

**NEW JERSEY
NOISE CONTROL COUNCIL (COUNCIL)
October 10, 2023
MEETING MINUTES**

ATTENDEES

Council Voting Members: Arnold Schmidt (Chair, Public Member), Steve Szulecki (Vice Chair, Public Member, Ecologist), Randy Hauser (Department of Labor), Daniel Lefkowitz (Department of Health), Gina Fischetti (Department of Community Affairs), Dr. Iris Udasin (Public Member, Medical Doctor), Norm Dotti (Public Member, Industrialist), Jack Zybura (Public Member), and Joseph DiFillippo (Public Member, Local Governing Body)

Council Candidate Members (Pending confirmation from the Governor's Office): Philip Makrelis (Public Member, Local Governing Body Candidate), David Triggs (Public Member Candidate)

Rutgers and NJDEP Representatives: Eric Zwerling (Director of the Rutgers Noise Technical Assistance Center), and Michelle Feasel (NJDEP Liaison to the Council)

Members of the Public: Sonya Alves-Viverois and Fletcher Platt Jr.

PUBLIC DISCUSSION

Chairman Schmidt read the Sunshine Act aloud. Members of the public had come to the meeting to discuss a noise issue with drones. *Chairman Schmidt **motioned** to delay the public discussion portion of the meeting until Norm Dotti arrived or until 10:30 A.M.* Mr. Dotti is the council's expert on the FAA. *Dan Lefkowitz seconded. All were in favor, the motion carried.*

CHAIR REPORT

Chairman Schmidt stated the Council's biennial election will be held at the November meeting. He stated that he will not be running for re-election for chairman, as he has held the position for ten years.

COMMUNICATIONS

Council Appointments: Michelle Feasel stated that there have been no updates, but her Governor's office contact stated she is hoping the pending packages start moving in the next month or two.

PUBLIC DISCUSSION

A member of the public, Sonya Alves-Viverois arrived at the meeting and stated she could not stay long enough for Mr. Dotti's arrival. She asked if she could make a brief statement. *Chairman Schmidt **motioned** to go into Public Session with Randy Hauser seconding. All were in favor.* The meeting was now open to the public. Ms. Alves-Viverois stated that she has lived in Long Valley for the last two years, and that her neighbor flies drones, with a full racetrack set up in his yard. He invites people over, so there are many drones flying at the same time. She stated they are flown at eye level and that it is a high-pitched noise that projects through the neighborhood. She stated that she went to the township committee and the police, and they have done nothing. She added that she called the DEP and was told that the township's ordinance was not approved by the Department. Chairman Schmidt stated, we should end the public session there, as he did not want the council to get into a discussion before Mr. Dotti arrived. *Randy Hauser **motioned** to close Public Session with Steve Szulecki seconding. All were in favor, so the meeting was closed to the public.*

MEETING MINUTES

*August 2023: Randy Hauser **motioned** to accept the meeting minutes as they were written with Joe DiFillippo seconding.* The minutes were now open for discussion. David Triggs stated that he meant firehouses and “emergency response facilities” as the original intent of section 1.4. Chairman Schmidt wanted it clarified what the questionnaires were for and suggested the word “appointment” be added. He also felt that it was unclear what the 10 second time limit applied to and that it should be clarified, Steve Szulecki stated that it was a vague statement, which then lead to the rest of the discussion. It was agreed that “emergency device” be added for clarity. Chairman Schmidt asked that “engineer” be clarified to “facility engineer”. Jack Zybura stated that the statement from Eric Zwerling about an attenuation number did not make sense. Mr. Zwerling recalled that he was expressing that the proposed interior impulsive standard of 65 decibels is based upon a structural attenuation of 15 decibels and assuming the outdoor limit of 80 decibels. It is not based upon impact. Chairman Schmidt stated that he appreciates how detailed the minutes are. *Chairman Schmidt **motioned** to accept the meeting minutes as amended, Randy Hauser seconded. All were in favor, the motion carried.*

NEW BUSINESS

Landscaping section in the Model Ordinance: Michelle Feasel stated that an issue was brought up that the commercial landscaping section of the model ordinance is less stringent than the state’s noise code. The model ordinance curfews commercial landscaping, outside of the curfew times the landscaping noise is exempt. Under the state’s noise code, commercial landscapers are enforceable on commercial property at all times. She stated that since this issue has arisen, she has received an ordinance from a township and didn’t feel comfortable approving it knowing the commercial landscaping section was less stringent. Steve Szulecki suggested removing that section of the model ordinance altogether. Ms. Feasel stated that the reference to “commercial, industrial or public” facilities could be removed and “residential” could stay in. Mr. Szulecki proposed that the model say, “last updated” and the sections updated with a list of changes. Eric Zwerling added that only commercial equipment on commercial property is the issue and stated that it is notoriously difficult to write noise rules for golf courses because they need to cut the grass early. It was decided that Jack Zybura volunteered to update the landscaping section and present it at the next meeting.

