

From: [Brennan Malanaphy](#)
To: [*CI-StPaul>Contact-Council](#)
Subject: Banfil Office Court etal. - Opposition to Sound level variance application at 170 Western Ave. S. / Mar 3 hearing
Date: Wednesday, March 2, 2022 11:59:01 AM
Attachments: [C2-1 SITE PLAN Rev.3 markup \(2\).pdf](#)
[Councilmember Noecker Jan. 21, 2022.pdf](#)
[City Zoning Jan. 13 2021.pdf](#)
[City zoning Jan. 19.pdf](#)

To whom it may concern.

In the absence of conditions that require the owner/contractor to resolve the past and future financial damages resulting from their violations of the city sound ordinance and MN statute via their construction activities, Banfil Office Court again opposes approval of a Sound level variance application at 170 Western Ave. S.

We believe the attached emails from City zoning clearly reflect that the city is the nexus of our problem; By its issuance of permits for work that they knew would violate the MN sound pollution statute/City ordinance, and doing so with the knowledge that these violations would be in extremely close proximity to incompatible commercial operations within our buildings.

Mining 30' x 60' x 6' deep areas of bedrock within 5' of our professional building has been debilitating to the 6 mental health counselors and 2 massage therapists that practice in this building, as will be the activities the contractor seeks to conduct going forward. DSI issues construction permits and inspects and licenses our buildings for professional office rental every 3 years, so this conflict was foreseeable. City Zoning's Mr. Ubl's Jan. 13 email reply to our request for intervention indicates it was foreseen – "I've had this conversation before the project the started. They would need to become more flexible. SJU".

Sound monitoring is not sound prevention. The contractor/applicant has never implemented any materially impactful sound abatement. Hanging moving blankets on a hurricane fence and setting jr. size cargo containers on the work site does not constitute "best practicable method" of sound abatement. Anyone who has driven along the freeway and seen the 4" thick, 30' high sound barrier walls knows what real sound abatement for 85+dBa looks like. Now they want you to grant a variance to 100 dBa from 7 – 5pm, which will continue thru May 13, without any accountability for the financial damage it will continue to cause. Then what after that?

In addition to reciting the toothless and ineffective conditions of the first sound level variance in her Jan 21 email, Council member Rebecca Noecker asserts that "the City is unauthorized to require compensation from one party to another. To clarify, we're seeking restitution, not compensation, which is by definition very different.

As it happens, the damaged in this instance are all small businesses including 2 that are woman owned. It is no small irony that at the last variance hearing the city council lauded the importance of small businesses to the vitality of the city, and later in the same meeting, voted to let the goliaths of this story proceed with their for profit venture at the direct expense of our small businesses.

For context, our damages are estimated to be ~\$4,000/mo. for 6 – 18 months (Nov '21 – Spring '22) depending on Nor-Son's activities. While it may seem inconsequential, I invite the members of the city council to consider what having their primary income source arbitrarily stopped for 6 – 18 months might feel like. However, this is an immaterial sum in contrast to the cost of Bigos Managements' new apartment complex and/or the revenue it will generate over the next ~50 years for them. I'm guessing Section 8 housing construction and operations probably have some nice tax credits/incentives, too.

We hope the city council will seize this opportunity to restore fairness by conditioning the open variance application on measurement of actual and projected financial damages by a third party arbitrator, and timely payment of those reparations to businesses harmed by the contractor/owner, who rightfully should be bearing these costs.

Otherwise, as Council member Noecker suggests we would be left to pursue our remedy in the courts, and it's hard for us to see how that wouldn't be focused on the city who has knowingly authorized the contractor and owner to undertake and persist in violations of MN sound level statute and St Paul Ordinance at our expense.

Sincerely,
Brennan

Brennan Malanaphy | Partner

Banfil Office Court

Professional Spaces - Historic Charm - Modern Amenities

651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com



CITY OF SAINT PAUL

Business Licensing
375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

February 11, 2022

ALLIANT REH LLP
555 7TH ST W STE 101
ST PAUL MN 55102-3068

NOTICE OF PUBLIC HEARING

Sound Level Variance

Nor-Son Construction – Construction of 170 Western Avenue S. Winslow Commons

Dear St. Paul Property Owner:

This is to inform you of a request for a variance from the sound level limitations as indicated in the St. Paul Noise Ordinance (Chapter 293 of the St. Paul Legislative Code). Property owned by you and located near the noise source, may be affected by this variance request. Rental property owners must provide a copy of this notice to all renters or post a copy in a common area of the building so it can be viewed by the occupants.

Description of Variance:

Location: 170 Western Avenue S.

Noise Source: Nor-Son Construction has requested a sound level variance, for 100 dBA at 50 feet from the sound source for a Construction Framing Project with use of handheld nail guns and a central air compressor, as part of a new apartment building construction site at 170 Western Avenue S. The variance is requested for the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, March 7, 2022 through May 13, 2022. The Department of Safety and Inspections will be recommending the following conditions: 1) The Variance shall be for the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, March 7, 2022 through May 13, 2022. 2) All powered equipment used in conjunction with the construction shall not exceed 95 dBA as measured at 50 feet from the sound source. 3) The applicant shall use best practicable methods for controlling noise, such as, but not limited to noise blankets, shields or portable sound barriers. Construction activities should be scheduled to minimize noise as much as possible. 4) The applicant shall provide personnel and equipment who shall provide continuous sound level monitoring during the hours of the variance. 5) All equipment, or similar devices shall be turned off no later than 5:00 p.m. March 7, 2022 through May 13, 2022. 6) If the sound level variance is approved, the applicant will notify, in writing, all property owners/residents within 400 feet of the proposed work location. Notice shall be a minimum of forty-eight (48) hours prior to the start of the work.

