

**Minutes
Noise Control Board Meeting
Wednesday, August 12, 2015
Council Chambers
4500 Knox Road
College Park, MD
6:30 p.m.**

<u>Members</u>	<u>Present</u>	<u>Absent</u>
Irene Bellamy	<u> X </u>	<u> </u>
Adele Ellis	<u> X </u>	<u> </u>
Bobbie Pinkett-Solomon	<u> X </u>	<u> </u>
Harry Pitt	<u> X </u>	<u> </u>
Mark Shroder	<u> </u>	<u> X </u>
Alan Stillwell	<u> X </u>	<u> </u>
Larry Wenzel	<u> </u>	<u> X </u>

Also Present:

Staff: Bob Ryan, *Public Services Director*; Robert Cofske, *Code Enforcement Officer*; Mark Russo, *Code Enforcement Officer*

Julie Beavers, *Recording Secretary*

I. Call to Order

The meeting was called to order at 6:30 p.m.

II. Approval of Agenda

Ms. Bellamy motioned to approve the agenda as submitted. Ms. Ellis seconded the motion.

All were in favor. **The motion passed 5-0-0**

III. Approval of Minutes – 07/22/2015 Meeting

Ms. Bellamy motioned to approve the minutes as submitted. Ms. Ellis seconded the motion.

All were in favor. **The motion passed 5-0-0**

IV. Hearing Subject: 4800 Berwyn House Road, University Club Apartments

- . **Property Owner: University Club UCAL LLC**
4500 Cherry Creek Drive – Suite 1200; Denver, CO 80246
- a. **Property Manager: Chaize Fletcher**
University Club at College Park
- b. **Complainants: Jill Barefoot and Douglas Sanford**

Chairman Stillwell described the hearing process.

Chairman Stillwell read § 138-5: Prohibited acts of the Noise Ordinance and § 138-6: Violations and Penalties of the Noise Ordinance

Chairman Stillwell read a letter of complaint dated July 29, 2015 from Jill Barefoot and a letter of complaint dated July 30, 2015 from Douglas Sanford describing a loud AC generator unit located in the rear of the University Club Apartments.

The College Park Code Officers approached the table.

Code Officer Cofske's Testimony:

On May 14, 2015 at about 10:00 in the morning City staff received a complaint from Mr. –or I was told of a complaint from Mr. Sanford and was asked to investigate and Mr. Sanford wanted to be contacted and I did. I met with Mr. Sanford at the property of 4903 (Osage St), he asked me to take the readings and explain what the readings were. I took readings inside and outside the house and along the rear property line. This was during the morning/ during the day. The equipment was operating fully and it was not a day time code violation but I was getting readings of low 60s (decibels) during the day. I took some readings inside the house low to mid 50s (decibels) and we talked about that and tried to figure out what was going on down there; there was no code violation at the moment. So I went down to talk to management and find out what this machine was and what it was doing. How it operated, how long it was going to operate and what we could do to mitigate some of the sounds and began the investigation.

Code Officer Russo's Testimony:

I was working day shift on Saturday, May 16, 2015 which is roughly 8:00 a.m. until 6:30 p.m. I received a call on the Code Enforcement Hotline at 12:46 p.m. from Allie McCracken who is a resident of 4903 Osage [Street] complaining about loud machinery at the rear of Berwyn House [Road]. I arrived at 12:54 p.m. and observed a tractor trailer with loud pieces of heavy equipment on it. It was running continuously. I took a reading at the rear of property line of 4800 of Berwyn House which is shared with the rear property line of 4903 Osage and obtained a sound meter reading of 66 decibels. I observed the sound was being generated at an irregular cycle- it wasn't continuous noise. It went up and down with a period of four (4) seconds. The cycle of readings averaged a high of 66 decibels and 63 at the low point. Again plus or minus 2 decibels isn't going to hold up as a violation so there was not a day time violation. I had a conversation with the residents [of the apartment building] who complained to the building management and were told the nature of the work that was going to be done was going to take a few months. I also took sound meter readings on the deck of the rear of 4903 Osage and there was a high point of 64 decibels. Later I took a reading from the parking lot of 4800 Berwyn House [Road] adjacent to the machinery which on the property can't be used but the sound meter readings was 71.8 decibels at the high point

