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Overall, neither the NJMP nor TR “won” the arbitration. The arbitrator (retired Judge Anthony Gibbons) rejected both our Proposals; ours because we simply did not have enough details and evidence about the commercially reasonable aspects of noise restrictions of other racetracks and the NJMP’s because it did not go far enough to reduce noise.

The judge stated: “*As a fact-finder it is difficult to reconcile these competing positions but given the large number of readings that were taken by the City and by NJMP’s expert and in view of the technical expertise that supports their reliability, my reaction is that the evidence presented by NJMP as to the noise levels was more persuasive. By itself, however, that conclusion is not dispositive* (involving or affecting disposition or settlement.) *For example, I was equally persuaded by petitioners’ testimony that, regardless of the disparities in the decibel level readings, the noise levels they described are legitimately offensive to them and significantly interfere with their ability to enjoy the peace and comfort of their homes. However, that too does not end the analysis.”*

*“One of the other troublesome aspects of the evidence relating to the economic consequences of track-side decibel level restrictions, in general, and a restriction of 92 dB in particular, is that the evidence presented by both sides was, to a large extent, lacking in detail.”*

He said of NJMP’s “Good Neighbor Policy:” “…*the essence of it is to provide an enhanced process for having the park disseminate information to the community and allowing for greater community input. This process would include notice of events that may cause abnormal noise, providing a mechanism for neighborhoods to raise issues and basically providing mechanisms to keep the line of communication open. It would also provide special access to NJMP’s facility. What it would not provide, however, is any mechanism for a reduction of the noise levels that were to be addressed by the Sound Committee.”*

*“A core ingredient of the stipulation was the reduction of noise emanating from the motorsports park.* *That was to be accomplished in more than one way. The first was the reduction in the hours during which the Park would operate, that is, both starting times and ending times. The second element was the modification of the Park’s public address system. The third element was the creation of the Sound Committee.”*

*“…it is necessary that I address threshold legal argument by NJMP and, that is, since the current operations of the Park are not violating any local or state regulations relating to noise controls, the legal foundation for TR’s proposal is essentially flawed. For example, although the City of Millville does have a noise control ordinance, its noise level restriction is only triggered when the sound levels at the nearest residential site reach 80 dB and even then, only after that level is sustained for at least twenty minutes. The State of New Jersey also has a noise control regulation and that control is triggered at 65 dB. However the State regulation exempts race tracks. Both sides agree that neither of these regulations are being violated here, regardless of whose noise measurements one accepts. That conclusion, however by no means dictates the outcome. When the parties agreed to resolve petitioners’ claim as part of the bankruptcy proceeding, NJMP committed to various noise reduction steps. Thus, the focus, at least for purposes of this arbitration, is no longer whether the Park operations constitute an actionable nuisance and/or whether that alleged nuisance requires remediation in the civil sense. Rather, the issue is whether the contractual terms incorporated into the stipulation of settlement have been fulfilled.”*

*“Although Mr. Brahin testified that he did not understand the stipulation to require the imposition of track-side decibel level restrictions, neither he nor anyone on the TR side offered testimony on what they did have in mind in utilizing the “commercially reasonable” standard.”*

*“Since the “commercially reasonable” term is not defined in the stipulation and since it can be arguably read to support either party’s version of what was intended, I view that term as ambiguous, at least based on the limited proofs presented here.”*

*“Even if I were to reject the respondent’s evidence as to the negative financial impact on this Park, I would still be left with the dilemma of not being able to fairly evaluate the circumstances that are operative at those parks that are limited by track-side decibel level restrictions in order to make a fair comparison with the impact on the NJMP operation. Stated differently, I cannot conclude from the proofs that simply because track-side decibel level restrictions work and are presumably commercially reasonable elsewhere, that that makes them commercially reasonable everywhere.”*

*“I need to revisit the proposal advanced on behalf of the Park, that is, the “Good Neighbor Policy.” Although I find all of its components as positive and potentially beneficial, nothing in the proposal addresses sound levels. The stated purpose of Section 5 of the stipulation was to reduce noise complaints and although better avenues of communication are a valuable component of that process without more, it seems unlikely that they would reasonably satisfy these residents and/or fulfill the intent of this portion of the stipulation.”*

*“For example, to conclude that good neighbor policies are, by themselves, adequate, would make the sound measuring steps that were built into the process superfluous. In Section 5(j) of the stipulation the parties acknowledged that “accommodation in this matter comes down to decibel/sound control”. The challenge here is how to achieve that in a commercially reasonable way and unfortunately that goal continues to be elusive.”*

*“Although I am sympathetic to the frustration that petitioners experience given the noise emanating from the facility and the negative impact that it apparently has on their ability to comfortably enjoy the peace and quiet that they seek, their proposed solution does not, in my judgment, meet the requirements of the Stipulation, at least not based on the proofs presented. Likewise, respondent’s proposal is also unacceptable, not because it is not laudatory but because it does not go far enough.”*