

1
2



CITY OF EDMONDS

121 5th Avenue North, Edmonds WA 98020

Phone: 425.771.0220 • Fax: 425.771.0221 • Web: www.edmondswa.gov

DEVELOPMENT SERVICES DEPARTMENT • PLANNING DIVISION

7
8

BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

9

Phil Olbrechts, Hearing Examiner

10

RE: Edmonds Public Works Noise Variance PLN2015-00063	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
---	---

11

12

13

SUMMARY

14

The applicant has requested a variance to the City of Edmonds noise standards for temporary nighttime construction work for a sanitary sewer maintenance project on Highway 99 between 216th and 220th Streets SW between the hours of 10:00 P.M. and 7:00 A.M. for five (5) nonconsecutive nights between March 1 and December 31, 2016. The variance application is approved subject to conditions.

15

16

17

18

ORAL TESTIMONY

19

Mike Clugston, City of Edmonds Associate planner, summarized the staff report. In response to examiner questions Mr. Clugston noted that the closest residential development is 250 feet northwest of the project site. Noise at the residential area caused by the proposed construction work should be similar to ambient noise levels.

20

21

22

Ed Sibrel, City of Edmonds Public Works, testified that as project manager he would operate the 24-hour complaint line for the project.

23

24

EXHIBITS

25

The staff report and its 11 attachments were admitted into the record as Exhibit 1 during the hearing held on January 28, 2016.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is the City of Edmonds Public Works Department.
2. Hearing. A hearing was held at 3:00 pm on January 28, 2016.

Substantive:

3. Site/Proposal Description. The applicant has requested a variance to the City of Edmonds noise standards for temporary nighttime construction work for a sanitary sewer maintenance project on Highway 99 between 216th and 220th Streets SW between the hours of 10:00 P.M. and 7:00 A.M. for five (5) nonconsecutive nights between March 1 and December 31, 2016. Page 2 of Att. 1 to Ex. 1 identifies the noise levels proposed by the applicant, which includes a maximum of 89 dBA at a distance of 50 feet from jackhammers. Ambient noise levels recorded at various points along the project area as depicted in Att. 6, Ex. 1 also reach 89 dBA.

4. Neighborhood Characteristics. The project area is surrounded by commercially zoned and developed properties. Commercial development and Swedish Hospital are located west of the Highway 99 in the project area. Similar commercial development is located east of the road in the cities of Lynnwood and Mountlake Terrace. The closest residentially developed property is located 250 feet to the northwest of the project site.

5. Adverse Impacts. The noise generated by the proposal will not create significant impacts to residents of properties in the vicinity. Most significant, the closest residential property is located 250 feet from the subject property and according to City staff the noise levels at this residential property will be close to ambient levels due to the distance separation. The staff observations on this issue are corroborated by ambient noise levels taken in Att. 6, Ex. 1, although there is not enough data in the administrative record to compare the duration of maximum noise levels. The applicant has also proposed all of the mitigation measures, Ex. 7, that can be reasonably required of an applicant, as demonstrated by the fact that the same exhaustive list of mitigation measures has been proposed and adopted in prior Edmonds examiner decisions. The only other mitigation that could be considered would be requiring the construction work to be done during the day. Given the traffic impacts of such a requirement on SR 99, the adverse impacts of such a requirement (traffic congestion caused by lane closures) would be far worse than just doing the work at night. The project area accommodates 21,000 trips per day southbound and 18,000 trips per day northbound.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. ECDC 5.30.120(C)(3) provides that noise variances shall be processed the same as zoning code variances regulated by ECDC 20.85.020. ECDC 20.85.020 provides the Hearing Examiner with the authority to review and act upon variance applications as Type III-A applications.

Substantive:

2. Review Criteria and Application. As identified in Finding of Fact No. 3, the project will generate nighttime noise levels up to 89 dBA 50 feet from the noise source. ECDC 5.30.040, in conjunction with ECDC 5.30.050(A), limits noise levels at commercial receiving properties to 70 dBA and 50 dBA for residential receiving properties between the hours of 10:00 pm and 7:00 am. As noted in the staff report, the noise generated by the proposal during daylight hours is exempt from Chapter 5.30 ECDC standards as construction noise. ECDC 5.32.120(C)(3) authorizes variances to the noise standards of Chapter 5.30 ECDC provided that the variance satisfies the criteria of ECDC 5.30.120(A) and (B). ECDC 5.30.120(A) and (B) are quoted below in italics and applied through corresponding conclusions of law.

ECDC 5.30.120(A): *Variances may be granted to any person from any requirement of ECC 5.30.040 or 5.30.110 if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source or because of nonavailability of feasible technology or control methods.*

3. Special circumstances justify the noise variance because there is no other mitigation available that could involve feasible technology or control methods as determined in Finding of Fact No. 5.

ECDC 5.30.120(B): *Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.*

4. The applicant proposes a maximum of five (5) nonconsecutive nights for the variance, which it has determined is necessary for completion of the proposed SR 99 improvements at night. The applicant has no discernible reason to extend the construction period for any time longer than necessary. There being no evidence to the contrary, it is determined that the requested variance is for the minimum time period necessary to complete the project.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECISION

The variance application is approved, subject to the following conditions:

1. A copy of the noise variance must be kept on the project site at all times.
2. The proposed noise mitigation measures described in Attachments 1 and 7 must be implemented, as applicable.
3. The noise variance shall be valid for only five (5) nights between March 1 and December 31, 2016. The Department of Public Works must notify the Planning Department each time the variance is used.
4. The granting of this variance does not relieve the City of Edmonds Department of Public Works from the remainder of the requirements and standards of the noise ordinance.

Dated this 11th day of February, 2016.


Phil A. Olbrechts

Edmonds Hearing Examiner

Appeal Right and Valuation Notices

This land use decision is final and subject to appeal to superior court. Appeal periods are short and appellants are encouraged to speak to an attorney about how and when such appeals should be filed.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.