and 69 at the low point. Again this was on the property and the building was essentially secure I did not have permission I just wanted to see what the noise [level] was. So based on that I issued a noise notice to the property owner which is just a notice saying that we received a complaint and investigated it. The following day I worked Sunday from 9:30 a.m. until 8:00 p.m. I went by at the end of the shift to see if the sound was the same and in fact the measurements at the rear property line were 61.9 decibels and 64.9 decibels at the high. These readings were taken between 8:20 and 8:30 p.m. I then followed that up because I wasn't sure if property maintenance exemption in the code would apply so I documented the findings and sent them to the Code Enforcement Manager for further evaluation.

Chairman Stillwell asked if Mr. Cofske spoke with management. Mr. Cofske reported that after Mr. Russo reported his findings over the weekend Mr. Ryan asked for a meeting to be set up between the building's management, an engineer and himself to see what the next steps would be to mitigate the noise.

Chairman Stillwell asked what the machine is for. Mr. Cofske stated it was an Air Conditioner which cycles on the compressor.

Mr. Pitt asked if the engineer was provided from the management. Mr. Cofske stated the engineer was Bob Johnson from Noyse Air Conditioning.

Chairman Stillwell asked how long will it be until the work is complete. Mr. Cofske stated they could only give estimates which could be weeks to a month.

Mr. Pitt asked what was the purpose of this compressor. Mr. Cofske stated the building is getting a replacement and this is temporary until the new one is installed.

Chairman Stillwell asked if there was discussion about ways to make it quieter. Mr. Cofske stated they did but Mr. Johnson did not think it was possible to mitigate it because of where the machine was placed, the echoes from the structure and the machine needs to breath. The machine could not be relocated

Mr. Ryan's Testimony:

As Mr. Cofske mentioned we did hold a meeting at the Public Services Office with Officer Cofske, myself, Code Enforcement Manager Jeannie Ripley and University Club Apartment Staff, trying to come up with a solution. Usually when we receive noise complaints that involve construction sites or emergency repairs we try to work with the property owners and the people performing the work to mitigate the impact. Frankly, I thought this work was going to be completed a month or so ago and it hasn't been. We met at the end of May- first part of June after we had these initial complaints and investigations. As it was mentioned, the geography here is that the residential properties are at a much higher grade than the parking lot where this equipment sits. It would be difficult to put up a sound barrier around it because it may just in fact project the sound higher than it is. No doubt it's an annoyance running 24-7. We couldn't find a solution to mitigate that other than to hurry up and get the job done. I'm not sure what the delay has resulted from. I believe building management is here and can explain the delay.

The complainants approached the table.

Doug Sanford's Testimony:

I rented the property because it had a beautiful backyard and a beautiful deck. We're artists so we spend a lot of time outside making art and meditating and doing yoga on the deck that sort of thing. I met with clients; I'm a photographer, so we met with clients on my property so we occasionally take pictures there as well. And since the beginning, when I wrote the letter, the 65 decibels or 64 decibels constantly 24 hours a day for the four (4) months I've been there has pushed us to a point why we are here today. I'm not the kind of person who comes into hearings and that sort of thing but this has gotten so egregious that I thought I have to come talk to you people today. The people on the street and the people in this room are all here in support as well. They are people who live on Patuxant Avenue they are people who frequent the properties there. They are all severely upset by the level of noise that's going on in our neighborhood. A lot of these people are students and they have been held to a very high standard of noise control and they feel it's not correct that the businesses in our neighborhood are not held to the same level of noise control and I have to agree with that. If I were to be doing construction in my backyard for four (4) months with decibel levels that they are. I would certainly not be allowed to continue that behavior. And so I wanted to bring this case to you guys and let you know what's going on and there are a lot of people being affected by this and I understand it's difficult to get the work done and that sort of thing. But I've worked on construction projects that have built entire buildings in shorter periods of time then this has taken. I feel this is probably a financial thing and cutting corners and taking their time to fix this in a slow gentle way and at this point it's gone on too long and I'm asking for relief.

