

ENVIRONMENTAL PROTECTION BOARD
City of Jacksonville
Wednesday, May 22, 2013
5:00 p.m.

EPB Special Meeting Summary

Members Present:

Tony Bellamy, P.E., Chair
Bobby L. Baker, P.E.
Michelle Tappouni
Steven Jenkins
Gary Bowers, M.D.
Nick Howland
Lucinda Sonnenberg

Members Not Present:

None

Staff/Resources Present:

Scott Trebatoski, Acting Division Chief
James Richardson, EPB Administrator
Ruby Tucker, Executive Secretary I
Jason Teal, OGC
Jody Brooks, OGC
Steve Pace, P.E., Environmental Engineering Manager Senior
Dana Brown, Environmental Enforcement Administrator

Visitors:

Andrew Sears, JEA
Jay Worley, JEA
Gage Miller, Golder Associates
Robert Kermitz, ETM
Daniel Colley, JEA
Wayne Young, JEA

CALL TO ORDER

Chair Steven Jenkins called the meeting to order at 5:02 p.m. He thanked the members for attending this Special Meeting.

UPDATE – PROPOSED PHASE II COJ REORGANIZATION

Mr. Jenkins provided an update to the EPB on conversations that have taken place since the last EPB meeting. He asked Jim Robinson to provide an update as to modifications that will be presented to the Council for Ord. 2013-209. Mr. Robinson acknowledged the EPB's concerns and expressed that the Administration was also aware. He presented a revised reporting structure for Public Works. He also clarified requirements for the Environmental Division Chief and Environmental Quality Activity Manager.

PUBLIC HEARING

Mr. Jenkins reconvened the continued Public Hearing for the Modification of the Variance Order for the JEA Riverside Water Main project.

PRESENTATION BY EPB STAFF

Mr. Richardson provided background and history of the variance order and the request before the EPB.

PRESENTATION BY OGC

Jason Teal, OGC, advised the board of the options before them and provided instructions that the EPB would have to base their decision on the evidence presented by JEA to show "Just Cause" for the variance to be modified.

PRESENTATION BY PETITIONER

Jay Worley, JEA, thanked the board and outlined the JEA presentation.

Robert Kermitz, ETM, provided information on the project as it was contemplated, and how it is currently being conducted. He went through a number of photographs and fielded a number of questions about specific project conditions.

Gage Miller, Golder Associates, provided background information on the sound levels being generated by the project. He explained the sound modeling done as the project was contemplated and showed pictures and video of current project conditions.

Andrew Sears, JEA, discussed how the original variance application was developed, what was contemplated, what was committed to and actions that were taken once problems were identified. One of the actions taken was to cease all night time operations a little more than a week into the project when problems were encountered and the nature of the project was revised. He then addressed the modifications being sought in the revised variance. JEA seeks to: keep variance condition (A) and modify it so that night time work is only done on an as-needed basis, remove conditions (B) and (D) since there has been significant amounts of data collected and continued recording is not needed and keep condition (C). Further, JEA seeks an increase in the sound level from 85 dBA at all times to an L10 of 85 dBA over an 8 hour shift or 110 dBA. Also, they would like to resume and continue nighttime operations and include the May Street to Lancaster section of the project in the variance order.

There were several questions and discussion to clarify the JEA variance modification request.

STAFF REBUTTAL

Steve Pace, P.E., Environmental Engineering Manager Senior began by covering a few items included in the JEA presentation, specifically that they just developed mitigation devices which had not been implemented, that they are not eliminating all night and that unanticipated noises should have been considered.

He then discussed the modified application and the request. He stated the request sought a 110 dBA for a 24 hour period 7 days a week. He discussed that they requested an L10 of 85 dBA over an 8 hour shift. They requested no monitoring. They are now requesting the use of back-up beepers.

Mr. Pace advised that JEA has not met prior commitments to minimize impact and are seeking no limit to noise generation. He reported that EQD staff does not see this as a reasonable request. He asked that the EPB not consider the modification request and take action to revoke the variance currently in place because of JEA's inability to meet the conditions imposed.

There were questions and discussion to clarify the recommendation provided by EQD staff.

COMMENTS FROM PUBLIC

None.

STAFF / PETITIONER REBUTTAL OR CLARIFICATION TO PUBLIC COMMENT

None.

BOARD DISCUSSION AND CLARIFICATION

The Board came to a consensus decision that they would not revoke the variance. The Board then continued discussion and questions posed to JEA and EQD staff. They expressed several concerns of project conditions and weighed the importance of the project. As the board vetted their options and possible conditions of a modified variance, the Chair asked JEA to consider sound monitoring conditions for the project during a recess of the hearing.

Upon reconvening the hearing, the Chair continued the discussion among the board in order to develop a variance order with conditions. With the assistance of the EPB Counsel, a potential variance modification order was developed and presented to the Board for consideration.

BOARD ACTION

The Chair entertained the following motion:

1. Petitioner is hereby **GRANTED** a Variance Modification for its Variance originally approved on January 25, 2013 from Environmental Protection Board Rules 4.207A and 4.207B, subject to the following conditions:

- (a) The original Variance application and Variance Modification application and commitments therein shall be adopted and incorporated as part of the conditions of this Variance Modification as set forth below.

- (b) There shall be a maximum Noise level of 85 dBA for construction and maintenance operations during nighttime operations and, during daytime working hours, Petitioner shall be limited to a noise level of L-10 85 dBA, with a maximum noise level not to exceed 110 dBA.
- (c) Nighttime construction shall not be scheduled but shall only be allowed in extenuating circumstances. Any time construction operations are required during nighttime hours, Petitioner shall provide notice to EQD staff before the close of business on the day of the extended construction. During all nighttime construction operations, Petitioner shall adhere to all conditions of and obligations required in the original Variance and original Variance application.
- (d) During daytime and nighttime construction operations, Petitioner shall implement engineering controls for all chop saws and impact wrenches and similar types of equipment.
- (e) Petitioner shall continue noise monitoring during a full daytime work shift when normal and representative construction operations are ongoing for five (5) consecutive days after the engineering controls identified in paragraph (d) above have been implemented. The purpose of this monitoring is to verify compliance with the daytime noise limits established in this Variance Modification. After the five-day monitoring period is concluded, Petitioner shall continue monitoring during daytime shifts when normal and representative work is being conducted for one (1) day per week for the remaining duration of the project.
- (f) The requirements of this Variance Modification shall also apply to Riverside Avenue between May Street and Lancaster Street, which was previously excluded under the original Variance.
- (g) Petitioner shall provide a monthly status report of the construction project, and such report shall include information about the number of complaints, if any, to the Air & Odor Committee. The report shall also include a plan for any remediation or corrective action in response to residents' complaints. Further, the report shall include the number of noise level exceedances and any remediation actions taken.
- (h) Petitioner shall ensure that sound measures be performed in accordance with the existing EPB Rule 4.
- (i) This variance shall expire on **November 1, 2013**.

2. A violation of the terms of this Variance Modification shall result in the implementation of a civil penalty in the amount of \$500 per violation.

3. Entry of this Variance does not relieve the Petitioner of the requirement to comply with applicable federal, state or local laws, regulations or ordinances.

The motion was properly seconded and approved unanimously by the Board.

PROCEDURAL SUMMARY

Mr. Teal confirmed that the Board took action to modify the existing variance in the manner described above.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 8:40 p.m.

Respectfully Submitted

Ruby Tucker, Executive Secretary I
Environmental Protection Board