

City of Portland
Noise Task Force

Meeting Minutes
Thursday, October 1, 2015

****Please note: due to a malfunction in the recording device, these minutes were captured in the meeting with no opportunity to revisit for accuracy. Please consider these minutes as a snapshot of the meeting with this limitation in mind.***

Members Present: Maryhelen Kincaid, Tina Penman, Jim Brunkhorst, Ryan Hyke, Doug Shapiro, Brad Nile, Ryan Pittel, Melissa Stewart, Mary Sipe, Melissa Stewart.

Guests: Patrice Hanson, Pearl District Neighborhood Association (PDNA); Sally Mize, Pearl District Neighborhood Association (PDNA); Jan Valentine, Pearl District Neighborhood Association (PDNA); Allan Classen, NW Examiner; Stanley Penkin, Pearl District Neighborhood Association (PDNA); Judy Bradley, Pearl District Resident; Melissa Stewart, Noise Review Board (NRB); David Mitchell, Pearl District Resident; John Wertzler, Pearl District Resident; Raihana Ansary, Portland Business Alliance (PBA).

Staff: Jasmine Wadsworth, Claire Adamsick, Paul van Orden, Theresa Marchetti, Kathy Couch

Welcome and minutes review

Members, staff and guest took turns introducing themselves.

Claire Adamsick introduced Mary Sipe as the new Task Force member replacing Dick Roy, who had an unforeseen scheduling conflict. Mary has attended both of the previous Task Force meetings and is up to speed on the discussion topics and materials.

Upon review, there were no amendments to the minutes from September 17.

Agenda and overview of handouts

Claire shared data from BPS staff member Nicholas Starin as a follow up to the EX Zones discussion regarding which potential industrial sites could be impacted by a noise code change in the district. Claire reported that Nicholas said he did not have land use data for the Pearl District, but he did share employment data from 2013. This showed that there were 101 total industrial businesses, including construction (24), manufacturing (18), wholesale trade (48), and transportation and warehousing (11). Of these businesses, it is important to note that some might actually be offices for companies in their respective categories.

Feedback from Commissioner Fritz re: EX Zones discussion and recommended areas of focus for Variance/Appeals/Notification discussion

At Claire's request, Raihana Ansary from the Portland Business Alliance informed the Task Force that she will be connecting another PBA member, Vanessa Sturgeon, with Commissioner Fritz's office to discuss an alternative method to pile driving that is

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understood to have fewer negative human health impacts. Claire stated that Commissioner Fritz asked this group to present its findings to the Task Force at a subsequent meeting.

Claire reported on Commissioner Fritz's response to the Task Force's feedback that a decision on changing the Noise Code in EX zones would be difficult without more information about potential impacts of these changes. Commissioner Fritz recommended that the Task Force turn its energy to the discussion on improving the variance and notification process. Maryhelen Kincaid supports putting the EX zones discussion on hold to discuss at a later date. She offered a suggestion that the Task Force submit official comment to Barry Manning and BPS in the context of the Mixed Use Zones project. The suggestion to craft a recommendation on EX zones was supported by Doug Shapiro and Melissa Stewart, with nods of agreement from other task force members. Claire asked for volunteers to draft a recommendation proposal for the full Task Force to review at a subsequent meeting. Melissa Stewart, Maryhelen Kincaid and Doug Shapiro volunteered to work together to develop a statement.

Variance, Appeals and Notification discussion

Jim Brunkhorst volunteered to read the problem statement and considerations from Commissioner Fritz for the Task Force to discuss.

Context: Currently, Noise Variance requests are submitted to the Noise Office for review and processing. Requests that the Chair of the Noise Review Board has deemed as having significant impacts on the community are scheduled for a public hearing in the context of a Noise Review board hearing. In instances where the direction given by the Chair needs clarification, the Noise Control Officer consults the Chair for direction on the legal venue of review. Current legal venues of review include the Noise Office, Noise Review Board and City Council. The events deemed less impactful are delegated to staff for review. In recent City Council hearings, community members have suggested that the window of time in which a variance is appealed is too narrow, and that notification of variance approvals may not be reaching those directly impacted by the variance decision. Construction and development representatives want reassurances that the variance process will allow them to complete their projects in a timely manner and that it will also limit the noise impacts on a given area.

Central Question: How can the Noise Code be appropriately revised to create a variance review process that is responsive to:

- *the community's desire for timely and transparent information*
- *the time-sensitive needs of the development community (construction-specific variances)*
- *City Staff capacity and resources*

Considerations from Commissioner Fritz:

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- *Focus discussion on high-impact variances -- and define criteria that define and differentiate between high-impact and low-impact projects.*
- *Consider the possibility of submitting high-impact Noise Variance requests directly to the City's Code Hearings Office*
- *Consider streamlining the variance process through partnership with other City bureaus responsible for permitting specific events (Parks, PBOT, ONI)*
- *Consider a cost recovery model to fund additional staff support (i.e. through increased variance fees in certain areas)*

Ryan Pittel asked for clarification regarding what Commissioner Fritz meant by streamlining.

