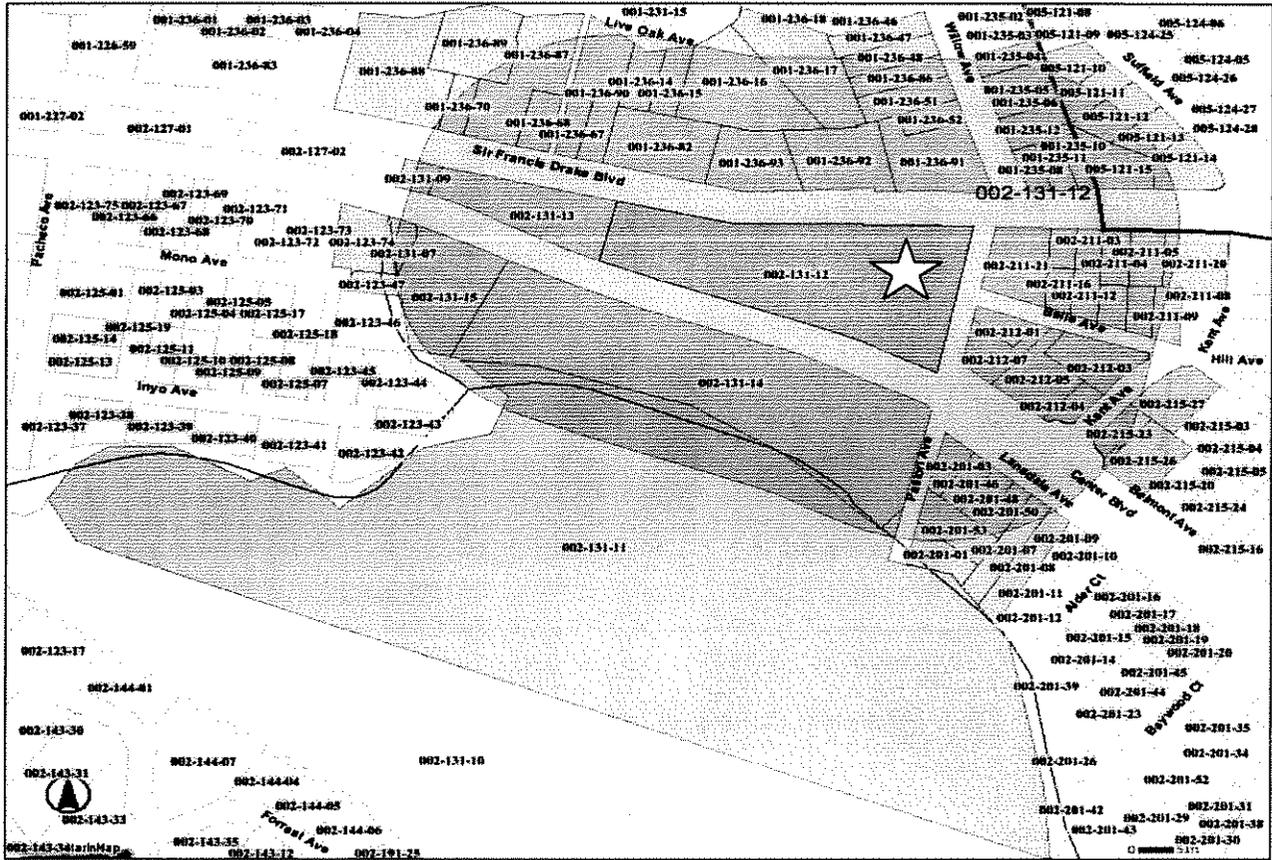


TOWN OF FAIRFAX STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: October 17, 2013
FROM: Jim Moore, Director of Planning and Building Services
LOCATION: 720 Center Boulevard; Assessor's Parcel No. 002-131-12
PROJECT: Review Use Permit No. 13-10
ACTION: Review of Use Permit for compliance with delivery vehicle conditions
APPLICANT: Al Baylacq, Good Earth Natural Foods
OWNER: Rich Hall, Fairfax Center Properties, LLC.
CEQA STATUS: Categorically exempt section 15301(a)



720 CENTER BOULEVARD

BACKGROUND

The conditions of approval for the Good Earth Market to conduct business at 720 Center Boulevard were predicated upon delivery trucks arriving to deliver goods to the store Monday through Saturday and that those delivery trucks would be processed through the loading dock area at the northeast corner of the building: and that only one 60-foot long grocery truck would arrive between 5:00 AM and 6:00 AM, Monday through Friday, and that only two 45-foot long produce trucks would arrive between 6:00 AM and 7:00 AM, Monday through Saturday: and that trash would be picked up after 8:00 AM.

On April 18, 2013, the Fairfax Planning Commission approved an application for minor modifications to the approved use permit and design review for the project and reviewed compliance issues with regards to the extra number truck deliveries before 7:00 am that had been occurring since the market opened for business: E.g., the Good Earth Market owners wanted relaxation of the number of early morning truck deliveries between 5:00 am to 7:00 am and the neighbors present wanted the elimination of truck deliveries before 6:00 am altogether - but were willing to accept unlimited trucks after 6:00 am.

The Commission continued the discussion of the number, truck size and delivery hours for six (6) months advising the applicant and the Planning Director to schedule a meeting between the Good Earth owners and the surrounding neighborhoods affected by the delivery noise to try and come up with mitigation measures to minimize the truck impacts.