Applicant has acknowledged that any social gathering associated with this variance must be managed in full compliance with all applicable Governor Walz and Mayor Carter COVID-19 Orders including but not limited to Orders relating to distancing, mask wearing and attendance limits.

Submit comments for Public Hearing electronically. The public may comment on public hearing items in person, writing or via voicemail. Any comments and materials submitted by 12:00 pm of the day before the meeting, Tuesday, March 1, 2022, will be attached to the public record and available for review by the City Council. Comments may be submitted as follows: Written public comment on public hearing items can be submitted to Contact-Council@ci.stpaul.mn.us, CouncilHearing@ci.stpaul.mn.us, or by voicemail at 651-266-6805. Live testimony will be taken in person in the Council Chambers, and by telephone by registering to speak by noon on the day before the meeting. The registration link is located on the City Council website at www.stpaul.gov/council or <https://forms.office.com/g/TD3xN7WHy5>. Public attendance at the City Council's regular meeting location may not be feasible due to the COVID-19 health pandemic. Members of the public may view City Council meetings online at <https://stpaul.legistar.com/Calendar.aspx> or on local cable Channel 18.

A public hearing before the City Council on this variance request will be held on:

Date: Wednesday, March 2, 2022

Time: 3:30 p.m.

Location: 3rd floor, City Hall Council Chambers

After the public hearing, the Council may grant, deny, or modify the variance request.

If you have questions about the sound level variance, please contact: Barb McMonigal-St.Dennis, Environmental Health Specialist, 651-266-9137, barb.mcmonigal-st.dennis@ci.stpaul.mn.us

Brennan Malanaphy

From: Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>
Sent: Thursday, January 13, 2022 10:23 AM
To: Hudak, Eric (CI-StPaul); Brennan Malanaphy
Cc: Niziolek, Dan (CI-StPaul); McMonigal-St Dennis, Barb (CI-StPaul)
Subject: Re: sound level variance application for 170 Western Ave. South, St. Paul

I've had this conversation before the project the started. They would need to become more flexible.

SJU

Get [Outlook for iOS](#)

From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Sent: Thursday, January 13, 2022 10:13:10 AM
To: Brennan Malanaphy <brennan@alliantconsulting.com>
Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>
Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Brennan,

As you're aware City Council laid-over their consideration of the sound level variance until next week providing time to determine an less impactful work schedule for the jackhammering and other disruptive activity. With that said, would the tenant group prefer to see the number of work hours per day shortened OR a sooner end date for the variance to expire? It shortened work hours per day, what hours would be preferred? If a sooner expiration date, what date? Also, please let me know if weekend work would help mitigate the impact to the tenant group?

Obviously the overall work hours required will be dictated by amount of work needed for completion. I'll be reaching out to Nor Son asking for information on what can be done on their end to limit those hours to whatever extent possible.

Thanks,

Eric



SAINT PAUL
MINNESOTA

Eric Hudak
Licensing Manager
Dept. of Safety and Inspections
375 Jackson Street, Suite 200
Saint Paul, MN 55101-1806
P: 651 266-9132

From: Brennan Malanaphy <brennan@alliantconsulting.com>
Sent: Monday, January 3, 2022 2:40 PM
To: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; Noecker, Rebecca (CI-StPaul) <Rebecca.Noecker@ci.stpaul.mn.us>
Subject: sound level variance application for 170 Western Ave. South, St. Paul

Think Before You Click: This email originated outside our organization.

Thank you for the information, Mr. Hudak.

We will distribute the sound level variance application notice to all the Banfil Office Court tenants as required by the City.

It is anticipated that there will be comments in opposition to the variance application submitted to the City Council on this matter.

The contractor and project owner were informed of the city sound level limits at the onset of construction activity, persisted in exceeding them without implementing effective sound abatement measures as they indicated they would, and declined our request to compensate tenants for the losses and expenses incurred from the disruption of their businesses.

The 557 W. 7th St. building is only ~10 feet from the construction activity and is a circa 1800's brick building. To date, the sound levels during normal business hours have proven prohibitive to the use of many of the offices in the building, resulting in disruption of mental and physical health services, and the related loss of business revenue and additional expenses to these providers.

We fear the worst is yet to come if the applicants are permitted to drive sheet pilings for the new structure without effective sound mitigation. Given the narrow site dimensions and current configuration, it also seems quite likely that the narrow space between the 557 W. 7th St. building and the new structure will be used for staging construction operations, resulting in persistent untenable sound levels for those in the building well beyond the variance application dates.

It is our hope that the City Council would only permit the contractor and project owner to exceed State and City sound level limits on the condition that they adequately mitigate their effects on Banfil Office Court tenants and/or justly compensate them for the interference with their businesses.

Sincerely,
Brennan Malanaphy

Brennan Malanaphy | Partner

Banfil Office Court

Professional Spaces - Historic Charm - Modern Amenities

651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

brennan@officespaceinstpaul.com

From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>

Sent: Wednesday, December 29, 2021 10:34 AM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Subject: FW: Work on Saturday the 11th at 170 Western Ave

Hello Brennen,

Per my voicemail, attached please find information to include a City Council public hearing date for the sound level variance application submitted by Nor-Son Construction for the Winslow Apartment project.

