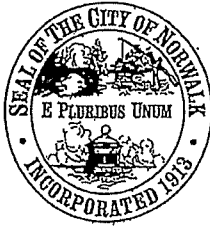


CITY OF NORWALK

LAW DEPARTMENT

CITY HALL
125 EAST AVENUE, P.O. BOX 5125
NORWALK, CONNECTICUT 06856-5125



TEL: (203) 854-7750

FAX: (203) 854-7901

COMMON COUNCIL ORDINANCE COMMITTEE

REGULAR MEETING

June 20, 2017

8:00 p.m. – Room 231

Norwalk City Hall-125 East Avenue
Norwalk, CT

AGENDA

1. ROLL CALL
2. PUBLIC HEARING (possible action on):
3. PUBLIC HEARING DISCUSSION
4. PUBLIC COMMENT
5. ACCEPTANCE OF MINUTES: May 16, 2017
6. OLD BUSINESS (possible action on): Noise
Bike-Walk Advisory Committee
7. NEW BUSINESS: (possible action on):
8. DISCUSSION ITEM:
9. ADJOURNMENT

**Draft Meeting Minutes from
05/16/2017 Ordinance
Committee Meeting**

**CITY OF NORWALK
ORDINANCE COMMITTEE
REGULAR MEETING
MAY 16, 2017**

ATTENDANCE: Eloisa Melendez, Chair; Thomas Livingston, Shannon O'Toole-Giandurco, Travis Simms, Douglas Hempstead, (7:08 p.m.); Michael Corsello (7:15 p.m.)

STAFF: Atty. Brian Candela, Corporation Counsel's Office.

OTHERS: Diane Lauricella; Timothy Callahan, Norwalk Health Department Director; Nancy Rosett, Bike/Walk Task Force Chair

CALL TO ORDER

Ms. Melendez called the meeting to order at 7:04 p.m. She called the roll. A quorum was present.

PUBLIC HEARING
(Possible action on:)

Ms. Melendez opened the Public Hearing on the Indemnification at 7:07 p.m. She asked if there was anyone present who wished to address the Committee at this time on the issue of Indemnification. No one came forward. She repeated her question two more times. No one came forward. Ms. Melendez closed the public hearing on indemnification at 7:08 p.m.

PUBLIC HEARING DISCUSSION

Indemnification

**** MS. O'TOOLE-GIANDURCO MOVED TO FORWARD THE AGENDA ITEM REGARDING INDEMNIFICATION TO THE FULL COUNCIL FOR APPROVAL.**

**** THE MOTION PASSED UNANIMOUSLY.**

PUBLIC COMMENT

Mr. Hempstead joined the meeting at 7:08 p.m.

Ms. Diane Lauricella came forward and said that she was present to discuss the noise ordinance. She said that she appreciated the back up material that Atty. Candela had provided.

Ms. Lauricella said that it would be good to hire an expert on noise pollution. The emitters are the ones that are creating the noise and the receptors are the ones that are hearing the noise. The 45 decibels that people are referring to is the level of noise that the receptors hear. In terms of Washington Street, the bars can be retrofitted to reduce the level of noise off site.

Ms. Lauricella said that the next step would be enforcement and she offered to create a blue ribbon panel to discuss this ordinance. There is not the capacity to address this even including the past few days when there was still a problem. She asked that the Committee study the ordinance carefully.

Mr. Corsello joined the meeting at 7:15 p.m.

Ms. Lauricella said that the receptors are not supposed to emit more than 50 decibels. Because the police department has a lot to do, she felt that it would be good to have the Health Department partner with the Police Department and Planning and Zoning to consider issues where you have residential properties and retail properties right next to one another.

There was no one else present who wished to address the Committee at this time.

ACCEPTANCE OF MINUTES:

April 18, 2017

**** MR. LIVINGSTON MOVED THE MINUTES OF APRIL 18, 2017.
** THE MOTION TO APPROVE THE MINUTES OF APRIL 18, 2017 AS
SUBMITTED PASSED WITH THREE IN FAVOR (MELENDEZ, LIVINGSTON,
AND HEMPSTEAD) AND THREE ABSTENTIONS (SIMMS, O'TOOLE-
GIANDURCO, AND CORSELLO).**

OLD BUSINESS

Bike/Walk Advisory Committee.

Ms. Rosett, the Task Force Chair, said that she appreciated Mr. Kimmel's work on the proposal. She suggested that the words "Advisory Committee" be change to "Commission".

Mr. Livingston spoke about the change of titles. The discussion then moved to the process of handling donations. Mr. Callahan outlined how the Health Department handled regular donations from the Greens Farms Congregational Church for the Home

Care program. The money was put into the general fund in a designated account. Mr. Corsello said that he had a different experience with donations to the golf course.

Ms. Rosett said that they have not received any donations but are applying for a grant through the Health Department.

Mr. Hempstead said that he had a question about setting it up as a Commission. He said that he was trying to understand the relationship where they could take action with the Director of Public Works. He pointed out that it is the Police Commission that sets up the street pavement markings.

Mr. Hempstead said that he was also trying to clarify the difference between an Advisory Committee and a Commission because a Commission would have authority to move forward on their own as opposed to the Advisory Committee that brings the information to a Council Committee and the Council Committee moves the item forward.

Atty. Candela said that he saw an committee as having a shorter term focus and a commission established for a much longer term. However the major difference would be the authority assigned to the group. He pointed out that one of the benefits of having the group as a Commission was that if the administration changes, the group would continue to function.

Mr. Corsello said that he had concerns about creating a large number of committees and trying to fill all the positions. Mr. Livingston pointed out that right now, the group was up and running. Mr. Corsello replied that once it becomes part of the Charter, every year there will need to be new appointees.

Ms. Melendez said that as the City continues to grow, she sees more people biking and walking. She said that she feels it is important to have the bike lanes.

The discussion then moved to the number of members of the Committee. Ms. Rosett explained that the group has been working together for the last four years and has just involved the advisory group, the Health Department, and DPW.

Mr. Hempstead asked about the Complete Streets program. He was told that the State has made a commitment to the fact that if the State works on a road, they are committed to dedicating 3% of the budget to the Complete Street Program. Mr. Callahan said that many of the Complete Street concepts have already been adopted by DPW. Mr. Corsello said that he believed that this would satisfy the mandate.

Ms. Melendez pointed out that they don't know who is on the Task Force. Ms. Rosett agreed. She said that there were a number of people who showed up consistently for the meetings, but there was not a formalized membership.

Mr. Simms cautioned everyone about creating too many commissions. He said that he was more in favor of keeping it as an advisory committee.

The discussion moved back the process that would be used if the group was awarded a grant. Ms. Rosett pointed out that they would have to have the mayor sign the financial documents if a grant was awarded.

Ms. Melendez said that she felt that the part about accepting the donations should be removed from the proposed document for now. She asked if the Committee had more questions.

Mr. Hempstead directed everyone's attention to the documentation from the City of Oakland. He said that the Oakland plan has the group reporting to the Director of Public Works. Ms. Melendez pointed out that Public Works has the authority to add bike lanes and did so before the Bike Task Force was created. Discussion followed about possibly adapting portions of the Oakland model for Norwalk.

Mr. Corsello said that the format that the Norwalk document currently has was something that everyone was familiar with, but pointed out that there were several portions of the Oakland resolution that the Committee liked. Atty. Candela said that he would review the ordinances and compile the various points for the Committee.

Ms Melendez reminded everyone that the City already has a Master Sidewalk Plan.

**** MR. HEMPSTEAD MOVED TO HAVE ANOTHER REDRAFT DONE OF THE PROPOSAL.**

**** THE MOTION PASSED UNANIMOUSLY.**

NOISE ORDINANCE.

Ms. Melendez said that Atty. Candela had taken time to answer some of the questions that the Committee had previously regarding this ordinance.

Mr. Corsello said that he liked the Bennett Brooks Company because they had worked on this type of situation before and knew Connecticut State law. One of the residents present pointed out that the company did not have any experience with enforcement.

Mr. Hempstead said that he was trying to move this forward. The Committee would need funding in the budget.

**** MR. HEMPSTEAD MOVED TO SUSPEND THE RULES TO DISCUSS HIRING THE BROOKS COMPANY.**

**** THE MOTION PASSED UNANIMOUSLY.**

Mr. Corsello said that he wanted to find out what the results were from the previous clients in Manchester, Enfield and Vernon before making a final decision.

Mr. Livingston pointed out that one of the issues was that the City has industrial zones located right next to residential zones.

It was pointed out once the information regarding the Brooks Company's experience with enforcement and how the other towns felt about their experiences with the company had been obtained, Ms. Melendez could call a special meeting to consider this issue.

Atty. Candela pointed out that Rutgers had done work all over the U.S. and parts of Canada while Bennett Brooks has done work in Connecticut.

Mr. Hempstead asked about the land use aspect because there are many commercial properties are bordered by residential areas. It will be important to find the right balance. Mr. Corsello said that it is hard starting up a business and having the rules changing after one starts a business.

Mr. Hempstead pointed out that permanent rock crushing has been outlawed in Norwalk, but there are temporary permits that allow rock crushing on a job site.

ADJOURNMENT

**** MR. LIVINGSTON MOVED TO ADJOURN.**

**** THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 8:36 p.m.

Respectfully submitted,

S. L. Soltes
Telesco Secretarial Services

Noise
Norwalk City Code
Chapter 68

MEMORANDUM TO FILE

Date: June 5, 2017
From: Brian Candela
RE: Noise Ordinance requests for the June 20, 2017 committee meeting

- 1) Contact Bennett Brooks and Eric Zwerling to obtain the following:
 - a. Get contact information for references; and
 - b. Follow up with references.

Eric Zwerling: All emails and attachment are affixed hereto as Exhibit A.

- 1) I sent an email on May 19, 2017 at 10:57 a.m. to Eric Zwerling requesting additional information.
- 2) I spoke with Mr. Zwerling on May 30, 2017 about this additional information and then sent a summary of the conversation to the ordinance committee.

May 30, 2017

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. I have spoken at length with Eric Zwerling concerning the questions that you posed at the end of the last meeting. In response to your questions, Mr. Zwerling stated the following:

- 1) Noise services in Connecticut: I do not believe that I have done a noise code in Connecticut. However, I have written codes all over the United States and am familiar with the problems that Norwalk faces in revising the noise ordinance.
- 2) Mixed use zones: Every jurisdiction has mixed use zones. It is not unique. Any noise code is a function of jurisdictional will. It can be as strict or permissive as Norwalk would like it to be. I offer options and explain what the consequences of that option would be in a given situation. If you write a successful noise code then you will anger people on both sides. However, it must be objective and clear as this helps the investigator who enforce it.
- 3) I recommend obtaining as much participation from as many parties as possible when redrafting the code. Get them involved. In addition, it is important to designate a few people or agencies to enforce the noise code because without enforcement, the code means nothing.
- 4) He has worked with Charles Shamoon, Esq. and other municipal attorneys all over the United States. Please note that I will reach out to Attorney Shamoon and obtain his thoughts about working with Mr. Zwerling as well.
- 5) Mr. Zwerling has a busy July 2017, but he would be able to get to the Norwalk noise code before the end of this summer

I have also received an email (with attachment) from Bennett Brooks on May 26, 2017 at 7:00 p.m. I have enclosed the attachment from Bennett Brooks for your review. I will reach out to the contact people that he provided from the Connecticut municipalities. Once I hear back from them, I will provide you with a further update.

- 3) I spoke with Attorney Shamoon on May 31, 2017 about Mr. Zwerling. Following our conversation, I sent an email to the ordinance committee summarizing it. A copy of the case mentioned in the email below is attached.

May 31, 2017

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. As requested, I have reached out and spoken to Charles Shamoon, Esq. concerning Eric Zwerling.

Attorney Shamoon advised that he worked with Mr. Zwerling over the years and found him to be professional, very technical and able to explain complicated subjects in a simple fashion. He provided me with a copy of a case that they were both involved in some time ago (February 2000). If you would like to review the case, I have attached a copy of it for your review. Although Mr. Zwerling has not provided any documentation that he has worked in Connecticut, Attorney Shamoon advised that he has been retained all over the United States and has a vast amount of experience. Attorney Shamoon was not able to answer any questions I had concerning Mr. Zwerling's experience with mixed use zones.

Please note that I am still waiting to hear back from Tim O'Neil, Esq. (counsel for Manchester) concerning his experience with Bennett Brooks.

Bennett Brooks: All emails and attachment are affixed hereto as Exhibit B.

- 1) I sent an email on May 19, 2017 at 10:49 a.m. to Bennett Brooks requesting additional information.
- 2) Mr. Brooks responded with an email on May 26, 2017 about this additional information. Mr. Brooks attached a letter to his email which provided the contact information for references. A copy of the letter Mr. Brooks attached to this email.
- 3) I spoke with some of the references on May 30, 2017 and May 31, 2017 about Mr. Brooks. Following our conversation, I sent emails to the ordinance committee summarizing these conversations.

May 30, 2017 email:

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. As requested, I have reached out and spoken to several references from Cromwell, Enfield, Tolland and Manchester concerning Bennett Brooks.

I initially spoke with Maria Elsdon, Esq. of Enfield. Even though the work which Mr. Brooks performed for Enfield took place in 1998, she recalled that he was vital in fashioning a noise ordinance for the town. In addition, she recalled him to be very helpful, knowledgeable, that he presented well and was able to explain complicated subjects in a simple manner. She indicated that she would recommend Mr. Brooks to the City of Norwalk. Attorney Elsdon even provided Mr. Brooks' report and analysis of a newly installed crematorium and

the minutes from a council meeting concerning that structure. A copy of these documents are attached to this email for your review. For your convenience, please also find another copy of Bennett Brooks' responses to your questions for your review.

I also spoke with Steven Werbner, formerly the general manager of Manchester and the current manager in Tolland. Since the work took place some time ago, Mr. Werbner only could recall that Mr. Brooks was helpful. A current employee of the Manchester Health Department, Jeff Catlett, advised that while he was not present when the noise ordinance revisions were made, he was present when Mr. Brooks came back to perform a two-day training seminar based on the newly created noise code. Mr. Catlett recalled that he was knowledgeable, explained things well and that this noise ordinance is still currently in effect.

Finally, I also spoke with Mark Branse, Esq. of Cromwell. Attorney Branse said that Mr. Brooks does a great job and is his go-to-guy concerning noise related issues. He explained that Mr. Brooks helped Cromwell develop a comprehensive noise ordinance. Attorney Branse indicated that he would recommend Mr. Brooks to the City of Norwalk.

Please note that I am still waiting to hear back from Tim O'Neil, Esq. (counsel for Manchester).

May 31, 2017 email:

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance.

I spoke with Tim O'Neil, Esq. of Manchester concerning Bennett Brooks. Attorney O'Neil advised that Mr. Brooks helped them re-write Manchester's entire noise code. He recalled that it was a positive experience and that Mr. Brooks was knowledgeable and professional. Following the completion of this project, Mr. Brooks appeared at the council meeting to explain the revised noise ordinance. Attorney O'Neil did not recall dealing with any mixed use zoning issues during this particular project. He did indicate that Mr. Brooks would be his go-to-guy if he ever needed future assistance with Manchester's noise ordinance.

2) Fee schedules and proposals for a noise consultants

Another copy of Brooks Acoustics' proposal & Eric Zwerling's proposal are attached as Exhibit C.

Exhibit A

Candela, Brian

From: Candela, Brian
Sent: Friday, May 19, 2017 10:57 AM
To: noiseconsultancy@aol.com
Cc: Candela, Brian
Subject: RE: Acoustical Consulting Services Proposal - Norwalk Noise Code
Importance: High

Good morning Eric. Before the ordinance committee makes a decision, they were looking for some additional information. First, please advise as to whether you have ever provided noise consulting services in Connecticut. If so, where? The ordinance committee would like the opportunity to speak with any past Connecticut clients in advance of making a decision. Second, please advise what experience you have with implementing noise ordinances in mixed use zones. Third, are land use, zoning, the building code and DEEP involved, at all, in this process? Fourth, have you ever dealt with implementing a noise ordinance in a city that has a similar size as Norwalk and with similar problems? I look forward to speaking with you about this matter in greater detail over the telephone.

The ordinance committee would like to make a final decision on this matter before the next meeting on June 20, 2017. Thank you in advance for your cooperation on these issues.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: noiseconsultancy@aol.com [mailto:noiseconsultancy@aol.com]
Sent: Wednesday, May 03, 2017 10:32 AM
To: Candela, Brian <bcandela@norwalkct.org>
Cc: Melendez, EloisaM <eloisa.melendez@hotmail.com>
Subject: Acoustical Consulting Services Proposal - Norwalk Noise Code

Dear Mr. Candela,

Attached please find my proposal to provide the acoustical consulting services that you have requested.

I look forward to the possibility of assisting you in protecting and improving the quality of life for the residents of Norwalk.

Be well.