(Please note that the staff report & attachments, minutes and a video recording of April 18, 2013 meeting are available on the town's website at townoffairfax.org).

DISCUSSION

On June 12, 2013 staff held a meeting at the Women's Club between the Good Earth owners and the surrounding neighbors affected by the delivery noise to try and come up with mitigation measures to minimize the truck impacts. At that meeting a three-step process was agreed to by both the neighbors and the Good Earth owners to:

1. **Compliance**; limit the early morning delivery trucks to the three allowed before 7:00 am.
2. **Improvement**; reduce or eliminate noise from the three trucks allowed before 7:00 am.
3. **Reward**; as a reward should the Good Earth owners achieve "compliance" and then succeed in reducing or eliminating noise from the three delivery trucks allowed before 7:00 am, then the neighbors would agree to allow an unlimited number of truck deliveries after 6:00 am with the one 60' truck still making deliveries between 5:00 am and 6:00 am.

Subsequent to the June 12, 2013 meeting between the parties, staff met with each side individual at two separate meetings on July 31, 2013 and on August 29, 2013 and then again with both parties together on August 29 to review progress on the three-step process.

To date, the Good Earth owners have implemented several protocols to limit the number and noise from truck deliveries before 7:00 am. These include: working with the truckers to limit or eliminate noise from back-up beepers, air brakes, loading equipment, engine idling, radios, loud talking; and have assigned a staff person to be there in the morning to manage deliveries and barricades at the driveway entrances to the eastern parking lot.

The Good Earth owners have also applied for a permit to extent the northern 8' fence next to the truck loading dock area - between the eastern parking lot and Sir Francis Drake Boulevard in order to further mitigate noise traveling towards the Willow Avenue neighborhood: please note that this application/item is also on the Planning Commission agenda tonight.

Unfortunately, there continue to be complaints from neighbors regarding the number, size of, and noise from trucks making early morning deliveries to the store prior to 7:00 am: and there have been two logged reports of complaints with the Police Department since April 18, 2013.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to either:
 - a) Direct the applicant to comply with the allowed number of trucks before 7:00 am,
 - b) Further restrict early morning truck deliveries before 7:00 am,
 - c) Relax early morning truck deliveries before 7:00 am,
 - d) Give staff alternative direction.

ATTACHMENTS

Exhibit A – Police incident reports and photos

Exhibit B – e-mail to Jim Moore, Director of Planning and Building Services from Bob Mellin dated 10/10/13

Exhibit C – two (2) e-mails from Good Earth dated 10/10/13

**FAIRFAX POLICE DEPARTMENT****CAD INCIDENT REPORT**

131008007

10/9/2013

Location GOOD EARTH NATURAL FOODS, 720 CENTER BL				Cross Streets PASTORI AV/PACHECO AV			City FAIRFAX	
Incident Type TCVIOL - TOWN CODE VIOLATION				Call Taker BASILIO-LEWIS, SERITA			Dispatcher BASILIO-LEWIS, SERITA	
Date 10/8/2013	Priority 2	Primary Unit 5L3	Beat	Fire Zone	Area DNTN	Map F5	Source TELEPHONE CALL	
Caller Name MELLIN, ROBERT ARTHUR JR				Caller Address 20 Willow Av, Fairfax			Caller Phone 415-453-8886	
Dispositions Service Provided					Weapon		Alm Level	Case Number
Vehicles 2011 Kw Ds, 9E57066/CA 2010 Frht, 8U98053/CA VIN: 1FVACWDT4ADAN5037					Associated Incidents			
Incident Times			Special Circumstances					
Received 06:00:00								
Created 06:01:12								
Dispatched 06:05:08								
En Route								
On Scene 06:07:55								
Closed 06:15:29								
Revd-Closed 15:29								
Persons								
Unit Times	Officer	Dispatched	Enroute	On Scene	Clear	Disp-On Scene	On Scene-Clear	Disp-Clear
5L3	Cade, William	06:05:08		06:07:55	06:15:29	02:47	07:34	10:21
Incident Comments Report of two delivery trucks in the loading area for past 5 minutes.								
TIME	#	EVENT						BY
06:01:12	1	Incident initiated at Good Earth Natural Foods, 720 Center Bl, Fairfax 2						S. Basilio-Lewis
06:01:40	2	RP advises to log the call only, does not want an officer to respond, as it is already						S. Basilio-Lewis
	3	0600 hrs.						
06:05:00	4	5L3 advised.						S. Basilio-Lewis
06:05:08	5	5L3 DISP. Good Earth Natural Foods, 720 Center Bl, Fairfax						S. Basilio-Lewis
06:07:55	6	5L3 10-97.						S. Basilio-Lewis
06:08:43	7	5L3 10-29: 8U98053/CA						S. Basilio-Lewis
06:08:43	8	5L3 DMV check: 8U98053/CA						S. Basilio-Lewis
06:08:47	9	5L3 10-29: 9E57066/CA						S. Basilio-Lewis
06:08:47	10	5L3 DMV check: 9E57066/CA						S. Basilio-Lewis
06:11:29	11	5L3 Both trucks parked in loading dock area with cargo being unloaded. One truck						S. Basilio-Lewis
	12	left just as officer arrived. The other truck still being unloaded.						
06:15:29	13	5L3 10-8. Disposition SP						S. Basilio-Lewis
06:15:30	14	5L3 Closed - Disposition SP						S. Basilio-Lewis
06:16:15	15	Officer contacted RP, who is now stating that trucks have been there since 0500 hrs,						S. Basilio-Lewis
	16	not for past 5 minutes.						
06:16:32	17	Printed for 5L3.						S. Basilio-Lewis

