

Air Odor Noise Committee

Amy Fu, P.E. – Chair
Caleena Shirley
David Wood
Thomas Deck
Edmund Clark, M.D.

Education & Public Outreach

David Wood – Chair
Lucinda Sonnenberg, Ph.D.
Bobby Baker, P.E.

**Water Committee**

Bobby L. Baker, P.E. – Chair
Thomas Deck
Roi Dagan, M.D.
Edmund Clark, M.D.
Caleena Shirley

Lucinda Sonnenberg, Ph.D. – Chairman
Amy Fu, P.E. – Vice Chairman
Bobby L. Baker, P.E., Edmund Clark, M.D., Roi Dagan, M.D.,
Thomas Deck, Caleena Shirley, David Wood

Jacksonville Environmental Protection Board

Monday, June 17, 2019

BOARD MEETING SUMMARY**MEMBERS PRESENT:**

Thomas Deck
Bobby Baker, P.E.
Lucinda Sonnenberg, Ph.D., Chair

Caleena Shirley
Edmund Clark, M.D.
David Wood

MEMBERS NOT PRESENT:

Amy Fu, P.E., Vice Chair
Roi Dagan, M.D.

STAFF/RESOURCES PRESENT:

James Richardson, JEPB Administrator
Melissa Long, EQD Chief
Jeff Close, OGC
Michael Williams, EQD Air Branch

Tree Kilbourn, EQD Enforcement
Terry Carr, EQD Water Branch
Bryan Mosier, Neighborhoods Dept.
Diane Tropica, CART Provider

VISITOR(S) PRESENT:

Mark Missigman
Tim Volpe
Eleonor Sands
James Floyd
Michelle Murphy
Rebecca Litz
Steve Diebenow
Chris Savery
Tom Gillis

Jeff York
Jordan Castroverde
Leslie O'Neal
Joel Nunnery
Erich Reichle
Derrick Fagg
Kenny Vande Velde
Hon. Lori Boyer
H. Paek

**CALL TO ORDER
INTRODUCTIONS**

LUCINDA SONNENBERG

Chair Sonnenberg called the meeting of the Jacksonville Environmental Protection Board (JEPB) at 5:02 pm. A quorum was established.

CHAIRMANS REMARKS

The Chair mentioned that there were three items referred to the Steering Committee from the last meeting. We have assigned two of them to the Air and Water Committees for discussion. There would be a joint meeting of those committees next week. The third item is placed on this agenda for discussion.

COMMENTS FROM THE PUBLIC

Councilwoman Lori Boyer shared her thoughts and concerns regarding funding requests from the EPTF. She would suggest that future requests consider the impact to the environment and making improvements.

APPROVAL OF MINUTES

A motion to approve the summary for the April 15, 2019 monthly meeting was made (Deck), properly seconded (Shirley) and approved by the body.

A motion to approve the summary of the May 20, 2019 monthly meeting was made (Shirley), properly seconded (Deck) and approved by the body.

CONSENT ORDERS

(Air/Odor/Noise)

- **none**

(Water/Haz Mat)

- **BW Philips Bowden, LLC (WP-19-52)** - Unlawful discharge to ground, surrounding environment and stormwater (MS4) (indirect); Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$1,472** [*\$2,300 less 20% for good faith efforts to cooperate and 20% discount for unique circumstances at the site*]
- **Pipeline Constructors, Inc. (WP-19-42)** - Unlawful discharge to stormwater (MS4); Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$6,400** [*\$8,000 less 20% for good faith efforts to cooperate*]
- **The Haskell Company (WP-19-31)** - Unlawful discharge of turbid water to surface waters; Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$6,400** [*\$8,000 less 20% for good faith efforts to cooperate*]
- **IM6282, LLC c/o Pattillo Industrial Real Estate (WP-19-27)** - Unlawful indirect discharge of turbid water to wetlands and sediment to stormwater (MS4); Failure to comply with erosion and sediment control standards – proposed settlement fee: **\$2,300**
- **Unifirst Corporation (WP-18-82)** - Unlawful discharge to streets and wetlands; Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$6,720** [*\$8,400 less 20% for good faith efforts to cooperate*]

- **United Parcel Service, Inc. (WP-18-35)** - Unlawful discharge of sediment and turbid water to stormwaters (MS4); Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$8,320** [*\$10,400 less 20% for good faith efforts to cooperate*]

A motion to approve the consent orders was made (Shirley), properly seconded (Clark) and approved by the body.

- **Petticoat-Schmitt Civil Contractors, Inc. (WP-19-39)** - Unlawful discharge to stormwater (MS4) and surface waters (Seaton Creek) overland flow; Failure to comply with erosion and sediment control standards – **proposed settlement fee: \$0** due to demonstrated inability to pay

After some discussion, a motion was made to approve the consent order (Deck), properly seconded (Shirley) and approved by the body.

ENFORCEMENT REPORT

TREE KILBOURN

- Compliance Plan - **Winn Dixie Stores Leasing, LLC (WP-19-25)** - Unlawful discharge of sewage or other untreated wastewater to surrounding environment and stormwater (MS4); Failure to maintain wastewater collection/transmission system to function as intended; Unlawful bypass of wastewater collection/transmission system or treatment facility

Consent Order settlement fee: \$16,000 assessed; SEP approved mitigation credit of \$1,360 for autodialer; Remaining penalty \$14,640

Consent Order requirements: SEP photos and invoices due to EQD by 6/30/19 by previous order; First monthly status report by 7/1/19; DEP permit application by 9/30/19 with work completed and DEP Request for Approval by 3/15/20; If independent connections can be made, modification request by 11/30/19; \$14,640 penalty paid or SEP proposals by 6/30/20

A motion was made to approve the consent order modifications (Shirley), was properly seconded (Deck) and approved by the body.

Ms. Kilbourn entertained questions on the monthly enforcement report – there were none.

PRESENTATION(s)

Mr. Richardson shared that the presentation by Kay Ehas scheduled for the evening had been postponed to the July meeting.

