

Moore-Love, Karla

From: Peter Albert <peterdalbert@gmail.com>
Sent: Tuesday, January 13, 2015 10:15 PM
To: Moore-Love, Karla
Subject: Oppose Variance #3501908

Dear City of Portland,

I have lived all but 15 of my 70 years in Portland. I currently live across the street from the construction at Morrison and Park. I will be unable to attend the hearing because of yet another medical appointment.

Yet I find time to tutor PSU students through statistics and graduate school entrance exams. I volunteer as the Coordinator for the Cognition and Systems Society at the Systems Science Program at PSU. I do original work on the origins of human folly (cognitive bias) in the networks of the brain, with the moral support of professors and enthusiastic responses of students; PSU has been weak in this field. Age does not prevent me from making Portland an even better place.

I do this in spite of the deafening noise which invades my apartment and work space (PSU does not give me an office) six days a week. I know that many other Downtowners suffer the same home invasion *with no compensation*.

Denying the variance will send the message to Portlanders that **the city cares about their rights more than it cares about big money, and that downtown is a vibrant neighborhood full of Portland's famed livability**. Allowing the variance would make me wonder if moving to Colorado wouldn't be such a bad idea after all.

All my best to the city I love,

Peter Dvorak Albert, M.A.
Approved private math tutor (PSU)
Coordinator, Cognition and Systems Society, PSU

GWENN SEEMEL
1550 NW FOURTEENTH AVENUE #620
PORTLAND, OR 97209
503.784.9248
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12 January 2015

Noise Review Board
City Hall
1221 SW 4th Avenue
Portland, OR 97204

Dear Noise Review Board,

As Andersen is applying for another variance at Block 17, I'd like to submit for your consideration a summary of some of Andersen's illegal noise producing activity as well as ONI's response over the last ten days.

On Friday 2 January, Patrick Owen of ONI called my partner and me in the evening to tell us that Andersen would be working late due to an emergency. When I emailed ONI about this a few days later, Theresa Marchetti informed me that it would have been unreasonable to ask Andersen to wait until Monday to unstuck their auger. When I asked Marchetti why Andersen would have had to wait until Monday since Saturday work is allowed between 7 AM and 6 PM, she did not respond to my question.

On Tuesday 6 January, Andersen worked until 9 PM. Since the neighborhood had had no notification of a variance, we were surprised by Andersen's ordinance violation. When ONI responded about this work a few days later, Marchetti said that it was permitted under variance #3551108, a one-day variance for crane activity that was granted by the Noise Review Board for work originally to be done on 17 December of last year.

When asked to share the variance details, Marchetti provided a packet of random documents: a photocopy of business cards from local apartments, a photocopy of a Andersen's calendar notes dated 5 January and 17 December with handwritten tallies for the number of units in each apartment building, an undated letter explaining that Andersen was granted a variance for December but due to internal problems they rescheduled the work for January, an email about an unrelated concrete pour, and an unsigned and undated one-page photocopy of variance #3551108, which had the stipulation requiring neighborhood notification haphazardly blacked out. Despite the removal of this condition, this packet of documents seems to be trying to tell the story of Andersen notifying the neighborhood on foot, counting units, and collecting business cards, while at the same time failing to mention the scheduled late variance work to its neighborhood notification email list. What's more, when my partner asked the staff in our building's office about the notice for variance #3551108, they said that they had not received any.

On Thursday 8 January, Andersen worked until 8 PM. I emailed Brian Anthony of Andersen the next morning and asked which variance he was using so we could keep track. He replied, "One of 40 that I have." Anthony is the superintendent of the Unico Overton. As of last week that site had two active variances, not forty. Either he was confusing a variance with a variance workday or he was being flippant due to his stated frustrations that noise from Andersen sites nearby was causing his to be "punished."

ONI later confirmed that Andersen did not in fact have a variance for the late work on Thursday but claimed Andersen had a good reason for the outside-of-ordinance noise. Marchetti wrote:

"Equipment needed to be removed in order to open the road for the community.
Otherwise, the road would have remained closed, which has its own negative impacts to

the community. Although they will not receive a citation, and in truth were unlikely to have been in violation of noise code given the EX zoning, the importance of adhering to the allowed time frame has been communicated to Anderson, and this occurrence will be referenced if further occurrences lead to a citation being issued."