EXHIBIT # A



FAIRFAX POLICE DEPARTMENT

CAD INCIDENT REPORT

130930012

10/9/2013

Location GOOD EARTH NATURAL FOODS, 720 CENTER BL	Cross Streets PASTORI AV/PACHECO AV	City FAIRFAX
--	---	------------------------

Incident Type TCVIOL - TOWN CODE VIOLATION	Call Taker BASILIO-LEWIS, SERITA	Dispatcher BASILIO-LEWIS, SERITA
--	--	--

Date 9/30/2013	Priority 2	Primary Unit 5L3	Beat	Fire Zone	Area DNTN	Map F5	Source TELEPHONE CALL
--------------------------	----------------------	----------------------------	-------------	------------------	---------------------	------------------	---------------------------------

Caller Name BRUCE, THOMAS ROBERT	Caller Address 142 Bolinas Rd, Fairfax	Caller Phone 415-453-8856
--	--	-------------------------------------

Dispositions Service Provided	Weapon	Alm Level	Case Number
---	---------------	------------------	--------------------

Vehicles 2010 Frht, 8U98053/CA	Associated Incidents
--	-----------------------------

Incident Times Received 06:14:45 Created 06:17:07 Dispatched 06:20:51 En Route 06:20:51 On Scene 06:23:20 Closed 06:26:09 Rcvd-Closed 11:24	Special Circumstances Persons
---	--

Unit Times	Officer	Dispatched	Enroute	On Scene	Clear	Disp-On Scene	On Scene-Clear	Disp-Clear
5L3	Cade, William	06:20:51	06:20:51	06:23:20	06:26:09	02:29	02:49	05:18

Incident Comments
DPW out and noticed a delivery truck in the delivery port of Good Earth for approx 30-45 minutes which just left. Another truck just arrived and is parked in the delivery port, medium sized white truck has only been there a minute or two at time of call.

TIME	#	EVENT	BY
06:17:07	1	Incident initiated at Good Earth Natural Foods, 720 Center Bl, Fairfax 2	S. Basilio-Lewis
06:19:14	2	5L3 advised.	S. Basilio-Lewis
06:20:51	3	5L3 ENRT. Good Earth Natural Foods, 720 Center Bl, Fairfax	S. Basilio-Lewis
06:23:20	4	5L3 10-97.	S. Basilio-Lewis
06:23:43	5	5L3 10-29: 8U98053/CA	S. Basilio-Lewis
06:23:43	6	5L3 DMV check: 8U98053/CA	S. Basilio-Lewis
06:24:01	7	5L3 One truck in port.	S. Basilio-Lewis
06:26:09	8	5L3 10-8. Printed for 5L3. Disposition SP	S. Basilio-Lewis
06:26:10	9	5L3 Closed - Disposition SP	S. Basilio-Lewis

Linda Neal

From: Jim Moore
Sent: Wednesday, October 09, 2013 9:25 AM
To: Linda Neal
Subject: FW: Good Earth Truck Complaint (FPD Incident 131008007)
Attachments: SAM_0186.JPG; SAM_0185.JPG

FYI...

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"
(*Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)

From: Mark Lockaby
Sent: Wednesday, October 09, 2013 9:24 AM
To: al@genatural.com
Cc: Jim Moore
Subject: FW: Good Earth Truck Complaint (FPD Incident 131008007)

