

**NEW JERSEY NOISE CONTROL COUNCIL MEETING
OCTOBER 13, 2009
MINUTES**

NCC Attendees: J. Lepis (Chairman), D. Triggs (NJDEP), R. Hauser (Member - DOL), A. Schmidt (Public Member), J. Feder (Public Member-pending confirmation), N. Dotti (Member), J. Surmay (Member-Local Governing Body), C. Accettola (Public Member-pending confirmation), I. Udasin (Member-Medical Doctor).

Public Attendees: Eugene Kim, Marc Levy

Administrative:

The meeting was held at the Rutgers Cook Campus Operators Training Center. The meeting started somewhat late due to building doors being initially locked. The originally planned subcommittee meeting on appointments was postponed.

Minutes of June 9 and September 8 meetings were approved. Chairman Lepis reminded the group that the NJ State Noise Code and Regulations would “sunset” in two years, and that the process of change involved delays. Therefore, it was necessary for the group to begin work on possible revisions. Initial areas for possible action were, addressing issues involving non-stationary sources, mixed use properties, buffer zones, and possible inclusion of automobile race tracks.

Most of the meeting was devoted to addressing issues brought to the NCC by members of the public.

Essex County Facility Claiming “Public Event” Exemption from Noise Limits

There was a brief discussion following up on an email exchange regarding a private facility in Essex County that had been cited for a noise violation, but claimed exemption because they had received a permit from the local governing body to play amplified live music on their deck, and therefore that their actions were a government sponsored and permitted “public event.” The consensus was that the actions involved did not fall into the intended usage of the “public event” exemption and furthermore that the local governing body did not have the power to grant exemption from the state noise code. It was suggested that violations of this type could be insured against in the future by having local permits make clear that the permitted actions must comply with existing laws and regulations.

Noise Arising from a Religious Facility

Mr. Eugene Kim resides near a religious facility in Bergen County. He complained that noise at his property line from this facility as a result of a band at this facility reached as high as 75 decibels, which would exceed the state standard. He has made a number of noise complaints. The Bergen County Health Department sent an inspector to investigate. Mr. Kim had notified the religious facility in advance that the inspector was coming, and

stated that the band had been especially quiet during the investigation, which yielded measurements between 59 and 64 decibels. The investigator subtracted five decibels from the highest reading, yielding a reported 59 decibels, which would not be a violation. Mr. Kim claimed that typical measurements from the facility, when not pre-warned, were 60 – 75 decibels.

The investigator's subtraction of 5 decibels from highest readings during a 10 minute period was reportedly based on instructions given in Mr. Zwierling's training course, but the consensus of the NCC members was that the investigator had misinterpreted the course directive, and that several loud intervals could be aggregated to form a 10 minute composite. Nevertheless, even taking this into account, the noise measured by the investigator was still below 65 decibels and therefore, at least during the daytime, not a violation, although the facility did appear to be violating the state noise code when not warned in advance that an investigator was coming. Some clarification of methods of measurement may be warranted and it was agreed that Chairman Lepis would follow up with Mr. Zwierling and the Bergen County Noise Coordinator to ensure that the right measurement techniques were being employed and reported.

The NCC members discussed the legal protections offered to religious organizations under religious freedom. Church bells and carillons were acknowledged as protected. However, it was unclear that a music band at a church service qualified. These issues complicate efforts by residents to resolve noise problems caused by religious facilities.

Noise Arising from a Racetrack

Mr Marc Levy, a resident of Manalapan described noise problems from Raceway Park, an automobile racing facility, that has relaxed muffler rules that reduce the amount of noise that vehicles make, and was also adding events of various types to improve revenues.. Mr. Levy claimed sound level measurements as high as 120 decibels at his home, which is approximately one mile from the facility located in Oldbridge. Mr. Levy was unclear as to the type of noise measurement (unweighted, C weighted, or A-weighted) but regardless, the extremely high reported levels rendered it virtually certain that state noise standards applying to other noise were being exceeded. Racetrack noise is exempted from state noise regulations. NCC members described motivations for the exemption. It was assumed at the time, that a separate regulation would be promulgated covering such racing. In addition, there are a large number of supporters of automobile racing who came out in force to oppose regulation when noise regulations were initially formulated.

NCC members present were sympathetic to Mr. Levy's problem and concurred that the protections offered against other types of noise were being denied him. Due to the exemption of racetracks from the state noise regulations, there was little the group could do, other than to try to get racetracks included in future regulation revisions. The group suggested possible political action, but Mr. Levy reported that his efforts at this to date had been unsuccessful. A major issue in adding regulation for racetrack noise is the large number of supporters of the racetrack activities who gain both jobs and entertainment.

J. Feder suggested that, if the 120 decibel measurement was accurate, there was possibility that his home and the surrounding area was being subject to more than 65 DNL and may be therefore be subject to constitutional protections against the taking of property, with potential legal recourse and financial recovery along those lines. (DNL is an energy averaged measurement, but due to the logarithmic nature of the decibel metric, there is so much energy present at 120 DNL that even if it is averaged over a long period, there is likelihood of exceedance of 65 DNL.)¹ Areas above 65 DNL are not considered by the federal government to be compatible for residential use and courts have ruled that properties subject to this noise level have been, in effect, “taken” by the noise producing entity, entitling the owner to financial compensation or buyout. However, Mr. Levy did not appear interested in pursuing this avenue.

Model Ordinance

Pursuit of issues raised by the public left little or no time for further work on the Model Ordinance. Chairman Lepis and Eric Zwerling have developed a number of changes for review. Unfortunately there was a lack of uniformity of the base document version to which these changes apply. It was decided that Mr. Triggs would promulgate the June 2009 draft, and then Chairman Lepis would migrate both his own and the Zwerling changes to the June 2009 base for review in email exchange and at the next meeting.

NEXT MEETING

The next formally scheduled meeting is on November 10, 2009.

Respectfully submitted:

Jerome Feder

¹ Assuming a measurement of 115 decibels, A weighted, then this 50 decibels above 65 DNL. This is equivalent to 100,000 times the energy. 115decibels present for only a little over 5 minutes a year would create a DNL of 65!