ONI's constant fallback on EX zoning is a handy shield for construction companies. It only serves as one more reminder to the community that the Noise Office will not take action, because ONI's position is that the word of the noise source is more reliable than that of the noise receiver. ONI has not taken readings or visited the north Pearl District despite the fact that we have requested that they take action in what has become a full-on work zone instead of a neighborhood.

On Saturday 10 January, Andersen used variance #3501908-001 to do an early morning concrete pour. Section C of that variance states: "No more than two concrete trucks will be at the site off-loading concrete, with two additional delivery trucks there in waiting." Andersen had five concrete pumps running simultaneously and at least ten concrete trucks on site—two trucks being sourced at each pump, two waiting at each pump, and the rest driving in or out. The trucks sounded alert beepers constantly between 5 and 7 AM, which violates Section F of the variance and serves as a shocking alarm clock for the entire community, most of whom didn't know it was coming because they're not on Andersen's email list.

What's more, Andersen orchestrated their five-pumps-plus-an-army-of-concrete-trucks operation to coincide with a 6 AM convoy of dump trucks that rolled through the neighborhood, queued under apartment windows, and eventually filed onto Andersen's construction lot to remove dirt from the area. None of this is covered by any variance.

This has been our Andersen Construction experience from just the past ten days.

The Office of Neighborhood Involvement's stated mission is to build inclusive, safe, and livable neighborhoods and communities. It's a nice sentiment, but, in practice, ONI's response to all these problems is to claim that it will chat with the construction company and that it will take note of our complaints as well as of the suggested solutions that we send its way.

Since there is no enforcement and ONI relies on the offending company to provide its own oversight, the onus for keeping track of alerts, violations, and variance dates falls on the construction-trodden community. We are conscripted volunteers in this scenario. We do everything that ONI asks of us, and still the illegal behavior continues. We would like that those who are being paid to do this work actually do it.

With six active construction sites in a two-block radius and two more projects scheduled to break ground in the same space during the first quarter of this year, we urge you: **Please do not give Andersen any more variances until it has proven itself a better neighbor and corporate citizen.**

Sincerely,



cc: The City Council

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14 January 2015

Mayor Charlie Hales
City Hall
1221 SW 4th Avenue
Portland, OR 97204

Dear Mayor Hales,

Last time we were here in October, I explained that the City of Portland has an enforcement problem when it comes to noise. Things look fine on paper—in the ordinance and in variances—but, in practice, enforcement is broken. Two and a half months later, the situation is the same. ONI has told me that it does not wish to be a punitive agency, and I'm here to report that it succeeds brilliantly in that. Construction companies and developers alike are confident in just how **not** punitive ONI is.

Today, I want to give you just one example of the noise office's reputation for being toothless, a reputation that has damaged livability in many areas around the city and has now reached the north Pearl District where I have lived for the last seven years. In December 2012, a project across the street from me broke ground and, from the beginning, it violated the noise ordinance regularly. Over the twenty-one months of the project's major construction activity, I sometimes filed complaints with the city for the project's illegal activity and sometimes tried communicating directly with the construction company. Whatever I did had little effect on the project's illegal behavior, which included regular 5:30 AM starts, late evenings, and Sunday noise.

In the end, after the months of consistent wrongdoing, ONI fined the project just twice. And when the developer contested the fines, ONI removed the larger of the two and reduced his bill to \$300. The fee was due in December but the developer has yet to pay. With that kind of slap-on-the-wrist punishment, I suppose I should be grateful that construction companies aren't even more flagrant in their disregard for livability in my community.

When just one construction project comes into a neighborhood, building in close proximity to people's homes, it damages livability for months on end, but when there are six sites in a two-block radius and two more breaking ground in the next few months, livability is impacted in a whole new way. If you add to that mix city agencies that fail to enforce noise ordinance and special variances, livability no longer exists.

My neighborhood will be in that condition through 2017 unless you make changes. You are the councilperson in charge of ONI and the Police—the two law enforcement agencies that are refusing to place a leash on illegal construction activity. Please fix those agencies and remind developers that it doesn't make sense to destroy the community if they want their own buildings to flourish once they're complete.