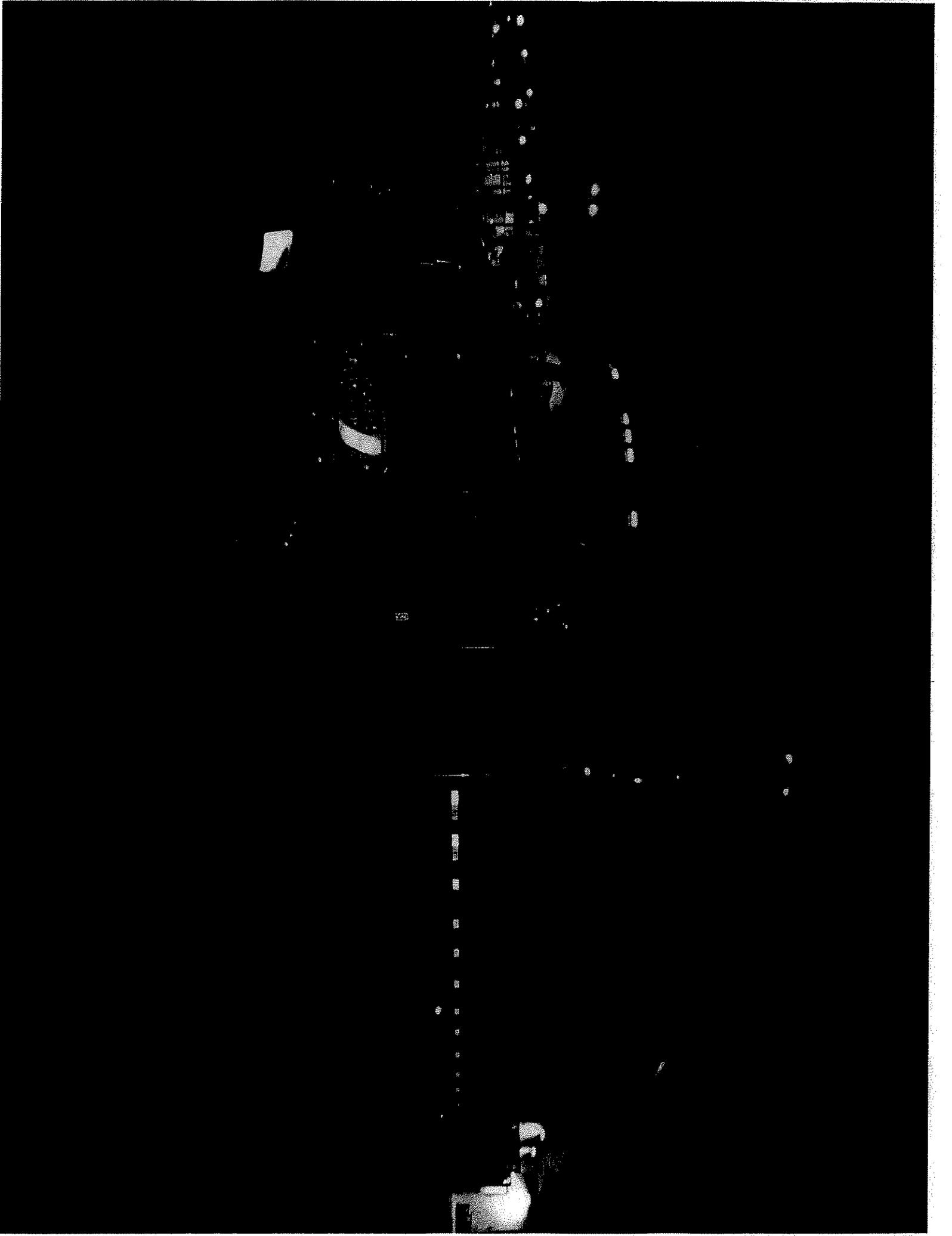
FYI

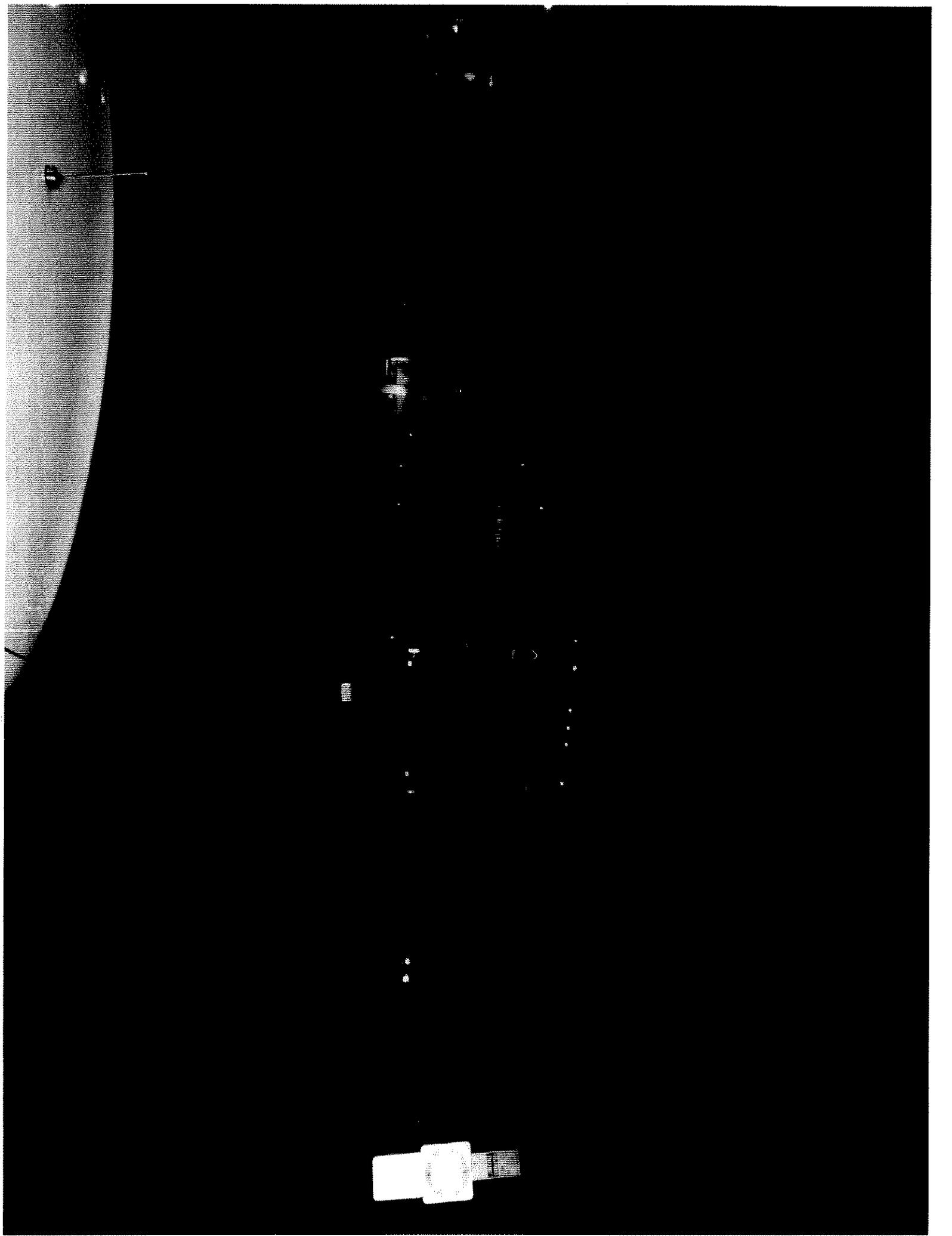
Mark Lockaby
Building Official
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
415-458-2370