PUBLIC HEARING(S)

- Noise Variance Appeal / Request for Reconsideration – Vista Brooklyn Project

Chair Sonnenberg announced that the JEPB would now consider the Vista Brooklyn Noise Variance Appeal and Request for Reconsideration.

Board Counsel Jeff Close shared that the JEPB had received an appeal request for the mentioned noise variance. After a review of the Jacksonville Ordinance Code and JEPB Rules, the Office of General Counsel determined that an appeal was not in order. He suggested that the JEPB could entertain the request for reconsideration and advised that would be the proper course of action.

Representing the petitioner, Tim Volpe of Adams & Reese, LLP addressed the Board and provided rationale as to why the variance should be reopened and reconsidered. (Presentation attached)

Representing the contractor, Jeff York of Shutts & Bowen, LLP addressed the Board and provided rationale as to why the variance was in proper order and that the contractor had operated within the guidelines established. (Presentation attached)

Discussion ensued regarding the variance, compliance and notices to residents. EQD staff shared that the contractor was in compliance and had made several additional steps to mitigate noise on the site.

A motion to approve the reconsideration because the process did not work was made (Clark) and properly seconded (Shirley). After discussion, the motion failed (3-3) (Baker, Deck, Wood – against; Shirley, Clark, Sonnenberg – for).

Discussion continued with additional questions of notices to residents, time consideration for concrete pours, additional mitigation and the wording of the variance in place. EQD staff were directed to meet with the contractor and propose additional mitigation of construction noise at the site.

A motion to defer the reconsideration request to Monday, June 24, 2019 with a presentation from EQD staff on what mitigation has taken place, number of complaints received and proposed additional mitigation steps to be added to the variance was made (Baker) and properly seconded (Wood). After discussion, the motion was amended to include information on actual communications to residents (moved by Sonnenberg, seconded by Shirley and approved). The amended motion was then approved by the body.

A recess was declared. The meeting resumed at 6:43 pm.

COMMISSION & JEPB COMMITTEE UPDATES

- Waterways Commission – Mr. Baker shared that the primary discussions centered around the State's new Blue-Green Algae Task Force, no Biosolids legislation coming out of the legislature, that salinity levels had been low but are now returning to previous levels and that it appeared that a big algae bloom was headed toward the area.
- KJB Commission – Mr. Richardson shared that the commission would be holding their annual retreat on June 28th.

- JEPB Water Committee – Chief Long referred everyone to the reports provided with the meeting packet and shared a few highlights:
 - EQD participate in an upcoming Landlord/Tenant training sponsored by JSO. This will be the first presentation around the issue of SSOs.
 - A successful proactive compliance assistance workshop with JTA was successful and may be replicated.
 - A flyer is being developed on ESC issues and will be provided by Development Services. Mr. Baker suggested that Tom McKnight also be provided the flyer for distribution.
 - A media event is being scheduled for the first application of Microbe Lift to selected ponds. Members will be invited.
 - A presentation on Microbe Lift will also be delivered at the FSA Annual Conference.
- JEPB Air Committee – Chief Long referred everyone to the reports provided with the meeting packet and shared a few highlights:
 - Ozone levels are high across the State. This is normal for this time of year. Locally we have approached warning levels but had not quite reached them.
 - All the data presented is pretty good
 - With several promotions, retirements and laterals, the staff is quite fluid at this time, but manageable.
- JEPB Education & Outreach Committee – Mr. Wood shared that there would not be a June meeting. He shared that quarterly communication plans were on pace. They will next tackle ongoing funding mechanisms and policies along with awards.
- SSO Prevention Committee – Dr. Sonnenberg shared that the next meeting would be on the 24th and that the committee was close to finalizing a report and recommendations that would go to the Board at the July meeting.

ENVIRONMENTAL QUALITY DIVISION REPORT

The Chief shared the following with the members:

- The COJ budget process is underway and is on track so far.
- The State's Chief Science Officer was putting out an RFI for Innovative Projects to remove nutrients from waterways.

EPB ADMINISTRATOR REPORT

Mr. Richardson discussed the report distributed with the meeting information. (attached)

OLD BUSINESS

- none

NEW BUSINESS

- EPTF Policy Discussion – Budget Item to Boost EPTF

Mr. Baker shared his thoughts regarding funding from the City for the JEPB to do projects. The fund is diminishing and could be supplemented with funding from the general revenue. There was discussion about the likelihood of it happening. It was shared that the Council might be amendable to matching projects proposed by the JEPB. It was discussed that if the Board came up with a proposed funding amount, that the Council President or the Administration might be asked to match the amount. It was also suggested that CW Boyer may have some thoughts on potential sources of matching funds.

ITEMS REFERRED TO COMMITTEES

- Repeated consent orders primarily on ESC issues
- After hours enforcement of noise

Mr. Richardson shared that the items would be forwarded to the Steering Committee for consideration.

NEXT SCHEDULED BOARD MEETING(s)

- JEPB Special Meeting – Monday, June 24, 2019 at 5 pm
- EPB Committees
- SSO Prevention – Monday, June 24, 2019 to follow JEPB meeting.
- EPB Steering Committee – Monday, June 10, 2019 at 4:00 pm
- EPB monthly meeting – Monday, June 17, 2019 at 5:00 pm

