

NEW JERSEY NOISE CONTROL COUNCIL (NCC)
DECEMBER 11, 2018
MEETING MINUTES

ATTENDEES: Arnold Schmidt (Chairman, Public Member), Steve Szulecki (Vice Chairman, Public Member, Ecologist), John Lago (Department of Community Affairs), Eric Lieberman (Department of Health), Dr. Iris Udasin (Medical Doctor, Public Member), Joseph Lepis (Civil Engineer, Public Member), Norm Dotti (Industrialist, Public Member), Jerry Feder (Public Member), Eric Zwerling (Director, Rutgers Noise Technical Assistance Center), David Triggs (NJDEP Liaison to the Council) and Michelle Feasel (NJDEP Co-Liaison to the Council).

PUBLIC: Mark Roskein (Bridgewater).

MEETING MINUTES

Salvatore Fama added comments to the October meeting minutes. Arnold Schmidt motioned to accept them with the changes and Steve Szulecki seconded. All were in favor except for Norm Dotti, John Lago, Joseph Lepis and Dr. Udasin who all abstained since they were not at the meeting.

Eric Zwerling added comments to the November meeting minutes. Steve Szulecki motioned to accept them with the changes and Arnold Schmidt seconded. All were in favor except for Eric Lieberman, John Lago and Norm Dotti, who all abstained since they were not at the meeting.

OLD BUSINESS

- *Revisions to 7:29* (This was moved up in the agenda to ensure that the NCC had a quorum).

David Triggs proposed amendments for the following sections of 7:29:

(for specifics, refer to the notes from the October 19th subcommittee meeting or the regular meeting minutes for November 2018)

7:29-1.1 Definitions

“Commercial facility”

Arnold Schmidt motioned to accept, and Eric Lieberman seconded. All were in favor, so the motion passed.

Add the definition for “Sound production device.”

Vote: Eric Lieberman motioned to accept, and Steve Szulecki seconded. All were in favor, so the motion passed.

7:29-2.11 Qualification of enforcement personnel

Vote: Eric Lieberman motioned to accept, and Steve Szulecki seconded. All were in favor, so the motion passed.

Salvatore Fama proposed amendments for the following sections of 7:29:

7:29-1.5 Exceptions

Add

15. Wildlife not under the control of the source.

Vote: Eric Lieberman motioned to accept, and John Lago seconded. All were in favor except for Joseph Lepis, who stated that zoos don't have wild animals. The motion passed by majority.

7:29-2.1 Definitions

To remove the definition for "Sound source."

Vote: Dr. Udasin motioned to accept, and Arnold Schmidt seconded. All were in favor except for Joseph Lepis, who stated that removing the words "animal" and "phenomenon" would adequately address the Council's concerns. The motion passed by majority.

Norm Dotti handed out proposed amendments to:

7:29-1.2 Industrial, commercial, or community service facilities

The amendments pertain to re-zoning, which would effectively exempt a commercial/industrial facility from complying with the 65 dBA daytime and 50 dBA nighttime permissible limits when an adjacent property zoned commercial/industrial is re-zoned to residential use.

Some of the NCC's concerns and comments included:

What if the facility expands?

Would a developer have to build residential structures to spec, to ensure that interior noise levels meet with the permissible nighttime limit?

If the NCC approves the changes, how do you protect the homeowners?

Similar to homes built near a race track, a disclosure statement can be effective. Boards can also add "conditions of approval" to deeds.

Exempting such existing commercial/industrial facility from complying with the 50 dBA nighttime permissible limit would be a major deviation from the existing regulatory structure of noise control in NJ and would result in some residents in the State not being protected from noise in the same manner as other residents.

Currently, NJAC 7:29 is solely an enforcement regulation. The proposed changes would result in adding provisions in NJAC 7:29 regarding "land use" in that the permissible limits could be differ for different residential communities depending upon the land-use designation prior to the construction of the residential units and whether there is an adjacent commercial facility, among other factors that would be decided by a local land use board.

Vote: Norm Dotti motioned to accept his proposed changes and Arnold Schmidt seconded the motion. Jerry Feder, Eric Lieberman and Joseph Lepis abstained, and John Lago and Steve Szulecki were against, so the motioned did not pass.

