



TOWN OF FAIRFAX

STAFF REPORT

January 14, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Discuss/consider residents' petition regarding the noise ordinance

RECOMMENDATION

Discuss/consider residents' petition regarding the noise ordinance and direct staff as appropriate with regard to follow-up actions.

BACKGROUND

In October 2013, a group of residents in the Deer Park neighborhood submitted a petition to the Council for consideration. Pursuant to Town Code 2.08.090 (C), if the Council is presented with a petition signed by 25 residents urging consideration of an issue, the issue shall be placed on the Council's agenda for discussion. The petition concerned the Town's noise ordinance and enforcement of the ordinance with regard to Deer Park Villa's outdoor events. Several neighbors spoke at the October 2, 2013 Town Council meeting about their concerns. Staff was directed to hold a neighborhood meeting, which took place in November 2013.

At its February 5, 2014 meeting, the Council discussed the status report on the neighborhood discussions, and directed staff to coordinate a second meeting, but ultimately the parties decided they did not wish or need to meet.

At its May 7th meeting, the Council discussed the noise issues regarding Deer Park Villa and considered proposed revisions to the noise ordinance. The Council did not take action on the proposed revisions to the noise ordinance and indicated that staff should schedule it for consideration at a future meeting.

At the end of May 2014 a group of residents in the Deer Park neighborhood submitted a second petition to the Council, concerning proposed revisions to the Town's noise ordinance and enforcement of the ordinance. It was agendaized for Council discussion on June 4, but the item was continued to July 16, and again to August 6 due to time constraints. While the petition did not specifically identify Deer Park Villa, the discussion with the Council regarding the petition has focused on the noise generated by Deer Park Villa's outdoor events.

At its August 6th meeting, the Council further discussed the matter and directed staff to meet with the owner of Deer Park Villa to evaluate the status of his proposed improvements and other actions he has undertaken to address the noise issue. The business owner has indicated he has undertaken such actions as building sound walls, reducing the occurrence of nightly music on the deck, and requiring outdoor music to end by 9:30pm.

At its October 1, 2014 meeting, the Council further discussed this matter and requested staff follow-up on three items:

- 1) Meet with the business owner of Deer Park Villa again to see if the issue can be resolved *(staff did meet with owner, but did not reach a resolution)*,
- 2) Research the Town minutes to determine the rationale for creating Noise Zones A, B, and C and for locating Deer Park Villa in Noise Zone B *(the minutes contain no details of the Council's discussion of the matter)*; and
- 3) Research information on facilities in Sausalito and Mill Valley *(information was attached to the November staff report)*

The Council then continued the matter to November to allow the owner an opportunity to attend the meeting. The owner had been unable to attend the October Council meeting due to illness. At the November meeting, the owner indicated that he believed there was a judgment against the Town in favor of Deer Park Villa in 1981 and that the judgment addressed the issue of outdoor amplified music at the business. In light of this information, the Council continued the discussion to its January meeting (tonight) to provide time to research this new information.

DISCUSSION

While staff could not find any Town records regarding the judgment or suit, we did obtain a copy of the judgment (see attached) from the Marin County Courts. Unfortunately, any background materials on this matter have already been destroyed by the Court. The judgment concerned the Town's action to prohibit amplified outdoor music at Deer Park Villa in 1978.

According to Town minutes, in 1976 the Town Council approved a use permit for Deer Park Villa (DPV) which limited outdoor amplified music to 8:30 pm for for-profit events and 10:00pm for charity events. In 1978, the Council reviewed the use permit and modified it to prohibit outdoor music at DPV. DPV filed suit against the Town and in 1981 the Court issued a judgment restraining the Town from prohibiting outdoor music at Deer Park and remanded the matter back to the Town for further hearings. It should be noted that neither the owner nor the Town has a copy of the actual use permit document or letter.

Staff believes that the judgment does not restrict the Council's ability to revise the Town's noise ordinance. As well, there is no indication that the use permit has been modified from the conditions outlined in 1976. As a result, all options are available to the Council to address the noise concerns of the residents. The challenge for the Council is finding the right balance between the neighbors' quiet enjoyment of their properties and the ability of Deer Park Villa to operate its business.