The meeting adjourned at 8:51 pm

Respectfully Submitted

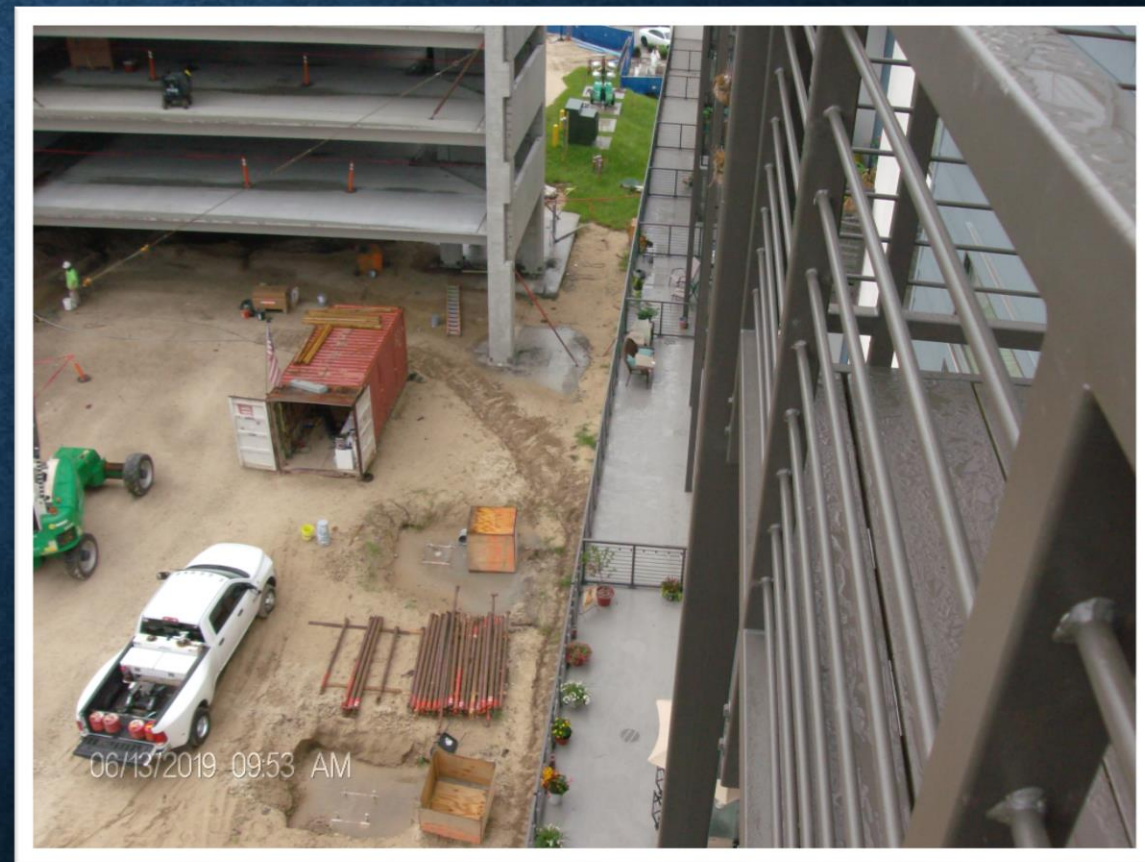
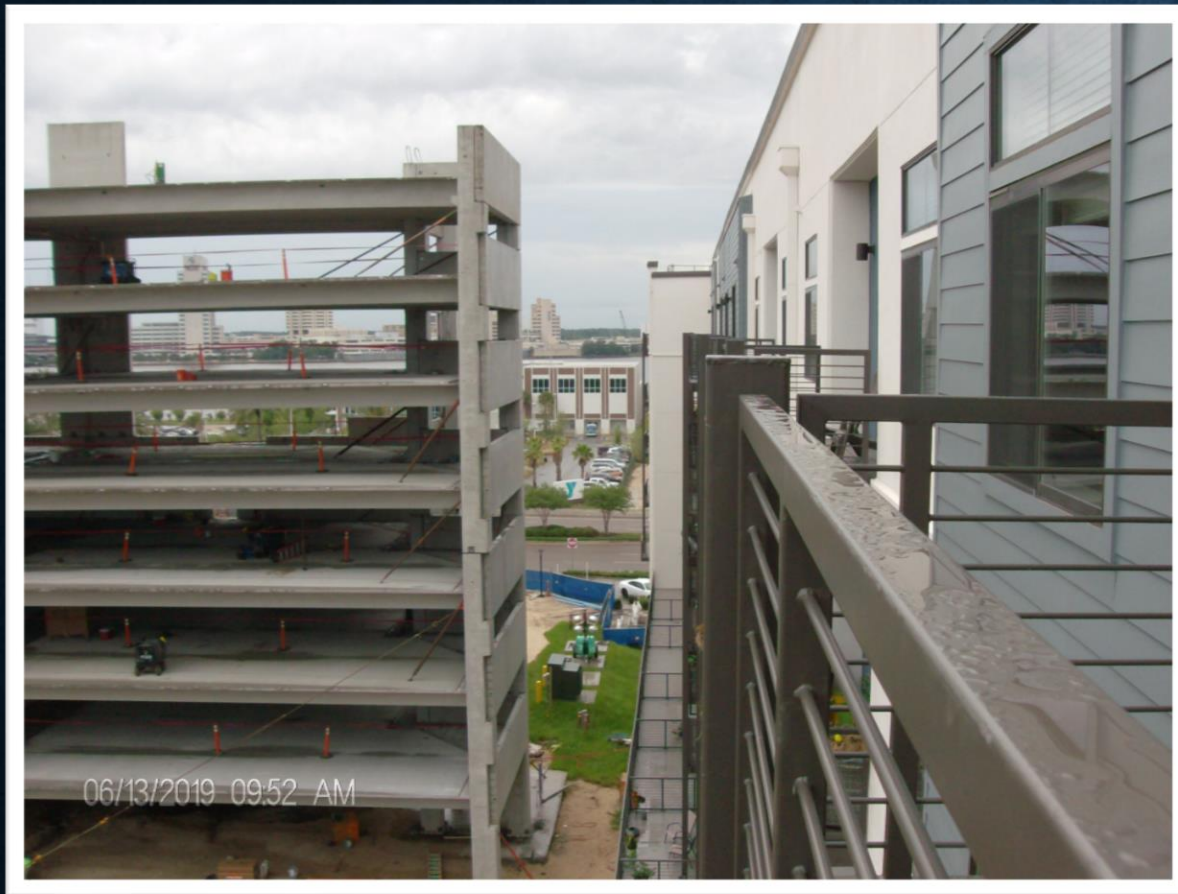
James Richardson, EPB Administrator