CHAIR REPORT/COMMUNICATIONS

- No news to report on NCC appointments and re-appointments.
- There was no correspondence to the NCC.
- Chairman Schmidt reminded the NCC members that it is their obligation to take the on-line ethics training and to fill out the Outside Employment Questionnaire. Certificates of completion should be sent to David Triggs.
- Chairman Schmidt read the following statement regarding noise from landscaping equipment. He maintains that this is strictly his opinion and not the policy of the NCC:

“In response to public input the sub-committee had very substantial discussions regarding proposed amendments to 7:29, to regulate landscaping equipment operated on residential properties by commercial landscapers. First it is an undeniable fact that there are millions of acres of lawns and landscapes in New Jersey, residential and commercial, which need to be maintained. Currently, the State Code establishes permissible sound level limits for property categories, not individual operations or pieces of equipment. To regulate specific landscaping equipment would be a significant departure to amend the State Code to target a specific operation or piece of equipment on a property category. While the goal of the Noise Control Act is to protect the people of New Jersey from the impacts of noise that unnecessarily degrades the quality of life, it requires that rules promulgated by the DEP be reasonable. It also specifically sets forth that local governments may adopt regulations that are more stringent than those promulgated by the DEP including adopting the Model Ordinance which regulates the use of landscaping equipment but, likely not to the satisfaction of the few residents who have contacted us. That said, neither the NCC nor the DEP have the authority to require that towns adopt the Model Ordinance. However, it is the recommendation of the sub-committee that we review the Model for potential revisions after finalizing revisions to 7:29. One potential revision discussed during the 7:29 review process, amongst several discussed, was strengthening the Model in reference to landscaping equipment noise. Further, municipalities, if they so desire, and some already have, have the authority to regulate landscaping equipment through ordinances that could either ban them or more strictly regulate the use of specific equipment. Therefore, it was the consensus of the sub-committee to recommend to the full Council not to recommend, at this time, amendments to 7:29 to regulate landscaping equipment.

I will open this up for discussion now for input from the other sub-committee members as well as the full Council after which I hope to take a vote on whether we should propose to the DEP, at this time, that we make revisions to regulate landscaping equipment.”

Eric Zwerling stated that 7:29 does not regulate anything on residential properties and that protection from noise must be reasonable. Regulating landscaping equipment in 7:29 would create an unreasonable burden on county inspectors who would find it difficult to respond to this type of complaint in a timely manner. It would also result in an unfunded mandate for local agencies to require local adoption of a code with provisions as requested by the public’s comments. It can be regulated by municipalities by either the Model or a stand-alone ordinance that restricts or bans certain types of equipment outright, which some municipalities have elected to do. Elected

officials have an obligation to respond to citizen's complaints, while also considering the economic impacts of any change.

Steve Szulecki stated that the state is vastly different from north to south and certain types of noise might impact one area while other areas are not. A state-wide mandate to regulate a certain type of equipment would therefore not be reasonable and may unnecessarily impose economic hardship for some municipalities that are typically not affected due to lower population densities and more open space.

Eric Lieberman stated that you also must look at the impact on landscapers, some of which could be put out of business by having to employ more people. The task of maintaining lawns would be extended by not being permitted to use the proper equipment. People also must, by law, maintain their lawns or face other penalties. It's not feasible to rake large lawns. It would violate equal protection standards by signaling out one type of equipment.

Norm Dotti read the following statement, which is his opinion:

“N.J.A.C 7:29 does not regulate any residential source and doing so would be a major change. 7:29-1.8(a) does allow “A governing body of a municipality” to “adopt a noise control ordinance” provided it “meets with the written approval of the Department.” A municipality may adopt the Model Ordinance, which does include some regulation of landscaping equipment. Further, a municipality may petition the Department for its own additional controls of landscaping equipment use and limits.”

John Lago motioned that regulating landscaping equipment should not be added to 7:29 and Norm Dotti seconded it. All were in favor except for Steve Szulecki who abstained as he felt that it wasn't the right time to discuss or vote on this complex issue. Although Jerry Feder voted in favor of the motion, he stated that the NCC has an obligation to protect citizens from all types of noise through effective solutions.

PUBLIC DISCUSSION

There was no public discussion.

NEW BUSINESS

There was no new business.

EXECUTIVE SESSION

The NCC did not meet in Executive Session.

NEXT MEETING

The next meeting is scheduled for Tuesday, January 8th (weather permitting) at 9:30 A.M.

Respectfully submitted by David Triggs, NJDEP Liaison to the NCC