PUBLIC DISCUSSION

Norm Dotti arrived, so *Randy Hauser **motioned** to go into Public Session with Dr. Iris Udasin seconding. All were in favor.* The meeting was now open to the public. Fletcher Platt Jr. started by thanking the council for their time. He stated that he is from Long Valley, and that his neighbor flies drones around a racing course in his backyard and the noise fluctuates in intensity. His case was seen by a judge in municipal court, but the judge did not feel that this issue was raised to the level that would be a criminal offense, so the case was dismissed. He stated that their town has an existing ordinance from 1971, based on the 1953 state ordinance, and that it has not been submitted to the DEP for approval. He stated that the ordinance applies if residents’ health and wellbeing are affected, but that no one can make a determination, because it is subjective. Eric Zwerling asked if Mr. Platt Jr. felt that the town would be amendable to banning drones. Mr. Platt Jr. stated that his town council has not responded to letters, and that the town has the ability to ban where drones can be operated, but that the mayor stated that drones are regulated by the FAA. Steve Szulecki asked if the neighbor charges people to fly the course? Mr. Platt Jr. stated that he does not believe so, he stated it’s a group of about four to five people and that none of the racetrack structures are permanent. Mr. Zwerling stated that towns have banned the use of drones and that it is a much straighter shot then adopting an ordinance, buying equipment and getting training on noise enforcement. He then asked if Mr. Platt Jr. and his fellow neighbors attend town hall meetings. Mr. Platt Jr. stated that six neighbors show up to the meetings. Chairman Schmidt read a passage about park services from the packet Mr. Platt Jr. put together for the council, he asked if this gives the council the right to put drones in the model? Mr. Szulecki

stated it was still on the town to adopt the model. Norm Dotti stated that the state noise code exempts aircraft operations and that the FAA considers drones to be aircrafts. Chairman Schmidt asked if they regulate at a certain distance off the ground or is it zero and up. Mr. Dotti stated they regulate it from zero and up. Steve Szulecki stated that there is a difference between personal and commercial use of a drone, and a commercial drone is more onerous and that recreational must operate under 400 feet. Mr. Zwerling asked if Mr. Platt Jr. was represented by council when he went to court. Mr. Platt Jr. stated he was not then but he is now. Mr. Zwerling then read straight from the Long Valley noise ordinance. Mr. Platt Jr. stated he put that passage in the letter he sent to the township. Mr. Zwerling stated that he would need to objectively prove a subjective presence of a nuisance, and suggested he have noise measurements taken. Mr. Platt Jr. stated he knows this is an uphill battle and feels if the model applied to drones it would be more direct. Mr. Szulecki stated that it sounded like Mr. Zwerling's suggested approach would be more fruitful. Mr. Platt Jr. stated that DEP regulated restrictions on drones so it should be possible. Mr. Dotti agreed that Mr. Zwerling's approach sounded best, take measurements and if an exceedance is recorded it would be a violation. He stated that it should not be in the noise regulations and that he was surprised the drone bans have not been challenged. Chairman Schmidt stated he was surprised Mr. Platt Jr. said the judge threw out the case because it was not at a criminal level, stating that usually noise is seen as a civil issue. Mr. Zwerling asked if there was any regularity to the drone racing. Mr. Platt Jr. stated that it was mostly on the weekends when the weather is nice, sometimes his neighbor will fly them on weeknights. Mr. Zwerling asked if Michelle Feasel could send an email to the DEP attorney reviewing 7:29 and ask for her thoughts on drones being included in the exception. Michelle Feasel stated that when they wanted clarification on the "maintained" wording of the gun range exception her and David Triggs met with DEP DAG's. Mr. Dotti stated that he doesn't feel there is a distinction between aircrafts and drones. Mr. Szulecki stated that someone needs to reach out to the FAA and get their definition. Mr. Platt Jr. asked who should reach out to the FAA, the noise council or himself? Mr. Szulecki stated on a municipal level Mr. Platt Jr. and his attorney need to educate themselves on the issue. Mr. Platt Jr. stated he believes that this is going to become an ongoing issue and that more drone racetracks will pop up. Gina Fischetti stated that when Long Valley's ordinance was written drones didn't even exist. Mr. Zwerling stated that he sent a request to the FAA noise portal for clarification on if drones are considered an aircraft. *Norm Dotti **motioned** to close Public Session with Joe DeFillipo seconding. All were in favor, so the meeting was closed to the public.*

OLD BUSINESS

N.J.A.C. 7:29 (Response to DEP attorney's comments): The Council began to discuss the comments made by the DEP's attorney in response to their most recent round of proposed amendments. A detailed accounting of the responses and votes is being prepared in a separate document.

PUBLIC DISCUSSION

*Randy Hauser **motioned** to go into Public Session with Joe DeFillipo seconding. All were in favor, so the meeting was now open to the public.* Mr. Fletcher Platt thanked the council for their time and consideration. *Randy Hauser **motioned** to close Public Session with Gina Fischetti seconding. All were in favor, so the meeting was closed to the public.*

ADJOURNMENT

*Chairman Schmidt **motioned** to end the meeting with Jack Zybura seconding. All were in favor, so the motion carried.*

NEXT MEETING

The next meeting is scheduled for Tuesday, November 14th at 9:30 A.M.
Respectfully submitted by Michelle Feasel, NJDEP Liaison to the Council.