Eric Hudak
(651) 266-9132



Eric Hudak
Licensing Manager
Dept. of Safety and Inspections
375 Jackson Street, Suite 200
Saint Paul, MN 55101-1806
P: 651 266-9132

From: Brennan Malanaphy <brennan@alliantconsulting.com>
Sent: Friday, December 10, 2021 5:39 PM
To: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>
Cc: Cervantes, Ricardo (CI-StPaul) <ricardo.cervantes@ci.stpaul.mn.us>
Subject: FW: Work on Saturday the 11th at 170 Western Ave

Think Before You Click: This email originated outside our organization.

Hi, Dan.

What seemed to be a plan for moving forward harmoniously on Bigos Management's project at Winslow Apartments has unraveled.

The contractor began excavating bedrock prior to the promised start date of Sat. Dec 4. They claim it was only a test, which had not been agreed to, and actually covered an area ~30' x ~60' which is too large to be credible as a test. Further, none of the promised "sound blankets" had been placed.

When excavation started Dec. 4, they had hung moving blankets of nominal thickness on only part of the fence surrounding the work site. We measured sound levels in excess of 88 decibels at ~50' and in excess of 74 decibels inside the building. Rock chips were flying through and over the fence into our parking lot and onto the cars parked there.

This work is being done less than 10 feet from our office building and the sound levels are interfering with our tenants' ability to conduct business on a daily basis, and affecting their personal health.

As the city was aware of this work and our concern for the sound levels and impact on our tenants, would it not have made sense for some one from licensing to be here to observe this work?

We are extremely frustrated by the unresponsiveness / indifference of the project owner and apparent lack of enforcement by the city.

Please help me understand if our expectations are out of line.

Best regards,
Brennan

Brennan Malanaphy | Partner

Banfil Office Court

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555 Seventh Street West, Suite 101, Saint Paul, MN 55102

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brennan@officespaceinstpaul.com

From: Brennan Malanaphy

Sent: Friday, December 10, 2021 5:13 PM

To: Chris Emond <chris.emond@nor-son.com>; slaw@tbigos.com

Cc: Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; Steve Boynton <sboynton@blueoxmediagroup.com>

Subject: RE: Work on Saturday the 11th at 170 Western Ave

Hi, Chris and Steve.

The credibility of Nor-Sun and Bigos Management continues to be strained.

The call from the city yesterday informing us that they'll be shutting off water to 23 of our tenants during business hours next Wednesday for your project is not welcome news either. Many of these businesses entail therapies that require handwashing between clients and we are receiving emails of concern for this additional disruption of their livelihoods.

It's odd that I didn't see you last Saturday, Chris. Can you share what did your decibel meter read, and from what point(s) of reference? What did your discussion with the city about how to move forward reveal?

We need a more effective solution than the "sound blankets" hung on the fence. Those that were hung have no acoustic quality in a single ply, and would never be sufficient at their current height if they did. Our tenants reported having to quit work early today and earlier in the week because the noise level was interfering with performance of services and their personal health.

Sincerely,
Brennan

Brennan Malanaphy | Partner

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651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

brennan@officespaceinstpaul.com

From: Chris Emond <chris.emond@nor-son.com>

Sent: Thursday, December 9, 2021 2:47 PM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Subject: RE: Work on Saturday the 11th

Brennan, I was on site for 10 hours last Saturday. I will forward this note to Steve at Bigos for their response and see what direction I get on how we can respond to the issues you brought up below. There are parts of this where my hands are tied and I need approvals from the owner to make changes. I know we can do better at the fence line for debris coming across and Jon and I will get that covered down to the Southeast corner.

Chris Emond

Sr. Project Manager

Nor-Son Construction

612-875-2608

Chris.Emond@Nor-Son.Com

From: Brennan Malanaphy <brennan@alliantconsulting.com>

Sent: Thursday, December 9, 2021 9:39 AM

To: Chris Emond <chris.emond@nor-son.com>

Subject: RE: Work on Saturday the 11th

Hi Chris.

I was at the site twice on Saturday. My observations:

I saw no one at the job site from Nor-Sun observing the work or measuring sound levels.

The sound abatement blankets appeared to simply be moving style blankets of very nominal thickness. They did nothing to reduce sound levels – I have video that demonstrates this.

The blankets extended only to the south edge of the 557 building so offered no protection from the rock debris flying over & through the fence into our parking lot, which had autos parked in it covered with rock chips and dust.

The decibel level inside 557 2nd floor offices exceeded 68.

The decibel level inside 557 1st floor offices exceeded 74.

The decibel level in the Banfil court yard exceeded 88, which is above the city code limit.

This week, the decibel level was in excess of 82 from over 300 feet away.

The vibration from the work Saturday appeared to be shifting items on shelves in the 557 offices. I relocated all items that looked vulnerable. I have received no email notices from the sensors that were installed in our buildings.

We appreciate the limiting of the bedrock excavation to Saturdays, which has lessened the impact on our tenants' use of their offices. However, our concerns regarding the disruption to our tenants' use of their offices during normal business hours that has been experienced and is yet to be experienced, remain.