Eric

Eric Zwerling, M.S., INCE, ASA

President, The Noise Consultancy, LLC
Office (908) 237-0298

Candela, Brian

From: Candela, Brian
Sent: Tuesday, May 30, 2017 9:31 AM
To: Melendez, EloisaM; Hempstead, Doug; Kimmel, Bruce I.; Livingston, Thomas P.; Corsello, Michael; Simms, Travis; Giandurco, Shannon O'Toole
Cc: Candela, Brian
Subject: Noise Ordinance
Attachments: Bennett Brooks re answers to questions from Ordinance Committee (00024840xD9291).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. I have spoken at length with Eric Zwerling concerning the questions that you posed at the end of the last meeting. In response to your questions, Mr. Zwerling stated the following:

- 1) Noise services in Connecticut: I do not believe that I have done a noise code in Connecticut. However, I have written codes all over the United States and am familiar with the problems that Norwalk faces in revising the noise ordinance.
- 2) Mixed use zones: Every jurisdiction has mixed use zones. It is not unique. Any noise code is a function of jurisdictional will. It can be as strict or permissive as Norwalk would like it to be. I offer options and explain what the consequences of that option would be in a given situation. If you write a successful noise code then you will anger people on both sides. However, it must be objective and clear as this helps the investigator who enforce it.
- 3) I recommend obtaining as much participation from as many parties as possible when redrafting the code. Get them involved. In addition, it is important to designate a few people or agencies to enforce the noise code because without enforcement, the code means nothing.
- 4) He has worked with Charles Shamoan, Esq. and other municipal attorneys all over the United States. Please note that I will reach out to Attorney Shamoan and obtain his thoughts about working with Mr. Zwerling as well.
- 5) Mr. Zwerling has a busy July 2017, but he would be able to get to the Norwalk noise code before the end of this summer

I have also received an email (with attachment) from Bennett Brooks on May 26, 2017 at 7:00 p.m. I have enclosed the attachment from Bennett Brooks for your review. I will reach out to the contact people that he provided from the Connecticut municipalities. Once I hear back from them, I will provide you with a further update.

I hope you all had a nice Memorial Day weekend.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Candela, Brian

Sent: Tuesday, May 09, 2017 3:57 PM

To: Melendez, EloisaM <eloisa.melendez@hotmail.com>; Hempstead, Doug <dhempstead@hotmail.com>; Kimmel, Bruce I. <brucekim@optonline.net>; Livingston, Thomas P. <tplivingston@norwalkct.org>; Corsello, Michael <mrcorsello@norwalkct.org>; Simms, Travis <TravisSimms@norwalkct.org>; Giandurco, Shannon O'Toole <otoole.shannon10@gmail.com>

Cc: Candela, Brian <bcandela@norwalkct.org>

Subject: Materials for 5/16/17 Ordinance Meeting #1

Ordinance Committee members:

Enclosed within this email, please find a copy of the materials for the May 16, 2017 ordinance committee meeting. A physical copy of the materials will also be delivered to your attention (in color). I wanted to email you a copy of these materials in advance. Enjoy the rest of the week.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

Candela, Brian

From: Candela, Brian
Sent: Wednesday, May 31, 2017 1:02 PM
To: Melendez, EloisaM; Hempstead, Doug; Kimmel, Bruce I.; Livingston, Thomas P.; Corsello, Michael; Simms, Travis; Giandurco, Shannon O'Toole
Cc: Candela, Brian
Subject: RE: Noise Ordinance
Attachments: Case conducted - Charles Shamoon Eric Zwerling (00024886xD9291).doc

Follow Up Flag: Follow up
Flag Status: Flagged

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. As requested, I have reached out and spoken to Charles Shamoon, Esq. concerning Eric Zwerling.

Attorney Shamoon advised that he worked with Mr. Zwerling over the years and found him to be professional, very technical and able to explain complicated subjects in a simple fashion. He provided me with a copy of a case that they were both involved in some time ago (February 2000). If you would like to review the case, I have attached a copy of it for your review. Although Mr. Zwerling has not provided any documentation that he has worked in Connecticut, Attorney Shamoon advised that he has been retained all over the United States and has a vast amount of experience. Attorney Shamoon was not able to answer any questions I had concerning Mr. Zwerling's experience with mixed use zones.

Please note that I am still waiting to hear back from Tim O'Neil, Esq. (counsel for Manchester) concerning his experience with Bennett Brooks.

I hope this email answers any questions that you have concerning Eric Zwerling. Thanks and have a nice day.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:43 PM
To: Melendez, EloisaM <eloisa.melendez@hotmail.com>; Hempstead, Doug <dhempstead@hotmail.com>; Kimmel, Bruce I. <brucekim@optonline.net>; Livingston, Thomas P. <tplivingston@norwalkct.org>; Corsello, Michael <mrcorsello@norwalkct.org>; Simms, Travis <TravisSimms@norwalkct.org>; Giandurco, Shannon O'Toole <otoole.shannon10@gmail.com>
Cc: Candela, Brian <bcandela@norwalkct.org>
Subject: RE: Noise Ordinance

Ordinance Committee members:

Until Published Standard Listing Is Made, City Cannot Exclude Extraneous Street Noises; TURLEY v. GIULIANI New York Law Journal February 28, 2000, Monday

Turley v. Giuliani, 99 Civ. 3381 (SAS), UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, 86 F. Supp. 2d 291; 2000 U.S. Dist. LEXIS 1514, February 15, 2000, Decided, February 16, 2000, Filed

New York Law Journal February 28, 2000, Monday

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New York Law Journal

February 28, 2000, Monday

SECTION: COURT DECISIONS; Pg. 21

LENGTH: 5282 words

HEADLINE: Until Published Standard Listing Is Made, City Cannot Exclude Extraneous Street **Noises**;
TURLEY v. GIULIANI

BODY:

SUMMARY U.S. District Court: S.D.N.Y. Constitutional Law

PLAINTIFFS, STREET musicians who perform in the Times Square area brought action to vindicate their First Amendment right to play reasonably amplified music. Plaintiffs argued that the exclusion by the Department of Environmental Protection inspectors of extraneous sounds, such as car horns, ambulances and buses, after measuring the ambient **noise** level, was arbitrary because they had unfettered discretion to decide which sounds could be excluded. The court agreed, finding that the unguided exclusion of various **noises** by different inspectors was arbitrary and capricious and could lead to content-based discrimination. The court held that, until there is a published standard listing of which **noises** to include and exclude, the City would be preliminarily enjoined from excluding any extraneous **noises** in the measurement of ambient sound levels.

Judge Scheindlin

[Footnotes Deleted for Publication]

TURLEY v. GIULIANI QDS:02762146 - Plaintiffs, Robert Turley and Tyrone Hamlette, are professional street musicians who perform in and around the Times Square area. They bring this action to vindicate their First Amendment right to play reasonably amplified music on the sidewalks and traffic islands which comprise Times Square. Plaintiffs have moved for a preliminary injunction enjoining and restraining the defendants (collectively, the "City") from: (1) enforcing a decibel ceiling of 85 - **dB(A)**-at-10 feet; (2) specifying a decibel ceiling lower than 95 - **dB(A)**-at-15 feet on their sound device permits; (3) charging plaintiffs with making "unreasonable **noise**" or exceeding the allowable decibel level based on arbitrary sound measurement practices; (4) imposing restrictions on plaintiffs' amplified music from which corporate-sponsored amplified events are exempt; (5) favoring certain Fifth Avenue business entities in the processing and issuance of sound device permits for the area in front of Trump Plaza at 5th Avenue and 58th Street; and (6) granting such entities "sham" permits in order to limit plaintiffs' opportunities for sound device permits at that location. The first **three** demands are referred to as the "sound level demands" while the latter **three** demands are referred to as the "preferential treatment complaints." For the reasons that follow, plaintiffs' motion is granted in part and denied in part.

I. Facts

A. The Music

Plaintiffs are street musicians who earn their living by performing music on sidewalks and traffic islands in and near Times Square. Affidavit of Robert Turley in Support of Plaintiffs' Motion for a Preliminary Injunction, sworn to November 2, 1999 ("Turley Aff."), P 2. Turley plays the electric bass and the TrebleBass, which is a combined electric bass and guitar, while Hamlette plays a portable drum kit. Id. Neither of Turley's instruments can be heard without a sound amplifier. Id. In order to earn a living, plaintiffs typically perform an eclectic mix of soul and jazz six to eight hours a day, five days a week. Id., P 3. They usually play at a volume of 95 **dB(A)**-at-15 feet, which they contend is just loud enough to be heard above the ambient **noise**. Id. In good weather, plaintiffs attract between 15 and 20 people who typically stand 15 to 20 feet away from them. Id.

B. The City's Sound Device Permit Scheme

To obtain a sound device (amplification) permit, an applicant must apply at least five days prior to the proposed use to the police precinct covering the area in which the sound device is to be used. See N.Y.C. Admin. Code @ 10 - 108(e). The applicant must state the exact time, date and location where he or she proposes to use a sound device. Id. Each sound device permit must specify the exact time, date and location where the sound device may be used. N.Y.C. Admin. Code @ 10 - 108(f). Each sound device permit must specify the "maximum volume of sound which may be employed in [the] use or operation" of the sound device. Id.

Turley typically applies for at least one five-day permit at either Mid Town North Police Precinct ("MTN"), which serves Times Square and the vicinity above West 45th Street, or Mid Town South Police Precinct ("MTS"), which serves Times Square and the vicinity below West 45th Street. Id., P 5.

Prior to March 1998, both MTN and MTS specified a 75 - **dB(A)**-at-6 feet decibel level. Declaration of Robert T. Perry, plaintiffs' attorney, in Support of Plaintiffs' Motion for a Preliminary Injunction, sworn to November 3, 1999 ("Perry Decl."), P 6. In March of 1998, in response to earlier litigation brought by Turley contesting the 75 - **dB(A)**-at-6 feet decibel level, MTN began specifying an 85 - **dB(A)**-at-6 feet decibel ceiling on sound device permits. Turley Aff., P 8. At about the same time, MTS began specifying an 85 - **dB(A)**-at-10 feet decibel ceiling. Id. On July 31, 1999, MTN raised the decibel ceiling to 85 - **dB(A)**-at-10 feet. Id., P 16. The Department of Environmental Protection ("DEP"), however, has adopted the permissive policy of not pursuing enforcement unless the measured sound level exceeds the permissible sound level limit by more than 3 decibels. Thus, a violation will not issue unless the sound level is at least 88 - **dB(A)**-at-10 feet. See Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction ("Opp. Memo") at 9.

C. The City's **Noise** Code

The New York City **Noise** Code, Title 24, Chapter 2, @ 24 - 201 et seq. of the Administrative Code, was enacted in 1972 to "reduce the ambient **noise** level in the city, so as to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the city..." N.Y.C. Admin. Code @ 24 - 202. The **Noise** Code is primarily enforced by the DEP. Perry Decl., P 8 (citing N.Y.C. Admin. Code @ 24 - 204). @ 24 - 218 of the **Noise** Code prohibits the making of "unreasonable **noise**," a term defined to mean:

any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities or injures or endangers the health or safety of a reasonable person of normal sensitivities, or which causes injury to plant or animal life, or damage to property or business.

N.Y.C. Admin. Code @ 24 - 203(ccc). Furthermore, @ 24 - 220(a) provides that "except as provided in @ 10 - 108 of the [Administrative] code, no person shall operate or use or cause to be operated or used any sound reproduction device in such a manner as to create any unreasonable **noise**." Plaintiffs note that the City of New York has previously taken the position that a street musician will not be charged with making "unreasonable **noise**" unless the sound device is being operated at a level in excess of the allowable decibel ceiling and at least 10dB(A) above the ambient **noise** level. Perry Decl., P 10 (citing Turley v. New York City Police Dep't, 988 F. Supp. 675, 679 - 80 (S.D.N.Y. 1997) ("Turley I"), aff'd in part, rev'd in part, 167 F.3d 757 (2d Cir. 1999)).

II. Discussion

A. Standard for Preliminary Injunctive Relief

A preliminary injunction generally may not be issued unless the plaintiff demonstrates that it is necessary to prevent irreparable harm and either (1) a likelihood of success on the merits, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in favor of the movant. Polymer Tech. Corp. v. Mimran, 37 F.3d 74, 77 - 78 (2d Cir. 1994); Blum v. Schlegel, 18 F.3d 1005, 1010 (2d Cir. 1994). However, when the "moving party seeks a preliminary injunction to stay government action taken in the public interest pursuant to a statutory or regulatory scheme," a

preliminary injunction should only be granted if the movant meets the more rigorous "likelihood of success" standard. Latino Officers Ass'n v. City of New York, 196 F.3d 458, 462 (2d Cir. 1999) (internal quotation marks and citations omitted).

Plaintiffs argue that because there are public interest concerns on both sides of this case, they may rely on the less rigorous "fair ground for litigation" standard. Plaintiffs cite Time Warner Cable of New York City v. Bloomberg L.P., 118 F.3d 917, 923 (2d Cir. 1997) in support of this proposition. However, in Time Warner plaintiff did not seek to enjoin the exercise of governmental regulatory authority. Id. at 923 - 24. Rather, plaintiff, a cable operator, sought to enjoin New York City from using channels reserved for public, educational or governmental ("PEG") purposes for two 24 - hour news programs produced by commercial television programmers. Id. at 919. In weighing the public interest concerns on both sides, the court noted that "the proposed action of the City in deciding what programming to place on one of its reserved PEG channels is more akin to... proprietary action." Id. at 923. In issuing the injunction, the court held that the public interest in maintaining PEG channels for their intended use outweighed the needs of the viewing public for a diversified range of traditional commercial programming, a need adequately met by numerous non-PEG channels. Id. at 929. There is no proprietary action at issue here-plaintiffs are seeking to prevent the City from exercising its regulatory authority by enforcing the current decibel ceiling. See id. at 923 -24 (higher standard applies where plaintiff seeks "to prevent the exercise of governmental regulatory authority"). Accordingly, the likelihood of success standard will apply here as it did when Turley previously sought preliminary injunctive relief. See Turley v. New York City Police Dep't, 93 Civ. 8748, 1996 WL 93726, at *3 (S.D.N.Y. Mar. 5, 1996).

It is well established that " 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable harm.' " Paulsen v. County of Nassau, 925 F.2d 65, 68 (2d Cir. 1991) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). Because the violation of a constitutional right is the irreparable harm asserted here, the two prongs of the preliminary injunction threshold merge into one: in order to show irreparable injury, plaintiff must show a likelihood of success on the merits. See Bery v. City of New York, 906 F. Supp. 163, 166 (S.D.N.Y. 1995), rev'd on other grounds, 97 F.3d 689 (2d Cir. 1996).

B. Sound Level Demands

i. The 85 - dB(A)-at-10 Decibel Level

In traditional public fora, plaintiffs have a First Amendment right to engage in expressive activity and communicate effectively. New York Magazine, a Div. of Primedia Magazines, Inc. v. Metropolitan Trans. Auth., 136 F.3d 123, 128 (2d Cir.), cert. denied, 119 S.Ct. 68 (1998) (citations omitted). And music is a form of expression and communication that is protected under the First Amendment. Ward v. Rock Against Racism, 491 U.S. 781, 790 (1989). Moreover, sound amplification is often necessary to effective communication. Saia v. People of State of New York, 334 U.S. 558, 561 (1948).

The City may regulate the time, place and manner of amplified music to prevent excessive **noise**, limit congestion and ensure public safety. Ward, 491 U.S. at 791 - 92; Bery v. City of New York, 97 F.3d 689, 697 (2d Cir. 1996). That power, however, is sharply circumscribed and "subject to the highest scrutiny." International Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 673, 678 (1992). Government

regulations limiting the time, place or manner of expression will be upheld "provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication of the information." Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984) (citations omitted).

Plaintiffs' first "sound level demand" is that the City should be enjoined from enforcing its decibel ceiling of 85 - **dB(A)**-at-10 feet because that ceiling lacks narrow tailoring and burdens "substantially more speech than necessary to further the [City's] legitimate interests." Ward, 491 U.S. at 799. This is due, in part, to defendants' practice of excluding regular "**noise** events," such as car horns, accelerating/braking buses, and construction sounds, which equal or exceed 85 - **dB(A)**-at-10 feet virtually every minute of the day, from their measurement of ambient **noise**. Turley Aff., P 19. Plaintiffs rely on their expert, Alan Fierstein, who measured ambient **noise** at **three** different locations around Times Square and found twelve **noise** events per minute averaging 86 **dB(A)**; **three noise** events per minute averaging 83 **dB(A)**; and one **noise** event per minute averaging 78 **dB(A)**. Affidavit of Alan Fierstein in Support of Plaintiffs' Motion for a Preliminary Injunction, sworn to June 4, 1999 ("Fierstein Aff."), PP 12 -14. By eliminating these **noise** events, the defendants are arguably underestimating the ambient **noise** level and, consequently, the decibel level needed to be effectively heard over that ambient **noise** level.

Defendants refute these ambient sound measurements by contending that Fierstein measured extraneous peaks and, without regard for the duration or the intervening sound levels, reported the arithmetic average of these peaks as the ambient sound levels. Zwerling Aff., P 18. Defendants contend that the ambient sound levels in the Times Square area are predominantly below 75 **dB(A)**. *Id.* at P 6. This conclusion is based on readings taken between the hours of noon and 10:00 p.m. on two separate days. *Id.*

Plaintiffs also argue that their audience, which typically stands 15 - 20 feet away from them, will have trouble hearing their music much beyond 10 feet at a 85 - **dB(A)**-at-10 feet level. Plaintiffs' Memorandum of Law in Support of Motion for a Preliminary Injunction ("Pl. Memo") at 19. Plaintiffs argue that this ceiling lacks narrow tailoring because it fails to take into account the jury's implicit finding in a previous trial in 1997 (Turley I) that plaintiffs need a 15 - to-20 signal-to-**noise** ratio to be heard and appreciated in Times Square. See Turley I, 988 F. Supp. at 679.