**220 RIVERSIDE'S
REQUEST FOR
RECONSIDERATION OF
BRASFIELD & GORRIE'S
VARIANCE**

PROXIMITY OF BROOKLYN VISTA CONSTRUCTION TO 220 RIVERSIDE

- Brasfield & Gorrie's nighttime construction activities take place within 10 to 20 feet of where tenants sleep





VARIANCE ALLOWS FOR CONSTRUCTION ACTIVITIES THROUGHOUT THE ENTIRE NIGHT

- The variance allows Brasfield & Gorrie to conduct concrete pouring and dewatering activities from 10 pm to 7 am.
 - Often pour concrete at 3 am
 - Use bright construction lights in the middle of the night



UNEXPECTED HARDSHIPS

- The impact of the nighttime construction was not felt until it began in full, several weeks after the variance was granted
- Residents were not able to provide input during the variance approval process, because they were unaware it was happening
- The nature, degree, frequency, and volume of the nighttime construction activities has changed and increased in the months following the issuance of the variance

IMPACT ON RESIDENTS OF 220 RIVERSIDE

- Since January 2019, twenty two tenants have given notice of their intent to vacate 220 Riverside due to Brasfield & Gorrie's construction activities
- Seven additional tenants have transferred units to move further away from the construction
- Another two tenants terminated their leases early due to construction

IMPACT ON RESIDENTS OF 220 RIVERSIDE

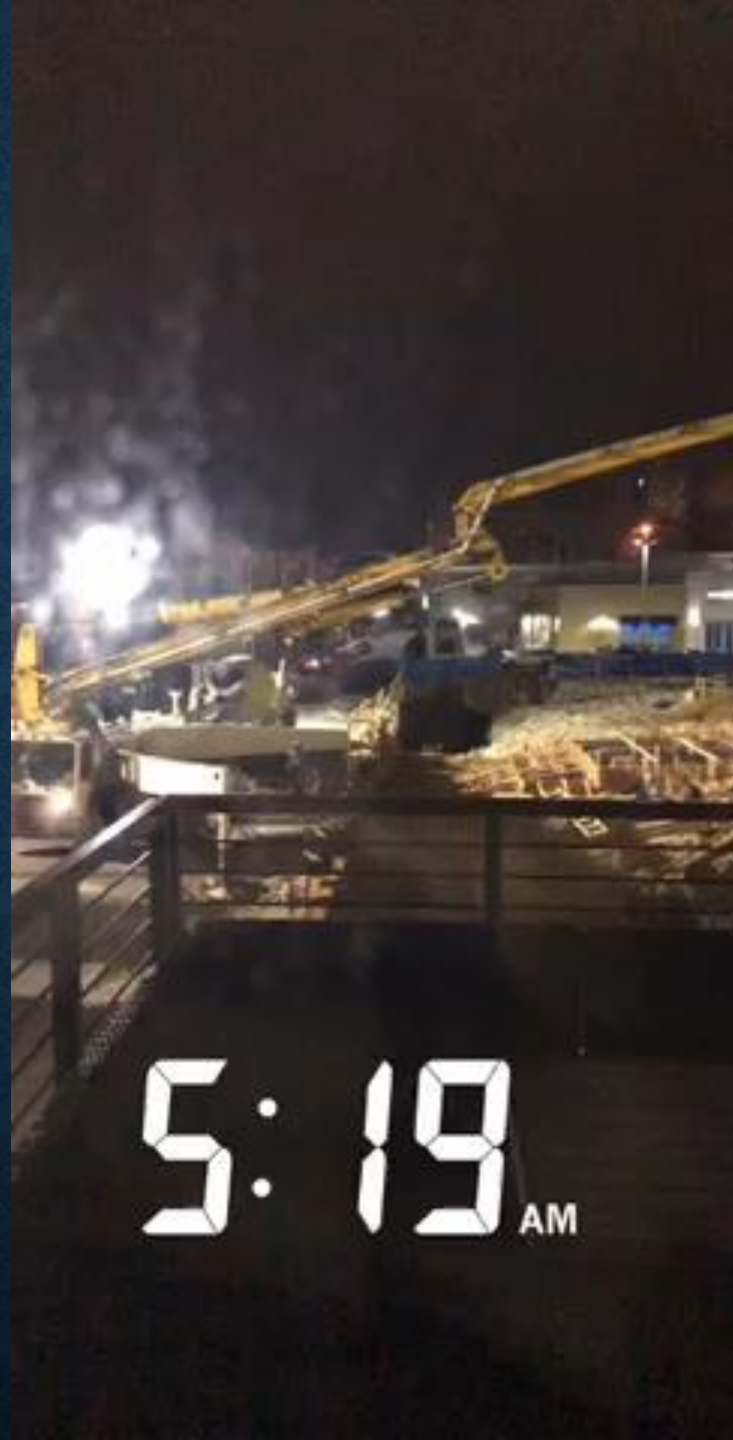
- Multiple resident physicians and other medical personnel are unable to rest after work because the construction is too loud
- A tenant who serves in the US Navy is worried about being fatigued at work from the construction continuing all night, he works on an aircraft and with heavy machinery
- A tenant who serves as a Navy Pilot is concerned about his safety and the safety of others when he undertakes flight duties after the construction causes inadequate sleep
- Tenants who normally work from home are no longer able to
- The severity of the construction causes the units to physically shake

IMPACT ON RESIDENTS OF 220 RIVERSIDE

- Pet owners are concerned about the anxiety the construction causes for their dogs
- Tenants are unable to use their units comfortably and feel they cannot invite guests over due to the noise
- The bright lights from the construction shine into tenants homes throughout nighttime construction and even heavy shades do not prevent the bright lighting
- Tenants feel the construction negatively impacts their mental and physical health, there is little to no break from the noise