The unusually close proximity of bedrock excavation and other construction activities to the 557 building is proving untenable and we need to revisit the topic of compensation for these businesses.

Best regards,

Brennan

Brennan Malanaphy | Partner

Banfil Office Court

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651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

brennan@officespaceinstpaul.com

From: Chris Emond <chris.emond@nor-son.com>

Sent: Wednesday, December 8, 2021 12:52 PM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Cc: slaw@tbigos.com; Jon Graefe <jon.graefe@nor-son.com>

Subject: Work on Saturday the 11th

Brennan, the work last Saturday was successful in removing half of the rock required near your 557 building. We are planning on working this Saturday, the 11th, to complete that work. The work hours would be similar with a start to construction near 7 am and then working as late as 5 pm. The goal would be to wrap up earlier in the day if at all possible.

Chris Emond

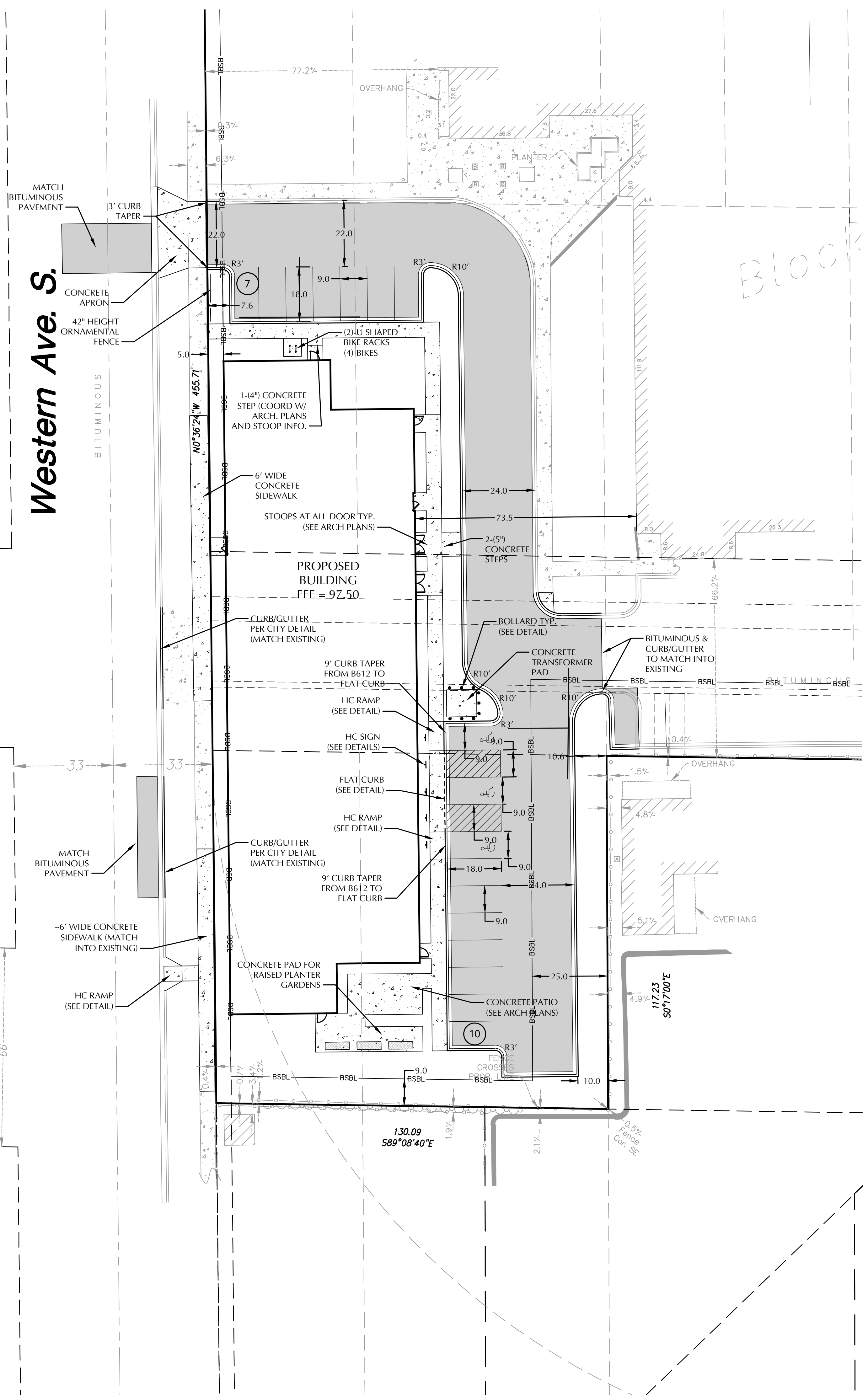
Sr. Project Manager

Nor-Son Construction

612-875-2608

Chris.Emond@Nor-Son.Com

Plotted: 04/03/2020 2:46 PM W:\2019\19011\CADD\DATA\CIVIL_dwg\Sheet Files\C2-1 SITE PLAN



SITE PLAN LEGEND

- CONCRETE SIDEWALK
- HEAVY-DUTY CONCRETE PAVEMENT
- HEAVY-DUTY BITUMINOUS PAVEMENT

SITE DATA

CURRENT ZONING:	RM3 MULTIPLE-FAMILY
DISTURBED PROPERTY AREA:	35,710 SF
EXISTING IMPERVIOUS AREA:	11,184 SF (31.3%)
PROPOSED IMPERVIOUS AREA:	27,783 SF (77.8%)
LOT AREA:	129,537 SF
EXISTING AND PROPOSED BUILDING AREA:	27,297 SF
LOT COVERAGE:	21.1%