Sincerely,



Parsons, Susan

From: David Vanadia <storyworks@vanadia.com>
Sent: Saturday, December 13, 2014 2:09 PM
To: Parsons, Susan
Cc: van Orden, Paul; Dingfelder, Jackie
Subject: Re: Details for Mediation on January 14, 2015? - David Vanadia

Yes, City Council meeting, not mediation meeting.

I have since learned that mediation is no longer needed.

Thanks!
David

On Dec 12, 2014, at 8:42 AM, Parsons, Susan wrote:

- > Hello David,
- > Yes, the continuation of your hearing is on the Council agenda for January 14th at 2pm. It will be a Council session in Council Chambers like October 30th's meeting. This will not be a mediation, but Council will expect to hear the results of the mediation. Attached is the caption file for the Oct 30 meeting. See highlighted section on the last page (I have copied it in this email also). I believe Paul van Orden can assist you. I'm also copying Jackie Dingfelder in the Mayor's Office on this email.
- >
- > Paul,
- > Can you advise Mr. Vanadia about the mediation arrangements? Please see his email below.
- >
- > Susan Parsons
- > Assistant Council Clerk
- > City of Portland
- > susan.parsons@portlandoregon.gov
- > 503.823.4085
- >
- > 10/30/14 Caption file excerpt:
- > Fish: Mayor, what's your expectation with respect to the questions we framed for Paul, some of which will require him to get together with the City Attorney's Office and just give us options, is that -- ?
- > Hales: My staff and I will track that, since Paul is part of the Office of Neighborhood Involvement. We'll take that list of council concerns and get to work on that, and perhaps again might even have council work session or some other opportunity to come together before.
- > Fish: And just speaking for myself, if we were to get just a written memo addressing the issues with some preliminary options as feedback, I would consider that satisfactory. I mean, that gives us a sense to know where we should focus our attention, what's feasible, what isn't. Just an initial road map in writing would be helpful.
- > Fritz: Could we make it the second week of January, please?
- > Hales: OK. So ordered. I hope everyone is clear on that. We're going to continue this item until the second week of January. In the meantime, we're going to take an assurance from the contractor there there's not going to be any Sunday work, and we expect that to be adhered to by Andersen and responded to by the Noise Office if for some reason that's violated. In the meantime, we'll ask Resolutions Northwest to get the parties together and see if we can come to perhaps a modification of the permit as proposed or as allowed under the variance in front of us. We'll see what you come back with.
- > Fritz: Do we need to set a time certain for setting it over?
- > Hales: Wouldn't hurt. Got us a time certain available?

> Parsons: I have you all set here. It's 2:00 p.m., January 14th.
> Fritz: Thank you.
> Hales: OK, I hope that works for everyone. That's what we'll do. Thank you very much.
>
> -----Original Message-----
> From: David Vanadia [mailto:storyworks@vanadia.com]
> Sent: Thursday, December 11, 2014 5:11 PM
> To: Parsons, Susan
> Subject: Details for Mediation on January 14, 2015?
>
> Hi Susan,
>
> I am David Vanadia and I am scheduled for a mediation meeting with Andersen Construction for Wednesday, January 14, 2015 at 2 pm as set by City Council on October 30, 2014.
>
> I am touching base to be clear:
>
> Is the mediation still on?
>
> If so, will be located at City Hall and in what room?
>
> Thank you.
>
> Sincerely,
> David Vanadia
>
>
> <10-30-14 pm caption xmr.docx>

Parsons, Susan

From: David Vanadia <storyworks@vanadia.com>
Sent: Saturday, December 13, 2014 3:30 PM
To: David Vanadia
Cc: Archer, Amy; Sweet, David; van Orden, Paul; Parsons, Susan; Brian Anthony; Dingfelder, Jackie
Subject: Appeal of Noise Variance #3501908 (Andersen Construction at the Unico Overton)

Hello Brian, Paul, David, Amy, Susan and Jackie,

ONI informed me that Andersen has agreed to the terms of my appeal, that the Noise Office altered variance #3501908 to reflect the change and therefore there is no need for mediation.

Please send me an official copy of the amended variance confirming Andersen's pledge to abstain from working on Sundays through the remainder of their year-long noise variance at the Overton site. With that in hand, I/we can simply report the outcome to City Council on January 14th and there will be no need for review at that time.