Defendants counter that the 85 - **dB(A)**-at-10 feet decibel limit is sufficiently narrowly tailored as it allows plaintiffs to be clearly audible to their audience. According to defendants, an increase of 10 decibels results in a doubling of perceived loudness. Opp. Memo at 16 (citing Zwerling Aff., PP 5, 7). In other words, at 10 decibels above the ambient **noise** level, music at 85 decibels will be perceived as two times louder than the ambient sound level of 75 **dB(A)**. *Id.* "Moreover, since doubling the distance from a point source reduces levels by 6 **dB(A)**, setting a permissible limit of 85 **dB(A)** when measured at 10 feet will result in the music having a sound level of 79 **dB(A)** at 20 feet. Music which is 4 **dB(A)** above the ambient sound level will be plainly audible above background..." *Id.* at 17.

On February 2, 2000, I was accompanied by the parties, their attorneys, and their experts to witness a demonstration of plaintiffs' music as it is heard on the street.

The demonstration occurred in front of the Marriott Hotel at 46th Street and Broadway at approximately 6:30 p.m. I listened to the music at the 85 - **dB(A)**-at-10 feet and 88 - **dB(A)**-at-10 feet decibel levels from distances ranging from 10 to 20 feet. At 10 and 15 feet, I subjectively found plaintiffs' music to be moderate on a scale of very loud, loud, moderate, low, too low and inaudible. At 20 feet, I found the music to be moderate to low but still clearly audible. I also noted that the ambient sound level ranged from 75 to 80 **dB(A)**, without excluding any extraneous sounds. Given these observations, plaintiffs have not shown a likelihood of success on the merits of their claim that the 85 - **dB(A)**-at-10 feet level is unduly restrictive. See Ward, 491 U.S. at 802 ("That the city's limitations on volume may reduce to some degree the potential audience for respondent's speech is of no consequence, for there has been no showing that the remaining avenues of communication are inadequate."); Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 655 (1981) (limits on where members of religious sect were allowed to set up a booth, distribute/sell literature, and solicit funds on fairgrounds did not violate their First Amendment rights because the regulations provided them with "an adequate means to sell and solicit on the fairgrounds"). Accordingly, injunctive relief prohibiting the City from enforcing the 85**dB(A)**-at-10 feet decibel ceiling is denied.

ii. The 95 - **dB(A)**-at-15 Decibel Level

Plaintiffs' second "sound level demand" is that the defendants should be enjoined from setting a decibel ceiling any lower than 95 - **dB(A)**-at-15 feet. Defendants contend that a sound level of 95 - **dB(A)**-at-15 feet is intrusive to many people and may force pedestrians to detour to avoid being exposed to this level of sound. Opp. Memo at 6. Again, based on my own observations, I found the 95 - **dB(A)**-at-15 feet level to be loud when heard from 15 and 20 feet away. Moreover, I am concerned that those walking along the sidewalk, at much closer proximity to plaintiffs, may find this decibel level objectionable and annoying. The City's **Noise** Code and permit scheme are meant to benefit the entire population, including those wishing to hear street music and those wishing to get to their destinations without detour. As such, the rights of those who wish to be protected from intrusive **noise** are no less important than the rights of those who enjoy loud street music. Plaintiffs have not shown a likelihood of success on the merits of their claim that a 95 - **dB(A)**-at-15 feet decibel level should be permitted. Thus, defendants are not preliminarily enjoined from enforcing a decibel ceiling below that level. This conclusion is buttressed by my earlier finding that an 85 - **dB(A)**-at-10 feet level is sufficiently loud.

iii. Methods of Sound Measurement

Plaintiffs' third "sound level demand" involves the method by which the sound level of their music and the ambient sound level for the Times Square area are measured. Typically, when the NYPD receives a **noise** complaint it sends a DEP inspector to the site to determine whether a Notice of Violation ("NOV") should issue by measuring the respective sound levels. The DEP inspector measures the sound produced by the music for a very short period-approximately 10 seconds-and focuses on the peak reading on the sound meter during that time frame. Turley Aff., P 15. The DEP inspector also measures the ambient **noise** level at that location-for approximately 30 seconds-to find a "steady state" ambient **noise** level. Id. In measuring the ambient **noise** level, the DEP inspector excludes all "extraneous" sounds such as car horns, ambulances, and accelerating/braking buses. A NOV will be issued if the sound from the music is above the permitted decibel level.

Plaintiffs object to the use of peak sound levels when measuring their music as being unsupported by empirical data. Reply Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction ("Reply Memo") at 6. Plaintiffs also object to the use of "snapshot measurements" (10 seconds for sound source, 30 seconds for ambient **noise** level) as arbitrary and "too small a sample from which to reliably draw any valid conclusions..." Id. at 5. Finally, plaintiffs argue that the exclusion of extraneous sounds from the ambient **noise** level is completely arbitrary because the DEP inspectors have unfettered discretion to decide which sounds are excludable. Id. at 7.

Defendants support the method by which they take sound level measurements. First, defendants contend that the "DEP's practice of comparing peak sound levels of the sound source to background sound levels for enforcement purposes is consistent with acceptable industry standards as it is designed to ascertain the normal and usual operation of the sound source." Opp. Memo at 8. In support of this statement, defendants cite the Affidavit of Eric M. Zwerling, defendants' sound expert, sworn to December 15, 1999 ("Zwerling Aff."), PP 29 -30 ("Virtually every jurisdiction I have worked with enforces on peak measurements so long as they represent the normal, usual operation of the sound source under investigation... Complaints are usually based upon the peak sound levels that may be particularly intrusive; they are not based on the average sound level of the source. It is then entirely appropriate to measure these peaks, so long as they represent the normal usual operation of the sound source."). According to defendants, plaintiffs' music is performed at a consistent level, varying by no more than 4 - 8 decibels. Second, defendants argue that "for purposes of enforcement, the only relevant ambient sound levels are those immediately preceding or following the measurements of the sound source under investigation. These ambient sound level measurements need not take more than a few minutes." Opp. Memo at 8 (citing Zwerling Aff., P 25). With regard to extraneous sounds, defendants point to paragraph 17 of the Zwerling Affidavit: "I know of no jurisdiction that includes short duration intense sound events in the determination of ambient sound levels for the purposes of establishing a baseline for enforcement purposes. The standard practice is to exclude extraneous **noises**..."

The City's method with regard to the timing of sound measurements, i.e., ten seconds for source sound, thirty seconds for ambient **noise** level, is not so arbitrary as to be inherently inconsistent with valid time, place and manner regulations. See Ward, 491 U.S. at 800 ("So long as the means chosen are not substantially broader than necessary to achieve the government's interest..., the regulation will not be invalid simply because a court concludes that the government's interest could adequately be served by some less-speech-restrictive alternative."); see also Johnson v. Bax, 63 F.3d 154, 158 (2d Cir. 1995) (government's limited discretion in regulating the use of its streets must be exercised uniformly and systematically so as not to create any unfair discrimination).

I do find, however, that the City's practice of conferring unfettered discretion on the DEP inspectors in deciding which **noises** to exclude as extraneous is unduly arbitrary. In the absence of a published standard listing which **noises** to include and which to exclude, the unguided exclusion of various **noises** by different DEP inspectors is arbitrary and capricious. The abuse of this discretion by DEP inspectors could easily lead to content-based discrimination. See Heffron, 452 U.S. at 649 (government regulation that allows arbitrary application is "inherently inconsistent with a valid time, place and manner regulation because such discretion has the

potential for becoming a means of suppressing a particular point of view"). Therefore, until the City develops published criteria of which extraneous sounds to include and exclude, it will be preliminarily enjoined from excluding any extraneous **noises** in the measurement of ambient sound levels.

C. Preferential Treatment Complaints

i. Corporate-Sponsored Event Exemption

Plaintiffs' first preferential treatment complaint is that while they are subject to the 85 - **dB(A)**-at-10 feet decibel ceiling, corporate-sponsored music events, such as Time Warner's musical extravaganza, JVC concerts and the Broadway on Broadway concert, have been exempt and consequently far exceed the decibel level imposed on plaintiffs. Turley Aff., P 17. Plaintiffs claim that this discrepancy violates the Equal Protection Clause of the Fourteenth Amendment and is therefore impermissible.

In response, defendants state that the permissible decibel ceiling on a sound permit is based on the information supplied by the applicant. Opp. Memo at 19 (citing Affidavit of Stephen Giaco, an officer of the NYPD, sworn to December 17, 1999 ("Giaco Aff."), P 5). In that affidavit, Officer Giaco states:

If the event sponsor anticipates a much larger audience, such as several hundred or several thousand, then the permissible decibel level will be adjusted accordingly to allow the speaker or performer to be heard by his or her audience. Moreover, if the activity is to take place where streets have been closed to traffic, the decibel ceiling can be set at a higher level since some of the concerns for pedestrian and vehicular safety will not be at issue.

Giaco Aff., P 5. This appears to be a credible and reasonable explanation for the differences in decibel limits set for corporate-sponsored events, which tend to be more elaborate affairs drawing audiences considerably larger than 10 to 15 people.

Furthermore, in equal protection analysis, suspect classes have generally been limited to groups defined by their status such as race, origin and gender, and not by the conduct in which they engage. Able v. United States, 155 F.3d 628, 632 (2d Cir. 1998). Street musicians do not fall within any suspect class. Accordingly, the rational relationship test applies to the government action challenged here. Where the "government differentiates between persons for a reason that bears a rational relationship to an appropriate governmental interest," there is no violation of equal protection. Id. at 631. Because the government has the legitimate interest in enabling corporate-sponsored events to be heard by large audiences, the discrepancy between the current decibel level imposed on plaintiffs and the higher levels granted to corporate sponsors does not present a constitutional violation. Plaintiffs therefore will not be relieved of the current restrictions imposed on them despite the disparity in decibel ceilings between their music and certain corporate-sponsored events.

ii. Preferential Treatment for Certain Fifth Avenue Entities

Plaintiffs' second preferential treatment complaint is that MTN has afforded preferential treatment to certain Fifth Avenue business entities-the Fifth Avenue Business Improvement District, the Fifth Avenue Association, and the Trump Organization (collectively, the "5th Avenue entities") - in the processing and issuance

of sound device permits for the sidewalk in front of Trump Plaza at 5th Avenue and 58th Street. Turley Aff., P 24. Specifically, plaintiffs allege that MTN accepts and processes sound device permits for the 5th Avenue entities before allowing Turley to submit applications, allows them to fax applications while requiring Turley to apply in person, and lets them separately apply for sound device permits for successive weeks for the very same use. Id., PP 25, 27 - 28.

Defendants respond that applications are generally handled on a first-come, first-served basis. Opp. Memo at 24 (citing Giaco Aff., P 4). For particular locations, such as 58th Street and 5th Avenue, MTN has implemented a "rotation system." According to Officer Giaco, under this system, a permit application is date and time stamped when it is received at the precinct. If a permit for the requested date and location has already been issued, this applicant will have the opportunity to get a sound amplification permit for that location during the next available five-day period. No individual or group who has already received a permit for that location will receive another permit for the same location until all the other applicants for sound permits for that location have had an opportunity to receive a sound amplification device permit. The applicant can, in the meantime, however, receive a sound device permit at an acceptable alternate location.

Giaco Aff., P 8. As plaintiffs have not yet presented any evidence that their permit applications are intentionally processed later than those of the 5th Avenue entities, a preliminary injunction restraining this alleged practice is not warranted at this time.

Defendants also point out that Turley has received a sound device permit from MTN for every week requested during the past six months, although not always at his first choice location. Id., P 10. Moreover, plaintiffs have received permits for the 5th Avenue and 58th Street location more than any other applicant for that location. Id., P 11. Nonetheless, this does not refute plaintiffs' remaining specific complaints, namely, processing by fax and successive week use.

The successive week use complaint is addressed in Exhibit N of defendants' motion papers. Exhibit N is a summary of sound permits issued at 58th Street and 5th Avenue for the period starting on June 2, 1999 and ending on November 30, 1999. A review of Exhibit N reveals that Turley received sound permits seven times during this period while Ms. Padilla, representing the 5th Avenue entities, received five permits. None of the permits issued to either Turley or Padilla were for successive weeks. This presumably accurate summary refutes plaintiffs' complaint of successive week use. Injunctive relief cannot be ordered in the absence of a violation.

The faxing of permit applications was also addressed by Officer Giaco. See Supplemental Affidavit of Stephen Giaco, sworn to February 2, 2000 ("Giaco Supp. Aff."). Officer Giaco states that it is the "policy and practice of MTN to require all sound device permit applicants to submit their applications in person at the precinct between the hours of 9:00 a.m. and 5:00 p.m. on weekdays." Giaco Supp. Aff., P 3. To the best of his recollection, the MTN has not accepted a facsimile transmission during the past year. Id., P 4. Officer Giaco does recall, however, that MTN did in fact accept a few applications by facsimile in limited circumstances, such as the need for the applicant to be out of town at the time of filing. Id., P 5. Officer Giaco states that Turley never made such a request. Id. In the meantime, MTN now refuses to accept any application by fax. Thus, MTN has effectively agreed to give up the practice complained of. A preliminary injunction is not required in the absence of irreparable harm.

iii. Sham Permits

Plaintiffs' final preferential treatment complaint is that the sound device permits issued to the 5th Avenue entities are mere shams because the activities they engage in-handing out pamphlets and providing information-do not require the use of a sound device. Turley Aff., P 29. See also Bieberman Decl., Ex. N (applications of 5th Avenue entities list "Tourist information & background music"). In response, defendants note that they can only review the information on the application, not the actual use by the applicant. Thus, in order to prove that the permits issued to the 5th Avenue entities were shams used to thwart plaintiffs' efforts to secure permits, plaintiffs must demonstrate that the MTN and/or MTS knew that the permits issued to the 5th Avenue entities were not being used for sound amplification. At this early stage, plaintiffs have failed to make the required showing. Accordingly, injunctive relief is not warranted. However, if plaintiffs can make the required showing following a period of discovery, they can renew this application.

III. Conclusion

For the reasons stated above, plaintiffs' motion for preliminary injunction is denied in all respects except for the challenge to the City's practice of excluding extraneous **noises**. A status conference is scheduled for February 23, 2000 at 4:30 p.m.

Exhibit B

Candela, Brian

From: Candela, Brian
Sent: Friday, May 19, 2017 10:49 AM
To: Bennett Brooks
Cc: Candela, Brian
Subject: RE: Brooks Acoustics

Importance: High

Good morning Bennett. Before the ordinance committee makes a decision, they were looking for some additional information. First, please provide us with contact information for the person that your company worked with at Enfield, Manchester and Cromwell concerning noise ordinance revision process. The ordinance committee would like the opportunity to speak with these people in advance of making a decision. Second, please advise what experience you have with implementing noise ordinances in mixed use zones. Third, are land use, zoning, the building code and DEEP involved, at all, in this process? I look forward to speaking with you about this matter in greater detail over the telephone.

The ordinance committee would like to make a final decision on this matter before the next meeting on June 20, 2017. Thank you in advance for your cooperation on these issues.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Bennett Brooks [mailto:bbrooks@brooksaoustics.com]
Sent: Tuesday, May 02, 2017 3:12 PM
To: Candela, Brian <bcandela@norwalkct.org>
Subject: Re: Brooks Acoustics

Hi Brian

Attached please find our proposal to assist with the noise ordinance revision.

Please contact me with any questions.

I look forward to working with you on this important project.

Best regards
Bennett

On Mon, May 1, 2017 at 3:42 PM, Bennett Brooks <bbrooks@brooksaoustics.com> wrote:

Candela, Brian

From: Bennett Brooks <bbrooks@brooksacoustics.com>
Sent: Friday, May 26, 2017 7:08 PM
To: Candela, Brian
Subject: Re: Brooks Acoustics
Attachments: Brooks - Noise ordinance references .pdf

Follow Up Flag: Flag for follow up
Flag Status: Completed

Hi Brian

Attached please find a letter in which I attempt to answer the Ordinance Committee's questions.

I also look forward to speaking with you about this matter in further detail.

Best wishes for a pleasant Memorial Day weekend.

Bennett

On Fri, May 26, 2017 at 2:55 PM, Candela, Brian <bcandela@norwalkct.org> wrote:

Good afternoon Bennett. Before the ordinance committee makes a decision, they were looking for some additional information. First, please provide us with contact information for the person that your company worked with at Enfield, Manchester and Cromwell concerning noise ordinance revision process. The ordinance committee would like the opportunity to speak with these people in advance of making a decision. Second, please advise what experience you have with implementing noise ordinances in mixed use zones. Third, are land use, zoning, the building code and DEEP involved, at all, in this process? I look forward to speaking with you about this matter in greater detail over the telephone.

The ordinance committee would like to make a final decision on this matter before the next meeting on June 20, 2017. Therefore, please email me a response to these questions along with contact information for the municipalities above. I need to provide an update to the ordinance committee next week. Thank you in advance for your cooperation on these issues and have a nice Memorial Day weekend.

Brian Candela

Assistant Corporation Counsel

City of Norwalk

125 East Avenue



Brooks Acoustics Corporation

30 Lafayette Square Vernon, Connecticut 06066 860-896-1081

26 May 2017

Mr. Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851

Subject: Proposal - Acoustical engineering services – Proposed Noise Ordinance Revision
Commission questions

Dear Mr. Candela:

Thank you for requesting answers to the Ordinance Committee's questions, as posed in your email of May 26:

- Provide us with contact information for the person that your company worked with at Enfield, Manchester and Cromwell concerning noise ordinance revision process.
- Second, please advise what experience you have with implementing noise ordinances in mixed use zones.
- Third, are land use, zoning, the building code and DEEP involved, at all, in this process?