ELEVATION NOTES

97.50 = ARCHITECTURAL 100' 0" (VERIFY WITH ARCHITECTURAL)

OFF-STREET PARKING CALCULATIONS

EXISTING PARKING PROVIDED	= 44 TOTAL STALLS
PROPOSED TOTAL PARKING PROVIDED	= 17 STALLS
EXISTING HANDICAPPED STALLS	= 1 STALLS (REMOVED)
PROPOSED HANDICAPPED STALLS	= 3 STALLS
REQUIRED HANDICAP STALLS FOR 51-75 STALLS	= 3 STALLS

SITE NOTES

SEE SHEET C0-1 FOR SITE NOTES.

LEGEND

EXISTING	PROPOSED

WINSLOW APARTMENTS

St. Paul, MN

BIGOS COMPANY

Minneapolis, MN

LOUCKS

PLANNING
CIVIL ENGINEERING
LAND SURVEYING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL

7200 Hemlock Lane, Suite 300
Maple Grove, MN 55369
763.424.5505
www.loucksinc.com

CADD QUALIFICATION

CADD files prepared by the Consultant for this project are instruments of the Consultant's professional services for use solely with respect to this project. These CADD files shall not be used on other projects, for additions to this project, or for completion of this project by others without written approval by the Consultant. With the Consultant's approval, others may be permitted to obtain copies of the CADD drawing files for information and reference only. All intentional or unintentional revisions, additions, or deletions to these CADD files shall be made at the full risk of that party making such revisions, additions or deletions and that party shall hold harmless and indemnify the Consultant from any & all responsibilities, claims, and liabilities.

SUBMITTAL/REVISIONS

CITY SUBMITTAL	11/06/19
PRICING SET	02/12/20
04/03/20	PERMIT SET

PROFESSIONAL SIGNATURE

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

License No. PJ DDD-PE 49933
Date 04/03/20

QUALITY CONTROL

Loecks Project No.	19011
Project Lead	PJD
Drawn By	DDL
Checked By	PJD
Review Date	04/03/20

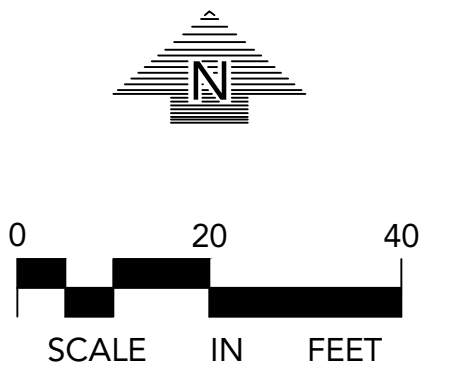
C0-1	SHEET NOTES
C1-1	DEMOLITION PLAN
C2-1	SITE PLAN
C2-2	OVERALL SITE PLAN
C3-1	GRADING PLAN
C3-2	EROSION CONTROL
C4-1	SANITARY/WATERMAIN PLAN
C4-2	STORM PLAN
C8-1	CIVIL DETAILS
C8-2	CIVIL DETAILS
L1-1	LANDSCAPE PLAN

Gopher State One Call
TWIN CITY AREA: 651-454-0002
TOLL FREE: 1-800-252-1166

WARNING:

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND / OR RELOCATION OF LINES.

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.



SITE PLAN
C2-1

Brennan Malanaphy

From: Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>
Sent: Wednesday, January 19, 2022 11:27 AM
To: Hudak, Eric (CI-StPaul); Brennan Malanaphy
Cc: Niziolek, Dan (CI-StPaul); McMonigal-St Dennis, Barb (CI-StPaul)
Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Good morning,

It is my understanding that most of the earthwork that generates a high level of vibration/sound is complete. The contractor could give specific timelines for this final earthwork to be completed.

I originally asked the neighbor about hours of operation before this project began and I did not get a sense of flexibility from Brennan or his tenants regarding modifying their hours of business.

We have a contractor that did not follow what they originally stated – in so far as time of execution of specific tasks of work, mitigation practices, etc.

I believe an agreed timeline should be identified for the earthwork but as far as the remainder of the project I have witnessed MANY vehicles that violate our current sound ordinance (even conversations at the curb can and does exceed 80Db)

Simple vehicle traffic and conversation challenge the ordinance and would suggest we revisit the language in the current ordinance to support progress. . . . it's inevitable.

Thank you,



SAINT PAUL
MINNESOTA

Stephen Ubl
Pronouns: He/Him/His
Building Official
Department of Safety and Inspections
375 Jackson St.
Saint Paul, MN 55101
P: 651-266-9021
Email: Stephen.ubl@ci.stpaul.mn.us



From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Sent: Wednesday, January 19, 2022 10:14 AM
To: Brennan Malanaphy <brennan@alliantconsulting.com>
Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>;

McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>

Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Brennan,

Building Official Steve Ubl, copied, can better speak to the actual type of construction activity taking place. I'm not sure what his schedule is today, but have reached out to him to see if available for a short meeting prior to today's Council meeting.

Eric
(651) 245-4043

From: Brennan Malanaphy <brennan@alliantconsulting.com>

Sent: Wednesday, January 19, 2022 7:20 AM

To: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>

Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>;

McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>

Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Think Before You Click: This email originated outside our organization.

