

## Mary O'Neil

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**From:** Elisa Nelson <nelsmith@burlingtontelecom.net>  
**Sent:** Sunday, June 18, 2017 10:20 PM  
**To:** Mary O'Neil  
**Cc:** Charles James Goodnight; Hans Manske; markbonfigli@gmail.com  
**Subject:** 79 Industrial Parkway  
**Attachments:** Act 250 letter (final).docx

Hello Mary,

I wanted to make Planning and Zoning aware of a letter several neighbors sent to the Act 250 Board regarding the Act 250 Minor Application for 79 Industrial Parkway. I have attached a copy for your records.

For the record, while Rhino Foods has identified two major sources of noise that regularly disturb the neighbors, nitrogen tank filling and boiler exhaust, there are several additional sources of noise which run throughout the day and night and the cumulative effect is a nuisance to say the least, and may be damaging to the health of neighbors through loss and interruptions of sleep. In addition the noise levels are such that we are unable to enjoy the use of our back yard and we must keep our bedroom windows closed even on hot summer nights.

Since 2001 Rhino Foods has maintained a written agreement with the neighbors to restrict the hours that nitrogen is delivered to their facility. The agreement limits deliveries to between the hours of 7am to 8pm (M-F), and 10am – 6pm (weekends). In addition we suggested a sign be placed on the nitrogen tanks listing the limited delivery hours so that truck drivers would always be aware of the limitation. Additionally Rhino agreed to notify neighbors in advance if deliveries were required outside the limited hours. Although this agreement has been mostly adhered to, there have been instances where deliveries happened outside agreed upon hours and without advance notice. For instance, on June 15<sup>th</sup>, 2017 at about 11:15pm the neighborhood was awoken by the sounds of the Rhino nitrogen tank being filled.

We believe that especially during nitrogen deliveries, and at other times, Rhino exceeds the Natural Resources decibel limits and would ask for proper sound readings to assure that regulations are being met. We also request and Rhino has agreed to add screening around the boiler, HVAC, and nitrogen stacks etc. that is properly sound engineered to reduce the noise to reasonable and within legal limits.

Elisa Nelson  
155 Austin Dr.  
Burlington, VT 05401

Natural Resources Board  
111 West St  
Essex Junction, VT 05452  
RE: Minor Application #4C0325-4

June 12, 2017

Dear Mr. Peter Keibel, District #4 Coordinator

#### Background

The signatories of this letter are the abutters of 79 Industrial Parkway, Burlington, VT 05401 aka Zoo Holdings (Rhino Foods). Letters of standing for each household are attached as addendum to this document. Most of us have been neighbors of Rhino Foods for well over 18 years.

Decades ago Burlington zoning ordinances created a difficult situation whereby an industrial zone was placed directly adjacent to a waterfront residential zone with no defined buffer area+. The inherent conflicts of this zoning remain today with neighbors and businesses walking a tightrope between business and operations and the peace, health and safety of residents living in their own homes. We have a long history starting in 1998 of trying hard to work together, as neighbors, for the good of the households and the good of a neighboring business. When Rhino Foods ran only one or two work shifts there were fewer issues. Once the third shift started there were more and more conflicts. Many noise conflicts calls were placed with the local police department, under the City of Burlington's Noise Ordinance (see attached copy), mostly related to the filling of liquid nitrogen tanks. Additionally there has been a noise problem with a powerful boiler whose exhaust from the roof near the rear of the building is an intermittent roar. Trucks idle roughly all night, despite a City anti-idling ordinance (see attached). These concerns lead to a 2001 agreement with Rhino to limit filling of their nitrogen tanks to between the hours of 7am – 8pm (M-F) and 10 am – 6 pm (weekends), unless an emergency situation required a tank fill. Rhino agreed to notify neighbors in advance if this situation was to occur. For the most part this agreement has been adhered to.

As Rhino has grown additional equipment has been installed, mostly ventilation and air conditioning equipment, outdoors on the southwest corner of the building. Each piece of equipment adds to the sound profile, incrementally. Taken individually no one piece of machinery may be loud but not rise to the point of offensive, but taken cumulatively the multiple combined machinery and truck engines do rise to the point of offense and include health issues with loss of sleep on a nightly basis. Saturday morning to 9pm Sunday is our only respite from constant loud noise. During previous Development Review Board hearings and other City sanctioned meetings, abutters and other neighbors have expressed serious concern regarding the noise emitted from Rhino Foods. In 2002(?) a hearing about new machinery brought attention to the need for noise and visual screening of roof penetrations. A simple, mostly visual, blockage fence was erected on the roof around the boiler's stack. Rhino also agreed to research a backup hot water system. If successful, there would be no boiler noise 11Pm to 7AM. Evidently this research was unsuccessful as boiler noise continues day and night as noted in the current application. No correspondence regarding this has been received by homeowners.