Answers

1- Contact information is included in the attached Qualifications document.

2- Many of the environmental sound and noise ordinance implementation projects on which we have worked are in locations that include residential, commercial and industrial uses in close proximity. Many of our recent projects include mixed-use developments for which residences and commercial activities occupy the same building, or adjacent buildings. Each municipality will characterize the zone and/or use definition using its own standards. This leads us to the next question.

3- Land use, zoning, the building code and the CT DEEP regulations present different aspects of the same situation. Each in its own way is an attempt to manage sound in the community in order to enforce a minimum standard for the quality of life of its citizens.

For example, many municipalities, including Norwalk, mandate noise level limits for zones, as defined in their Zoning Regulations. The CT DEEP mandates noise level limits depending on the land use, regardless of the local zone definition.

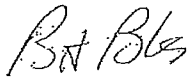
The City of Norwalk mirrors the DEEP land use method in its definition of a "Residential Zone" as, "All city-owned property used for recreational or educational purposes and all residential districts and any commercial district when used for residential purposes, as defined in the Zoning Regulations of the City of Norwalk, and all uses permitted therewith either as a right or as a special use."

Furthermore, the CT State building code addresses the minimum sound isolation performance requirements for multi-family dwellings, which mirror the requirements of the International Building Code (IBC) Section 1207. These requirements are not currently addressed in the City of Norwalk's Building Code, Chapter 26, or the Housing Code, Chapter 59.

The mandated sound isolation performance of mixed use buildings could be a combination of noise ordinance sound level limits and residential building code requirements. The question of how to apply noise level limits to differing zones and land uses, and whether to include building performance in an ordinance would be a decision for the City make.

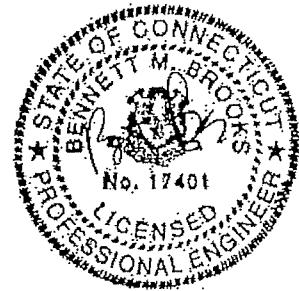
Please contact me if you have any questions concerning this matter.

Very truly yours,
BROOKS ACOUSTICS CORPORATION



Bennett M. Brooks, PE, FASA, INCE
President

Attachment



Consulting Services -- Noise Control Ordinance

Qualifications and Experience

The Project Manager for this project will be Brooks Acoustics Corporation (BAC) Senior Consultant Bennett M. Brooks, PE, FASA, INCE. Mr. Brooks is a licensed Professional Engineer with over 40 years' experience in acoustics and noise control. He has been instrumental in assisting a number of municipalities in recent years to conduct noise surveys, develop noise ordinances, or to refine and improve existing ordinances. These include the Towns of Cromwell, Durham, Enfield, Killingly, Manchester, Orange, Scotland, South Windsor and Willington, and the Torrington Area Health District in Connecticut, the Town of Rochester (Accord), New York, and the Town of Jamestown, Rhode Island. He also worked with the St. Lawrence Forum, to advise citizens on noise issues in the Cities of Hudson and Greenport, New York.

Mr. Brooks' activities on municipal projects include working with Town Managers, Planners, Selectmen and Town Councils to develop the goals of the noise ordinance and the general approach which would best suit the town or city's needs. He has worked with Town Attorneys to develop ordinance language that would harmonize with other local and state regulations, such that the ordinance would be easily understandable, enforceable and defensible. Mr. Brooks also worked with Police and Zoning officials to develop noise measurement and enforcement procedures that were readily adaptable to those officials' current practice and work load. Finally, he presented the proposed rulings in public forums, in order to gain consensus and public support.

In addition to assisting municipalities develop noise control ordinances, Mr. Brooks has worked extensively with companies and institutions to develop practical and effective noise controls for their facilities in locations across the country. He has helped many organizations meet and comply with local, state and federal noise regulations.

Mr. Brooks currently serves as the Vice-Chair of the American National Standards Institute (ANSI) S-12 Noise Committee Working Group 41 for Model Community Noise Ordinances. He is past Vice-Chair of the S12 Committee and currently serves the committee as an Individual Expert. He has also served the Acoustical Society of America as Chair of the Technical Committee on Noise. In addition, Mr. Brooks served as a consultant to a study team of the National Academy of Engineering working to determine the needs for a national noise policy.

Mr. Brooks will be the Principal Investigator for this project. He will devote his full attention to these efforts during the performance of the needed tasks, as required.

Qualifications and Experience (continued)**References - Government**

Town of Cromwell, Connecticut (1997, 2007, 2014, 2015 projects)

Mark K. Branse	Town Attorney	860-241-4088
Denise Lamontagne	Chief of Police	860-635-2256 x.13

Town of Manchester, Connecticut (2002, 2013 projects)

Steven R. Werbner	General Manager	860-647-3123
Timothy P. O'Neil	Assistant Town Attorney	860-647-3132
Maryann Cherniak Lexius	Director of Health	860-647-3173
Kim Dubanoski	Chief Sanitarian	860-647-3172

Town of Enfield, Connecticut (1999 project)

Maria N. Stavropoulos	Sr. Assistant Town Attorney	860-253-6405
Daniel T. Vindigni	Assistant Town Manager	860-253-6300

Candela, Brian

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:43 PM
To: Melendez, EloisaM; Hempstead, Doug; Kimmel, Bruce I.; Livingston, Thomas P.; Corsello, Michael; Simms, Travis; Giandurco, Shannon O'Toole
Cc: Candela, Brian
Subject: RE: Noise Ordinance
Attachments: Maria Elsdén, Esq. - documents concerning Bennett Brooks (00024866xD9291).pdf; Bennett Brooks re answers to questions from Ordinance Committee (00024840xD9291).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. As requested, I have reached out and spoken to several references from Cromwell, Enfield, Tolland and Manchester concerning Bennett Brooks.

I initially spoke with Maria Elsdén, Esq. of Enfield. Even though the work which Mr. Brooks performed for Enfield took place in 1998, she recalled that he was vital in fashioning a noise ordinance for the town. In addition, she recalled him to be very helpful, knowledgeable, that he presented well and was able to explain complicated subjects in a simple manner. She indicated that she would recommend Mr. Brooks to the City of Norwalk. Attorney Elsdén even provided Mr. Brooks' report and analysis of a newly installed crematorium and the minutes from a council meeting concerning that structure. A copy of these documents are attached to this email for your review. For your convenience, please also find another copy of Bennett Brooks' responses to your questions for your review.

I also spoke with Steven Werbner, formerly the general manager of Manchester and the current manager in Tolland. Since the work took place some time ago, Mr. Werbner only could recall that Mr. Brooks was helpful. A current employee of the Manchester Health Department, Jeff Catlett, advised that while he was not present when the noise ordinance revisions were made, he was present when Mr. Brooks came back to perform a two-day training seminar based on the newly created noise code. Mr. Catlett recalled that he was knowledgeable, explained things well and that this noise ordinance is still currently in effect.

Finally, I also spoke with Mark Branse, Esq. of Cromwell. Attorney Branse said that Mr. Brooks does a great job and is his go-to-guy concerning noise related issues. He explained that Mr. Brooks helped Cromwell develop a comprehensive noise ordinance. Attorney Branse indicated that he would recommend Mr. Brooks to the City of Norwalk.

Please note that I am still waiting to hear back from Tim O'Neil, Esq. (counsel for Manchester).

I hope this email answers any questions that you have concerning Bennett Brooks. I will advise when Charles Shamon, Esq. is able to speak with me concerning Eric Zwerling.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851

Candela, Brian

From: Candela, Brian
Sent: Wednesday, May 31, 2017 4:06 PM
To: Melendez, EloisaM; Hempstead, Doug; Kimmel, Bruce I.; Livingston, Thomas P.; Corsello, Michael; Simms, Travis; Giandurco, Shannon O'Toole
Cc: Candela, Brian
Subject: RE: Noise Ordinance

Follow Up Flag: Follow up
Flag Status: Flagged

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance.

I spoke with Tim O'Neil, Esq. of Manchester concerning Bennett Brooks. Attorney O'Neil advised that Mr. Brooks helped them re-write Manchester's entire noise code. He recalled that it was a positive experience and that Mr. Brooks was knowledgeable and professional. Following the completion of this project, Mr. Brooks appeared at the council meeting to explain the revised noise ordinance. Attorney O'Neil did not recall dealing with any mixed use zoning issues during this particular project. He did indicate that Mr. Brooks would be his go-to-guy if he ever needed future assistance with Manchester's noise ordinance.

I hope this email answers any questions that you have concerning Bennett Brooks.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:43 PM
To: Melendez, EloisaM <eloisa.melendez@hotmail.com>; Hempstead, Doug <dhempstead@hotmail.com>; Kimmel, Bruce I. <brucekim@optonline.net>; Livingston, Thomas P. <tplivingston@norwalkct.org>; Corsello, Michael <mrcorsello@norwalkct.org>; Simms, Travis <TravisSimms@norwalkct.org>; Giandurco, Shannon O'Toole <otoole.shannon10@gmail.com>
Cc: Candela, Brian <bcandela@norwalkct.org>
Subject: RE: Noise Ordinance

Ordinance Committee members:

Please allow this email to serve as an update on the retention of an acoustical expert concerning the noise ordinance. As requested, I have reached out and spoken to several references from Cromwell, Enfield, Tolland and Manchester concerning Bennett Brooks.

Candela, Brian

From: Elsden, Maria <melsden@enfield.org>
Sent: Tuesday, May 30, 2017 11:11 AM
To: Candela, Brian
Cc: Hamel, Maureen
Subject: RE: Bennett Brooks
Attachments: Bennett Brooks, TC Minutes 11-16-98.pdf; Bennett Brooks, Crematory Noise Evaluation.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Brian ,

As requested. Hope this helps.

MSE

Maria S. Elsden
Sr. Assistant Town Attorney
Town of Enfield
120 Enfield Street
Enfield, Connecticut
06082
telephone: 860.253.6406
facsimile: 860.253.6362

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From: Candela, Brian [mailto:bcandela@norwalkct.org]
Sent: Tuesday, May 30, 2017 10:58 AM
To: Elsden, Maria
Cc: Candela, Brian
Subject: Bennett Brooks

Maria – here is my contact information. Thanks for your help.

Brian Candela
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295

Fax: (203) 854-7901

Regular Meeting

11/16/1998

Page 9

Bennett Brooks from Brooks Acoustics Corporation was present for this discussion.

Mr. Brooks stated they took noise readings at different locations, and afterwards Mr. Stevens invited them to observe the crematorium operation.

Councilor Ludwick questioned whether Mr. Brooks believes he was able to get a clear noise reading, and Mr. Brooks stated his belief they were able to get a clean reading. He explained how the graphs can be defined. He spoke about other noises which effect readings, i.e., passing traffic or airplanes passing overhead.

Councilor Ludwick questioned whether Mr. Brooks has any recommendations as to how noise might be reduced at the crematorium. Mr. Brooks responded he did not include any recommendations in his conclusion since he did not study the equipment, nor discuss it with the manufacturer. He spoke about possible alterations that might be made to reduce noise emitted from the crematorium. He pointed out an engineering design process would have to be engaged in before he could make any specific recommendations.

Councilor Kaupin referred to the 44 dba registered at the Urbanowicz residence and noted that is just one point away from exceeding state law. He questioned whether Mr. Brooks can quantify the difference between 44 and 45 dba and whether it's a great amount of noise, or a slight amount of noise. Mr. Brooks explained that generally 1 dba is about the minimum amount that would be noticed.

Councilor Kaupin questioned if it's common to do multiple monitorings to get a representative sample so that it's known what the norm is coming from that source. Mr. Brooks stated his belief it's possible the operation could be different on another day, however, he doesn't believe it would be much different based on several physical factors. He stated his belief the operation of the noise source is fairly consistent.

Councilor Kaupin questioned whether the Town should do additional testing to learn what the norm is emanating from this source. He noted he'd like feedback from the Council regarding this.

Councilor Dodd questioned whether Mr. Brooks' meter can suppress background noise to measure noise coming from a target area. Mr. Brooks stated his meter has an omni-directional microphone, therefore, it takes sound from all directions. Councilor Dodd questioned whether a microphone could be used to measure just a target area. Mr. Brooks stated that type of instrumentation exists, but he feels it wasn't necessary in this case.

Councilor Mangini questioned if an alteration to the equipment is a sensible concept. Mr. Brooks stated that is a matter of the business owner and residents coming to an agreement.

Chairwoman Strom suggested reading through the material provided, consider this evening's discussion and decide whether the Council wishes to go forward either with additional testing or more discussion.

Councilor Falk questioned the cost of the testing, and Mr. Brooks responded \$3,100. He added they basically work on an hourly rate.

Councilor Falk stated his belief there should be a limit as concerns additional testing.

Councilor Egan stated before additional testing is done, perhaps there could be discussion about possible modifications.

DISCUSSION RE: VFW PROPERTY ACCEPTANCE

Mr. Shanley stated they are conducting a last round of soil testing at this site.

Chairwoman Strom stated this item will appear on the December 7th agenda.

DISCUSSION RE: ENFIELD REVITALIZATION COMMITTEE SIGN PROPOSAL

Representing the Enfield Revitalization Committee was Carl Albert. Mr. Albert stated they're requesting a "Hazardville Village of Enfield" sign. He noted there are several signs welcoming people to Enfield, and Thompsonville has a designation sign as well. He noted the last area in need of identification is the Hazardville area.

Councilor Kaupin questioned plans to have designation signs through different areas of town, and Mr. Albert stated it has been decided to designate just the Thompsonville and Hazardville sections of Enfield.

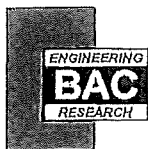
Mr. Shanley stated there are funds budgeted in the Capital Budget for Enfield Revitalization. He noted if the Council provides authorization, some of those funds can be made available for this sign.

It was the consensus of the Council that they are in favor of the concept for the Hazardville sign.

Chairwoman Strom noted this will appear under New Business on the next agenda.

DISCUSSION RE: OPEN SPACE COMMITTEE

Mr. Shanley stated the grant was awarded to the Conservation Commission. He noted there is no obligation for a committee, however, a number of Councilors and others have asked about what can be done to acquire more open space in Enfield. He noted riverfront property has been discussed.



Brooks Acoustics Corporation

27 Hartford Turnpike

Vernon, Connecticut 06066

860-647-0514

Mr. Christopher Bromson, Esq.
Town Attorney
Town of Enfield
820 Enfield Street
Enfield, CT 06082-2997

9 November 1998
LR1998-0630

RECEIVED

NOV - 9 1998

OFFICE OF THE
TOWN ATTORNEY

Subject: Evaluation of crematory noise

Dear Mr. Bromson:

As requested, Brooks Acoustics Corporation (BAC) has conducted an evaluation of the noise from the recently installed Leete-Stevens Enfield Chapel crematory facility. Noise measurements were made at nearby residences, while the crematory facility was in operation. The measured data from these tests indicate that noise emissions from the crematory are within the limits set by the noise regulations of the State of Connecticut. Based on these data, it is the opinion of BAC that the crematory is in compliance with state noise regulations.

Measurements of noise emissions were also made at the crematory facility. Based on these observations, major noise sources were identified. Although low in level, one of these noise sources was distinguishable at the nearby residences. Discussions with residents, in which they described sounds they felt were objectionable, were correlated with observations at the crematory facility. The noise source arousing resident objections was identified.

Noise Level Standard

The noise level limits which apply to the residential property lines are derived from a land use performance standard. This standard is the State of Connecticut Department of Environmental Protection regulations Title 22a, Environmental Protection, "Control of Noise", Connecticut General Statutes Sections 22a-69-1 to 22a-69-7.4.

This standard imposes limits for the noise emitted by commercial land uses to receptors in residential land uses. These limits are 55 dBA (A-weighted sound pressure level) during the daytime hours of 7 am to 10 pm, and 45 dBA during the nighttime hours of 10 pm to 7 am. In addition, the state standard allows short duration excursions above these limits, ranging from an allowable 3 dBA above those limits for up to 15 minutes per hour, to 8 dBA above those limits for up to 5 minutes per hour.

Further, the state standard imposes a penalty of 5 dB on prominent discrete tones, meaning the presence of acoustic energy concentrated in a narrow frequency band, which would lower the allowable limits that are otherwise mandated.

It is noted that the state imposed noise standards are essentially the same as those imposed by the existing Chapter 6A of the Town of Enfield Code.

Noise survey test

The survey test was conducted by Bennett Brooks of BAC. Town of Enfield officials in attendance during the survey included Assistant Town Manager Dan Vindigni, Zoning Enforcement Officer Wayne Bickley, and Police Captain Carl Sferrazza. The acoustic survey was conducted in accordance with accepted methods of environmental noise measurement.

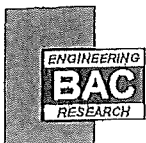
The noise survey was conducted during the time period between 8:00 and 11:30 pm on Monday, **26 October 1998**. Sky conditions were clear. The temperature at 11:40 pm was 42 degrees F, with 90 percent relative humidity. The wind was generally calm.

The primary field measurement system was a digital precision (Type 1) integrating sound level analyzer, which was used for measurement of statistical and spectral sound level parameters. A scientific tape recorder and calibrated Type 1 scientific microphone was used for on-site confirmation and validation of field measurements. In addition, a third sound level meter was used to confirm field measurements. All acoustic measurement systems were calibrated by third party laboratories with equipment directly traceable to the U.S. National Institute for Standards and Instrumentation (NIST). The instruments were also field calibrated both before and after the test. The nominal accuracy for all measurement systems is ± 1.0 dB.