Over the past 45 days since the appeal hearing, I've been in touch with the Noise Office/ONI, have communicated with Andersen in person, through their hotline, and via email about noise activity, and recently cooperated with Andersen's 5 am - 10 pm noise variance request for a December 17th crane erection. I have suggested possible noise enforcement and community education solutions to the Noise Office but have yet to receive a response to those suggestions. I also have not received any request from Andersen Construction, City Council, ONI or Resolutions Northwest for a mediated discussion about alternative solutions to my appeal. I now see that it is because Andersen and the Noise Office reached a private conclusion that they have yet to announce.

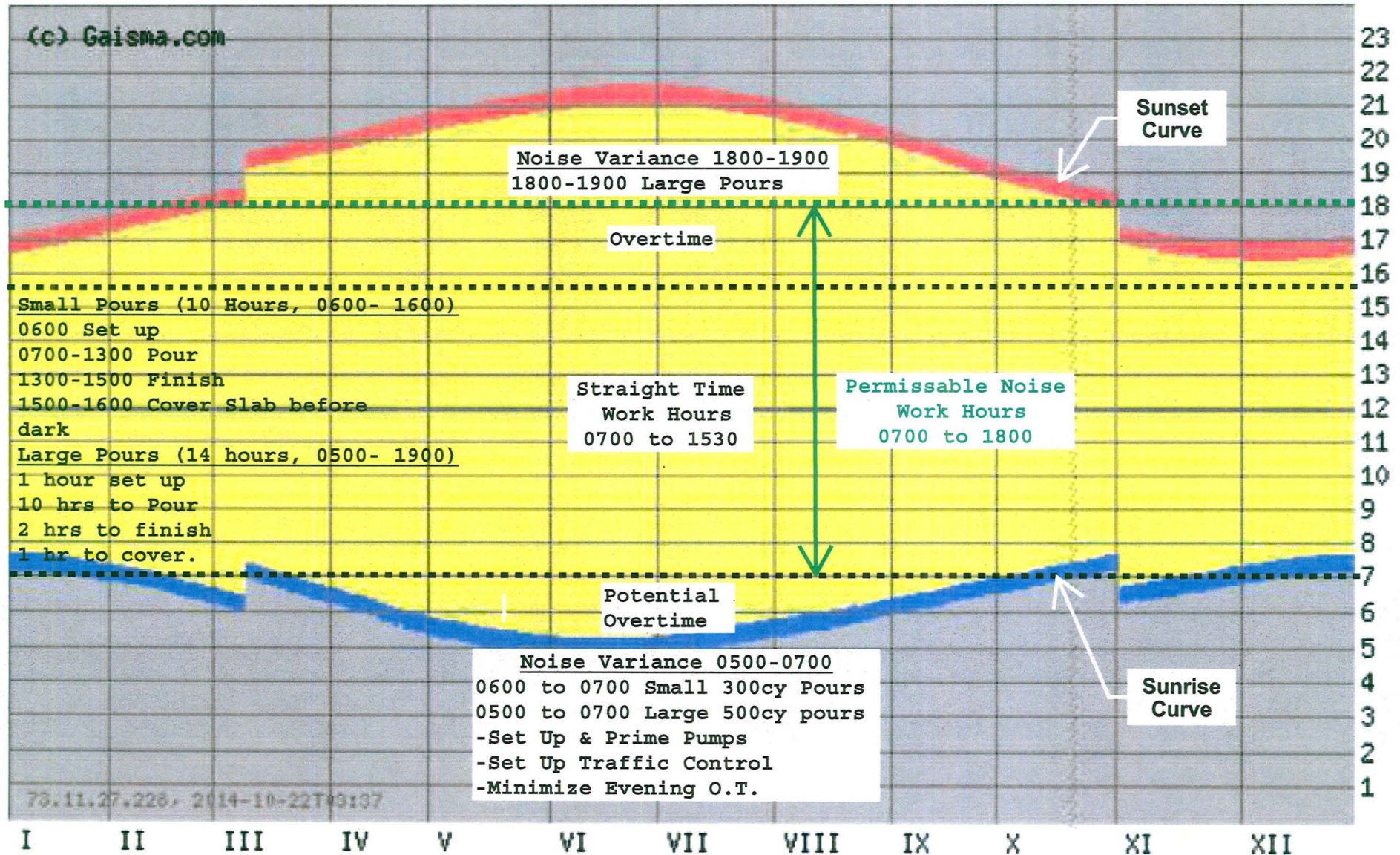
If I've been misled and Andersen is still planning to propose alternatives to my appeal in a mediated setting, as suggested by Amanda Fritz, then know I remain amenable to such a discussion. Please note, however, that we are 30 days away from the follow up meeting with City Council. Otherwise, thank you for giving us a very reasonable weekly break from construction noise and congestion at the Overton site through 2015. I'm sure neighbors will feel valued as a result of this outcome and I look forward to making it official.