From: William Cade
Sent: Wednesday, October 09, 2013 7:59 AM
To: Mark Lockaby
Cc: Chris Morin
Subject: Good Earth Truck Complaint (FPD Incident 131008007)

Hello Mark,

On 10/08/13, at approximately 6:00am, the police department received a complaint (**FPD Incident #131008007**) about two trucks at the loading dock of Good Earth. At approximately 6:07am, I arrived at Good Earth. Upon my arrival, I observed 2 trucks parked in their east parking lot loading dock. At the time of my arrival, one of the trucks in question had its engine idling. However, both trucks had their cargo unloaded. I contacted the Reporting Party who advised that both trucks woke him up from his sleep and had been parked/unloading its cargo at Good Earth since 5:00am. Attached are photographs of the trucks in question.







OCT 10 2013

Early Morning Noise at Good Earth

RECEIVED

Thu, Oct 10, 2013 at 3:28 PM

Robert Mellin <robertmellin@gmail.com>

Draft To: Jim Moore <jmoore@townoffairfax.org>

Cc: gtoy@townoffairfax.org, lneal@townoffairfax.org, jreed@townoffairfax.org, dweinsoff@townoffairfax.org,

lbragman@townoffairfax.org

I want to start by thanking you and your staff for the time and energy you have invested in helping our group over the past year. Your team has always responded promptly in a professional manner to our requests. You are in the middle between people trying to run a business and people trying to sleep. We appreciate your tireless efforts at mediation.

Fifteen months ago my neighbor Stephen Franks made what was to be the first of several monthly appeals to the Fairfax Town Council to take action to reduce the early morning noise at the Good Earth (G.E.) store. Our claim was then, and is now, that the pre-6 a.m. noise (as early as 3 a.m.) awakens the neighbors.

Mr. Franks began a dialog with G.E. owner Al Baylacq to explore remedies and was assured by Councilman Weinsoff on the record at one of the Council meetings that the G.E. store would comply with the terms of its operating permit.

A year has now passed, and the noise continues to wake up the neighbors.

Knowing that G.E.'s temporary operating permit had expired in early 2013, we appeared before the Planning Commission on April 18, 2013 to ask for help and explained that our negotiations with G.E. over the prior nine months proved fruitless. We cited two dozen petitions signed by neighbors asking for help. Separately, the Town Planning Department presented a recommendation at that April 18th meeting that deliveries be limited to 6 a.m. and later.

We were disappointed that the Planning Commission ignored the Town's recommendation and chose instead to "kick the can down the road" as one Commissioner put it. The Commission directed both parties to continue to exploring remedies for another six months.

Moreover, the Commission decided to grant a permanent operating permit to the store in spite of the fact that the store had failed to meet the terms of its conditional temporary permit which had been negotiated with G.E., the Town and G.E.'s neighbors in response to similar noise problems at the store's previous location.

Another six months have passed, and the noise continues to wake up the neighbors.

In compliance with the Commission's directive, I called a meeting of the two parties on June 12, 2013, which you hosted. We presented G.E.'s owners with a list of eleven distinct noise sources which our neighbor group had identified as the reasons they are awakened. G.E.'s owner questioned whether the noises came from the store. I subsequently offered, twice and in writing, to install live 24/7 streaming audio/video at our expense to define the noise sources. G.E. has not requested this support.

The eleven noise sources are: airbrakes, back-up beepers, horns, voices, Idling, truck doors & liftgate, pallet jack,

EXHIBIT # B

pallet handling, loudspeaker, hydraulic ramp "flap, backing into dock accidentally.

To their credit, G.E.'s owners have developed a "Protocol For 5 a.m. Receiver Role" which details how the store's staff can reduce or eliminate the noises. Similarly, one of the store's largest pre-6 a.m. vendors, UNFI, issued an in-house directive to its drivers echoing G.E.'s guidelines.

Unfortunately, these guidelines are not being followed and G.E.'s neighbors continue to be awakened almost daily. At the end of this letter is a daily log I personally kept at G.E.'s east parking lot between 4:30 a.m. and 6:15 a.m. this week. The log is intended to give you a "feel" for our reality.

You are familiar with the agreements which I thought were made at the two meetings you hosted on June 12th and August 29th, 2013,: chaining off the parking lot before 7 a.m. and extending the SFD sound wall east to shield Willow residents. Neither has happened.

Our neighborhood group is at a disadvantage because we do not have personal relationships with any Planning Commissioners or Council Members. So we have drawn upon some of the relationships we do have and have contacted officials at neighboring communities and at the County level for guidance in trying to resolve this matter.

When approaching our contacts for input, we did not identify the town nor the store by name, yet 7 out of the 8 we spoke with suggested Fairfax and the Good Earth.

San Anselmo Town Manager Debbie Stutsman cites their success using Nuisance Abatement Proceedings in cases like ours. Corte Madera's Planning Manager, Dan Bell suggests permit revocation and nuisance abatement. San Rafael's Community Development Department's Raffi Boyolan suggests a range of remedies depending on the terms of the permit and the alleged damages.