Test Position 1 was located at 58 South Road, the Urbanowicz residence, 15 feet west of the house, even with the house front, toward the Leete-Stevens facility. Test Position 2 was located in the backyard of 81 South Road, the Fiore residence, near the southeast property line corner. Test Position 3 was located in the backyard of 23 Indian Run Road, the Hays residence, 15 feet from the rear of the house. Test Position 4 was located at the Leete-Stevens crematory facility, 10 feet west of the ventilation louvers in the access door.

Test Data Discussion

Testing was begun at Position 1 at approximately 8 pm, then proceeding to Position 2 at about 8:30 pm. Noise levels at those locations were dominated by traffic on South Road. Testing was conducted at Position 3 at about 9 pm. Although the measured noise levels at Position 3 were very low, a distinctive warbling sound which cycled on and off was detectable. This sound was described by the resident, and later confirmed, as associated with the crematory.



Upon returning to South Road, a meeting was arranged with Richard Stevens of Leete-Stevens Enfield Chapel. Mr. Stevens suggested a tour of the crematory facility and indicated that operations had begun at approximately 8:15 that evening.

Noise measurements were made at the crematory facility (Position 4), and it was determined that the distinctive warbling sound is due to the automatic cycling of a gas burner in the crematory. Mr. Stevens reported that this burner is needed to maintain the operating temperature required by state code. Subsequently, testing was repeated at residential Positions 1 and 2. The distinctive warbling sound was then also detectable at those locations.

Test Data Analysis

A plot of the measured sound level versus time at **Position 1**, the Urbanowicz residence, is shown in Time History graph TH98-81026001, attached, for the test period beginning about 8 pm. This plot shows the variation in A-weighted noise level (dBA) as vehicles pass by on South Road. The noise level varies from a low of about 40 dBA between vehicles to peaks of 70 to 75 dBA. Since Mr. Stevens had indicated that crematory operations had begun about 8:15 pm that evening, this test was ostensibly conducted before crematory operations were begun.

A plot of the measured sound level versus time at **Position 2**, the Fiore residence, is shown in Time History graph TH98-81026002, attached, for the test period beginning about 8:30 pm. Again, the measured noise level varies with the passing of vehicles on South Road. The levels are somewhat lower than those measured at Position 1, since Position 2 was a greater distance from the road. The levels varied from about 35 dBA between vehicles to peaks of about 50 to 55 dBA. This test period was conducted at about the time that crematory operations were started.

A plot of the measured sound level versus time at **Position 3**, the Hays residence, is shown in Time History graph TH98-81026003, attached, for the test period beginning about 9:20 pm. Measured noise levels were very low, about 30 dBA, for this test period. Toward the end of the test period, a passing aircraft raised the level to about 50 dBA. Note on the plot that the distinctive warbling sound was detectable from the 30 second time duration beginning about 21:22:00, and also for another 30 second duration beginning about 21:24:10. The warble raised the level about 2 or 3 dB.

At **Position 4**, near the crematory west access door, it was determined that there are two major noise sources which emit sound outside of the building. One is the combustion air intake fan, which emits a constant whine type sound, primarily through the louvers in the access door. The other source is the gas burner which cycles on and off, and emits the distinctive warbling sound through the exhaust stack on the roof.

A plot of the measured sound level versus time at **Position 4** is shown in Time History graph TH98-81026004, attached, for the test period beginning about 10:20 pm. This plot shows the variation in source noise levels as the gas burner cycles on and off. The burner causes an increase in source noise level of about 4 dB at this location.

A plot of the measured sound level versus time at **Position 1**, the Urbanowicz residence, is shown in Time History graph TH98-81026007, attached, for the second test period beginning about 10:45 pm. Again, this plot shows the variation in noise level as vehicles pass by on South Road. Also, the distinctive burner warbling sound from the crematory was evident during this test period. The level of this sound is indicated for the 30 second duration beginning about 22:47:50. The warbling raised the background noise level about 3 to 4 dB, to about 42 to 44 dBA.

A plot of the measured sound level versus time at **Position 2**, the Fiore residence, is shown in Time History graph TH98-81026009, attached, for the second test period beginning about 11:05 pm. Again, the measured noise level varies with the passing of vehicles on South Road. The distinctive burner warbling sound from the crematory was only briefly evident during this test period, due to passing traffic. The level of this sound is indicated beginning about 23:06:50, before a vehicle arrived. The warbling raised the background noise level about 2 to 3 dB, to about 38 dBA.

As a noise that is identified with the crematory, the burner warble would be subject to the limits imposed by Connecticut noise regulations. At the Urbanowicz residence, the crematory burner warble reached a level of about 44 dBA. This is just below the mandated limit of 45 dBA. At the Fiore residence, the burner warble reached a level of about 38 dBA, and at the Hays residence the burner warble was about 33 dBA. These levels are well below the mandated limit of 45 dBA.

The measured noise data taken at the Urbanowicz residence was analyzed to determine if a prominent discrete tone was present, as defined in the State of Connecticut noise regulations. A noise spectrum plot for the time period when the burner cycle was on is shown in graph GR98-8102607a, attached. The burner warble is indicated by the peaks in the 160 and 200 Hz frequency bands.

A noise spectrum plot for time period when the burner cycle was off is shown in graph GR98-8102607b, attached. Note the relative absence of peaks in the 160 and 200 Hz frequency bands. Calculations made in accordance with the noise regulations determined that these peaks would not be defined as prominent. Therefore, no tone penalty would be applied to the noise limits in this case.

Conclusions

Noise levels were measured at the Leete-Stevens Enfield Chapel crematory, and sources of emitted noise were identified. Noise levels were also measured at three nearby residences. Based on the measured noise data obtained during this survey, it was determined that noise attributable to the crematory was always below 45 dBA at the nearby residences. Also, it was determined that prominent discrete tones were not present in the noise emitted by the crematory. Therefore, it is the opinion of BAC that the crematory is in compliance with state noise regulations.

Also, based on the data obtained during this survey, it is concluded that it may be possible to reduce the noise emitted by the crematory. It is likely that in order to achieve a noise reduction, modifications to the cremation process or hardware would be required. A detailed design investigation would be needed to determine the feasibility of such modifications within the constraints imposed by the state codes which govern the cremation process.

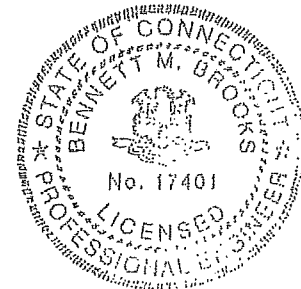
Please contact me if you have any questions concerning these findings.

Very truly yours,
BROOKS ACOUSTICS CORPORATION



Bennett M. Brooks, P.E.
President

attachments

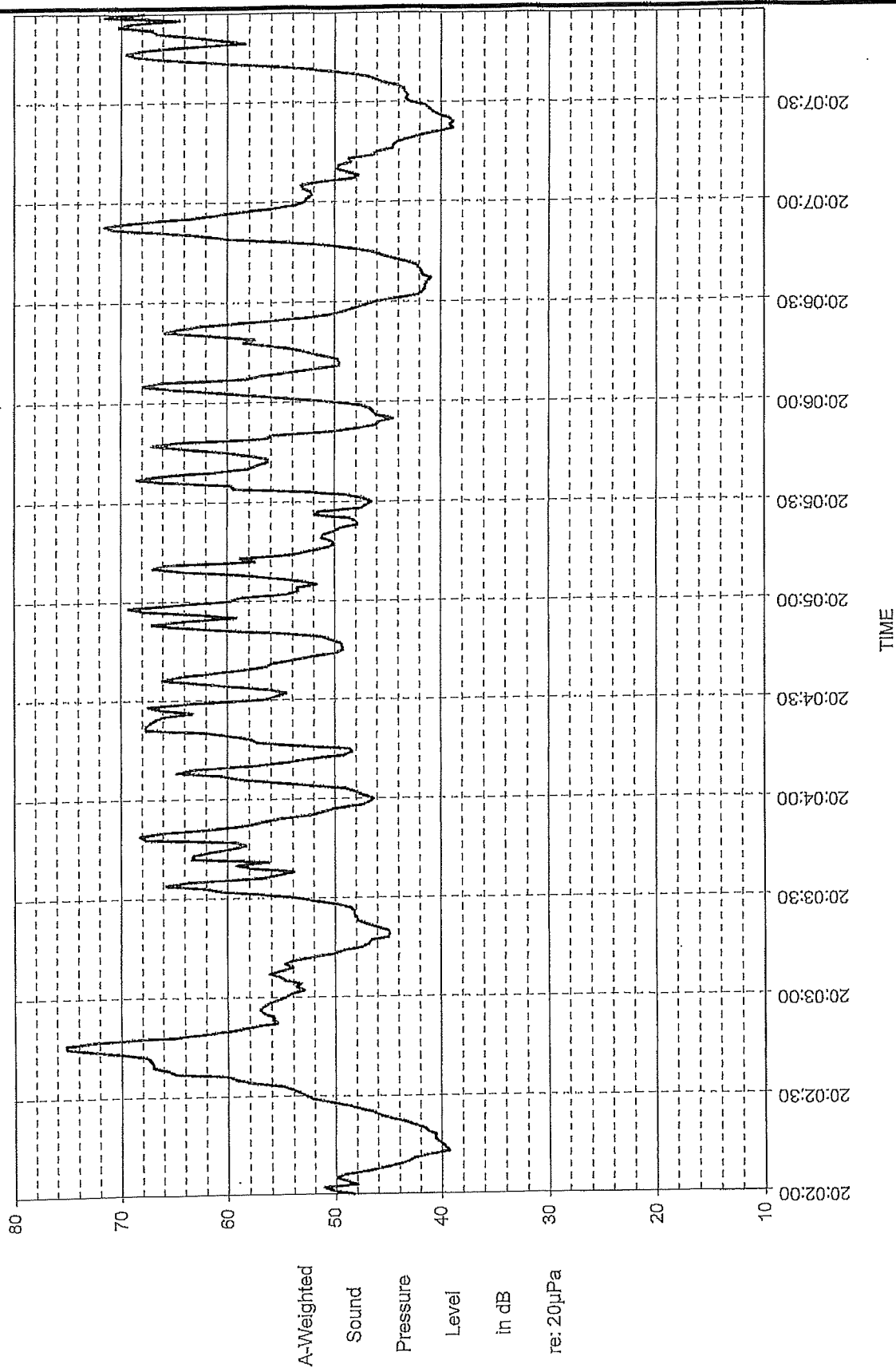


TIME HISTORY

Residential Background Noise -- #58 South Road
15 feet west of house front

Date: 26 Oct 98
Time: 20:02
Position: 1

Town of Enfield
Crematorium Noise Survey
Enfield, CT



TIME HISTORY

Town of Enfield

Crematorium Noise Survey
Enfield, CT

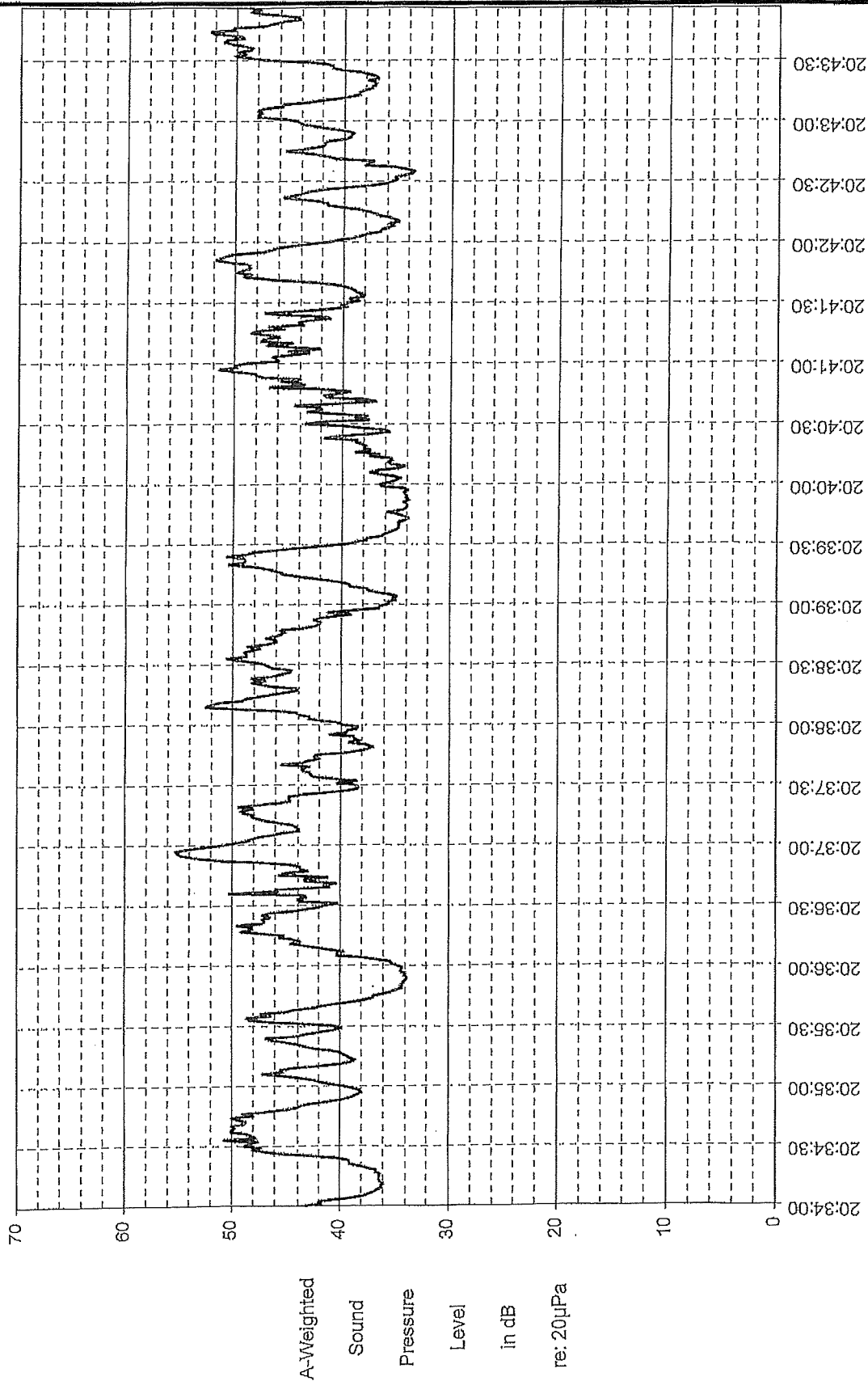
Residential Background Noise -- #81 South Road

