sportsmen's Club, and a board member and Treasurer for the New York Police Combat Association which uses the Monroe Chester facilities for training and competition. In addition, I also hold an internationally recognized Audiovisual Design certification (CTS) with heavy emphasis on the "audio" spectrum.

The language of the proposed law as presented is absurdly ambiguous except as regards firearms and hunting. These two sporting endeavors are individually targeted as sources of unusual noise. Any noise ordinance needs to specifically exempt agricultural, industrial, hunting, and outdoor shooting noises from its scope because they are not unusual. Indeed, in the rural environment, they are quite normal.

The mentioned activities in a rural environment are not unusual in any way and account for a lot of beneficial economic activity. As mentioned at the Town Hall, farmers and dairymen start early, industrial noises (like snow blowers and plowing) can happen at all hours, and hunting is typically done around daybreak. These types of noises must be exempted from any ordinance in order to prevent a negative impact on the lifestyle of the community, and the local economy.

Kindly ask the Police what they need to be able to assist the community in abating truly nuisance noise situations, instead of crafting an unworkable, and heavy-handed solution to a simple existential problem.

Best regards,

Lloyd Jeffords, CTS,

Treasurer, NYPCA

RECEIVED

CC: TS, TB (ea), WC ✓  
DEC 05 2019

TOWN CLERK  
CHESTER, NEW YORK

Affiliated with National Rifle Association



**Robert Valentine**

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**From:** brawny43 <brawny43@optonline.net>  
**Sent:** Tuesday, November 12, 2019 11:32 PM  
**To:** Robert Valentine  
**Subject:** Noise ordinance

I am unable to attend the meeting tomorrow but wish to voice my concerns. The part about snowblowers not being used between the hours of 8pm and 8am is ridiculous. If it stops snowing at 9 or 10pm how are we supposed to clear our driveways in order to get to work the next day? Let the snow sit for 10 or so hours and wait till it hardens up making even more difficult? What about the plows doing people's driveways at all hours of the night? Are they included also? Thank you for your consideration in this matter. Craig Braun 2 marion st

Sent from my Verizon, Samsung Galaxy smartphone