At the County level, Senior Planner Kristin Drumm, who has Fairfax experience, suggests continuing to document and appeal to the Town Council. Tax Collector Roy Given has extensive experience with matters like these in Belvedere, Novato, San Anselmo and Fairfax (about 6 years ago) suggests defining the Town's responsibility and pursuing action.

All of these officials were surprised that a permanent permit was granted when the terms of the temporary permit were not met. They were also surprised that this has dragged on for well over a year and suggested that average resolution was less than six months.

The noise problem has two primary impacts on G.E.'s neighbors:

A. Economic - In the past year, five neighbors have given up, sold and moved away. A sixth is about to list their home for sale. Several renters have also moved away from the noise. One of the 5 homes was sold to a new family that appeared at our second Town-mediated meeting on August 29th. The parents and their children attended to ask if they could get help keeping the G.E.'s delivery trucks from blocking their driveway so Dad could go to work in the morning.

I claim that the home sales are not because of the recent "real estate boom." Evidence lies in the declining values of neighbors' homes. For instance, the value of 20 Willow (my home) has decreased each of the last 12 months according to Zillow.com, an online real estate listing service. Each month the service, which I signed up for to try to sell my house just as G.E.'s construction began, sends me an email telling me how much less my house is worth based on comparable sales in the surrounding neighborhood.

I sent the 12 monthly Zillow reports showing my home's declining value to the County Assessor's Office and spoke with its head, Richard Benson. He has assigned an assessor to evaluate the problem in the area.

As you know, someone trying to sell their home is required to disclose certain information. The disclosures relating to the G.E. noise situation include the following:

Excerpts from California Association of Realtors SELLER PROPERTY QUESTIONNAIRE (C.A.R. Form SPQ, Rev.11/10)

V. SELLER AWARENESS: "Are you (Seller) aware of:

A. STATUTORILY RELATED:

4. Whether the Property is located in or adjacent to and "industrial use" zone (In general, a zone allowing commercial use).

K. NEIGHBORHOOD:

1. Neighborhood noise, nuisance or other problems from sources such as . . . 36 examples are listed including: traffic, parking congestion, trucks, . . .

M. OTHER:

2. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer.

B. Health – I assume we all know the effects of sleep interruption. Certainly new parents do. In our neighborhood's case, the effects of almost daily sleep interruption vary from household to household and can depend on the health and sleep patterns of the residents.

At the end of last month, we sent a follow-up survey to each of the two dozen neighbors who signed the noise abatement petition in early April of 2013. 100% of the respondents claimed that the problems still exist. Some expressed vehement frustration.

I told you and the Council about an older neighbor woman many months ago. When we first contacted her in April, she told us we were wasting our time trying to change things, but she shared her complaints just the same. For the past two years she has been bedridden with illness and the daily noise, sleep interruption and stress have been her reality. Two weeks ago she repeated her discomfort in her survey response:

"It is horrible. It wakes us up at 4:30 a.m. with 'beep, beep, beep.'" Also the large trucks rumble past with a very undesirable shake of the house." Her comments are dated September 25, 2013.

She died October 1st.

Our neighborhood group doesn't understand why the noise problems continue. Our group has questions which we hope you, or the Commission, or the Council can answer. The questions include:

1. Why is there no enforcement of G.E.'s permit? At the Town Council's October 1, 2013 meeting it was acknowledged that a \$500. fine had been assessed to the Deer Park Villa for excessive noise in the afternoon/evening. Fines of up to \$500. a day were discussed as a remedy for the alleged nuisance/permit violations existing at a home on Willow Avenue. Why are G.E.'s well-documented and continual violations not cited by the Town?
2. Why was a permanent permit granted when the store continually violated its conditional permit?

We want to repeat our appreciation for your efforts on this matter. As I mentioned in my letter to you at the end of last month, our group has acknowledged its (my) failure to resolve this and has voted to take another direction.

I want to add my personal thanks for your patient and professional response to my requests.

Sincerely, 
Robert A. Mellin

GOOD EARTH Early Morning Delivery Observations – Monday 10.7.13 to 10. 10.13

East Parking Lot

<u>Date</u>	<u>License / Length</u>	<u>Name</u>	<u>Arr./Depart (a.m.)</u>	<u>Comments</u>
10/7	2O67107/60 ft.	unfi	5:01 / 5:41	Air Brakes four times; back-up beeper four times; pallet jack; dropping pallets; lift gate; illegal left turn exiting onto SFD blocking both lanes waiting 4 light.
10/7	BU98053/30 ft	Org.Prod.	6:00 / >6:20	No noise.
10/8	8U98053/30 ft	Org. Prod.	5:39 / ?	Pallet jack, dropping 5 or 6 pallets; "drum" noise from inside of truck; picks up empty pallets/boxes
10/8	4LB7576/45 ft.	Verit.Veg.	5:52 / ?	Called police re 2 nd truck before 6 a.m.; spoke to dispatcher Serita; Officer Cade arrived at 6:02. Truck idled for 8 minutes before backing to dock. Driver assistant guided truck backing up. Air brakes And pallet jack noise.
10/8	2067102/60 ft.	unfi	6:14 / ?	Back-up beepers twice.
<hr/>				
10/9	At 4:30 a.m. A-frame signs are blocking entrance to east parking lot.			
10/9	1WM1724/45 ft.	Verit.Veg.	5:16 / 5:34	Parked on Center Blvd., across from Sunshine Cyclery – driver unloaded there and used pallet jack to walk two pallets to dock on east side. No noise.
10/9	7Z59506/	Unmarked Van	5:35 / 5:40	Van enters from SFD. One hand truck load delivered
10/9	2I24851/45 ft	enfi	5:52 / ?	Unable to enter due to sawhorses, truck circles back onto SFD, west to town.
10/9	Store employee moves A-frame signs at 5:54			
10/9	8U98053/30 ft.	Org. Prod.	5:58 / ?	Air brakes.
10/9	2I24851/45 ft.	enfi	5:58 / ?	Air brakes.
<hr/>				
10/10	8U98053/30 ft.	Org. Prod.	4:56 / 5:20	Drives through A-frame signs; airbrakes; pallet jack; dropped pallets; bottles being dumped or dropped –