VIDEO OF 4:40 AM CONSTRUCTION

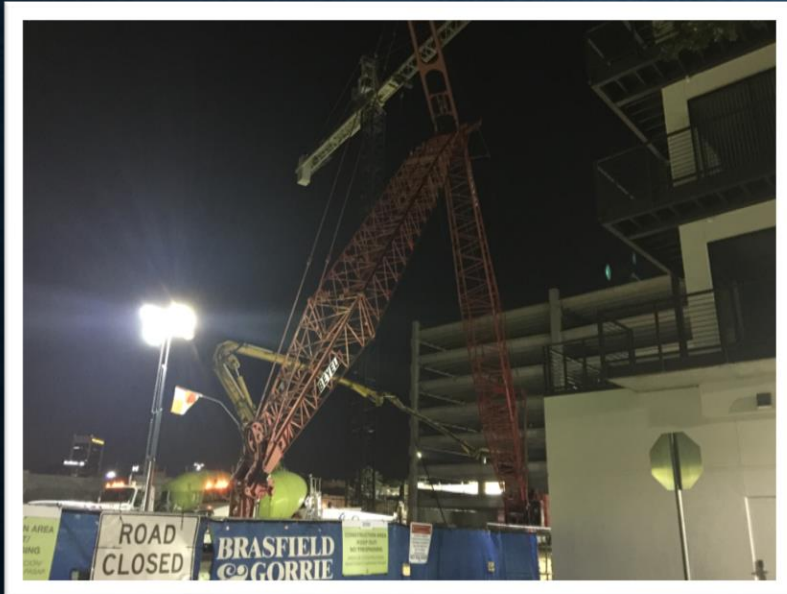




5:19 AM

NO PREJUDICE TO BRASFIELD & GORRIE

- Brasfield & Gorrie fails to indicate why construction must occur in the middle of the night, instead of between 7 am and 7 pm
- Brasfield & Gorrie is unwilling to compromise and continues to put its interests above the citizens of Jacksonville and tenants of 220 Riverside



THE BOARD SHOULD RECONSIDER THE VARIANCE

- The Board does have the ability to reconsider their prior grants under Section 360.112, which states:

Appeals; reconsideration.

“A person aggrieved by an administrative order or a determination or decision by the Director shall have the right to appeal the order, determination or decision to the Board. Appeals shall be decided in the same manner as provided in Part 4 for hearings on complaints. In addition, the Director, **the Board** or a hearing officer may, upon a showing of just cause by the aggrieved party, **reconsider an order, determination or decision that it or he has rendered.**”

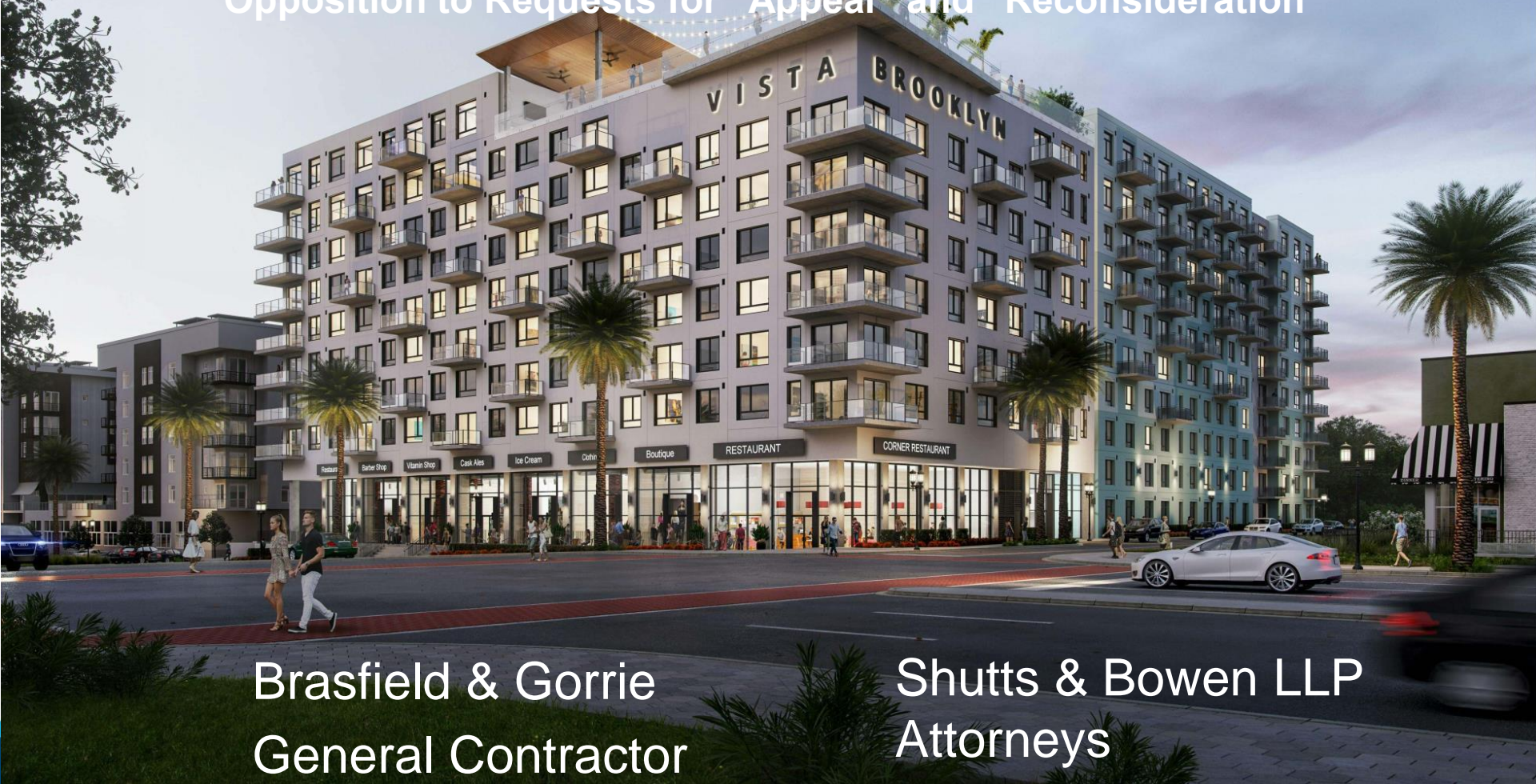
THE BOARD SHOULD RECONSIDER THE VARIANCE

- There is no rule or ordinance prohibiting the Board from reconsidering a variance it has issued, particularly upon the development of new facts or complaints from citizens of Jacksonville after the variance has gone into effect
- The Variance itself allows for additional mitigation efforts
- The section B&G proposed, Section 360.406, is for enforcement proceedings concerning criminal or civil liability for noise violations not reconsideration of a variance's terms and conditions
- 220 Riverside does not wish to enforce the variance, but rather requests a reconsideration of the variance a result of unexpected and persistent hardships faced by its residents
- Section 360.112 is the applicable provision governing the Request for Reconsideration of the Variance