If the Council is unsatisfied with the owner's actions to mitigate noise, they could consider the following options to address the noise issue:

- 1) Maintain the status quo (no changes to Noise Ordinance);
- 2) Request the Planning Commission to conduct a public hearing to ratify the conditions of the use permit based on the Town minutes and/or modify the conditions as deemed appropriate;
- 3) Revise the Noise Ordinance to:
 - a. change the "Day" hours for Noise Zone B in which Deer Park Villa is located to end at an earlier time than 10:00pm; (no earlier than 8:30pm)
 - b. revise the decibel levels in Noise Zone B for day hours; and/or
 - c. add different time periods for different days in Zone B (e.g., Friday and Saturday day hours stay at 10:00pm, all other days end at 8:30pm);
- 4) Revise the enforcement provision in the Ordinance (staff recommends in any case); or
- 5) Any combination of actions 2-4 above.

Staff does not recommend eliminating or consolidating Noise Zone B into Noise Zone A. It appears one purpose of Noise B is to create transition/buffer zone between Zones A and C. Noise Zone C is the commercial areas of Town including the downtown. Staff would also recommend that the existing enforcement provision be replaced with the attached language.

It should be noted that, subsequent to the December Council meeting, staff was approached by "The Congress of Neutrals (C of N)", a nonprofit organization with over a decade of experience in helping to resolve community disputes and other types of conflicts, to try to mediate a resolution with Deer Park Villa and the neighbors. (Go to www.congressofneutrals.org for more information.) As there are no costs to the Town or the parties for the mediation, staff put C of N in contact with the neighbors and the owner of DPV. Staff will verbally report on their progress at the Council meeting.

Based on the Council's direction, staff would return with revisions to the Noise Ordinance at a future public hearing.

FISCAL IMPACT

N/A

ATTACHMENTS

Judgment of Marin County Superior Court
Revised enforcement provision

FILED

12/24/1979

1 RONALD A. SILVEIRA, ESQ.
 2 COSTAMAGNA, CECCOTTI & SILVEIRA
 3 36 Professional Center Parkway
 4 San Rafael, California 94903
 5 TEL: 472-2011
 6
 7 Attorneys for Plaintiffs

FILED
 DEC 24 1979
 PETER MEYER
 MARIN COUNTY CLERK
 BY 

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF MARIN

10 ANTOINETTE GHIRINGHELLI and)
 11 DEER PARK VILLA, INC., a)
 12 California corporation,)
 13 Plaintiffs and Petitioners,)
 14 vs.)
 15 TOWN OF FAIRFAX, a municipality,)
 16 and DOES I through C, inclusive,)
 17 Defendants and Respondents.)

NO. 91304
JUDGMENT
REMANDING THESE
PROCEEDINGS TO
THE TOWN COUNCIL
OF THE TOWN OF
FAIRFAX AND
RESTRAINING THE
ENFORCEMENT OF
THE ORDER
PROHIBITING
OUTSIDE AMPLIFIED
MUSIC UNLESS SAID
MUSIC SHALL
CONSTITUTE A
PUBLIC NUISANCE
AND BE FOUND TO
BE TOO LOUD IN THE
OPINION OF A
POLICE OFFICER OF
THE TOWN OF
FAIRFAX

18 This matter came on regularly before the above-entitled
 19 court on September 25, 1979, for hearing in the courtroom of the
 20 Honorable Peter Allen Smith, Judge Presiding, in Department 4 of
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LAW OFFICES
 OF
 COSTAMAGNA, CECCOTTI
 & SILVEIRA
 AN ASSOCIATION INCLUDING
 A PROFESSIONAL CORPORATION
 36 PROFESSIONAL CENTER PKWY.
 SAN RAFAEL, CA 94903

1 the above-entitled court, pursuant to the verified petition of
2 petitioners herein. An alternative Writ of Mandamus issued herein
3 on November 3, 1978 was served on respondent. Ronald A. Silveira,
4 Esq., of the law firm of Costamagna, Ceccotti & Silveira, appeared
5 as attorney for petitioners, and Wallace S. Myers, Esq., of the
6 law firm of Myers, Praetzel & Garety, appeared as attorney for
7 respondent.