(driver may not be source); "drum" noises in truck;
dropping of dock ramp as truck drives off.

Several deliveries at front of store by trucks on Center.

No more deliveries until after I leave at 6:15.

END

Linda Neal

From: Jim Moore
Sent: Thursday, October 10, 2013 4:20 PM
To: Linda Neal
Subject: FW: Good Earth Truck Complaint (FPD Incident 131008007)

FYI...

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"

(*Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)

From: Al Baylacq [mailto:al@genatural.com]
Sent: Thursday, October 10, 2013 4:17 PM
To: Jim Moore; Mark Lockaby
Cc: Mark Squire; Fairfax Police Chief
Subject: Fwd: Good Earth Truck Complaint (FPD Incident 131008007)

Hi Jim and Mark,
Thanks for the opportunity to view the recent complaint and respond.

Not only am I including our receiver, Jonathan's, direct response here but also my understanding after looking into the specifics of the incident.

Prior to receiving the forwarded complaint, Jonathan reported the following (as he does every day to me):

On Oct 8th, 2013 at 6:26 AM receiving@genatural.com wrote:
Hey Al,

This morning we had a policeman taking pictures of our produce trucks again. We were 100% within our regulations so I don't know if he was just keeping tabs just because or if he misunderstands our regulations but he was there in any case. We had Earl's between 5 and 6, and V.V. and UNFI between 6 and 7. No one else. No beeps, good air brakes, signs in place.

Thanks a lot,
Jonathan

After we received the complaint we talked and watched the morning footage of our doc. I also forwarded the report email to him and asked him to respond to what was being reported- he did so yesterday and that is included right below my signature here.

We found that the Earl's truck arrived at 5:40am and left the dock just after 6am. The officer reporting that the truck was idling; and that is a result of the driver himself getting ready to leave as can be seen minutes later in photo at 6:10-ish.

We have NEVER let trucks idle while delivering products to us (not up at old location nor down here in new location) its simply an air quality/ pollution problem for our staff open door ways/ windows and always has been that mostly. Besides, I don't really understand how an idling truck can possibly drown out the noise on Sir Francis Drake Blvd. (hundreds of cars, trucks, buses, garbage trucks, street sweepers, driving by in a constant stream before and after 5am.)

NO TRUCKS were on this property until the Earl's truck. We started reviewing the tape at about 10 minutes before 5am and again found no activity at dock until 5:40am when Earl's pulled up. The Earl's truck NEVER uses back up beeps and they do not set air brakes anymore. The very conscientious driver (who is employed by owner Earl Herrick, a longtime Fairfaxian, who has gone above and beyond to train staff and equip his trucks appropriately- he and his company has had complete "buy-in" around this issue of not causing noise) is just that- he cares about satisfying us a lot.

The claim that "both" trucks had dropped the cargo is also false. Veritable Vegetable semi arrived at 6:01am and was here til about 6:25am dropping their cargo. They hadn't dropped the 4 pallets of produce at the point the officer was on location, fyi.

Obviously, I don't know who exactly was woken up at 5am (or how close they are to store dock), but I can attest it wasn't from anything that happened down here that morning.

Sincerely,
Al

Al Baylacq, Partner
Good Earth Natural Foods, INC.
720 Center Blvd.
Fairfax, CA. 94930
415-454-0123 Ext. 222
415-744-1809 Computer Fax

Begin forwarded message:

From: "receiving@genatural.com" <receiving@genatural.com>

Subject: Re: Good Earth Truck Complaint (FPD Incident 131008007)

Date: October 10, 2013 5:45:44 AM PDT

To: Al Work <al@genatural.com>

Hey Al,

That report isn't entirely accurate. We only had one truck between 5 and 6 which was Earl's. The second truck mentioned arrived shortly after 6. It is true that we had two trucks on the dock a little after 6, but not before hand. The truck idling was Earl's and that was only for a moment or two as he was just about to leave. I believe the officer that was there actually saw the Earl's truck pull away so hopefully he would be able to attest to that. He did not leave his truck idling while he was unloading, this I know for a fact. If there's anything else I can help clear up please let me know.

Thanks,
Jonathan

On Oct 9, 2013, at 2:10 PM, Al Work wrote:

Jonathan,

I know we talked about today, but could you please weigh in with a direct response to what Mark L. Is saying in his email report.

Truck idling?