Happy Holidays!

Sincerely,
David Vanadia

Andersen Construction Co.
 Unico Overton Apartments
 10/29/14
 BA/ACCO

*Submitted by
 Brian Anthony*



Support Appeal

APPEAL OF DAVID VANADIA AGAINST NOISE VARIANCE
RE UNICO OVERTON APARTMENT PROJECT

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Brooks Hickerson	1255 NW 9th # 309 97209	brooks.hickerson@gmail.com
✓ Patrice Hanson	1221 NW 11th Ave. #101 97209	patrice939@gmail.com
✓ GWENN SEEMEL	1550 NW 14th #620 PORTLAND, OR 97209	gwenn@gwennseemel.com
✓ Maura Jess	1230 NW 12th Ave #506 Portland OR 97209	mmvjess@gmail.com
Patly Kerns	1221 NW 12th Ave #613 97209	family only

Parsons, Susan

From: Kroma, Anne (Parks)
Sent: Thursday, October 30, 2014 11:26 AM
To: Moore-Love, Karla
Subject: [done sp] Written testimony for Council Item 1127, Appeal of Noise Variance 3501908
Attachments: Council Agenda Item 1127.docx

Testimony from Anne Kroma, 623 SW Park Ave, Portland OR 97205 for today's hearing at 2 pm

Council Agenda Item 1127
Appeal of Noise Variance 3501908

Dear Mayor and City Commissioners,

This letter is in support of those residents that want Title 18 enforced to help ensure their quality of life in the downtown urban environment. It is also in support of the woefully under-funded Noise Office.

What good does it do to have elegant local legislation (like a noise code nationally recognized as fair and enforceable) when a Bureau Director can make an arbitrary decision about not enforcing parts of it? I guess I can hope that having the Noise Office under ONI will help, but even if funding is not diverted or decreased, there has never been enough trained staff to maintain a functioning work unit.

Whether the decision to ignore code is based on budgetary reasons (as in we laid off half our front line employees) or because it's inconvenient to remember that you are a regulatory agency (the customer is not always right just because they paid a fee), it teaches citizens that they can pick and choose the laws they decide to obey. There should be consequences to a permit holder for ignoring the conditions of the permit – like not giving them another one.

I have lived in downtown for almost twenty years and continue to watch neighbors move to other parts of the city because they give up. Livability is a huge issue (to residents and tourists alike) and it was different when I could tell someone that if they complained the correct way, they could be assured that if nothing else, there were statistics being kept. Now nobody bothers to get a permit, or if they do - they violate the main purpose of it by not notifying the neighbors. A noise variance is so the people impacted by the extra noise can choose to avoid it. It's similar to the idea of staying with friends in Estacada if you don't want to deal with Rose Festival, because you're notified when it's going to be Rose Festival.

I live next door to the Park Avenue West construction site. This past Sunday, October 26th I got to hear:
7:15 am Hoffman's construction site generator turn on and run for an hour (like every Sunday morning)
8:05 am amplified announcements for the 'Run like Hell' event started in Pioneer Square (no notice)
8:50 am the same fundraiser started playing very loud music for a couple of hours
5:00 pm street musicians played drums and didgeridoo a block away (for more than an hour)

I accept that I have no recourse to hearing the following legal noise:

- Max trains horns blaring at people and cars on the tracks
- Garbage and recycling trucks several mornings a week starting as early as 4 am
- Back-up beepers on 18 wheelers delivering to Nordstrom (by the way, did anyone stop to think how bad two loading docks across from each other on a narrow street is going to be?)
- Drunk people yelling and singing; cars cruising or alarms going off; and Leaf blowers

I rarely call Police non-emergency anymore, because they generally won't do anything about noise. I've testified on the public record that as part of Pioneer Square's variance, they need to actually notify neighbors. They promised not to start events before 9 am on Sundays and stop taping flyers to the door handles of apartment buildings as notification.

