

NEW JERSEY NOISE CONTROL COUNCIL (NCC)
SEPTEMBER 12, 2017
MEETING MINUTES

ATTENDEES: Arnold Schmidt (Chairman, Public Member), Randy Hauser (Department of Labor), Salvatore Fama (Motor Vehicle Commission), Dr. Iris Udasin (Public Member, Medical Doctor), Joseph Lepis (Public Member, Civil Engineer), Norm Dotti (Public Member, Industrialist), Jerome Feder (Public Member), John Kapferer (Public Member), Mark Roskein (Candidate Member), Joseph DiFillippo (Candidate Member), Eric Zwerling (Director, Rutgers Noise Technical Assistance Center) and David Triggs (Department of Environmental Protection, Noise Control Council Liaison).

PUBLIC: Jack Zybura (Lewis S. Goodfriend and Associates)

MEETING MINUTES

Joseph Lepis read a statement regarding his argument over the use of “at or within” in the Regulations. He requested that his prepared statement be included in the July meeting minutes since the June meeting minutes were already approved. The NCC instead suggested that it be included in the September meeting minutes under new business. Mr. Lepis agreed. Salvatore Fama requested that additional language be included in the firing range portion of the July meeting minutes to emphasize and further clarify his objection to the blanket racetrack exemption, while the firing range exemption is only grandfathered for facilities built before a specific date. With Mr. Fama’s additional language added, John Kapferer motioned to accept and Joseph Lepis seconded to approve the minutes. All were in favor so the motion passed.

CHAIR REPORT:

- Chairman Schmidt discussed an e-mail from a resident of West Windsor who requested the NCC’s advice regarding noise coming from a park in Mercer County where concerts are being held over the summer and fall. As a result, a couple of concerns have emerged, prompting the NCC to request that the DEP seek guidance from the DAG’s Office, before advising the resident. The NCC wants clarification on whether a municipality can enforce against a county, as well as an explanation on what constitutes/defines a public celebration? One NCC member did an online search for the definition of Public Celebration and found; “To observe a day or event with ceremonies of respect, festivities or rejoicing.” A sound study sponsored by the county on the concert stage’s noise impact on nearby residents, was found to be flawed by members of the NCC who reviewed it. While awaiting the DAG’s advice, Chairman Schmidt called the complainant and gave her contact information for the Mercer County Division of Public Health for assistance.
- Chairman Schmidt emphasized the importance of getting to the meetings on time and to review the meeting minutes beforehand. With revisions to N.J.A.C. 7:29 taking up most of the meeting time, it is imperative that other NCC business that requires a vote by a quorum be taken care of first.
- Most of the existing members, and new candidates for open vacancies, whose names were submitted to the Governor’s Office for consideration, were contacted to fill out and return a form online. Dr. Udasin and Jerome Feder were unsure whether they were contacted or accidentally deleted the e-mail.

NCC COMMUNICATIONS/CORRESPONDENCE:

Refer to the first item of the Chair Report.

OLD BUSINESS:

- *Roundtable Part 150 Study:* The Technical Advisory Committee meeting for September was canceled. The next meeting will include a presentation on noise mitigation efforts based on computer modeling.
- *Motor Vehicles Entering and Exiting Properties:* Norm Dotti informed the NCC that no progress has been made. Chairman Schmidt stated that he would leave it on the agenda until told otherwise.
- *N.J.A.C. 7:29 Revisions* **Joseph Lepis:** Mr. Lepis suggested that “at or within” (see statement in New Business) be removed from the regulations. Chairman Schmidt called for a vote. All of the members were in favor of leaving “at or within” in 7:29, with the exception of Mr. Lepis, who voted to remove the wording. While Jerome Feder agrees with some of the sentiment of Mr. Lepis’s argument, he felt that the issue has been resolved through a majority vote.

Eric Zwerling: Mr. Zwerling will resubmit his recommended amendments as bullet points.

Salvatore Fama: Mr. Fama handed out a list of the current exemptions with suggested additions. The first addition reads as follows: *Any sound producing recreational, sporting activities or special events such as but not limited to people engaged in hitting baseballs, hitting paddle balls, hitting tennis balls, hitting pickle balls, hitting hand balls, shooting sporting clays, shooting targets, racing cars, operating chainsaws, flying kites, model airplanes, playing instruments, etc.* Eric Zwerling felt that this would set a dangerous precedent by exempting anything that derives joy. Regardless of how much noise something makes, it could apply to almost anything. Other members agreed. Jerome Feder felt that it would interfere with a citizen’s “peaceful use of property,” which is guaranteed under common law. Joseph Lepis motioned to reject the suggested exemption and Chairman Schmidt seconded it. All were in favor of the motion except Mr. Fama, who was against it. The motion therefore passed. Mr. Fama also suggested adding wording to the existing exemption on public celebrations, but it was tabled until the DEP consults with the DAG’s Office on clarification of what constitutes a public celebration. He also made changes to the existing firing range exemption but chose to rewrite and resubmit it at the next meeting as concerns were voiced regarding the removal of “normal operation” and clarification is needed on what is considered private property. It was emphasized that changes to the regulations should not be based on zoning, only protection from noise.

Arnold Schmidt: Chairman Schmidt handed out a list of potential amendments to address. While there was not enough time to discuss any of them at length, some were eliminated, such as propane cannons used on farms, which is already exempted under the Right to Farm Act. It was also suggested that language similar to that in the Restricted Uses and Activities Section of the Model to address landscaping equipment be included in N.J.A.C. 7:29.

- *Model Revisions:* Revisions to the Model were not discussed.

NEW BUSINESS:

Public Celebration Definition: Based on the NCC’s request, Mr. Triggs will ask that a DAG be assigned to provide a definition of what constitutes a public celebration and whether a municipality can enforce against a county government.

Joseph Lepis requested that the following statement be included in the minutes: “When you have a regulation that permits measurements to be taken at two different (or several) locations, many times hundreds of feet apart, this will result in two different measurements to determine the existence of a violation. A rule which results in two separate and distinct conclusions on any government matter is no regulation at all. The current “at or within” language should be removed from the guidance document and addressed as part of the sunset negotiations currently occurring in the NCC meetings.”

PUBLIC DISCUSSION

Impulse Noise: Jack Zyburra from Lewis S. Goodfriend & Associates submitted in writing, three areas dealing with impulse noise at residential receivers that he feels should be addressed as part of the current revision process to N.J.A.C. 7:29. He feels that inconsistencies with N.J.A.C. 7:29 and the Model Noise Ordinance could make the Model

less stringent. The NCC felt that his argument had merit that warranted further discussion as part of revising N.J.A.C. 7:29. A copy of Mr. Zybura's letter will be included with the posted meeting minutes.

EXECUTIVE SESSION:

There was no need to go into Executive Session.

NEXT MEETING:

The next meeting is on October 10th at 9:30 A.M.

Respectfully submitted by: David Triggs, NJDEP Liaison to the NCC