Hello, Eric.

I have met with the tenants to discuss possible schedule adjustments, but we feel don't have enough information about what to expect going forward.

Information from Nor-Son and Bigos about what we might expect throughout the project has been very limited, and they have failed to deliver on previous promises. Among other things, Steve Law's letter to Briah Anson, attached, is now indicating that there will be no pile driving, contrary to the variance application submitted by Nor-Son earlier.

Would it be possible to have a phone call early this afternoon to gain clarity about the construction activities that Nor-Son intends to conduct?

Best regards,
Brennan

Brennan Malanaphy | Partner

Banfil Office Court

Professional Spaces - Historic Charm - Modern Amenities

651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>

Sent: Thursday, January 13, 2022 10:13 AM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>;

McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>

Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Brennan,

As you're aware City Council laid-over their consideration of the sound level variance until next week providing time to determine an less impactful work schedule for the jackhammering and other disruptive activity. With that said, would the tenant group prefer to see the number of work hours per day shortened OR a sooner end date for the variance to expire? It shortened work hours per day, what hours would be preferred? If a sooner expiration date, what date? Also, please let me know if weekend work would help mitigate the impact to the tenant group?

Obviously the overall work hours required will be dictated by amount of work needed for completion. I'll be reaching out to Nor Son asking for information on what can be done on their end to limit those hours to whatever extent possible.

Thanks,

Eric



SAINT PAUL
MINNESOTA

Eric Hudak
Licensing Manager
Dept. of Safety and Inspections
375 Jackson Street, Suite 200
Saint Paul, MN 55101-1806
P: 651 266-9132

From: Brennan Malanaphy <brennan@alliantconsulting.com>

Sent: Monday, January 3, 2022 2:40 PM

To: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>

Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>;
Noecker, Rebecca (CI-StPaul) <Rebecca.Noecker@ci.stpaul.mn.us>

Subject: sound level variance application for 170 Western Ave. South, St. Paul

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Thank you for the information, Mr. Hudak.

We will distribute the sound level variance application notice to all the Banfil Office Court tenants as required by the City.

It is anticipated that there will be comments in opposition to the variance application submitted to the City Council on this matter.

The contractor and project owner were informed of the city sound level limits at the onset of construction activity, persisted in exceeding them without implementing effective sound abatement measures as they indicated they would, and declined our request to compensate tenants for the losses and expenses incurred from the disruption of their businesses.

The 557 W. 7th St. building is only ~10 feet from the construction activity and is a circa 1800's brick building. To date, the sound levels during normal business hours have proven prohibitive to the use of many of the offices in the building, resulting in disruption of mental and physical health services, and the related loss of business revenue and additional expenses to these providers.

We fear the worst is yet to come if the applicants are permitted to drive sheet pilings for the new structure without effective sound mitigation. Given the narrow site dimensions and current configuration, it also seems quite likely that the narrow space between the 557 W. 7th St. building and the new structure will be used for staging construction operations, resulting in persistent untenable sound levels for those in the building well beyond the variance application dates.

It is our hope that the City Council would only permit the contractor and project owner to exceed State and City sound level limits on the condition that they adequately mitigate their effects on Banfil Office Court tenants and/or justly compensate them for the interference with their businesses.

Sincerely,
Brennan Malanaphy

Brennan Malanaphy | Partner

Banfil Office Court

Professional Spaces - Historic Charm - Modern Amenities

651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

brennan@officespaceinstpaul.com

From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Sent: Wednesday, December 29, 2021 10:34 AM
To: Brennan Malanaphy <brennan@alliantconsulting.com>
Subject: FW: Work on Saturday the 11th at 170 Western Ave

Hello Brennen,

Per my voicemail, attached please find information to include a City Council public hearing date for the sound level variance application submitted by Nor-Son Construction for the Winslow Apartment project.

Eric Hudak
(651) 266-9132



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Sent: Friday, December 10, 2021 5:39 PM
To: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>

Cc: Cervantes, Ricardo (CI-StPaul) <ricardo.cervantes@ci.stpaul.mn.us>

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This work is being done less than 10 feet from our office building and the sound levels are interfering with our tenants' ability to conduct business on a daily basis, and affecting their personal health.

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Please help me understand if our expectations are out of line.

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From: Brennan Malanaphy

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To: Chris Emond <chris.emond@nor-son.com>; slaw@tbigos.com

Cc: Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; Steve Boynton <sboynton@blueoxmediagroup.com>

Subject: RE: Work on Saturday the 11th at 170 Western Ave

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brennan@officespaceinstpaul.com

From: Chris Emond <chris.emond@nor-son.com>

Sent: Thursday, December 9, 2021 2:47 PM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Subject: RE: Work on Saturday the 11th

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Chris Emond

Sr. Project Manager

Nor-Son Construction

612-875-2608

Chris.Emond@Nor-Son.Com

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The decibel level in the Banfil court yard exceeded 88, which is above the city code limit.

This week, the decibel level was in excess of 82 from over 300 feet away.

The vibration from the work Saturday appeared to be shifting items on shelves in the 557 offices. I relocated all items that looked vulnerable. I have received no email notices from the sensors that were installed in our buildings.

