

House Noise Control Task Force Meeting Minutes
9.30.16

Co-Chair Smyk called the meeting to order at 11:05 a.m. For a list of those present, please see the list below. After introductions, he remarked on the composition of the committee by stating that each member had different but valuable perspectives that would contribute greatly to the task force process. He then explained that this introductory meeting was primarily aimed at setting the agenda for the next meeting, and asked the members present to share their experience with noise issues.

Rehoboth Beach Police Chief Keith Banks explained that his police department recently remodeled their noise ordinances due to the issues surrounding strictly noise meter policies. Instead, they switched to a “plainly audible” policy for private homes and used a simple but successful process: A noise warning the first time and would then issue a civil citation for disturbing the peace. Complainants wishing to receive updates from the police are also able to steer the police to where they are hearing the noise in their homes, such as in their bedrooms or yards.

Co-Chair Smyk inquired about the department’s noise meters. Chief Banks explained that noise meters are sent out once a year to be recalibrated with an associated cost of \$1,200. Officers need to be taught proper meter use by instructors from Rutgers University, but there are no requirements.

Judge James Horn inquired whether it would be better for law enforcement if making criminal charges related to noise were exclusively under Justice of the Peace Court. Chief Banks responded that the issue is that businesses switch to the Court of Common Pleas in hopes that the case will get thrown out. Judge James Horn explained his reasoning for his inquiry, which was that more small fines are moved over to the Justice of the Peace Courts.

Major Galen Purcell then explained that a partnership with Kent County allowed Kent County’s Troop 3 to have two noise meters. All the troopers were trained with the noise meters but since they serve the whole county, it became too cumbersome to take the equipment out for a loud party on Saturday night. He could not think of too many arrests for noise complaints, and that the public was not aware of these meters. Judge James Horn added that Kent County has a plainly audible policy for private residences.

Director Hetti Brown then talked about the Office of Animal Welfare’s policies and experiences related to noise control. The Office of Animal Welfare does enforce dog barking ordinances for Kent and New Castle Counties, which are written as ten minutes of continuous barking and thirty minutes of intermittent barking. However, every court case OAW has attempted has been thrown out since the barking is not considered continuous if the dog pauses at any time. Director Brown appreciated the idea of adopting a “plainly audible” policy for dog barking ordinances since most of the residents they deal with are repeat offenders.

Co-Chair Smyk added that in his experience, continuous or prolonged dog barking is a reaction to their condition. Director Brown added that OAW does conduct welfare checks.

Major Purcell drew parallels to his experience on the Anti-Littering Task Force and reminded the committee that the state cannot enforce their way out of noise issues.

Co-Chair Smyk let the committee know the Co-Chair Lynn is now a part of the meeting. After a brief overview, Director Brown inquired whether residents charge against one another for civil complaints. Judge James Horn replied that common law requires proof of damage. He then stated that the group may have to deal with not only legislation but also enforcement and proof of violation.

Major Purcell noted that consolidating county code could make it easier for prosecution preparation. Co-Chair Smyk requested an overview for each department's guidelines for addressing noise in order to compare and form better statute. Judge James Horn posed the idea of a potentially generalized noise statute for all agencies but recognized that one statute would not fit all.

Co-Chair Smyk brought up the noise issues in Kent and Sussex Counties, primarily from the development in areas that were formerly agricultural or industrial. People are moving close to these particular zones and then complain about noise associated with running a plant. Co-Chair Lynn added that it may be helpful to follow-up on a land-use or planning perspective, citing experiences in Kent County. He suggested someone from the Office of State Planning be present at these meetings as well as a Court of Chancery representative. Co-Chair Smyk's aide, Dawn Hopkins, explained that they are still waiting for the appointment of a county authority.

Judge James Horn also added that the Justice of the Peace Court has limited equitable jurisdiction. Rep. Lynn stated that the Court of Chancery may be willing to cede some of the equitable jurisdiction.

Todd Davis stated that the Department of Agriculture mainly works with noise issues stemming from irrigation. However, he has noticed that the continually changing farm technology helps mitigate the issue. Mr. Davis also told the committee that loud activities (i.e. harvesting) happen for a short duration. Most of the complaints the Department of Agriculture receives are related to odor.