Thanks,

Al

Sent from my iPhone

Begin forwarded message:

From: Mark Lockaby <mlockaby@townoffairfax.org>
Date: October 9, 2013 at 9:23:36 AM PDT
To: "al@genatural.com" <al@genatural.com>
Cc: Jim Moore <jmoore@townoffairfax.org>
Subject: FW: Good Earth Truck Complaint (FPD Incident 131008007)

FYI

Mark Lockaby
Building Official
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
415-458-2370

From: William Cade
Sent: Wednesday, October 09, 2013 7:59 AM
To: Mark Lockaby
Cc: Chris Morin
Subject: Good Earth Truck Complaint (FPD Incident 131008007)

Hello Mark,

On 10/08/13, at approximately 6:00am, the police department received a complaint (**FPD Incident #131008007**) about two trucks at the loading dock of Good Earth. At approximately 6:07am, I arrived at Good Earth. Upon my arrival, I observed 2 trucks parked in their east parking lot loading dock. At the time of my arrival, one of the trucks in question had its engine idling. However, both trucks had their cargo unloaded. I contacted the Reporting Party who advised that both trucks woke him up from his sleep and had been parked/unloading its cargo at Good Earth since 5:00am. Attached are photographs of the trucks in question.

Officer William Cade #093
Fairfax Police Department
144 Bolinas Rd.
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<SAM_0185.JPG>

Linda Neal

From: Jim Moore
Sent: Thursday, October 10, 2013 5:52 PM
To: Linda Neal
Subject: FW: Morning of 10/10

FYI...

James M. Moore
Director of Planning & Building Services
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: (415) 453-1584
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"The Life of the Land is Perpetuated in Righteousness"

(*Ua mau ke ea o ka aina i ka pono* has been the motto of Hawaii for over 160 years)

From: Al Baylacq [mailto:al@genatural.com]
Sent: Thursday, October 10, 2013 5:47 PM
To: Jim Moore
Cc: Mark Squire; Garrett Toy
Subject: Fwd: Morning of 10/10

Jim,

In preparation for next week's meeting, I'm thinking about delivering to you all about a months worth of these "short reports" (forwarded below) that our full time receiver does just about every morning for me. Would they be helpful for you to have?

Additionally, thanks for helping with the fence extension project, including getting the mailing/notification out.

In following up the additional items from our meeting about a month ago, I report that the following day after meeting, I had a very clear discussion with marin sanitary driver and a voice mail exchange with Steve Rosa about the importance of our once-a-week pickup of trash compactor and that it never can happen before 7am again. Steve claimed this WILL NOT happen anymore, especially since we had to follow up the very next week because of a substitute driver (knowing about the restriction evidently, but showed up at 5:45am anyways but then was refused and told to come back after 7am). We haven't had a problem with MS since.

As I stated in last meeting, this really surprised me that not only did the main driver on his own change the pickup time from around 10am (better traffic time for them then), but Jonathan too didn't think the 7am restriction included MS, mainly because he has witnessed that MS are driving all over the town making tremendous noise as early as 4:30am on Mondays.

So, I don't anticipate MS being a problem in early mornings anymore and Jonathon is very clear now. (The noisy recycled glass pick up is also always after 8am)

The item of "chaining off the parking lot" is a real troubling step for us to take.

I would like to have removed the requirement of fencing off the property. Happy to discuss or process this with you both and Bob and Steve too.

Two more refined points of view here: 1- I believe except for two specific incidences we have successfully limited "all other trucks" besides the big 3 from violating the timing policy of 7am and that track record is strong now, especially over last couple of months.

The signs have helped but mostly direct follow up for anyone who tries to deliver here.

2- the logistics of chaining and unchaining the lot everyday and night suck frankly. The issues of cars in the lot just about every single night is a real problem. This includes in-store nightly maintenance company access, Poncho Villa's customers, neighbors friends cars etc.

3- emergency access to building would be limited

4- the real cost of installing such a system, including the labor/ workman's comp issue of moving 150' of chains twice a day; storing them somewhere

5- the reality of a "rogue truck driver" arriving before 6am and being confronted with trying to understand whether the lot being fenced off is actually intended for him is real; This could mean the driver parks out on Pastori, likely idles engine, walks into building to question the rule or to see "whats possible". Thats not a good scenario for neighbors either.

(In fact we recently had a rogue driver, see signs, drive around the block to West side, unload his pallet, then he dragged the pallet all the way around to dock and left it on the dock without anyone noticing it at 5:45am)

I hope my points add up a little to help "lift this idea" from being forcibly implemented. I feel we have in place clear messaging to most of our vendors and we certainly have learned we do when the rules get violated and we follow up with them afterwards and haven't experienced repeated violations from same companies- in essence we have control over "normal behaviors".

I guess I feel like the problems with putting in and maintaing fencing in place are real; that the effect of doing so, won't actually help meet the objective 100% and the energy, labor time, and overall expense basically keeps me from following thru on this item.

See ya next week,

Al

Al Baylacq, Partner
Good Earth Natural Foods, INC.
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415-454-0123 Ext. 222
415-744-1809 Computer Fax

Begin forwarded message:

From: "receiving@genatural.com" <receiving@genatural.com>

Subject: Morning of 10/10

Date: October 10, 2013 7:29:26 AM PDT

To: Al Baylacq <al@genatural.com>

Cc: Andrew Kreps <a.kreps@genatural.com>

Hey Al,

This morning we only had Earl's between 5 and 7. No other deliveries. No air brakes, no beeps. no banging around, no loud voices, no idling, no banging pots and pans, and no other loud noises what so ever. Signs were up all morning and no one was here taking pictures. All in all it was a good morning.

Thanks,
Jonathan