We appreciate the limiting of the bedrock excavation to Saturdays, which has lessened the impact on our tenants' use of their offices. However, our concerns regarding the disruption to our tenants' use of their offices during normal business hours that has been experienced and is yet to be experienced, remain.

The unusually close proximity of bedrock excavation and other construction activities to the 557 building is proving untenable and we need to revisit the topic of compensation for these businesses.

Best regards,
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Brennan Malanaphy | Partner

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brennan@officespaceinstpaul.com

From: Chris Emond <chris.emond@nor-son.com>

Sent: Wednesday, December 8, 2021 12:52 PM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Cc: slaw@tbigos.com; Jon Graefe <jon.graefe@nor-son.com>

Subject: Work on Saturday the 11th

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Chris Emond

Sr. Project Manager

Nor-Son Construction

612-875-2608

Chris.Emond@Nor-Son.Com

Brennan Malanaphy

From: Noecker, Rebecca (CI-StPaul) <Rebecca.Noecker@ci.stpaul.mn.us>
Sent: Friday, January 21, 2022 10:56 AM
To: Brennan Malanaphy
Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Dear Brennan,

Thank you for writing to me for this suggestion. I considered this prior to our vote this week but ultimately decided to grant the sound-level variance.

Like any property owner, Bigos has the right to construct and demolish structures on their property. (In this case, the construction in question will provide much-needed affordable housing to other St. Paul residents which, to me, is a good thing.)

As I explained at the meeting on Jan. 12, the City is unauthorized to require compensation from one party to another. That is a matter that would need to be settled privately, likely in court.

I understand that the noise and vibrations from the construction will be a burden for you and your tenants, and I believe the sound-level variance requires reasonable measures to mitigate this burden. After hearing your concerns, I put additional constraints on Bigos by requiring that they do their noisiest work from 7 am – 12 pm each day, rather than from 7 am – 5 pm as was originally proposed. I have also requested our Department of Safety and Inspections staff to keep a close watch on the property and to be prepared to take enforcement action if they are not meeting the terms of their sound-level variance.

I know that you and your tenants are likely disappointed with this outcome, but I want you to know my reasoning in making this decision. Thank you again for writing to me.

Best,
Rebecca

Rebecca Noecker | Saint Paul City Councilmember, Ward 2

15 West Kellogg Blvd – Suite 310B | Saint Paul, MN 55102
651.266.8622 | rebecca.noecker@ci.stpaul.mn.us

Stay connected to Ward 2! [Sign up for quarterly e-newsletters](#), [like us on Facebook](#) and [follow us on Twitter](#).

From: Brennan Malanaphy <brennan@alliantconsulting.com>
Sent: Wednesday, January 19, 2022 2:20 PM
To: Noecker, Rebecca (CI-StPaul) <Rebecca.Noecker@ci.stpaul.mn.us>
Subject: FW: sound level variance application for 170 Western Ave. South, St. Paul

Think Before You Click: This email originated outside our organization.

Dear Councilmember Noecker,

I hope that today you will encourage the City Council to require the DSI Zoning division to engage a mediator to bring the parties together and craft a solution rather than granting the variance. I believe a reasonable agreement could be reached that way.

We believe this is a good project for the city being managed very poorly by the owner and contractor. Why Bigos and Nor-Son have dug in their heels on compensating the small amount of damages in the context of such a large project is perplexing to Banfil Office Court and our tenants.

Further, the applicants have not acted in good faith, have not put forward a credible sound abatement plan and are sending mixed signals as late as yesterday about their future activities – their variance application lists “sheet pile driving equipment” while Bigos Management is purporting they won’t be doing anything more than removing the bedrock rubble they have already created.

From correspondence I received today, it seems Mr. Ubl of the city is in favor of loosening the sound level ordinance (which is also a MN statute)rather than enforcing it.

It was wonderful and inspiring to see the small businesses celebrated prior to testifying before the council last week. If the City really believes small businesses are critical to St. Paul’s vitality, denying the variance request is an opportunity to demonstrate it.

I am happy to discuss this further with you.

Sincerely,
Brennan

Brennan Malanaphy | Partner

Banfil Office Court

Professional Spaces - Historic Charm - Modern Amenities

651-291-0607 local | 612-308-1676 Mobile

555 Seventh Street West, Suite 101, Saint Paul, MN 55102

www.banfilofficecourt.com

From: Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>

Sent: Wednesday, January 19, 2022 11:27 AM

To: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>; Brennan Malanaphy <brennan@alliantconsulting.com>

Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>

Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Good morning,

It is my understanding that most of the earthwork that generates a high level of vibration/sound is complete. The contractor could give specific timelines for this final earthwork to be completed.

I originally asked the neighbor about hours of operation before this project began and I did not get a sense of flexibility from Brennan or his tenants regarding modifying their hours of business.

We have a contractor that did not follow what they originally stated – in so far as time of execution of specific tasks of work, mitigation practices, etc.

I believe an agreed timeline should be identified for the earthwork but as far as the remainder of the project I have witnessed MANY vehicles that violate our current sound ordinance (even conversations at the curb can and does exceed 80Db)

Simple vehicle traffic and conversation challenge the ordinance and would suggest we revisit the language in the current ordinance to support progress. . . . it's inevitable.