8 The record of a portion of the dispositive administrative
9 proceeding having been received into evidence and examined by the
10 above-entitled court, additional evidence having been received by
11 the court, arguments having been presented, the court having made
12 findings of fact and conclusions of law which have been signed and
13 filed, and the court having directed that judgment should issue
14 in the cause,

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

16 1. That these proceedings be remanded to the Town Council
17 of the Town of Fairfax for further hearings and the making of
18 findings of fact and conclusions of law and report to this court,
19 and pending said hearings and report, that respondents be restrained
20 from prohibiting amplified music played outdoors at the premises
21 unless said amplified music shall, at the time, constitute a public
22 nuisance or be found and determined to be too loud in the opinion
23 of a police officer of the Town of Fairfax.

24 DONE, IN PART, IN OPEN COURT this 25th day of September, 1979,
25 supplanted and superseded by the Memorandum of Opinion signed

26 ///

1 25th day of October, 1979, and signed this 24 day of
2 October, 1979.

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4 *Pete Allred*
5 Judge of the Superior Court

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9 APPROVED AS TO FORM:

10 MYERS, PRAETZEL & GARETY

11 By *Wallace S. Myers*
12 Wallace S. Myers
13 Attorneys for Respondent

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FAIRFAX, CA MUNICIPAL CODE OF ORDINANCES

§ 8.20.050 EXTERIOR NOISE LIMITS.

(A) Maximum permissible sound levels by receiving land use.

(1) The noise standards for the various noise zones as presented in the following table shall, unless otherwise specifically indicated, apply to all such property within a designated zone.

(2) No person shall operate or cause to be operated any source of sound at any location within the incorporated town, or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the person, which causes the noise level when measured at the complainant’s property line to exceed the limits in the table below for more than seven and one-half minutes in a 15- minute period. Those seven and one-half minutes need not be continuous.

(3) If the measured ambient level differs from that permissible, the allowable noise exposure standard shall be adjusted in five-decibel increments in each category as appropriate to encompass or reflect the ambient noise level.

(4) If the measurement location is on a boundary between two different zones, the noise level limit applicable to the lower noise zone shall apply.

(B) Correction for character of sound.

(1) In the event the alleged offensive noise, as judged by the Chief of Police or his or her designated representative, contains a steady, audible tone such as a whine, screech or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech, the standard limits set forth in the table below shall be reduced by five decibels. If the Chief of Police determines that the noise is extremely offensive to a person of normal sensitivity because it contains a steady, audible or high-pitched whine, screech, or hum, is repetitive (such as hammering or riveting) or is music or speech that is distorted, contains emphatic beats or vulgar or profane language, the Chief of Police, or his or her designated representative, may reduce the exterior noise limit by 5 decibels

| <i>Exterior Noise Limits</i> | | | |
|---|---------------------------|------------------------|---------------------------------|
| <i>(Levels not to be exceeded more than 7.5 minutes in any 15-minute period)</i> | | | |
| <i>Noise Zone</i> | <i>Time Period</i> | | <i>Noise Level (dBA)</i> |
| A (Residential) | Night | 10:00 p.m. - 7:00 a.m. | 40 |
| | Day | 7:00 a.m. - 10:00 p.m. | 50 |
| B (Multiple Dwelling, Residential) | Night | 10:00 p.m. - 7:00 a.m. | 50 |
| | Day | 7:00 a.m. - 10:00 p.m. | 55 |
| C (Commercial) | Night | 10:00 p.m. - 7:00 a.m. | 55 |
| | Day | 7:00 a.m. - 10:00 p.m. | 60 |

(2) These zones are illustrated on Exhibit A, “Noise Zones, Town of Fairfax,” attached to the ordinance codified in this chapter. Areas that are not covered on the map are included in Zone A.