Chairman Stillwell asked if Mr. Sanford spoke with management. Mr. Sanford responded that he spoke with someone at the very beginning and was told that this is the way it must be and he will have to deal with the noise.

Ms. Pinkett-Solomon asked if Mr. Sanford spoke with the property manager. Mr. Sanford stated yes and it was an emergency situation and there is nothing that can be done about it. Ms. Pinkett-Solomon asked if there was an estimate as to how long this work would take. Mr. Sanford responded that the property manager said it would take four (4) months and would not give any other confirmation.

Jordan Seres' (resident of Osage Street) Testimony:

I guess a lot of what I was going to say was covered. My house is a, most of us are STEM students- Computer Science student, two (2) engineering students, math student and a plant sciences student. When we looked at the property back in May I guess the generator was not there. It may have been the end of April, we figured great house, great backyard. Then we moved in and there was an air conditioner and it's very loud and that is why we are here today. Like I said most things that I would say have been said- I'm not trying to be redundant here.

Chairman Stillwell asked if there were others in the room that felt the same way. There was a large show of hands.

Respondents approached the table.

Chaize Fletcher's testimony:

I have a building of 350 University of Maryland students. 99% of my building- we lease to anyone who meets our background and financial requirements. We switched over from our boiler to our chiller on April 24th. Over that weekend it was cool so we did not realize there was an issue at the time. We were able to determine the chiller had actually gone down during that weekend because it had gone into the mid 90s over that weekend. We called out Noyes; is the name of our [air conditioning] company. We had them come and determine that the unit had gone bad. So the company I work for, University Communities, we acquired this property back in July of last year. So we knew there were some issues that were eventually going to be needed to be worked on but did not know the chiller was in the state that it was. As soon as we figured out the chiller was bad I contacted our corporate office and contacted Noyes to see what I could do for my residents because I have 350 residents to keep cool in the middle of May. That's my duty. So we received a proposal for a rental chiller back on May 6th and then the insurance, we had contacted insurance because we are talking about a huge device. Insurance finished the initiation and a temporary chiller was approved on May 7th. So that's when we had the chiller set up on May 8th. We've been working with the insurance company since then there's been multiple meetings, paper work, you can imagine. We're talking about close to \$200,000.00 replacement for this chiller. There's a lot of work and a lot of hands of course this needs to go through. So on May 28th we met with the City and explained exactly what we can do and we brought in Bob Johnson, the rep for Noyes that came in. He's the AC specialist. The end point is that we've been working with this ever since. It's a nuisance for my residents as well, we have balconies- we do offer that to our residents and they pay extra for their balconies as well. The only way to get rid of the noise would be to not provide my residents with AC which, of course, in the middle of summer in Maryland, it gets very hot and I could not not provide AC for my 350 residents. Of course with the timing I was not able to get all my residents in because we would have packed out the building with unhappy residents as well. So we want to be great neighbors as well I'm not sure unfortunately, who the complaints came to because I'm the manager, so who they came to, maybe one of my leasing agents. In the beginning we did not know how long it was going to be. We are talking about something that has to be built out. By the time we arrived at the meeting back in the end of May we knew it was going to be eight (8) to twelve (12) weeks out. We knew it was going to be most of the summer it was going to be out. There are so many different hands- they have to custom build [the replacement unit]. There is a lot of work that goes into it.

Chairman Stillwell stated that twelve weeks is almost up. Ms. Fletcher agreed and continued her testimony.

The bottom line is that they are going to start excavation on this Monday. They have to remove the fans and dig out/take out the old chiller. The new chiller had to be custom built.

Mr. Pitt asked where the machine was being built. Ms. Fletcher stated Carrier is building it in their factory and it will be delivered to the yard and then will be brought on site. The construction end date is September 1, 2015.

