

Public Hearing – Meeting Summary

Petition for Rulemaking- EPB Rule 4

Monday, February 11, 2013

5:00 p.m.

Members Present

Steven T. Jenkins, Chairman
Michelle Tappouni, Vice Chairman
Bobby L. Baker, P.E.
Tony C. Bellamy, P.E.
Gary Bowers, M.D.
Nick Howland
Lucinda Sonnenberg, Ph.D.
Michelle L. Mahoney, P.E.

Members Not Present

None

Staff/ Resources Present

James Richardson, EPB Administrator
Vince Seibold, P.E., Chief
Ruby Tucker, Executive Secretary I
Cherry Shaw, OGC
Steve Pace, Environmental Engineering Manager Senior

Visitors

Scott Shine

Call to Order

Chair Jenkins called the Public Hearing to order at 6:16 p.m.

Certification of Public Notice

Vince Seibold, P.E., Chief of Environmental Quality certified that the public notice required by Florida law appeared in the Financial News & Daily Record on January 18, 2013.

Chair Jenkins read a statement which provided the outline of how the hearing would proceed. He requested that the petitioner and staff limit their presentations to ten minutes each. After the presentations the petitioner will be granted an additional five minutes to respond to comments made by staff and questions from the board. Staff will make comments, then comments from the public, a board discussion and board vote. The issue before the board is to either initiate the rulemaking process or deny the petition.

Presentation by Petitioner

Scott Shine, 4390 Richmond Park Dr. E., Jacksonville, Florida, stated that he purchased his property in 1994 and a few years later noise issues began with the Windsor Parke Golf Club which is adjacent to his property. The operation of maintenance equipment, mowers, blowers, etc., began as early as 5:22 a.m. Upon learning of Rule 4: Noise Pollution, the petitioner registered noise complaints and staff began investigations. Windsor Parke Golf Club was cited and the noise issues

ceased. In 2005 the noise issues returned and modifications were made in the Golf Club permit to mitigate the noise impacts but noise problems continued periodically.

Mr. Shine read language contained in JEPB Rule 4.207 prior to amendments in 2010 and the current language. He indicated that changes to JEPB Rule 4:207 in 2010 include golf course landscaping equipment used during nighttime hours. Mr. Shine stated that since the rule change, the noise has diminished the enjoyment of his home and he is requesting that the Board open JEPB Rule 4.207 to initiate rulemaking proceedings to restore the original language as written in 2010.

Program Staff Comments

Steve Pace, Environmental Engineering Manager Senior, shared historical information regarding noise pollution, the impacts, measures taken to protect the community, noise regulations and permitting.

Mr. Pace stated that EQD discontinued issuing noise permits due to staffing issues and as a result JEPB Rule 4.207 was amended to include golf course landscaping equipment in the exceptions for construction or maintenance operations during nighttime hours not to exceed 60 dBA. The work practice is exempted, not the dBA level. By rule, 65dBA is permitted to residential property and to sensitive areas (schools, daycare, hospitals). EQD has always made every effort to protect the public health and welfare of the community.

Mr. Shine stated that the language in JEPB Rule 4.213 - Leaf or Trash Blowers and Lawn Maintenance Equipment - states that leaf or trash blowers and lawn maintenance equipment between the hours of 9:00 pm and 7:00 am is prohibited. The language in JEPB Rule 4.213 is what he is requesting - maintenance equipment between the hours of 9:00 pm and 7:00 am be prohibited.

Mr. Pace stated that when there is specific regulation that addresses something, it trumps the general rule. The general rule relates to leaf or trash blowers and lawn maintenance equipment and the rule that specifically addresses golf course landscaping equipment is the rule that applies to golf course landscaping equipment. This rule trumps the general rule.

Mr. Shine mentioned that it has been stated that due to a lack of staffing issues the rule was changed. In the original language prior to 2010, nighttime hours for the maintenance operation was prohibited and with the new language nighttime hours of operation is allowed and staff has to measure dBA levels. There should be other agencies that can enforce this law.

Vince Seibold, Chief shared that patrol officers at the Jacksonville Sheriff's Office (JSO) have been trained and certified in Community Noise Measurements by Rutgers University. Decibel meters were provided to those JSO Officers and they've been very successful in our enforcement after hours.

Comments from the Public

None.

Board Discussion and Staff Clarification

A lengthy discussion occurred regarding the reason for changes made to JEPB Rule 4.207 in 2010, the work practice, the board's options, opening the petition, the time frame for amendments, etc.

James Richardson, EPB Administrator stated that EPB Rule 1.202 provides direction for the EPB as it relates to this matter. It reads as follows:

1.202 Petition for Rulemaking

A person regulated by Board Rules or having a substantial interest in any Board Rule may petition the Board to adopt, amend or repeal a rule. The petition shall specify the action requested and, upon receipt of the petition, the Board shall publish a notice that the petition has been filed which will include the name of the petitioner and the type of action requested in the petition. Not later than 30 days after the date that the petition was filed, the Board shall either initiate rulemaking proceedings pursuant to this Rule or deny the petition with a written statement of its reasons for the denial, which shall be delivered to the petitioner and published.

Cherry Shaw, OGC, stated that the Board has the option to open the rule for rulemaking proceedings or deny the petition.

Board Vote – Accept or Deny Petition

A motion to open the rule for rulemaking was properly offered and seconded. The motion was approved unanimously.

Procedural Summary

Cherry Shaw, OGC, stated that the Board has opened the rule and initiated rulemaking in response to a Petition for Rulemaking seeking the repeal of changes to JEPB Rule 4.207.

Adjournment

The Public Hearing adjourned at 7:30 p.m.

Respectfully submitted

Ruby Tucker, Executive Secretary I
Environmental Protection Board