

Ad-hoc Committee for the creation of a Light, Air, and Noise by-law

Minutes

Meeting: #3, February 7, 2019

Members Present: Tony Beattie, Casey Campetti, Max Gordon, Ronald Karr, Patricia Kenneally, Mark Little, Vince Premus, Joe Radwich, Margaret Scarsdale, Harvey Serreze

Members Absent: Tim Brothers, Renee D'Argento, Sherrill Rosoff

Guests: None

Clerk's Comments: Votes appear in boldface

MOT = Motion; 2nd = seconded;

The meeting convened by Margaret Scarsdale at 7:01 p.m. The meeting was being recorded and but was not broadcast live on local cable.

Agenda

1. Acceptance of minutes from January 29, 2019
 2. Introductions: Ron Karr
 3. Statement of purpose
 4. Bylaw analysis, by section
 5. Stakeholder outreach: (1) liaisons for current stakeholders; (2) discussion for additional stakeholders
 6. Old business
 7. New business
 8. Reminder of next meeting: Tuesday, February 12
 9. Agenda for 2/12/2019
 10. Matters that may be raised that the chair didn't reasonably anticipate
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1. Acceptance of minutes from January 29, 2019

Margaret asked whether anyone had changes to the minutes. Vince supplied his edited copy to Max.

Approval of minutes from Meeting #1, January 22, 2019	Carried
MOT to approve WITH CHANGES: Vince; 2nd: Ron	Y=10 N=0 3=absent

2. Introductions: Ron Karr (absent at previous meeting)

Ronald Karr—BA history, MA library/information science, PhD urban history. Retired reference librarian (UMass Lowell 31 years). Has published books, articles in scholarly journals.

Publisher/founder, Branch Line Press. Former member of Planning Board, Historic Commission, many town committees. Participated in 30 years' worth of Town Meetings, including presiding, so he has good sense of political ramifications and "what will play."

3. (Re)statement of purpose

Margaret restated our purpose: to draft bylaws on light, air, and noise regulations in time for the Town Meeting.

4. Bylaw analysis, by section

[general discussion in which we all say that section-by-section review is premature as there are things that need to be worked out first]

Vince: Reached out to Frank Kuhn, Plaistow, NH, a consultant who helped get the Massachusetts noise regulations in place. FK would be available to discuss issues, comment on emails, etc., but would probably need \$\$ to speak before group or be hired. Takeaways:

- Simpler is better.
- Consider establishing paths for arbitration/adjudication.

In view of discussion and reading current drafts, Vince leaning toward modeling our bylaw on Lexington's, which is simple, straightforward.

Harvey: Concerned about adding in lots of technical numbers and thresholds/targets that require ongoing measurements. Likes Lexington's simpler model.

Vince: We probably don't need to weigh it down with many definitions, although we do need to define *noise pollution* [and, by extension, light pollution and air pollution].

Tony: Two audiences: people who live here and businesses looking to locate here. "I'm a grayscale guy."

Ron: A critical issue will be enforcement. Boards have some "police power," concentrated on agency or person (e.g., zoning>building inspector). Having multiple enforcers will be unworkable.

Tony: I have lots of faith in the police, and they've made it clear that they don't have a lot of trouble handling typical noise complaints. That would mean involving the BOH only if it ends up getting complicated.

Vince: There are three levels of regulations needed. (1) There are immediate cases of not being "neighborly," and those are handled now just by the police responding and asking people lower noise levels; (2) There are habitual offenders whose cases could go to the BOH, along with evidence/data for discussion or a hearing (loser pays?); and (3) new use would require a permit and so we need a mechanism to ensure that new businesses/new uses meet noise level requirements.

Ron: There are two types of problems: intermittent and persistent. Commercial/industrial likely to be persistent. I think we should consider using a ticketing system for complaints/violations.

Tony: We need to make sure Planning Board has something from us to screen new use and permit applicants.

Ron: Currently we have "wild west zoning laws"—in a commercial zone, you need a business permit but not much else, so you could put a strip club downtown.

Tony: Maybe this is an opportunity to tame a bit of the wild west.

Max: In the past couple of meetings we've talked about some examples of things that have happened or could have happened, but I'd like to mention a sort of case study of my own, and a big reason why this committee caught my attention. Let's say, hypothetically, that there is a large development that has small patches of grass but still has a landscaping company that runs their leaf-blowers 8 hours straight chasing one or two leaves—even in the winter. They were leaf-blowing in January for an entire day.

Casey: There's annoying and then there's chronic. This sounds like something to take to the condo association. Maybe they don't even know they're being obnoxious. But that is one reason we need to make sure what we come up with is clear and understandable. We don't want something [so complex or so vague] that people can wriggle off on a technicality.

Vince: Right. The first step should usually be to talk to the neighbor or, in this case, the condo association.

Pat: It sounds like we're talking not just decibels but duration, even intensity.

Harvey: There could be advantages to not being quantitative. I think the state already has quantitative regulations that apply to Pepperell.

Vince: But it needs to be quantitative—for persistent noise especially.