Back yard, southeast corner - 10 feet north of grass edge

Date: 26 Oct 98

Time: 20:34

Position: 2

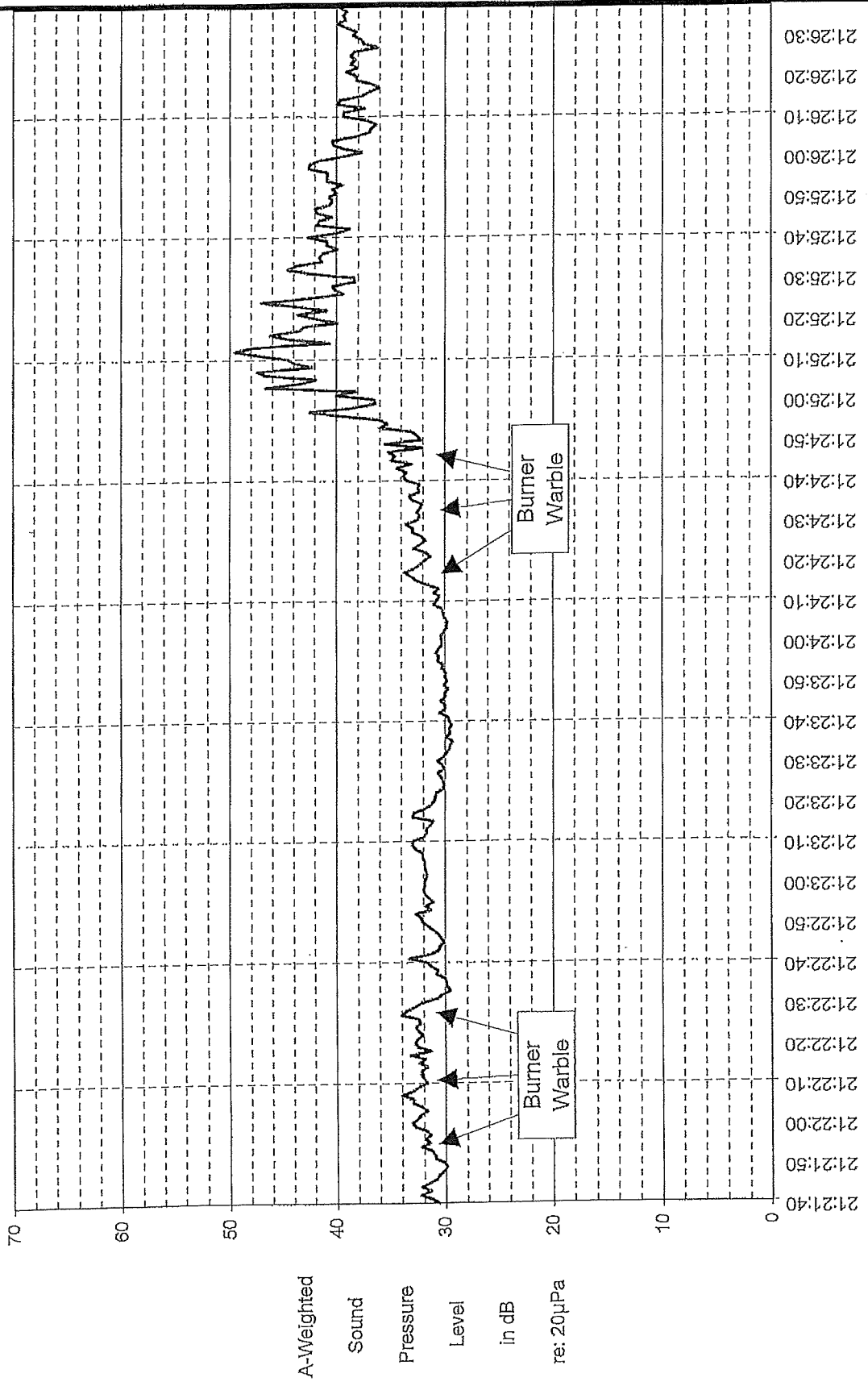


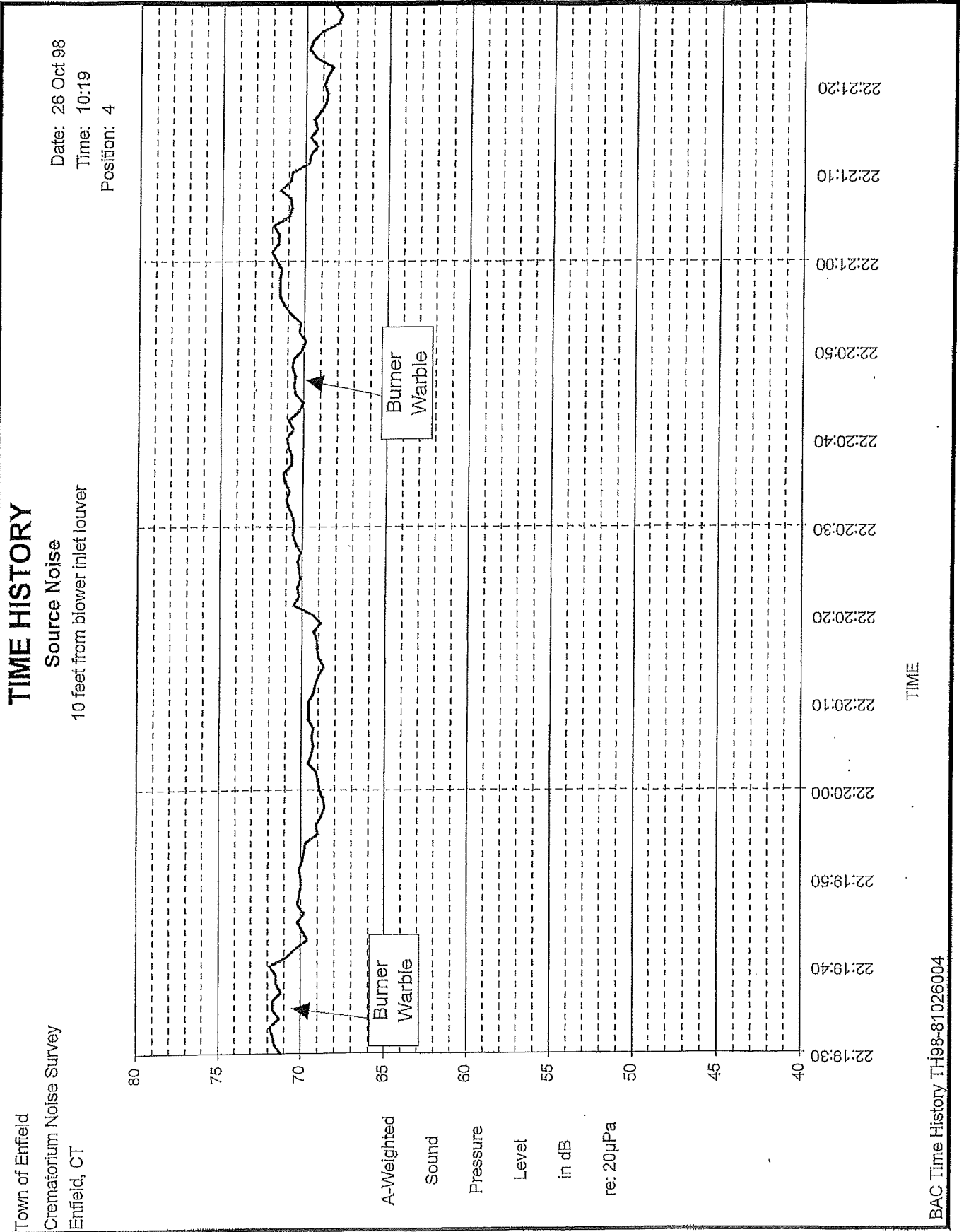
TIME HISTORY

Residential Background Noise -- #23 Indian Run
15 feet from back of house (NE)

Town of Enfield
Crematorium Noise Survey
Enfield, CT

Date: 26 Oct 98
Time: 21:21
Position: 3



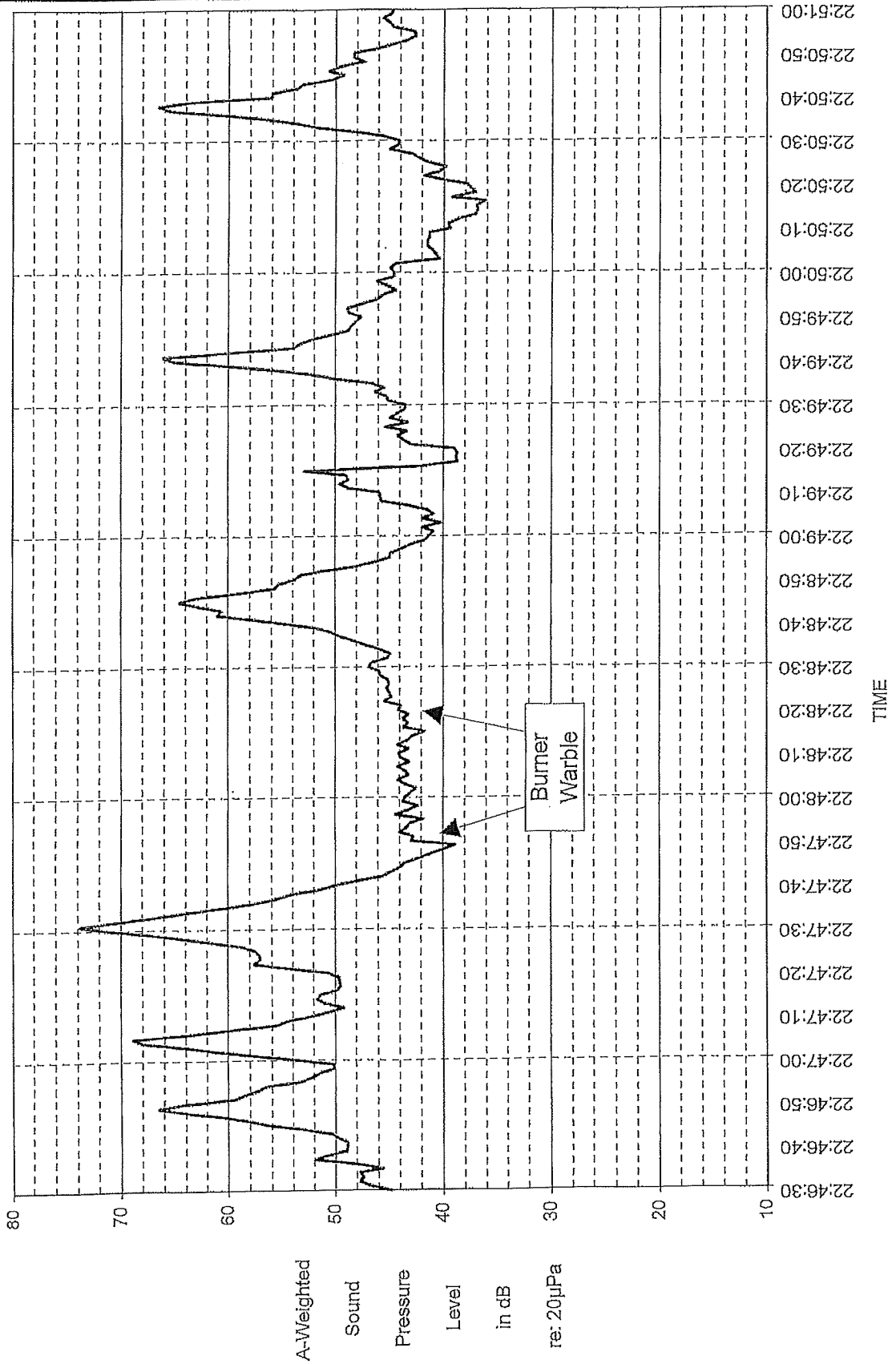


TIME HISTORY

Town of Enfield
Crematorium Noise Survey
Enfield, CT

Residential Background Noise -- #58 South Road
15 feet from side of house (W)

Date: 26 Oct 98
Time: 22:46
Position: 1



TIME HISTORY

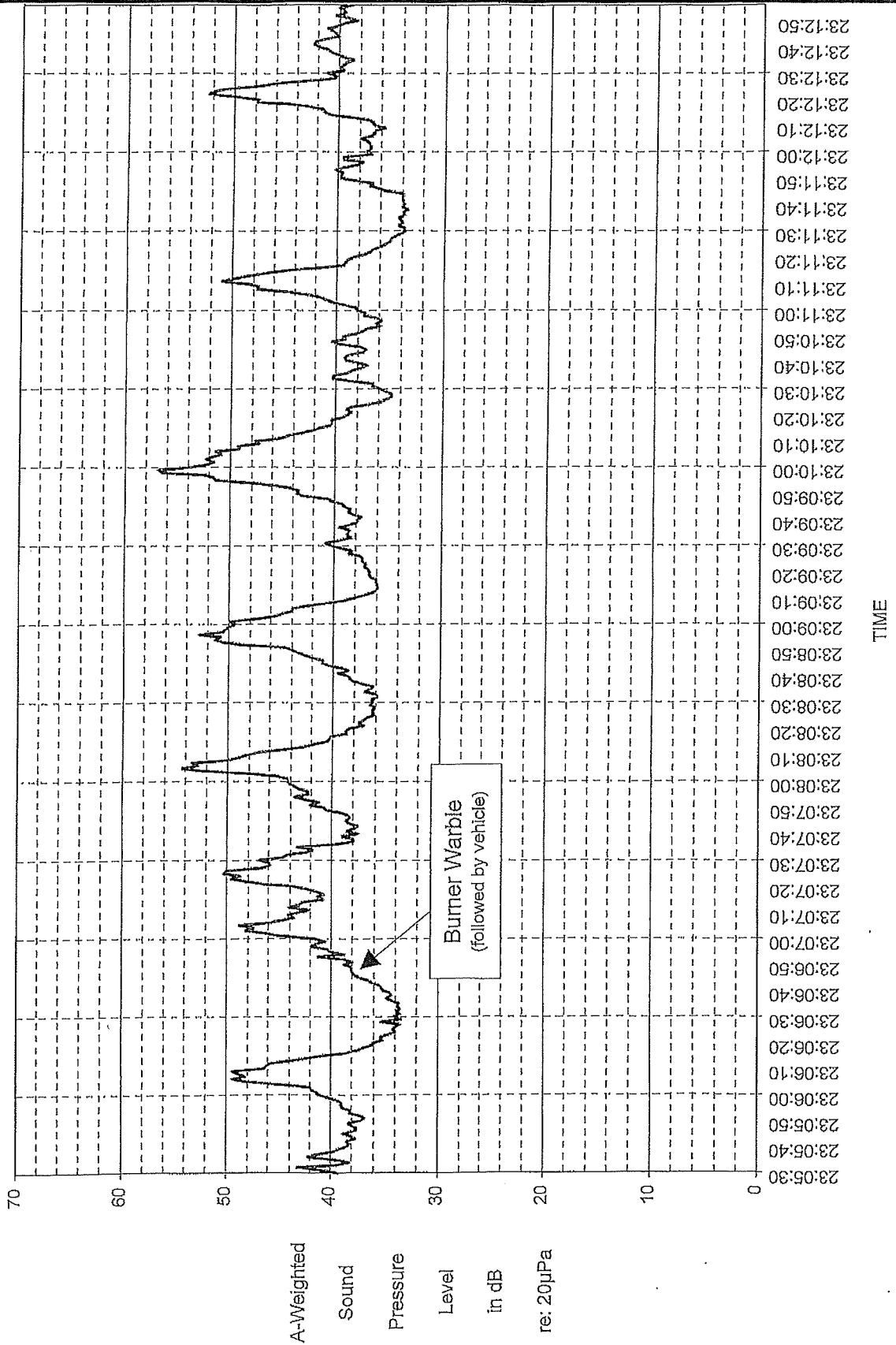
Town of Enfield

Crematorium Noise Survey
Enfield, CT

Residential Background Noise -- #81 South Road

Back Yard

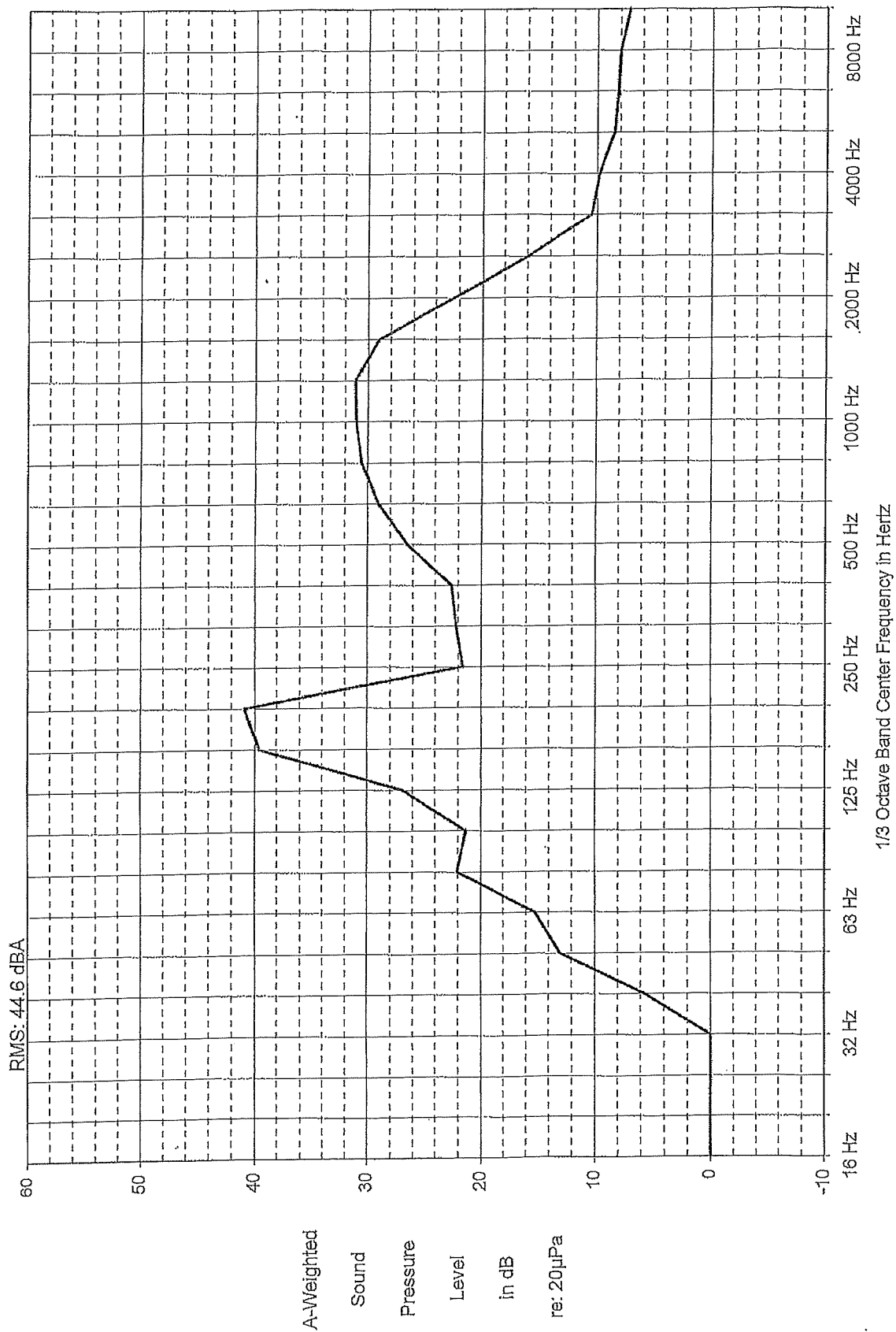
Date: 26 Oct 98
Time: 23:05
Position: 2



Residential Background Noise

#58 South Road
"Crematory Burner Cycle On"