Melissa Stewart asked if the Police and Parks bureaus will have the appropriate staff and support in place to enforce variances.

Maryhelen Kincaid commented that complaints about amplified sounds can be enforced by Police Officers and asked whether Paul knows how many of these types of complaints exist. It would be a benefit for constituents if they do not have to go to both the police and the Noise Office to file complaints.

Brad Nile asked for greater context on what prompted the discussion about the variance process. Mary Sipe stated that this issue came from a Noise Variance issue in the Pearl District. She commented that per the current code, what typically happens is that once a variance is approved it is too late for anyone to appeal. Currently, a citizen must make a comment on an application, and if people aren't aware of the application in the first place, a timely appeal is next to impossible.

The Task Force discussed what type of events that could be appealed. Theresa clarified that the Task Force has been asked to determine an understanding of "low impact" and how "low impact" noise issues could be addressed or deferred to another bureau involved in event permitting.

Tina Penman asked Mary Sipe for more clarity regarding the appeal by two Pearl District residents on a noise variance (heard by Council in spring 2015). Mary explained that the appeal was on a variance for early morning concrete pours and the appeal was submitted in an attempt to prevent the pours from happening on Sundays. The construction company agreed not to work on Sunday after the City Council Hearing on the appeal and the variance was modified to exclude Sunday work.

Brad Nile noted that the appeal process seemed to have been effective in this case. Mary Sipe noted that the Pearl residents were only aware of the appeal process because the Noise Office educating them on the steps to appeal a variance. Paul provided clarity on this statement [*no notes available on this response*].

Task Force members discussed defining "high impact" variances and Paul pointed out that the Noise Code includes a definition on "high impact" noise events.

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Maryhelen Kincaid said that it's more critical that the group define high impact and low impact. She stated that an appeal should focus on what is allowed by code, and that how citizens are notified is of greater concern to her than the appeal itself. She added that trying to notify someone every time a permit is granted should be done, but it would be an administrative nightmare. She suggested that the group consider methods similar to those used by BDS for land use notifications.

Tina Penman suggested looking at the applicant's previous application history to determine whether further review is needed.

Task Force members discussed the challenges around notification, in terms of who is responsible and who should be notified. Tina Penman suggested that the Task Force could require longer lead time on notifying the community on a variance application. There seemed to be some support in the group for this.

Noise Task Force staff responded to questions about how variances are prioritized. If there is now overarching concern or "flag," Kathy says her standard approach is to review variance requests in chronological order (based on start date requested).

Tina Penman suggested a voting process in order to vet recommendations on the table, and the group was in general agreement. Tina emphasized the need for members to have specific language to vote on, the ability to cast votes and have those votes documented. Ryan Pittel agreed with Tina and believes it would speed up the process of reaching a decision. Maryhelen Kincaid added that voting would give Commissioner Fritz a clear idea of where the Task Force is leaning.

Public Comment

Stan Penkin, Pearl District resident, is concerned about Task Force putting EX Zoning discussion on hold. He believes most of public in attendance agree with him that the Pearl District is residential, and feels that there is so much momentum about EX zoning now that a recommendation should be taken to Council. The primary reason he feels this is important is because the Noise Office needs more flexibility to address noise complaints that the current zoning does not allow staff to address.

Patrice Hanson, Pearl District resident, believes if people knew about high impact noise in advance, they could make plans in advance to avoid the noise. This process is about respect for community members and ample notice is critical.

Salley Mize, Pearl District resident, asked if the river is included in the noise code as she has heard two recent reports regarding a float plane in the Willamette River, and believes someone is abusing a privilege.

- Paul answered that the River has zoning applied to it when an aircraft is on the water. [*Clarity on takeoff/landing not captured here*] When aircraft is in the air it's under FAA regulations.

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Jen Valentine, Pearl District resident, stated her support for Stan Penkin's comment on continuing the EX zones discussion.

Dave Mitchell had a question on pile driving issues, which he will hold until the next meeting on October 8th.

Raihana Ansary reiterated past comments regarding concerns with EX issues, if discussion continues, she believes the Task Force needs more time to evaluate.

Continued discussion and preliminary recommendations

[Note taker had an irreversible conflict and had to leave room at this point. Will capture recommendations in October 8th minutes.]

Adjourned 5:40 PM