Ron: I agree that we should make the bylaws brief; that will give them a better chance of passing. We don't need all these definitions; some of them are common sense, and some of them are already covered in the Zoning Board's definitions. If it's unnecessarily long/complex, it won't pass at Town Meeting.

Tony: The old draft is good, but there's just too much information.

Joe: So much of what's there is covered in other regulations, especially definitions. If you're going to go by decibels, you need baselines. If we make a bylaw, we'll have to update it. If we piggyback on zoning regulations, it will be easier to update.

Vince: We need baselines. The state has regulations, but we want to make sure ours are as good or better, not worse. If there's a use that we think will violate our bylaws, we can gauge it against those baselines. We could think of that as a first step—in the same way that we have other overlays on the Zoning map, the nighttime and daytime noise baselines could be overlays. We could think about commissioning someone to measure the baselines. The bylaws may not need to specify who creates the baselines.

Pat: These other towns, especially Lexington, did they do baselines?

Vince: Spencer didn't, but I think Lexington may have since its levels are relative—as in, you specify a baseline and define a violation as some dB-A relative to the baseline. Absolute levels make me uncomfortable. I played around with my phone app on Elm Street and got a quiescent reading of about 35 dB-A—that seems like a normal background. But what's "normal" might not be healthy: it seems fair that we should all have the expectation that conditions will not worsen. [He uses his phone app at meeting and finds that when no one is talking, it reads 30–35 dB-A].

Joe: For communities using a relative change against a baseline, 10 dB is typical. Of course, that's a logarithmic change, much greater than a linear change.

Ron: Regulations can be enforced as laws. State laws can be enforced by the state. Police enforce laws, and they can write tickets. I think we should make noise violations a ticketable offense, and a bylaw would make that possible, and would allow additional tickets for noncompliance—a new \$100 ticket for every day the violation continues. An offense would be a violation of the state regulations that are already in place or 10 dB-A above our baselines.

Margaret: So, we're all agreed that we want out bylaws to be simpler. So, do we still need levels to address persistent noise?

Vince: Yes, we still need levels, but there may be two classes: persistent and transient. [He relates case of town that turned mills into offices, homes built on hills facing mill had no complaints but then the offices in the mills has bigger computers/more machines, etc., and needed big A/C units on roof that substantially increased the noise for the houses.] New uses need to prove mitigation efforts, etc.

Tony: Planning Board needs a checklist for new uses/new permits that includes conformance to noise regulations and commitment to remediation.

Ron: We do have that anything-goes commercial zone. We need to clarify what businesses need to present in the way of studies, proof of compliance, etc.; remember when we were discussing the need for a traffic study for the medical center. There was not real data. It basically said, "There will be more traffic."

Margaret: So, what I'm hearing overall is that we want to build on the state regulations and add the minimal necessary, and that we need levels.

Ron: I suggest we quote the state regulations, but we need to build in protections because if the state relaxes its standards then our would automatically relax, too.

[someone]: Is that likely to happen?

[general agreement that in the current political climate, anything anti-environment could happen]

Pat: Is this a bylaw or a regulation? Or an ordinance?

[general discussion of bylaw vs. ordinance vs. regulation, etc., followed by discussion of whether we are creating a bylaw or a regulation, and whether the noise regulations should be tied to the zoning bylaws]

Ron: Regulations are waivable; bylaws are not.

Margaret: We are tasked with creating bylaws.

Pat: I suggest we base our bylaw on the state regulations but don't quote them word for word. We keep everything simple, like Lexington's noise bylaw.

Tony: I'm a visual person, so I've made a whiteboard decision tree.

Ron: One problem with tying this to zoning is enforcement. Construction can take place anywhere. I think we start with something like Lexington and make sure it's comprehensive and independent of zoning.

Pat: we still need some definitions.

Casey: Bylaws can reference zoning, and noise types can be anywhere. Once we establish the basics, I would hope assurance of compliance would seep into other Boards' considerations.

Ron: Site plan reviews could require proof of noise bylaw conformance.

Ron: Yes, this should not be a zoning bylaw. Zoning has issues with grandfathering, requirements for a 2/3 vote—it's the wrong tool because it doesn't cover enforcement of point source issues.

Casey: Yes, zoning has teeth but doesn't fit.

Max: I do this sort of thing all day long. I am good at taking in different sources of information, organizing it, connecting it, and presenting it simply. I volunteer to create a basic noise bylaw based on the Lexington model and adding in what we've discussed here today, by Saturday. Understand, I wouldn't be adding the technical data—this would be a template that we could work from—but it would be a basic bylaw that we could add our baselines to and could even follow for light and air.

Motion that Max creates a simple Lexington-based draft of the noise bylaw (by Saturday) to work from at next meeting (Tuesday, Feb 12). MOT by Vince; 2nd by Ron.	Carried Y=9 N=1 3=absent
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5. Motion to adjourn MOT by Joe; 2nd by Pat.	Carried Y=10 N=0 3=absent
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Meeting adjourned 9:02 p.m.