

**NEW JERSEY NOISE CONTROL COUNCIL MEETING  
JANUARY 11, 2011,  
MINUTES**

**NCC ATTENDEES:** J. Lepis (Chairman, Civil Engineer), A. Schmidt (Vice Chairman, Public Member-Registered Environmental Health Specialist), J. Feder (Secretary, Public Member-pending confirmation), R. Hauser (DOL, Member), I. Udasin (Public Member-Medical Doctor), J. Kapferer (Public Member), T. Pitcherello (Member-NJDCA), N. Dotti (Public Member), S. Szulecki (Public Member-pending confirmation, Ecologist), D. Triggs (NJDEP).

**I. ADMINISTRATIVE**

**1.1 Review of Minutes of the Previous Meeting**

Minutes of the December 14, 2010 meetings were reviewed. However, Chairman Lepis and Mr. Triggs both brought draft copies of the minutes on which comments had been edited by hand. Secretary Feder agreed to review these and prepare updated draft minutes for review at the next meeting. Secretary Feder requested that, going forward, comments on draft minutes be provided via email in advance to facilitate review.

**1.2 NCC Process and Communication**

Secretary Feder raised an issue regarding the approval process for Resolutions. Several other committees and councils in which he participates allow an expedited process in exigent situations requiring timely response. In these situations, the group would vote on contents of a resolution, but defer and delegate the exact wording to a group member. Chairman Lepis referenced the NCC Bylaws and found that, not only was there no provision for this expedited process, but that there was a requirement that Resolutions be posted two weeks in advance, which would appear to rule out an expedited process unless the Bylaws were changed.

As an additional process issue, technical discussions within subcommittees and NCC members sometimes take place via email. Such discussions allow technical work to proceed between meetings. However, NCC deliberations are subject to regulations regarding open public meetings. It was suggested that a publicly accessible email log and history might address this need. Mr. Szulecki volunteered to look into how other groups handled the need for member communication between meetings and the need to maintain an open public process.

**II. AMUSEMENT PARKS/VIOLATIONS CAUSED BY UP-ZONING**

A noise complaint regarding an amusement park in Cape May County, NJ, surfaced some issues regarding zoning and enforcement of regulations. For the situation in question, an amusement park had been in existence for some time in what had previously been an industrial or commercial zone. Local officials had recently up-zoned a nearby neighborhood to residential, which then rendered it subject to stricter nighttime (10PM-7AM) noise limits, which would apply since the adjacent property is now zoned residential. The amusement park would have had to meet the same daytime standard when the adjacent property was zoned commercial, but apparently no complaints were ever made by the commercial property owners/operators. If there is no complainant, then there is

no violation (based on provisions of NJAC 7:29). Since the residential units have been occupied, complaints have been made that have presumably demonstrated a violation of the daytime and/or nighttime limits; however, the NCC has not seen the documents prepared by Cape May County regarding the reported violation. To address the presumed violations, the NJ Association of Amusement Parks had requested a specific regulation exemption for amusement parks.

NCC members felt that such local specific “carve outs” from existing regulations were undesirable and set poor precedents. NCC members felt that the local zoning officials should have been sensitive to, and addressed this issue, prior to creating the up-zoned residential area. Mr. Dotti stated that in his experience, a residential developer seeking a zoning upgrade was sometimes asked to pay for upgrades to nearby commercial or industrial facilities to address regulation violations that would be incurred as a result of the zoning upgrade. It was pointed out that whereas the NJ Department of Transportation would often pay for noise barriers in situations where a highway created a problem for an existing residential community, it commonly refused to pay for such barriers to protect a newly constructed residential community near a previously in place highway. However, it was also felt that the amusement park had not established that “feasible engineering or administrative controls” for its activities could not eliminate the violation. The consensus was that, even though the amusement park was there prior to the residential up-zoning, it should be asked to explore whether feasible engineering and administrative controls on its part could address the problem. The NCC has denied other business sectors seeking an exemption from NJAC 7:29. In order to properly determine whether exemption status is justifiable a detailed analysis of the circumstance must be presented to the NCC, including, at a minimum, existing source noise levels at the receptor property(s), hours of operation, the noise source(s) ordered based on their proportional contribution, a review of potential engineering and administrative controls and their costs. Beyond the specifics for this amusement park, the NJ Amusement Park Association would have to further justify why a “blanket” exemption for the entire industry is warranted.

### **III. FUTURE TREATMENT OF NOISE RELATED CALLS TO THE NJDEP**

Mr. Triggs reported that he typically gets two telephone calls a day related to noise. The calls come because of previous association of his name with noise related activities, rather than as a result of any formal call “funneling” mechanism. Most calls are rapidly handled by referring the caller to County or local health officer. However, some calls raise issues that require the expertise of specific members of the NCC, or raise issues that need to be addressed by the NCC as a Council in which case Mr. Triggs refers the caller appropriately, or brings the issue to the next NCC meeting. Occasionally, a caller or representative groups are invited to appear directly before the NCC to further explain the situation and collect advice. There was question as to whether there should be a formal email and call in contact points for noise related issues, but no decision was made to establish such contact points.

### **IV. MOTOR VEHICLE NOISE ENFORCEMENT**

Several members had previously listened to a segment of a radio show by Jim Gearhart on FM 101.5 HZ in which a caller expressed dismay regarding a Court dismissal of a noise complaint regarding motor vehicle noise on a weekend evening. The judge ruled that without objective measurements of the noise level and comparison with a regulation, he could not rule that a violation had occurred. The discussion brought out several issues: 1) Measurements are typically done by

trained noise enforcement officers working for the County or localities. These officers are unlikely to be available on a moments notice on a weekend evening; 2) the actual violation would likely occur with respect to the Model Ordinance, which only about 10% of municipalities have adopted and had approved, rather than the state noise regulation. It was pointed out that municipalities often have non-approved ordinances, adopted in good faith. In the latter situation, a Judge might be unaware of the need for state approval, and rule in favor of the plaintiff in a violation case. However, an alert defendant could point out the requirements for state approval and if this had not taken place, the defendant could have the case dismissed.

## **V. NEXT MEETING**

The next scheduled meeting, weather permitting, is on February, 8, 2011.

Respectfully submitted,

Jerome Feder