

NEW JERSEY NOISE CONTROL COUNCIL MEETING
April 8, 2014
MINUTES

NCC ATTENDEES: A. Schmidt (Chairman, Public Member-Registered Environmental Health Specialist), J. Lepis (Vice Chairman, Civil Engineer), J. Feder (Secretary, Public Member), R. Hauser (DOL, Member), J. Kapferer (Public Member), C. Accettola (Public Member), I. Udasin (Public Member – Medical Doctor), D. Rizzo (Division of Community Affairs, Member), N. Dotti (Public Member), Eric Zwerling (RNTAC), D. Triggs (NJDEP).

I. ADMINISTRATIVE

- 1) Since the March 8, 2014 Meeting, member candidates whose applications had been awaiting approval from the Governor, received their formal notices of appointment. Mr. Triggs asked for copies of the appointment letters. Appointees were asked to send in their notarized Oath of Office certifications if they had not done so already. The formal appointments will greatly help the achievement of quorums at meetings and the conduct of business of the NCC. Congratulations were offered to newly appointed members and thanks offered to those who helped facilitate the appointment process. It was noted that the appointment terms were different amongst members, and it was speculated that this was done deliberately to avoid having many appointments expiring simultaneously.
- 2) Mr. Surmay has not attended meetings for well over a year nor responded to inquiries from the Governor's office regarding his reappointment. It is unlikely that he has been reappointed. Therefore, NCC members were asked to think about possible candidates who might be solicited to fill a vacancy.
- 3) Draft minutes of the March 11, 2014 meeting were reviewed and approved with minor corrections.

II. COMMUNICATIONS

Chairman Schmidt summarized recent communications to the NCC

- 1) Copy of letter from NY Senator Avella to Patrick Foye of the PANYNJ providing recommendations for setting up an aviation issues Roundtable as requested by the NY Governor Cuomo.
- 2) Letter from PANYNJ to homeowners regarding residential window replacement as part of recent Bayonne Bridge construction initiatives.
- 3) Announcement by PANYNJ regarding closure of a main EWR Runway for two months to allow new taxiways and other improvements. This will lead to increased use of EWR cross runways 11/29 and result in temporary additional noise impacts. Secretary Feder pointed out the new taxiways may be used for staging aircraft according to navigation destinations and could be a precursor to implementation of a dispersal headings feature which would dramatically increase noise impacts in Union and Essex Counties.
- 4) PANYNJ press release on the Part 150 studies for LaGuardia and JFK airports and the formation of an aviation issue "Roundtable." This included an increased number of noise monitors, and improved facilities for handling noise complaints, including an aviation noise office.
- 5) PANYNJ Press release regarding the extension of Part 150 and Roundtable activities to New Jersey. Vice Chairman Lepis informed the group that the NJ actions had been initiated later and could be expected to lag the NY actions by a few months, although the time difference would ultimately be closed.

III. PART 150 STUDIES AND RELATED MEETING WITH ASSISTANT DEP COMMISSIONER

Chairman Schmidt and Vice Chairman Lepis had both received letters from Ms. Richelle Wormley, Interim Director of DEP Air and Hazardous Materials Enforcement, responding to the NCC letter requesting Governor Christie's help in getting Part 150 studies for NJ airports. This letter cited the PANYNJ Press Release cited above, which stated that the PANYNJ would perform those studies for NJ airports. Mr. Triggs reported on his meeting with Assistant DEP Commissioner Giordano regarding asking for the Governor's help. Mr. Giordano expressed the view that it would be helpful to gain a formal letter from PANYNJ committing to the items in the PANYNJ Press Release prior to proceeding further. Vice Chairman Lepis expressed the view that it might be most appropriate to have any requests to PANYNJ be transmitted via the two recent NJ appointees to the PANYNJ.

IV. GUIDANCE DOCUMENT

The Guidance Document was a main item on the agenda. However, Mr. Szulecki, who has been the most active on this, was unable to be present at the meeting. Nevertheless, it was decided to proceed on one of the more difficult issues in the document, which is the directive on where measurements should be taken - at the property line, as specified in N.J.A.C. 7:29-1.2(a) versus "at or within the property line" as specified in N.J.A.C. 7:29-2.5(a)2. Msrs. Zwerling, Szulecki, and Schmidt felt that, given the goal of protection of an "affected party," discretion should be granted to the noise enforcement officer to select the measurement location and that this should be related to where the person lives and conducts activities. Vice Chairman Lepis argued for a stricter interpretation - that measurements be conducted at the property line whenever physically possible, as this might be most protective. However, all agreed that, if measurements at the property line understated impacts because of physical configuration of the property, for example, due to presence of a sound blocking fence or berm, that it would be reasonable for the noise enforcement officer to select an alternate location that would more accurately reflect the noise levels experienced by the affected party. All also agreed that the statute needed to be updated in the future to address the two sections of N.J.A.C. 7:29 (noted above) that appear to provide different direction on where sound level readings are to be taken.