Thank you,



SAINT PAUL
MINNESOTA

Stephen Ubl
Pronouns: He/Him/His
Building Official
Department of Safety and Inspections
375 Jackson St.
Saint Paul, MN 55101
P: 651-266-9021
Email: Stephen.ubl@ci.stpaul.mn.us



From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Sent: Wednesday, January 19, 2022 10:14 AM
To: Brennan Malanaphy <brennan@alliantconsulting.com>
Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>
Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

Brennan,

Building Official Steve Ubl, copied, can better speak to the actual type of construction activity taking place. I'm not sure what his schedule is today, but have reached out to him to see if available for a short meeting prior to today's Council meeting.

Eric
(651) 245-4043

From: Brennan Malanaphy <brennan@alliantconsulting.com>
Sent: Wednesday, January 19, 2022 7:20 AM
To: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>
Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>; McMonigal-St Dennis, Barb (CI-StPaul) <barb.mcmonigal-st.dennis@ci.stpaul.mn.us>
Subject: RE: sound level variance application for 170 Western Ave. South, St. Paul

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Hello, Eric.

I have met with the tenants to discuss possible schedule adjustments, but we feel don't have enough information about what to expect going forward.

Information from Nor-Son and Bigos about what we might expect throughout the project has been very limited, and they have failed to deliver on previous promises. Among other things, Steve Law's letter to Bria Anson, attached, is now indicating that there will be no pile driving, contrary to the variance application submitted by Nor-Son earlier.

Would it be possible to have a phone call early this afternoon to gain clarity about the construction activities that Nor-Son intends to conduct?

Best regards,
Brennan

Brennan Malanaphy | Partner

Banfil Office Court

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From: Hudak, Eric (CI-StPaul) <Eric.Hudak@ci.stpaul.mn.us>

Sent: Thursday, January 13, 2022 10:13 AM

To: Brennan Malanaphy <brennan@alliantconsulting.com>

Cc: Niziolek, Dan (CI-StPaul) <dan.niziolek@ci.stpaul.mn.us>; Ubl, Stephen (CI-StPaul) <stephen.ubl@ci.stpaul.mn.us>;
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Chris Emond
Sr. Project Manager
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CITY OF SAINT PAUL

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December 28, 2021

FORT ROAD OFFICE PARK
555 7TH ST W
ST PAUL MN 55102-3009

NOTICE OF PUBLIC HEARING

Sound Level Variance

Nor-Son Construction – Construction of 170 Western Avenue S. Winslow Commons

Dear St. Paul Property Owner:

This is to inform you of a request for a variance from the sound level limitations as indicated in the St. Paul Noise Ordinance (Chapter 293 of the St. Paul Legislative Code). Property owned by you and located near the noise source, may be affected by this variance request. Rental property owners must provide a copy of this notice to all renters or post a copy in a common area of the building so it can be viewed by the occupants.

Description of Variance:

Location: 170 Western Avenue S.

Noise Source: Nor-Son Construction has requested a sound level variance, at 95 dBA at 50 feet from the sound source for a Bedrock Removal and Construction Site with heavy equipment use, with operation of sheet pile driving construction equipment, in preparation for a new apartment building construction site at 170 Western Avenue S. The variance is requested for the hours of 7:00 a.m. to 5:00 p.m., January 15, 2022 to March 4, 2022. The Department of Safety and Inspections will be recommending the following conditions: 1) The Variance shall be for the hours of 7:00 a.m. to 5:00 p.m., beginning January 15, 2022 through March 4, 2022. 2) All powered equipment used in conjunction with the construction shall not exceed 95 dBA as measured at 50 feet from the sound source. 3) The applicant shall use best practicable methods for controlling noise, such as, but not limited to noise blankets, shields or portable sound barriers. Construction activities should be scheduled to minimize noise as much as possible. 4) The applicant shall provide personnel and equipment who shall provide continuous sound level monitoring during the hours of the variance. 5) All equipment, or similar devices shall be turned off no later than 5:00 p.m. beginning January 15, 2022 through March 4, 2022. 6) If the sound level variance is approved, the applicant will notify, in writing, all property owners/residents within 400 feet of the proposed work location. Notice shall be a minimum of forty-eight (48) hours prior to the start of the work.

Applicant has acknowledged that any social gathering associated with this variance must be managed in full compliance with all applicable Governor Walz and Mayor Carter COVID-19 Orders including but not limited to Orders relating to distancing, mask wearing and attendance limits

Public attendance at the City Council's regular meeting location is not feasible due to the COVID-19 health pandemic. Members of the public may view City Council meetings online at <https://stpaul.legistar.com/Calendar.aspx> or on local cable Channel 18.

Submit comments for Public Hearing electronically. The public may comment on public hearing items in writing or via voicemail. Any comments and materials submitted by 12:00 pm of the day before the meeting, Tuesday, January 11, 2022, and will be attached to the public record and available for review by the City Council. Comments may be submitted as follows: Written public comment on public hearing items can be submitted to Contact-Council@ci.stpaul.mn.us, CouncilHearing@ci.stpaul.mn.us, or by voicemail at 651-266-6805.

A public hearing before the City Council on this variance request will be held on:

Date: Wednesday, January 12, 2022

Time: 3:30 p.m.

Location: Members of the City Council will participate in City Council meetings by telephone or other electronic means.

After the public hearing, the Council may grant, deny, or modify the variance request.

If you have questions about the sound level variance, please contact: Barb McMonigal-St.Dennis, Environmental Health Specialist, 651-266-9137, barb.mcmonigal-st.dennis@ci.stpaul.mn.us

AA-ADA-EEO Employer