VISTA BROOKLYN

200 Riverside Ave

Opposition to Requests for “Appeal” and “Reconsideration”



Brasfield & Gorrie
General Contractor

Shutts & Bowen LLP
Attorneys

Executive Summary

- Noise Variance issued January 22, 2019 is a Final Order and the Board does not have authority to either hear an appeal of the Noise Variance or to reconsider the issuance of the Noise Variance
 - Code § 360.406 – 10 day period to request rehearing before the Board – expired February 1, 2019
 - Code § 360.406 – 30 day period to appeal to the Circuit Court expired February 21, 2019

Board does not have authority to hear any appeal or rehearing

■ Code § 360.406:

- The Board shall have the discretion to grant a rehearing, if applied for, within ten days. Rehearings shall be conducted by a hearing officer in the same manner as hearings. The denial of an application for rehearing shall render the Board order, which was the subject of the application, final. Appeals to any final order of the Board shall be by common law certiorari in the Circuit Court in and for Duval County, Florida, pursuant to 9.030(c)(3), Florida Rules of Appellate Procedure.

■ See:

- *Bush v. City of Mexico Beach*, 71 So. 3d 147 (Fla. 1st DCA 2011) (review of city council quasi-judicial decision must be by timely filed circuit court certiorari review)
- *Pruitt v. Brock*, 437 So. 2d 768 (Fla. 1st DCA 1983) (if rehearing mechanism is not triggered by timely rehearing application, tribunal loses jurisdiction at expiration of time for filing for rehearing)
- *Helmich v. Wells Fargo Bank, N.A.*, 136 So. 3d 763 (Fla. 1st DCA 2014) (tribunal's inherent authority to "reconsider" its prior actions is limited to non-final orders rendered before a final order is entered)

- Petitioner cannot rely on Code § 360.112 – this provision is not contained in Part 4 of Chapter 360 and cannot provide different procedures regarding appeal, rehearing, or reconsideration.

Brasfield & Gorrie's Reliance on the Noise Variance

- Noise Variance was a prerequisite to commencement of construction and investment in 200 Riverside Avenue.
- Upon issuance of the Noise Variance, B&G commenced construction.
- For the last 5 months, B&G has been conducting construction activities, including foundation work and vertical construction, in full compliance with the Noise Variance.
 - Complaint Logs have been maintained and delivered to the COJ; and complaints have been addressed through voluntary mitigation
 - COJ has measured noise levels and determined that B&G is fully compliant
 - B&G has made voluntary noise measurements to ensure compliance
 - Neighbors have been notified in advance of nighttime activities
 - B&G has minimized the work required to be done at night
 - Mufflers and other mitigation measures have been used on equipment
 - Noisy equipment has been located and oriented as far as possible from residential properties to reduce noise traveling to homes
 - Staging of concrete trucks has been organized so that the trucks are as far as possible from the residential properties
- The strict construction limitations and schedule requested by petitioner would unfairly impact the financial investment of the 200 Riverside Avenue project through additional expense and delay.

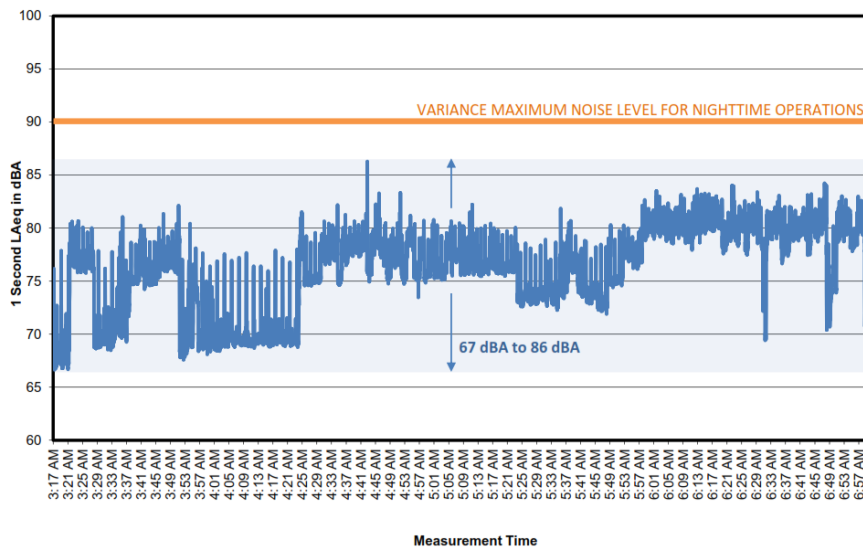
Brasfield and Gorrie are Good Neighbors

- B&G recognizes that nighttime pours can be disruptive to its neighbors, however, in compliance with the Sound Variance:
 - B&G limits early morning (3:00 am) starts to only the large pours that absolutely require that early of a start time
 - The large pours consist of 80 trucks and 800 cubic yards of concrete.
 - Due to the heat and traffic, and the fact that the pour cannot stop once started, the trucks must start queuing at 3:00 am
 - These pours are relatively rare (approximately 10 remaining over the life of the project)
 - Other early morning pours will also be required, but will be smaller (perhaps 80 cubic yards each), and have been voluntarily started later in the morning (5:00 am)
 - Nonetheless, while B&G strives to be a good neighbor, construction contingencies will not permit B&G to agree to absolute limits on the Noise Variance that is in place, instead B&G will voluntarily do their best to not unnecessarily disrupt their neighbors.
 - No person has filed a complaint with the Department that B&G has violated the Noise Variance, even though they have procedural recourse to do so.