Ms. Ellis asked if insurance was the reason for the delay in the beginning. Ms. Fletcher stated that insurance gave approval the next day and the delay was not caused by monetary issues.

Mr. Pitt asked who the insurance carrier is. Ms. Fletcher did not know but could give him the name at another time. Mr. Pitt asked if she spoke with the insurance company about the problem. Ms. Fletcher stated she has had constant meetings with the insurance company regarding this issue.

Chairman Stillwell asked how close the chiller is to the property line. Mr. Sanford stated it is 37 feet. Then asked if there could be a screen but the noise would bounce off the apartment building.

Mr. Pitt noted that the chiller needs to breath. Is it four (4) feet or six (6) feet?

Oscar Suero's (maintenance for University Club Apartments) Testimony:
The portable chiller is on a big truck. You have the pictures? It needs to breath.

Mr. Pitt asked what kind of air space would it need to put a barrier around that. Mr. Suero stated more than that. Ms. Fletcher stated that in the meeting with Mr. Johnson that even if a screen was built they would still hear the noise. Mr. Pitt asked if there was a way to lessen the noise. Ms. Fletcher stated the sound would bounce off the building. Ms. Ellis stated the sound could be a lot less then it is now.

Chairman Stillwell asked if the machine could be shut off for part of the day. Mr. Suero stated the machine shuts itself off when it's cooler. Chairman Stillwell said that if the machine is shut off then the neighbors would have a break and the temperature wouldn't rise that quickly. Ms. Fletcher stated she has a duty to her 350 residents. Chairman Stillwell reminded Ms. Fletcher there is a noise ordinance in the city and she has to comply with it. Ms. Fletcher stated she is providing a service to her residents and their contracts. Chairman Stillwell stated she is putting her residents above the city's ordinance and the community's residents. There needs to be a solution. Ms. Fletcher will speak with Noyes, the corporate office and insurance company to see about shutting the machine down at certain times at night.

Mr. Pitt asked if there could be a 16-foot temporary stud wall with 2 inch 4 by 8 insulation on it. Ms. Fletcher will look into it. Mr. Suero stated that may work.

Chairman Stillwell stated the Board has presented some ideas. Ms. Fletcher agreed and will discuss with Mr. Johnson and with the city.

Mr. Ryan reminded the Board that the City does have a noise ordinance but does not require air conditioning.

Ms. Pinkett-Solomon recalled that the project is supposed to be completed by September 1st. Ms. Fletcher agreed.

Chairman Stillwell asked how soon Ms. Fletcher could meet with Mr. Johnson. Ms. Fletcher said she could speak with him tomorrow [August 13, 2015] and give an update to Mr. Ryan.

The complainants returned to the table.

Mr. Sanford pointed out that it is summer and there are not 350 residents in the building. The parking lot is empty.

Chairman Stillwell asked what time would work for the community for the chiller to be off. Mr. Sanford said any time would work for him.

Kelly Donough's (resident of Osage Street) testimony:
It's ridiculous to say a 16 foot wall wouldn't mitigate the sound. As long as we can't see the unit it's going to take away, even if it's 30% that's good for us. I'm in favor of the wall.

Chairman Stillwell asked what time would work for Mr. Donough to have the chiller off. Mr. Donough stated evenings would be best.

Ms. Jill Barefoot stated that she can hear it from the front of her house.

Mr. Donough stated he does not believe it could be completed in two weeks. If the wall was constructed then they could take their time.

The respondents approached the table.

Aladdin (resident of University Club Apartments) Khaydarov's Testimony:
I live in the back, I hear it if the windows open. To me, after a while, the AC outweighs everything. I'll listen to an orchestra if I have to just to get the AC but for me it's now a purr in the background because when other stuff is on you don't hear it that loud. When I go outside I can hear it, it's pretty loud. I can also say that during my months here I have also heard a lot of stuff coming from the other side. Rave parties, people throwing hula hoops, fire hazards where I thought people were going to set trees on fire.