The Guidance Document is intended to help a noise enforcement officer to deal with an existing situation and complainant. However, several members pointed out that this document would likely also be used to help zoning decisions prior to actual construction of a possibly problematic noise configuration in which there was not yet a complainant. There was extended discussion and a number of examples presented. Mr. Dotti presented a situation involving source and receptor locations, separated by two driveways and a grass dividing strip, in which it was highly unlikely that there might be a complainant and in which a strict property line interpretation would lead to large unnecessary noise mitigation costs. However, another example was presented in which current proposed usage rendered it unlikely that activities would be impacted, but in which future property usage changes might yield a violation. This might support a strict property line interpretation in zoning decisions. There appeared to be consensus that if construction were allowed in a situation in which proposed usage presented no noise violation under a more liberal interpretation, that if property usage changed and activities shifted, then a noise violation could be issued and the party responsible for the noise would need to render the situation conforming regardless of any prior action by the Zoning Board.

Chairman Schmidt presented a complainant driven scenario where the investigator would have access to the rear property line, adjacent to (and 5 feet from) the sound source being complained about by the affected person. This was an area of the complainant's property that he did not utilize. Chairman Schmidt conducted a "straw poll" for this scenario and most members present (8 plus Dave Triggs and Eric Zwerling), supported deferring to the discretion of the noise enforcement officer in selecting a measurement location on the

complainant's property based on where he was affected by the noise. Vice Chair Lepis voted against this, indicating measurements should be taken at the property line. In this case, the majority of members agreed that the closest to the sound source measurements should be taken was about 150 feet from the property line even though there was access to take measurements at the property line and there was nothing blocking the sound such as a sound blocking fence or berm.

It was discussed that possibly separate subsections in this section of the guidance document should address complaint driven/affected party situations and preconstruction or reconstruction zoning issues.

Secretary Feder expressed concern over the use of sleep disruption as a sole consideration for considering nighttime impacts. This might lead to limiting measurements to outside an affected party's bedroom window. Although sleep disruption is mentioned as a concern in the statute, in dealing with aviation noise, lower nighttime ambient noise levels, which serve as a reference for humans judging noise, have also been a motivation for using dramatically higher nighttime noise penalties. This would argue for night sound enforcement at least throughout the areas of usage of the property.

V. \$2000 CAP ON NOISE VIOLATION FINES ISSUE RAISED BY HOBOKEN

As a continuation of the topic from the previous meeting, it was asked whether incorporation of larger than \$2000 fine might threaten the legal validity of the Model Noise Ordinance due to other overriding NJ statutes. This is a legal question, but there was some feeling that if this was the case, that measures be taken to bring the Model Ordinance into conformity with other statutes. Further discussion of this topic was deferred to a subsequent meeting.

VI. MISCELLANEOUS ADDITIONAL TOPICS

- 1) *Meadowlands Noise*: Mr. Triggs reported having received a letter inquiring about enforcement of noise within the Meadowlands. The Commission document briefly describes a 55 decibel day, 45 decibel night limit, without further information on measurement and enforcement, including who would enforce the limits. This is an instance in which there are conflicting rules for overlapping jurisdictions. It was suggested that the Meadowlands inquiry be referred to NJ state legal staff, since this is a legal question rather than a noise question.
- 2) *Web Site Directives on Updating Local Noise Ordinances*: The NJDEP web site currently recommends that municipalities with outdated noise ordinances update these to the 1997 version. Mr. Triggs questioned whether it would be more appropriate to update to the 2010 version. This opened the larger question of whether a municipality with an NJDEP approved, but older noise ordinance which incorporated stricter than current limits, might be best off keeping its older ordinance. Mr. Triggs asked whether it might be best to simply remove the recommendation to update from the website. Further discussion was deferred to a future meeting.

VII. NEXT MEETING

The next meeting is scheduled for May 13, 2014.

Respectfully submitted:
Jerome Feder, Secretary

Attested by: Arnold W. Schmidt, Chairman