Stu Widom told the committee that he is experienced with noise issues associated with trains and planes, which are under FAA and FRA jurisdiction. As a representative of industry, the biggest concern is the patchwork of different noise ordinances that businesses must deal with since some municipalities have quite outdated policies that do not take short-term noise into account. Co-Chair Lynn agreed, and added that he gets many noise complaints from Dover Air Force Base.

Kitty Holtz stated that the Farm Bureau receives very little complaints from homeowners and that farmers receive most of their protection from Title III of the Delaware Code. When Co-Chair Smyk asked about legislative goals, Todd Davis proposed more clarity in noise ordinances and enforcement.

Patrick Emory gave a brief overview of Title 7 and DNREC's jurisdiction over. He felt the noise issues came from the recent surge of newcomers into Delaware since they do not understand that certain plants and businesses have been present for years before their development was created. He suggested updating decibel levels in ordinances so that businesses would not have to be

grandfathered in. He also suggested working with the Board of Realtors to require notification to potential buyers if a house is close to a business with pre-dated noise.

Co-Chair Lynn brought up an issue where the City of Dover approved a piece of land for Calpine's industrial purposes, but Calpine did not put anything there. In the meantime, Wild Meadows was constructed next door and inhabitants were upset when Calpine started building. He asked if it would be too much to put the burden on the industrial land-use owner or county to advise developers. Co-Chair Smyk felt that a solution needed to be made for this issue in order to protect quality of life for residents.

Stu Windom felt that educating the homebuyer was most important, and Co-Chair Lynn agreed, stating that Delaware is an attorney-only state that does not require a review of the land surrounding the house in question. When asked, Patrick Emory felt that additional resources are needed for DNREC and OAW to meet the complaints and expectations from the public. Director Brown felt that encouraging neighbor accountability and ownership of conflict would be the best way to help and felt that a civil complaint would be best.

Co-Chair Smyk voiced concerns about forcing businesses to make modifications to their businesses that they potentially cannot afford. Mr. Emory reminded him that noise is a lot easier for DNREC to deal with than odor. He advised caution in model policies. Judge James Horn inquired about a sign on Route 9 that advised residential neighbors to call DNREC. When asked for more detail, James Faedke from DNREC stated that they had 500 complaints in five weeks from about twenty-five people. Patrick added that the state of Delaware does not want to tell businesses how to fix their noise and odor issues.

Devera Scott also clarified the differences between personal injury action and a civil citation. Co-Chair Smyk asked to move on to discuss the agenda for the next meeting.

Co-Chair Lynn requested that a representative from Dover Downs be present for the next meeting, Co-Chair Smyk reminded the committee that many organizations facing noise issues are not present for this task force. He then mentioned that the next meeting would be scheduled after an overview of noise policies and statute is completed by Devera Scott.

Speaker's Appointee Wade Hudson felt that the committee should work to pass policies eliminating the issue itself so that government does not have to step up enforcement.

Co-Chair Smyk opened up the floor for public comment. Dave Aycock commented on noise and safety issues with neighbors shooting on their property as well as the noise issues involved with the Delaware Coastal Airport located in Sussex County. Major Purcell offered to speak with Mr. Aycock about the airport after the meeting adjourned.

Co-Chair Smyk adjourned the meeting at 12:30 p.m.

House Noise Control Task Force Attendee List

Members (Representing):

- Rep. Stephen Smyk
- Rep. Sean Lynn
- Wade Hudson (Member of the Public)
- Chief Keith Banks (DE League of Local Governments)
- Kitty Holtz (Farm Bureau of DE)
- Stu Widom (DE State Chamber of Commerce)
- Patrick Emory (DNREC)
- Major Galen Purcell (DSHS)
- Todd Davis (DOA)
- Hetti Brown (DHSS, OAW)
- Judge James Horn (Chief Magistrate)
- Devera Scott (DOJ)

Other Attendees from State Agencies (Representing)

- James Faedke (DNREC)

Public

- David Aycock (Member of the Public)
- Randall Chaff (Associated Press)