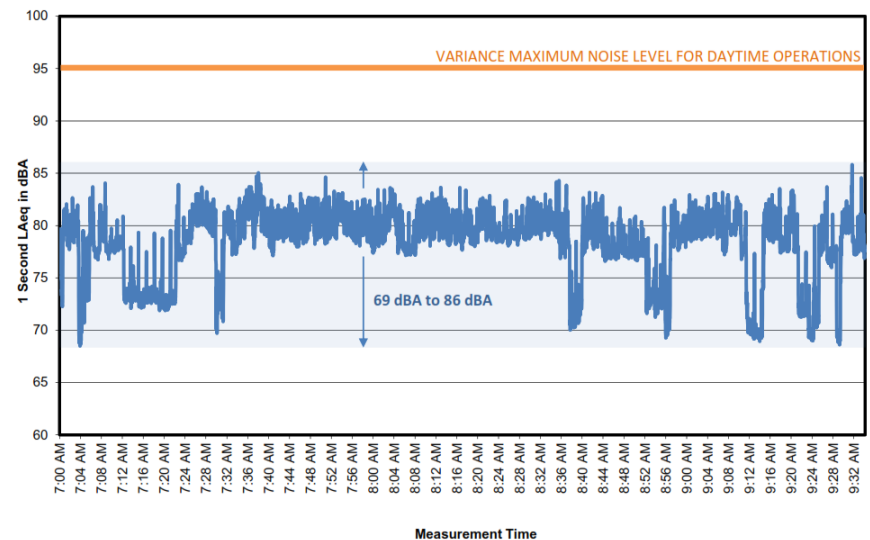
Concrete Pour on Saturday, June 15, 2019

- Most recent large pour, commencing at 3:00 am
 - Sound levels measured by Siebein Associates, Inc., Consultants in Architectural and Environmental Acoustics, a recognized expert witness in matters such as this.
- Sound levels measured (from a balcony of the neighboring property at issue – 220 Riverside Avenue) from 3:17 am until 9:34 am were less than 90 dBA (sound level limit for nighttime construction specified in the Noise Variance)

200 RIVERSIDE AVENUE
LOCATION: On the Balcony of Apt. 619
TIME: 3:17 AM - 7:00 AM

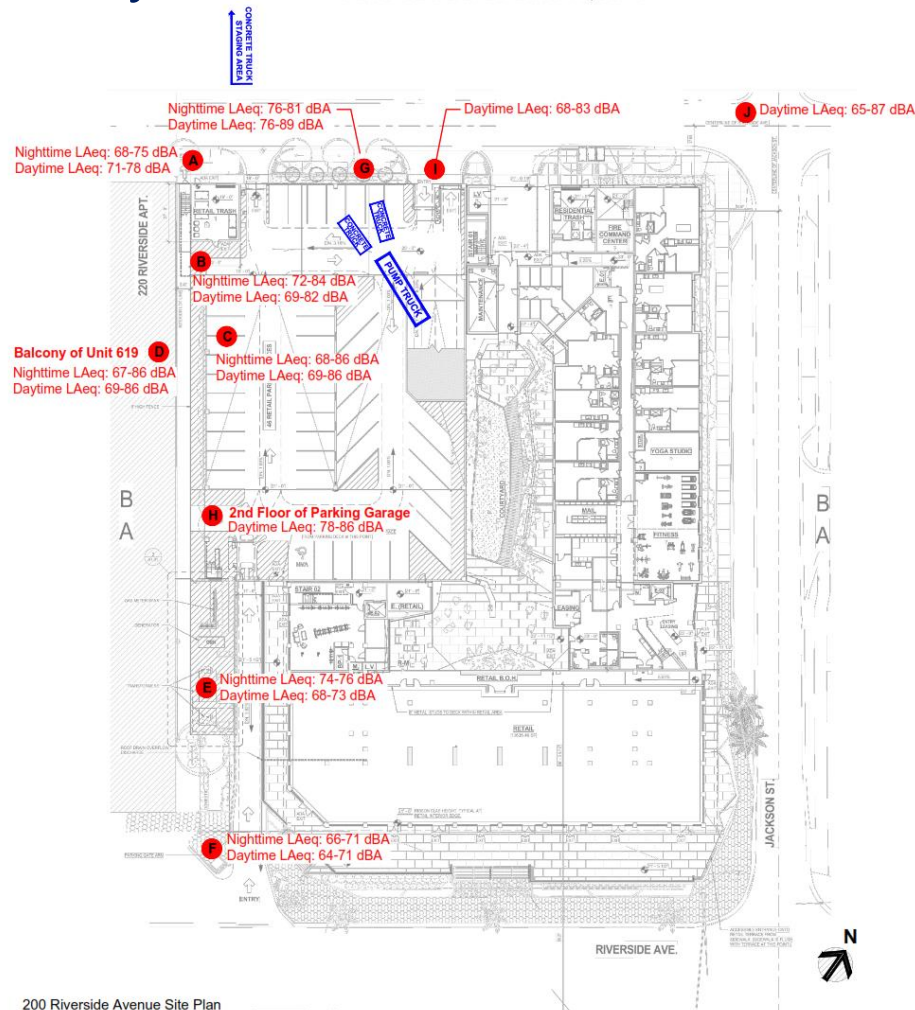


200 RIVERSIDE AVENUE
LOCATION: On the Balcony of Apt. 619
TIME: 7:00 AM - 9:34 AM



Sound Level Measurements – 6-15-2019

■ Sound Levels by Location on Site:

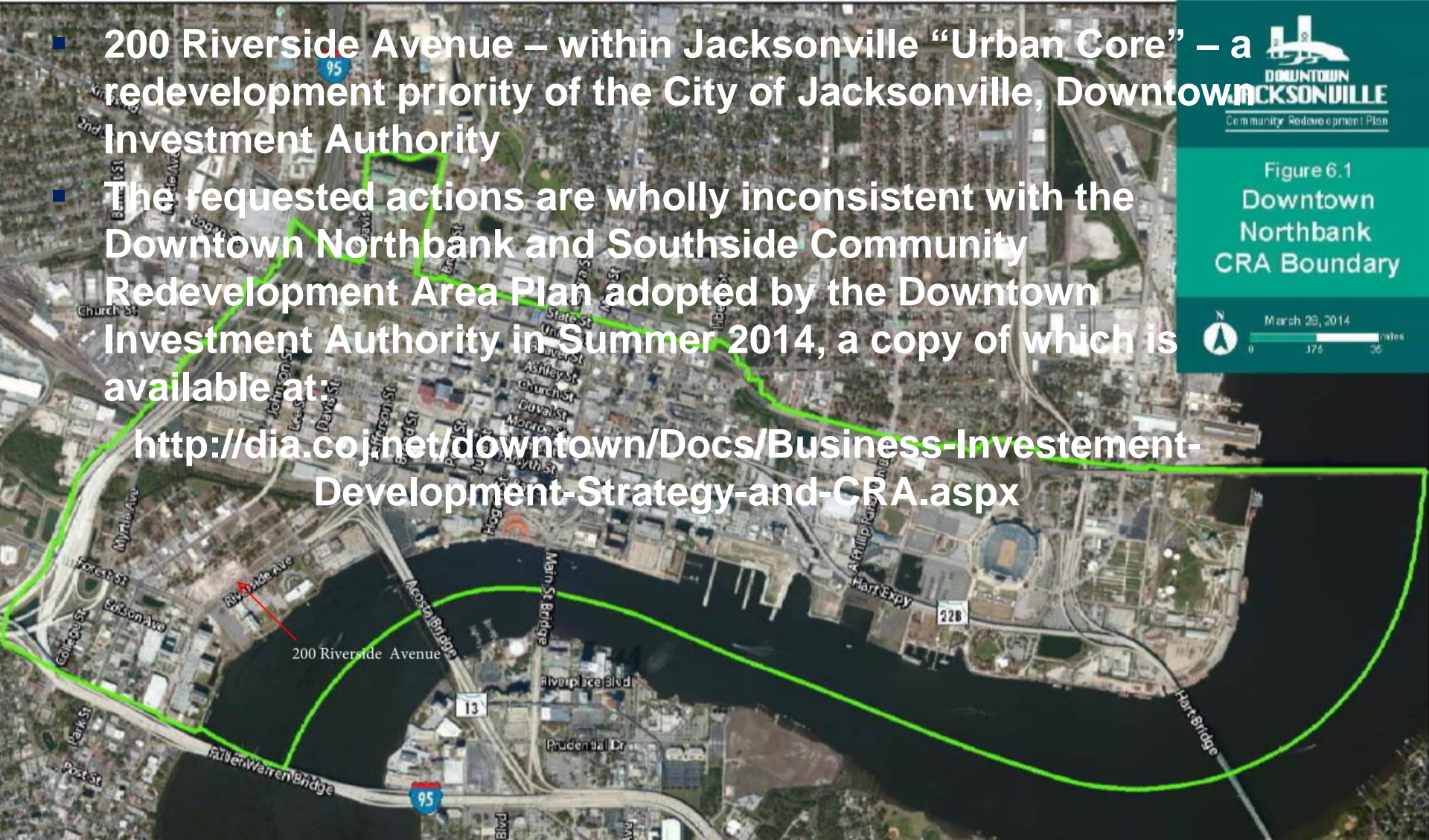


Policy Considerations

- 200 Riverside Avenue – within Jacksonville “Urban Core” – a redevelopment priority of the City of Jacksonville, Downtown Investment Authority
- The requested actions are wholly inconsistent with the Downtown Northbank and Southside Community Redevelopment Area Plan adopted by the Downtown Investment Authority in Summer 2014, a copy of which is available at:
<http://dia.coj.net/downtown/Docs/Business-Investment-Development-Strategy-and-CRA.aspx>



Figure 6.1
Downtown
Northbank
CRA Boundary



Conclusion

- Noise Variance issued January 22, 2019 is a Final Order and the Board does not have authority to either hear an appeal of the Noise Variance or to reconsider the issuance of the Noise Variance
 - Code § 360.406 – 10 day period to request rehearing before the Board – expired February 1, 2019
 - Code § 360.406 – 30 day period to appeal to the Circuit Court expired February 21, 2019
- B&G is doing its best to mitigate disruption to neighbors, and is fully compliant with the Noise Variance.
- It would be against public policy to revisit this issue after the expiration of legally available appellate remedies.
- This type of issue is going to become more common with the City's desired infill development and investors are entitled to rely on variances obtained in good faith from City agencies.

Air Odor Noise Committee

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EPB ADMINISTRATOR REPORT – June 2019

- ✓ The nomination period for the annual Environmental Excellence Awards is now open. Please share the information with family, friends and others in the community. Deadline for submission is July 19th.
- ✓ The Professional Engineer and Conservation positions on the JEPB will be open for membership in the coming months. If you are aware of anyone that may have an interest in serving, please have them to contact me.
- ✓ The committees working on resiliency are wrapping up their work. The Stormwater Resiliency and Infrastructure Development Committee has concluded their work. They have introduced legislation to address update the floodplain management ordinance, zoning code, the Land Development Procedures Manual, wetland buffers and issued an RFP to secure services to conduct a resiliency analysis associated with an updated Master Stormwater Management Plan. They will present their work to City Council at their meeting on June 25th. A draft of their presentation is attached. One item of discussion pertained directly to the JEPB. In discussion of wetlands, there was a desire to have a quantitative analysis, of some sort, to be included in future State of the River Reports. A copy of something along those lines that was provided to the committee by the Riverkeeper is also attached.

The AAA Working Group is proceeding with their work as well. They are beginning to form their recommendations which will be presented to the City Council for adoption or modification. Their work, originally expected to be concluded in July, will likely wrap up around October.

- ✓ Plans for the symposium are proceeding. The breakout session topics have all been finalized and are being publicized. Registration will open in July.