Though Rhino has said they want to work with us for decades, their efforts have largely been limited. The small efforts they have done (other than limiting hours for LN2 deliveries), have been, by their own

admission, to go to Lowes and get some cheap fencing to place around the boiler exhaust. At this point even that is gone due to lack of maintenance. In addition, despite having discussed the issue in two public presentations about this latest addition months apart, they still have not put any real effort into this issue other than to move the ventilation equipment from the previously planned back of the building to the roof, and that may well have been done due to make space for the new road behind the building. As of the neighbor meeting May 30th, they showed no plans for noise or visual mitigation and had to call the construction manager (architect sitting there) to get any info. The manager said it was nothing more than a cheap visual block, and as of yet, despite the promise of more formal description the next day, nothing has been sent. When asked twice what would happen with the LN2 delivery schedule if production continued to rise, necessitating closer delivery spacing, no answer was forthcoming. Their goal is expressly to continue growing.

Rhino Foods has apparently conducted sound level investigations on their property. To our knowledge no sound level readings have been taken "at the residences". Readings at the lot line (points unknown) are as high as 65dbA. Sounds levels during a nitrogen delivery are not reported. Final proposed regulations relating to wind turbines will limit noise to 42db at residences (39 db at night), for comparison. A 3 db increase in readings represents a doubling in sound power levels. 65 db is more than 200 times the 42 db limit about to be put in place for wind turbines. While we believe 42 db is too restrictive, 200 times louder crosses the line into offensive. In addition, noise readings were likely measured at the lot line near ground level possibly blocked from the exhaust source by the edge of the roof (at least partially). Nearby houses are elevated with line of site closer to the roof (exhaust) level and not blocked by the roof. If noise levels were to be measured at residences, they need to be measured in winter when leaves off the trees, and outside the windows of each house. Eight foot fences and young trees are nice for blocking view of lower wall but useless for blocking the view of Rhino's building much less blocking any noise going from a roof 25 feet above ground to residence windows elevated above ground level. We need to have noise stopped at its source - on the roof.

In 2015 Rhino sought permission to remove trees to answer safety and sanitary concerns around food production and animal access from trees to the building. \_\_\_ sq. ft. of trees were removed between the properties which resulted in the loss of screening for noise and sight lines. The trees removed contained most of the branching below 35ft and thus removed most of the foliage between the properties. In response to neighbor complaints that the tree cutting had more of a visual and noise impact than expected, Rhino planted 12 – 12ft arborvitae as a visual buffer which was more than their permit required.

As Rhino Foods seeks an expansion of their building, additional tree cutting, and a new driveway that will exist between Rhino and the abutting neighbors, there are serious concerns regarding the additional noise, hours of operation, and visual screening. Multiple machinery units that were ground based on the south side of the building are being moved to the rooftop. There is concern about additional noise travelling with ease to neighbors, especially those to the north who were effectively blocked by the building when the equipment was on the ground.

#### Agreement

The below signed parties have agreed to the following actions by Rhino Foods to address the unacceptable and offensive noise from their plant activities.

We are asking that the Act 250 Board include these provisions in the Act 250 Permit so that we have official sanction. If this is not possible, or if this process is not agreed to, we respectfully request a hearing to bring forward evidence of offensive noise and detrimental health effects.

On May 30, 2017, in a meeting with R Paul Smith, Elisa Nelson, and Charles Goodnight, Rhino Foods agreed to the following:

- a. Limiting use of back road to LN2 truck deliveries, with previously agreed to delivery hours
- b. Trees – more evergreen variety (size was not discussed) where is a caliper measurement taken vs dbh?
- c. HVAC units and boiler vent on the roof must have sound barriers to reduce noise
- d. Extend the fence section and trees further north on the property line to protect the Goodnight and Bonfigli/Mora properties.

Sincerely,

R. Paul Smith and Elisa C. Nelson, 155 Austin Dr., Burlington, VT 05401

Charles J. Goodnight, 145 Austin Dr., Burlington, VT 05401

Michael Williams, 91 Austin Dr., Burlington, VT 05401

Hans Manske, 121 Austin Dr., Burlington, VT 05401

Mark Bonfigli and Marisa Mora, Windmill Bay Rd, Shelburne VT owners of 121 Austin Dr., Burlington VT, 05401

Attach:

- o letters about standing
- o Documentation of tree removal impact (photos)
- o Noise ordinance
- o Idling ordinance
- o Wind turbine ordinance (decibel limits)