Date: 26 Oct 98
Time: 22:48:10
Position: 1

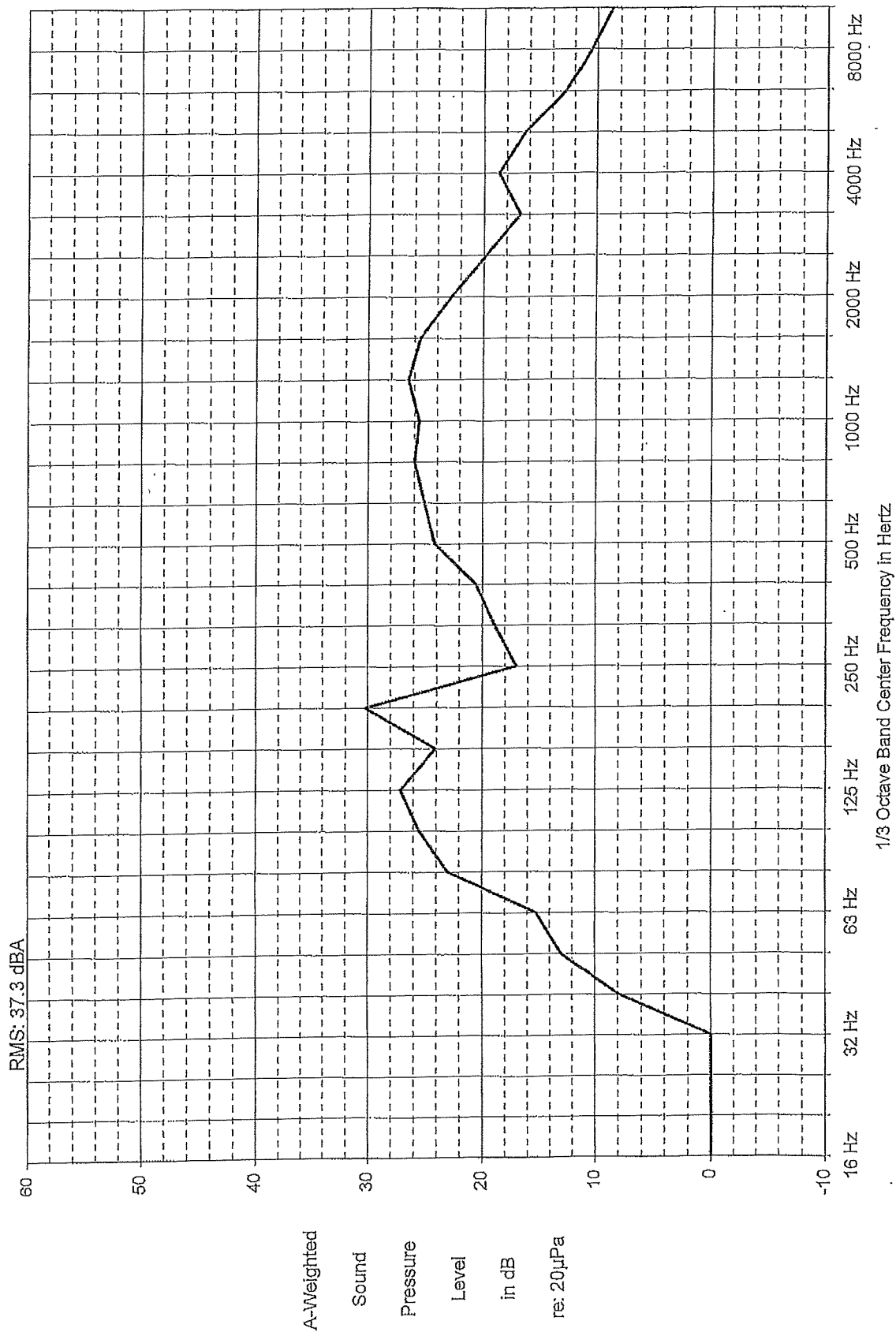


Residential Background Noise

Town of Enfield
Crematorium Noise Survey
Enfield, CT

#58 South Road
"Crematorium Burner Cycle Off"

Date: 26 Oct 98
Time: 22:50:15
Position: 1



BAC Graph 8102607b

Peak: 30 dB at 200 Hz

Exhibit C



Brooks Acoustics Corporation

30 Lafayette Square Vernon, Connecticut 06066 860-896-1081

2 May 2017

Mr. Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851

Subject: Proposal - Acoustical engineering services – Proposed Noise Ordinance Revision

Dear Mr. Candela:

Thank you for asking Brooks Acoustics Corporation (BAC) to submit a proposal to review, research and assist in a proposed revision of the City of Norwalk Noise Ordinance (Chapter 68).

I am familiar with the noise ordinance revision process, having assisted several Towns in Connecticut with similar projects, including Cromwell, Manchester and Enfield. Further, I serve as the Co-chair of the American National Standards Institute (ANSI) Committee on Community Noise Ordinances.

BAC is pleased to offer the following acoustical engineering services: A review will be made of the available documents on the subject matter. Research will be conducted of the appropriate criteria for sound emissions, including applicable noise ordinances and regulations with regard to zones and land uses. Suggested language will be crafted for a proposed noise ordinance revision, in collaboration with the Corporation Counsel, and other city officials as appropriate. The proposed ordinance revision may be presented at an appropriate venue, such as a public hearing, as needed. As appropriate, responses from stakeholders will be studied and may be incorporated into the proposed revision. A summary report of the study findings will be written, as may be appropriate.

The above described effort will be charged as Senior Consultant engineering time, at the labor rate of \$250/hour, plus miscellaneous laboratory and travel expenses, in accordance with the attached contract terms. If additional services are required, they will be provided at the attached terms and conditions contract rates.

As this is a potential ordinance revision matter, it is difficult to make an exact estimate of the labor hours and fees which are involved. Based on previous similar projects, the labor hours which may be required could range from 20 to 40 hours. The corresponding fees could be from approximately \$5000 to \$10,000, depending on the scope of services that are required. All efforts will be made to provide the engineering services required in the most expeditious manner and at the least cost.

Please review the attached contract terms sheet and return with an authorized signature to our CT office for processing, at the following address.

Brooks Acoustics Corporation
30 Lafayette Square, Suite 103
Vernon, CT 06066

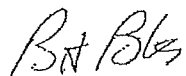
Attention: Kathie Thomas, Office Manager
Email: kathie@brooksacoustics.com
Phone: 860-896-1081

Please apply an authorized signature below to indicate agreement with these terms and return to our CT office in order to commence services.

_____	_____	_____
Name	Title	Date

I look forward to working with you on this important project.

Very truly yours,
BROOKS ACOUSTICS CORPORATION



Bennett M. Brooks, PE, FASA, INCE
President

Attachment

General Terms and Conditions

Fees: The total fee, as stated by Brooks Acoustics Corporation (BAC), shall be understood to be an estimate, and shall not be exceeded by more than ten percent without approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Hourly labor rates (US Dollars) are as follows:

Senior Consultant.....	\$250.00
Consultant.....	200.00
Senior Associate.....	160.00
Associate.....	130.00
Chief Technician.....	110.00
Senior Technician.....	100.00
Technician.....	90.00
Laboratory Assistant.....	80.00

The Minimum Fee for individual projects is \$2500.00.

A retainer fee of \$00.00 shall be paid by the Client to BAC, or a Purchase Order shall be issued, as a condition to commence services. Monthly progress payments shall be made during the project duration.

Reimbursable Expenses: Reimbursable expenses are defined as follows and shall be invoiced at direct cost: (1) Travel and Subsistence. (2) Reproduction of documents, telephone and telefax, shipping and mailing expenses. (3) Use of BAC vehicles at 55 cents per mile. (4) Any other direct disbursements and fees made on behalf of the client.

Indemnification: (1) The Client agrees to indemnify and hold harmless BAC against all damages, losses or costs to the extent caused by Client's negligent acts in connection with the project and the acts of anyone for whom the Client is legally liable. (2) Whereas job-site safety conditions are the sole responsibility of the Contractor, the Client agrees to hold harmless and indemnify BAC for and against all claims, damages, awards and costs of defense arising out of claims related to job-site safety. (3) The Client agrees to stipulate within the Contract Documents that the Contractor or Client shall purchase and maintain, during the course of construction, "all-risk" builder's risk insurance which names the contractor, the Client's agents and BAC as additional insureds.

Risk Allocation: In recognition of the relative risks, rewards and benefits of the project to both the Client and BAC, the risks have been allocated such that, BAC's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed ten times our fee or \$50,000, whichever is less. Such causes include, but are not limited to BAC's negligence, errors, omissions, strict liability, breach of contract and breach of warranty.

Fiduciary Responsibility: The Client confirms that neither BAC nor any of BAC's subconsultants or subcontractors owes a fiduciary responsibility to Client or owner. The

Client also confirms that the owner has so agreed in owner's agreement with client.

Termination: (1) This agreement between Client and BAC may be terminated by either party upon (7) seven days' written notice in the event of persistent failure of performance of the material terms and conditions of this agreement by the other party through no fault of the terminating party. (2) If this agreement is terminated during the course of performance of the work, BAC shall be paid the reasonable value of the services performed during the period prior to the effective date of termination of the agreement. (3) In the event of termination, BAC shall be paid all termination expenses resulting therefrom. (4) If, prior to termination of this agreement, any work designed or specified by BAC during any phase of the work is suspended in whole or in part for more than three months or abandoned after written notice from the Client, BAC shall be paid for such services performed prior to receipt of such notice.

Billings/Payments: Invoices for BAC's services shall be submitted, at BAC's option, either upon completion of such services or on a monthly basis. Invoices shall be payable upon receipt. Final invoice shall be payable upon receipt of final documentation - CASH ON DELIVERY (COD). Client shall be responsible for all costs of collection including reasonable attorney's fees.

Document Ownership: All documents, electronic files and any intellectual work, including patentable designs, produced by BAC under this agreement shall remain the property of BAC and may not be used by the Client for any other endeavor without the written consent of BAC.

Mediation: In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Accepted by: City of Norwalk, Connecticut
Proposed noise ordinance revision

(Client's Authorized Representative Signature)

Date _____
(Name & Title)

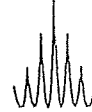
Bt Bles

(BAC's Authorized Representative Signature)

Bennett Brooks - President Date 2 May 2017
(Name & Title)

THE NOISE CONSULTANCY, LLC

309 VAN NESTE ROAD
FLEMINGTON, NEW JERSEY 08822



THE NOISE CONSULTANCY

(908) 237-0298

noiseconsultancy@aol.com

www.noiseconsultancy.com

SENT VIA EMAIL

May 3, 2017

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851

Dear Mr. Candela,

This letter is in response to your request for a proposal to assist you in amending Norwalk's Noise Code at Chapter 68, as we discussed on the phone yesterday. I've reviewed Chapter 68 and can see where its application could present practical difficulties.

As I noted in our phone conversation, in my capacity as President of the Noise Consultancy, I've assisted jurisdictions across the breadth of the US to amend or rewrite their noise ordinances. Please review my resume for a list of clients. I have also served as an expert witness in courts from New Orleans to New York City, including Federal Court.

In my capacity as Director of the Rutgers University Noise Technical Assistance Center, in the past 26 years I've trained maybe 8,000 noise enforcement investigators throughout the country from Alaska to Florida, as well as internationally. Thus, I am well aware of the capabilities of field enforcement officers.

Based upon our conversation, I will propose two approaches to offering my consulting services: as an hourly rate or as a comprehensive lump sum. Your decision may be based upon the extent of the services you desire.

HOURLY RATE: I can provide my services on an hourly basis, if you desire to perform much of the work in-house, with my assistance in reviewing that work. The rate for my services is \$220/hour, and travel is invoiced at \$165/hour. On-site consultation will be invoiced at \$1,800/day, plus travel.

INCLUSIVE PROPOSAL:

- One day of on-site consultation, scheduled at a mutually convenient date;
- Present an educational seminar on the basics of sound as it applies to noise regulation including: the various approaches to noise ordinances (i.e., nuisance ordinances v. performance ordinances) and the practical benefit/drawbacks to each approach, followed by an open discussion to determine the specific desires of Norwalk regarding what the jurisdiction desires to regulate or exempt from the ordinance;

- Tour the jurisdiction, specifically the problem areas;
- Conduct sound level measurements of problem sources &/or conduct a demonstration of the methodology of sound level measurement for enforcement purposes;
- Review whatever relevant documents are provided by the City of Norwalk;
- Draft a new or amended Noise Ordinance, as appropriate, based upon all information gathered;
- Perform whatever redrafting is necessary, until the new or amended Ordinance is adopted, or declared legislatively dead;
- Remain available for consultation via phone or e-mail.

The inclusive price for these services is \$9,500. Expenses are additional, and would include, if necessary, a hotel.

Additional days of consecutive on-site consultation will be invoiced at \$1,400/day plus expenses. Additional days of non-consecutive on-site consultation will be invoiced at \$1,800/day plus travel time and expenses.

If Norwalk desires training for your investigators, I will submit a separate proposal from the Rutgers University Noise Technical Assistance Center for such services.

If you have any questions whatever regarding this proposal, please don't hesitate to call me.

I look forward to the possibility of working with the City of Norwalk, and assisting you in your effort to deliver a better quality of life to your residents.

Sincerely,



Eric M. Zwierling, M.S., INCE, ASA
President

ERIC M. ZWERLING, M.S., INCE, ASA

Rutgers University Noise Technical Assistance Center
14 College Farm Road
New Brunswick, NJ 08901

The Noise Consultancy, LLC
309 Van Neste Rd
Flemington, NJ 08822

CURRENT POSITIONS

- 1991-Present *Director* - Noise Technical Assistance Center
Department of Environmental Sciences
Rutgers - The State University of New Jersey
- 1999-Present *President* - The Noise Consultancy, LLC
Noise Consultant/ Expert Witness (Since 1992)
[Expert for the Defendants, City of New York Law Department
-in- Robert Turley, *et al.*, - against- Rudolph Giuliani, *et al.*,]
- 1993-Present *Noise Enforcement Expert* - New Jersey Department of Environmental
Protection. Contracted (as Director of the RNTAC) to provide technical expertise
on noise related issues to the NJDEP and the State of New Jersey
- 1998-Present *Instructor* - "Noise Hazards" in 'Fundamentals of Industrial Hygiene'.
University of Medicine and Dentistry of New Jersey , School of Public Health,
Office of Public Health Practice
- 1998-Present Committee Member - S12 Working Group 41, Model Community Noise
Ordinances. Acoustical Society of America
- 2001-Present Committee Member - Technical Study Group on Community Noise
Institute of Noise Control Engineering
- 1994-Present *Instructor* - "Community Noise" in 'Environment and Public Health Course',
Rutgers Continuing Education Program, Cook College Office of Continuing
Professional Education.
- 1992-2005 *Adjunct Professor*- Rutgers University Department of Environmental
Sciences. Course: 375:336 'Community and Occupational Noise'
- 1998-2000 Commissioner - Franklin Township (NJ) Environmental Commission
- 2010-Present Board of Education, Chair - Green Committee
Readington Township, New Jersey

PROFESSIONAL AFFILIATIONS

- Member - Acoustical Society of America
Member - Institute of Noise Control Engineering

EDUCATION

ABD Ph.D. Candidate
Rutgers - the State University of New Jersey
Department of Environmental Sciences

Occupational Hearing Conservationist
Council for Accreditation in Occupational Hearing Conservation.

Graduate Certificate in Environmental Ethics -
Department of Philosophy, University of Georgia.

B.S., M.S. University of Georgia.

JURISDICTIONAL CERTIFICATIONS

Approved Noise Control Investigator
New Jersey Department of Environmental Protection
Pursuant to N.J.A.C. 7:29 -2.11(a)3

Approved Noise Consultant
New York City Department of Environmental Protection
Pursuant to N.Y.C.A.C. Section 24-231

Approved Instructor
State of Michigan
Department of Licensing and Regulatory Affairs
Bureau of Construction Codes

AWARDS

1997 *Advisor of the Year Award*
Rutgers College Student Activities Advisory Council
Faculty Advisor - Students for Environmental Awareness

2016 *Sustainable Raritan Award*
Outstanding Achievement in Public Education
Sustainable Raritan River Collaborative and Rutgers' Sustainable Raritan River Initiative

PUBLICATIONS

Zwerling, E.M. 2015. Proposed Noise Standard for Wind Turbine Generators on Farms.
State Agriculture Development Committee, New Jersey Department of Agriculture.

Zwerling, E.M., A. Myers, C. Shamoon. 2012. Analysis of the "Plainly Audible" Standard for Noise Ordinances. Proceedings of Inter- Noise 2012. Institute of Noise Control Engineering.

Zwerling, E.M., C. Shamoon. 2010. Proactive Regulation Engenders Creative Innovation - Quieting the Jackhammer. Proceedings of Noise-Con 2010. Institute of Noise Control Engineering.

Szulecki, S., E. Zwierling, C. Anderson, B. Turpin. 2010. Modeling with CadnaA to estimate the probability of awakening associated with train horns. Proceedings of Noise-Con 2010. Institute of Noise Control Engineering.

Zwierling, E.M., C. Anderson, S. Szulecki, F. Maimone, B. Turpin. 2009. Study of Train Noise in Teaneck, NJ. USEPA Agreement Number: X-83245701-0

Zwierling, E.M. 2005. Regulatory Scheme For Noise Enforcement In New Jersey . *Invited paper*. Journal of the Acoustical Society of America.V.118, No. 3, Pt 2 of 2, Sept. 2005, p. 1849.

Zwierling, E.M. 2004. Training as a Critical Component of Successful Noise Enforcement Programs. *Invited paper*. Journal of the Acoustical Society of America.V.115, No. 5, Pt 2 of 2, May 2004, p. 2568.