Chairman Stillwell asked if Mr. Khaydarov could live without air conditioning. Mr. Khaydarov stated that he probably couldn't. Chairman Stillwell asked how quickly the temperature goes up. Mr. Khaydarov said it rises quickly.

Kayleigh Dorsey's (resident of University Club Apartments) Testimony:
I'm on the front of the building so me personally I don't hear the chiller. But me being in the front of the building my apartment is in sun all throughout the day. Sunrise, sunset- I

get sun in my apartment. I also have a balcony so I have a huge sliding glass door in my apartment. I have a pet who sits in the apartment all day. When the AC has gone out for a three day period my apartment will get up to 85 degrees during the day. At night, does not go down at all- 80 degrees. Between 80 and 85 degrees is where it sits at. There is not a time in my apartment when the AC goes off and it's miserable. When I come home from the end of my day, I work from 9:00 a.m. until 8:00 p.m. the last thing I want to do is walk into my apartment, an 82 degree apartment and sit down and cook dinner in an 82 degree apartment. It's miserable and I've lived there for 2 ½ years now and though, I know AC does not have to be provided, when I move into a new building and I've been accustomed to having AC for 2 ½ years I don't think it's very fair for me not to have AC. I know there are noise complaints and I understand that part. But I don't appreciate my pet being left in 85 degree weather. - My apartment is in front of the building. When the ac has gone out its 80 and 85 degrees. It doesn't go off. Work from 9 to 8. Cook dinner in an 82 degree apartment. I don't think it's fair that I don't have ac. My pet left in 85 degree weather.

Ms. Ellis asked if any of the residents have asked the property management to provide fans when the chiller shuts down. Ms. Dorsey stated she has two (2) fans in her apartment. She has spoken to other residents and they all agree nothing cools the building down. Residents complain to management constantly when the AC is not working. Ms. Dorsey also added that resident's moved out in July and the new residents will move in on Saturday.

Ms. Pinkett-Solomon asked if there are any incentives when the AC is down. Ms. Dorsey stated that they have been offered cold waters, snacks and fans. Ms. Pinkett-Solomon asked if there may be a discount in the rent. Ms. Dorsey said no because the chiller broke down and it wouldn't be something she would ask for.

Leslie Lyght's (resident of University Club Apartments) Testimony:
So we've had some health concerns with breathing issues, myself being one of them. I have asthma and bronchitis. So to have the AC be off and to go through that aggravation. We are trying to accommodate some resident's with a temporary AC; we're trying to do what we can do. Especially with parents coming in and they are extremely concerned about their kids living in the building and it's hot and they have problems and health conditions so that becomes a problem we have to deal with.

The Board recessed for deliberation at 7:20 p.m.

The Board returned from deliberation at 7:29 p.m.

Chairman Stillwell reconvened the hearing.

Chairman Stillwell stated the Board found there had been a violation of the Noise Ordinance and understands the unusual circumstance. The Board would like to suspend the fine pending the property management do some noise abatement.

The Board provided until September 1, 2015 as the compliance date. If there isn't an abatement plan within three (3) business days then the Board will revisit the hearing

and there could be a fine. Chairman Stillwell called for a motion that there had been a violation of the Noise Ordinance.

Ms. Bellamy made a motion that there was a violation of the noise ordinance and the Board would suspend the fine given that management would create a plan with Mr. Ryan for abatement. If there is still a problem after September first then the Board will revisit. Ms. Ellis seconded the motion.

All were in favor. **The motion passed 5-0-0**

Mr. Pitt reiterated the suggestion of a wall. Ms. Fletcher asked for a time frame. Chairman Stillwell said it would be as soon as possible. Mr. Pitt stated the wall could be built in a day.

V. New Business

There is no new business

VI. Mayor and Council Boards, Commissions and Committees Review – 09/22/2015

No comment was made

VII. Adjournment

Ms. Bellamy motioned to adjourn. Mr. Pitt seconded the motion.

All were in favor. **The motion passed 5-0-0**

The meeting adjourned at 7:34 p.m.

Meeting minutes prepared by Julie Beavers, Contract Secretary