The rule used to be simple: construction noise is allowed 7 am to 6 pm Monday through Saturday. Anything other than that, you will be notified, given a phone number to call, and complaints would be monitored and affect future permits. Title 18 means nothing anymore and it's a shame.

Anne Kroma, 623 SW Park Ave, 97205

Parsons, Susan

From: Mh Kincaid <jamasu88@msn.com>
Sent: Wednesday, October 29, 2014 11:24 PM
To: Moore-Love, Karla
Cc: Commissioner Fritz; Commissioner Saltzman; Commissioner Fish; Hales, Mayor; Commissioner Novick
Subject: Testimony for Appeal of Noise Variance
Attachments: Testimony_noise variance_appeal 30OCT14.docx

Council Clerk, Mayor Hales, and City Commissioners,

Attached is my testimony in support of granting the appeal of David Vanadia in regard to a noise variance granted to Anderson Construction. This appeal is being heard at 2pm. Thursday Oct 30th

Thank you for considering my testimony. Because of a schedule conflict I won't be at the Council to deliver this in person.

Thank you,

Maryhelen Kincaid

October 29, 2014

Testimony for Appeal of David Vanadia against the noise variance granted to Andersen Construction for the Unico Overton Apartment project located at the block bounded by NW 12th Ave, NW Overton St, NW 13th Ave and NW Pettygrove St

I support granting the appeal which would then allow for quiet Sundays for residents impacted by construction noise. The cumulative effects of construction noise for long periods of time have serious impacts on the health of residents. Providing one quiet day out of seven seems a highly reasonable request. We all need to realize how we would be affected by noise for the duration of time that this variance has been granted. I doubt anyone would agree with that the terms of this variance are reasonable for a 12 month period, nor could find them supporting any type of acceptable livability standards in terms of exposure to loud and disruptive construction noise. The appeal is asking for one quiet day a week while they are exposed to 6 days of construction noise for a year. I believe these residents deserve that quiet day.

I served as the chair of the Citizen Noise Advisory Committee for the Port of Portland for nine years and regularly dealt with noise complaints. While aircraft noise cannot be eliminated there are abatement procedures in place to limit the impacts to neighborhoods. By granting this appeal you will provide a limited abatement of construction noise that will benefit hundreds of residents.

You, as Commissioners of the City, have the responsibility to protect the health and quality of life of the citizens. This is a small request in terms of the bigger impacts of the cumulative effects of multiple construction projects that are disrupting life for the Pearl District residents.

Beyond granting a one day a week moratorium on construction activities, I urge Council to look at the process for public access to the noise variances that are granted. There is no public access to the variance issuance information on the City's website. Even though the noise variance states that various notifications have to take place and the burden of notification is on the variance applicant, there is no verification that notification happened, or inspection of completion of conditions of the variances (as in proof of contact, establishment of hotlines, or a complaint log). Unlike requirements for land use review notifications in Title 24 there are no similar notification requirements for Noise Office staff to notify our intentional systems: neighborhood associations and coalitions. Since I have been involved with this construction noise issue I have found that unless complaints are filed no one knows if there was a variance. Most often the time to appeal has passed and any changes to the variance are left to the discretion of the Noise Officer. I think you will hear this in the experiences related to both this appeal and prior complaints about noise variances and enforcement of conditions of the variance.

I suggest a committee be formed, outside of, or as a subcommittee of, the Noise Review Board to explore options for improving the variance notification process as well as the administration of the variances, complaints, verification of conditions of the variance, and appeals. I have been involved in a subcommittee of DRAC exploring changes to the demolition process and we have been highly effective in our collaborative efforts with a wide variety of stakeholders and City staff in crafting possible solutions. I suggest this model be used to explore the issue of noise variances and public information.

I urge you to grant this appeal and improve the lives, if only for one day a week, of the highly impacted residents.

Thank you,

Maryhelen Kincaid

2030 NE Blue Heron Drive

Portland, OR 97211