Zwierling, E.M. 2004. Noise Enforcement in Cities. *Invited paper*. Journal of the Acoustical Society of America.V.115, No. 5, Pt 2 of 2, May 2004, p. 2593.

Zwierling, E.M. 2002. Characteristics of Successful Local Noise Enforcement Programs. *Invited paper*. Journal of the Acoustical Society of America.V.112, No. 5, Pt 2 of 2, Nov. 2002, p. 2375.

Zwierling, E.M. 2002. Boom Car and Boom Box Code Drafting. The Quiet Zone. Spring 2002.

Zwierling, E.M. 2002. Hearing Protection. In *Encyclopedia of Public Health*, ed. Lester Breslow. Macmillan Reference USA.

Zwierling, E.M. 2001. Vehicle Enforcement. Rutgers Noise Technical Assistance Center. Developed for North Salem, NY

Zwierling, E.M. 2000. Regulation of Amplified Sound Sources. Proceedings of Noise-Con 2000. Acoustical Society of America / Institute of Noise Control Engineering. Newport Beach , CA. December 3-5, 2000 .

Zwierling, E.M. 2000. State of Michigan Model Noise Ordinance. Proceedings of Michigan Municipal League Annual Convention/ Michigan Association of Municipal Attorneys Annual Meeting. September 28-30, 2000 , Macinac Island , MI .

Zwierling, E. M. Contributing Editor. 1991-Present. Community Noise Enforcement. Rutgers Noise Technical Assistance Center.

Zwierling, E. M. Contributing Editor. 1998. Vehicle Sound Reproduction Enforcement. Rutgers Noise Technical Assistance Center. Developed for the City of Rochester, New York

Zwierling, E.M. 1997. Community Noise Enforcement: A Mature Technology. Hearing Rehabilitation Quarterly. 22:4, 4-8+.

Zwierling, E.M., D. Pinto, P. Hanna, J. Lepis, B. Turpin. 1997. Local Noise Enforcement Options and Model Noise Ordinance *With Pre-Approved Language for the State of New Jersey* . Rutgers Cooperative Extension Publication #E215.

Zwierling, E.M. 1997. Community Noise Infosheet. Environmental and Occupational Health Sciences Institute. Public Education and Risk Communication Division.

Zwerling, E.M. 1996. Turning Down the Volume: Effective Strategies for Community Noise Enforcement. The Police Chief. V. 63, Dec. 53-59.

Zwerling, E. M. & B. J. Turpin. 1996. Community Noise Enforcement: Reviving a Moribund Program or Developing One Anew. Proceedings of Noise-Con 96, The 1996 National Conference on Noise Control Engineering. 955-960.

Zwerling, E.M. 1996. Community Noise Pollution Certification and Assistance. Home page for Rutgers Noise Technical Assistance Center. <http://www.envsci.rutgers.edu/org/tntac/>

RESEARCH PROJECTS (at Rutgers University, as P.I. or Co-P.I.)

"Assistance Regarding Noise Standards for Wind Turbines on Farms," Granting Agency: New Jersey State Agricultural Development Commission (SADC), 2011 - 2015.

"Assistance Regarding Noise Standards for Photovoltaic Installations on Farms," for New Jersey State Agricultural Development Commission (SADC), 2010.

"Railroad Noise in Teaneck, New Jersey" Granting Agency: United States Environmental Protection Agency, 2005 - 2009.

"Road Noise Educational Outreach Program," Granting Agency: New Jersey Department of Transportation, 2002.

CONFERENCE PRESENTATIONS

Community Noise Control: Reviving a Moribund Program or Creating One Anew. International Code Council 2013 Conference. Atlantic City, NJ. September 30, 2013.

Emerging Noise Issues: Emergency Generators and Beach Bars. *Invited Presentation*. New Jersey Environmental Health Association Annual Public Health Conference. Atlantic City, NJ March 5, 2013.

Must we regulate civility? Yes, unfortunately. But, is it effective? *Invited lecture*. stillspotting () nyc . Guggenheim Museum. New York City. October 9, 2012.

Analysis of the "Plainly Audible" Standard for Noise Ordinances. Proceedings of Inter- Noise 2012. Institute of Noise Control Engineering. August 22, 2012.

Proactive Regulation Engenders Creative Innovation - Quietening the Jackhammer. *Invited Paper*. Proceedings of Noise-Con 2010. Institute of Noise Control Engineering. Baltimore, MD, April 20, 2010.

Environmental Health and Noise: Issues and Answers. *Invited Presentation*. New Jersey Environmental Health Association Annual Public Health Conference. Atlantic City, NJ March 3, 2008.

Noise Primer For Legal Professionals. *Invited Presentation*. New York State Bar Association Environmental Law Section Fall Meeting. Saratoga Springs, New York. October 13, 2007.

How to Control Noise Pollution in Your Community. *Invited Presentation*. 90th Annual Conference - New Jersey State League of Municipalities. Atlantic City , NJ November 15, 2005.

Regulatory Scheme for Noise Enforcement in New Jersey . *Invited Paper*. 150th Meeting - Acoustical Society of America . Minneapolis , MN October 17-21, 2005.

Noise Enforcement in Cities. *Invited Paper*. 147th Meeting - Acoustical Society of America . New York , New York May 24-28, 2004.

Training as a Critical Component of Successful Noise Enforcement Programs. *Invited Paper*. 147th Meeting - Acoustical Society of America . New York , New York May 24-28, 2004.

Community Noise Impacts. *Invited Presentation*. Topics in Public Health. New Jersey Department of Health and Senior Services. April 16, 2003.

Characteristics of Successful Local Noise Enforcement Programs. *Invited Paper*. First Pan-American/Iberian Meeting on Acoustics. Jointly Sponsored: Acoustical Society of America , the Iberoamerican Federation of Acoustics and the Mexican Institute of Acoustics. Cancun , Mexico .Dec 2-6, 2002.

Community-Based Environmental Noise Management, *Invited Panelist*; The Role of State and Local Governmental Agencies in Noise Abatement and Control, *Invited Panelist*. Inter-Noise 2002, The 2002 International Congress and Exposition on Noise Control Engineering. Dearborn , MI Aug. 19-21, 2002.

Community Noise Regulation and Enforcement: Theory and Practice. American Association of Code Enforcement. 4th Semi-Annual Education Conference. Bowie , MD. May 1-3, 2002.

Regulation of Amplified Sound Sources. Noise-Con 2000. Acoustical Society of America/Institute of Noise Control Engineering. Newport Beach , CA. December 3-5, 2000.

Writing and Enforcing a Noise Ordinance. Michigan Municipal League Annual Convention. Nuts and Bolts of Writing a Noise Ordinance. Michigan Association of Municipal Attorneys Annual Conference. Macinac Island , MI , September 28-30, 2000.

Municipal Noise Regulation - Theory and Practice. International Municipal Lawyers Association, Mid-Year Seminar. Washington , D.C. April 9-11, 2000.

Effective Strategies for Community Noise Enforcement:

Michigan Municipal League 9th Annual Education Conference. Mt. Pleasant, MI.
March 11, 1998.

The Association of Towns of the State of New York , Annual Meeting,
Educational Training Courses. New York City , February 16, 1998 .

American Association of Code Enforcement 8th Annual Business and Educational
Conference. Hagerstown , MD , October 20-25, 1997.

Community Noise Enforcement: Reviving a Moribund Program or Developing One Anew. Noise-Con '96, The 1996 National Conference on Noise Control Engineering, Seattle, WA, September 29-October 2, 1996.

NOISE ENFORCEMENT CERTIFICATION COURSES TAUGHT

Community Noise Enforcement
Vehicular Noise Enforcement
Vehicle Sound Reproduction Enforcement
Motor Sports Ordinance Enforcement
Octave Band Analysis for Enforcement Purposes

New Jersey :

Certification and recertification - every three months, 1991 to present.

On-Site:

New Rochelle, NY; Jacksonville, FL (four times); Long Beach, NY (three times); Everett, WA; St. Augustine, FL (three times); Seattle, WA (twice); Neptune Beach, FL; Gainesville, FL; Anchorage, AK (twice); Binghamton, NY (twice); Washington State Association of Code Enforcement (three times); Ft. Collins, CO; Shelter Island, NY (four times); New York City, NY [NYC DEP, NYPD, NYC Parks, NYC DDOC] (eight times); Rochester, NY; Newport, RI; Platekill, NY; Traverse City, MI; DeKalb County, GA (four times); Twinsburg, OH; Sandusky, OH; North Salem, NY; Honolulu, HI; Lafayette, LA (twice); Philadelphia, PA (twice); Barbados, West Indies (twice); Collier County, FL (three times); Walton County, FL (three times); Greenville County (SC); Vancouver B.C. (three times); Panama City Beach, FL (twice); Matanuska-Susitna Borough, AK; Union, OH; Ithaca, NY

ON-SITE ORDINANCE DEVELOPMENT WORKSHOPS

Lafayette, LA; Traverse City, MI; Plattekill, NY; St. Augustine, FL; Charleston County, SC; Lansing, MI; DeKalb County, GA; Walton County, FL; Overland Park, KS; Greenville County, SC; Decatur, AL; Yonkers, NY; Ossining, NY; Newport RI; Monroe County, FL; Fort Lauderdale, FL; Panama City Beach, FL

PARTIAL LIST OF CLIENTS

City of New York Law Department; City of Philadelphia Law Department, Environmental & Regulatory Compliance Division; U. S. State Department; City of New York Police Department; Bergen County (NJ) Utilities Authority; New York City Department of Environmental Protection; New York State Office of Attorney General; McDonald's Corporation, Lafayette (LA) Consolidated Government; McGlinchey Stafford (New Orleans); Gaeta Recycling, Inc.; National Ecology; Browning Ferris Industries; Township of Manalapan (NJ); Kansas State Legislature; Readington Township (NJ); City of Lansing (MI); City of Tacoma (WA); City of St. Augustine (FL); Atlantic Development and Management Corp.; CareMatrix Corporation; County of Charleston (SC); DeKalb County (GA); Greenville County (SC); Ethicon, Inc.; City of Yonkers (NY); Walton County (FL); City of Overland Park (KS); City of Newport (RI); City of Ossining (NY); Franklin Township (NJ); Alliance to Save Southern Ulster's Rural Environment; Roche Molecular Systems; Wheelabrator, Inc.; Monroe County (FL); City of Juneau (AK); Township of Branchburg (NJ); City of Eugene (OR); Union County United (PA); City of Fort Lauderdale (FL); City of Panama City Beach (FL); Stop & Shop Supermarket Company; Track Racket (Millville, NJ); Green Lawn Cemetery (Columbus, OH); Nissan Motor Company, Ltd.; City of Union (OH); City of Ithaca (NY); SA Engineering; Upper Deerfield Township (NJ)

Bike-Walk Advisory Committee

MEMORANDUM TO FILE

Date: June 5, 2017

From: Brian Candela

RE: **Bike Walk Ordinance requests for the June 20, 2017 committee meeting**

- 1) **Can you amend the proposed Bike Walk Ordinance to include a disclaimer that is similar to the disclaimer found in the Arts Commission Ordinance**

Answer: The proposed Bike Walk Ordinance is attached as Exhibit A.

- 2) **Can you amend the proposed Bike Walk Ordinance to include the changes that were recommended by members of the Ordinance Committee at the May 16, 2017 meeting?**

Answer: The proposed Bike Walk Ordinance is attached as Exhibit A.

- 3) **Email Bruce Chimento and find out more about the Master Sidewalk Plan?**

Answer: Email on May 30, 2017 at 3:30 p.m. All emails are attached as Exhibit B.

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Answer: Email on June 5, 2017 at 12:22 p.m. All emails are attached as Exhibit B.

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Answer: Email on June 5, 2017 at 12:22 p.m. All emails are attached as Exhibit B.

Brian,

I far as I know there is no sidewalk master plan. There are areas of the City that are described as "Urban Core" where concrete sidewalks are required and of course, there is a difference between footpaths and sidewalks.

Bruce J. Chimento, P.E., Director of Public Works
{00025045.DOCX 1}

Exhibit A

[Proposed Ordinance]
[Revisions updated after Ordinance Committee meeting on 05/25/17].

Chapter _____. Bike/Walk Advisory ~~Committee~~ Commission

§ _____. Composition.

The Bike/Walk Advisory ~~Committee~~ Commission shall be composed of seven members to be nominated by the Mayor and approved by the Common Council. The minimum qualifications for membership are that an individual must live in Norwalk. The Mayor shall designate one of the seven members as Chairman. Each member of the ~~Committee~~ Commission shall be appointed for a term of three years, and terms shall be staggered. The terms of the initial members shall be as follows: two members with terms to expire June 30, 2018; three members with a term to expire June 30, 2019; and two members with terms to expire June 30, 2020. Thereafter, the terms for all members shall be for three years commencing on July 1st. ~~If a member shall terminate in advance of his or her term, his or her replacement shall be appointed by the Mayor to complete his or her term.~~ The ~~Committee~~ Commission may, upon a majority vote, request that the Mayor to remove any member who is absent from 25%[3] or more meetings in any 12 month period ~~or more in a year~~. Any vacancy shall be filled by the Mayor with the approval of the Common Council for the unexpired term of the member whose place shall become vacant. Members shall serve without compensation.

The Directors ~~or their designees~~ of the Planning & Zoning, Public Works, and Health Departments, the Executive Director of the Redevelopment Agency ~~or his designee~~, and the Police Chief, ~~or their respective~~ ~~his~~ designees, shall each serve ex officio without a vote. Staff support shall be provided by the Public Works and Health Departments.

§ _____. ~~Duties~~ Purpose.

A. The Bike/Walk Advisory ~~Committee~~ Commission supports bicycling and walking as safe, ~~convenient~~ accessible, and sustainable forms of transportation and recreation that increase Norwalk's livability and economic vitality, and improve public and environmental health.

B. The purpose of the ~~Committee~~ Commission ~~will~~ shall be ~~to work with the Planning and Zoning, Public Works and Health Departments to:~~

(1) Promote Complete Streets programs and facilities for bicycles and pedestrians in Norwalk;-

~~(2) Coordinate public awareness campaigns, educational trainings and events;~~

~~(23)~~ Review, promote, and update Norwalk's Master Bicycle Plan;

(3) Review, promote, and update Norwalk's Pedestrian Plan;

~~(43)~~ Review and provide advice in the implementation of the transportation component of the Plan of Conservation and Development; and

~~(5)4) Work with appropriate City agencies and departments to review~~ Review and provide advice on transportation and other projects having an impact on walking and biking in the City Norwalk from the earliest stage possible.

[Proposed Ordinance]

[Revisions updated after Ordinance Committee meeting on 052/2521/17].

(6) The Commission shall provide annual reports to the Common Council of the City of Norwalk to summarize the Commission's work over the course of the year and to identify key policy issues affecting the safety of and access for bicyclists and pedestrians in Norwalk.

C. The Commission may also:

(1) Coordinate and promote public awareness campaigns, education, and events related to bicycle and pedestrian issues; and

(2) Conduct research, ~~and evaluation~~, and seek grants in furtherance of its purpose, ~~and accept donations from private individuals and public entities in furtherance of its purpose.~~

D. In no event shall the acts or proposed acts of this Commission conflict with the lawful designated duties of any other body or Commission of the City of Norwalk.

Exhibit B

Candela, Brian

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:37 PM
To: Chimento, Bruce J.
Cc: Candela, Brian
Subject: Bike Walk

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Thanks in advance. I hope you had a nice Memorial Day weekend.

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

Candela, Brian

From: Candela, Brian
Sent: Monday, June 05, 2017 12:22 PM
To: Chimento, Bruce J.
Cc: Candela, Brian
Subject: RE: Bike Walk

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Thanks in advance. I hope you had a nice weekend.

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:37 PM
To: Chimento, Bruce J. <bchimento@norwalkct.org>
Cc: Candela, Brian <bcandela@norwalkct.org>
Subject: Bike Walk

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Thanks in advance. I hope you had a nice Memorial Day weekend.

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

Candela, Brian

From: Chimento, Bruce J.
Sent: Monday, June 05, 2017 4:15 PM
To: Candela, Brian
Subject: RE: Bike Walk

Brian,

As far as I know there is no sidewalk master plan. There are areas of the City that are described as "Urban Core" where concrete sidewalks are required and of course, there is a difference between footpaths and sidewalks.

Bruce J. Chimento, P.E.
Director of Public Works



City of Norwalk
125 East Avenue
Norwalk, CT 06856-5125
Tel (203) 854-7990

From: Candela, Brian
Sent: Monday, June 05, 2017 12:22 PM
To: Chimento, Bruce J.
Cc: Candela, Brian
Subject: RE: Bike Walk

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Thanks in advance. I hope you had a nice weekend.

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901

From: Candela, Brian
Sent: Tuesday, May 30, 2017 3:37 PM
To: Chimento, Bruce J. <bchimento@norwalkct.org>
Cc: Candela, Brian <bcandela@norwalkct.org>
Subject: Bike Walk

Bruce:

Can you provide me with any information/documentation about the Master Sidewalk Plan for the City of Norwalk? I need this documentation for the next ordinance committee meeting. If these documents/information exist, would you be able to get it to me by the end of the week?

Thanks in advance. I hope you had a nice Memorial Day weekend.

Brian Candela, Esq.
Assistant Corporation Counsel
City of Norwalk
125 East Avenue
Norwalk, CT 06851
Phone: (203) 854-7295
Fax: (203) 854-7901