

# Commons Neighbors Sound Off on Concert Noise Exemption

By Steve Angelides

Seven neighbors of the Moraga Commons submitted comments to the Town Council about the proposal to exempt Moraga's popular summer concerts and other Town-authorized events from Moraga's sound ordinance. Two of those comments were from attorneys who claimed the Town must prepare a full-blown environmental impact report before it can enact such an exemption.

The proposed exemption comes in the aftermath of a lawsuit filed by Commons neighbor Joyceanne Beachem against the Town and the Moraga Parks and Recreation Foundation, which puts on the summer concerts. Beachem's lawsuit had claimed that the concerts, which draw hundreds of residents and guests to the Moraga Commons on Thursday evenings during the summer, are a nuisance.

Beachem submitted one of the comments, in which she said she had dropped her lawsuit in November 2006 "because the town agreed to actively work on a resolution to the noise transfer issue." But Beachem dismissed her lawsuit without prejudice, so she can file it again if she is not satisfied with the Town's efforts to resolve the noise issue.

In her comment, Beachem implied that she might do just that. "This proposal is an affront to neighbors near the park who have been asking the Town to resolve this issue for twenty years," Beachem wrote.

The proposed exemption would strike at the heart of lawsuits such as Beachem's. According to the Town's attorney, Gabrielle Whelan, enacting a properly-worded exemption would give the Town immunity against future claims that the concerts are a nuisance. Although enactment of the proposed exemption would not prevent Beachem from filing her lawsuit again, if it succeeded in granting immunity as Whelan stated, it would prevent Beachem from prevailing against the Town on a nuisance claim.

The exemption was suggested by attorney Peter Urhausen, who represented the Town against Beachem's lawsuit. The Town's Parks and Recreation Commission approved the wording of the proposed exemption by a 4 to 2 vote on March 20.

Besides exempting the summer concerts and other Town-authorized events from the Town's sound ordinance and stating that such events "cannot be deemed a nuisance," the proposal specifies that "such events may exceed 60 decibels at any listening point on any other property." 60 decibels is the typical level of normal conversation.

Lily Wescott, one of the two dissenting Parks and Recreation Commissioners, voted against the exemption because she objected to the provision that concert noise "may exceed 60 decibels." Instead Wescott wanted an upper limit placed on the noise. Whelan explained to the Town Council that she and Urhausen felt the provision permitting noise to exceed 60 decibels would give the Town stronger support for immunity from future nuisance claims, but that an upper limit could also be added without weakening that immunity.

Parks and Recreation Director Penelope Leach, who presented the exemption proposal to the Town Council at its meeting on April 25, explained to the Council that the exemption proposal is the first prong of a three-pronged approach to the concert noise issue. Leach said the other two prongs are to come up with ways to continue to mitigate sound transfer from the summer concerts, and to continue to offer the concerts and other events such as the 4th of July and the Pear Festival to people in Moraga "because they are an important part of our culture."

Leach told the Council that the Foundation has purchased a new sound board and will require the bands to plug their equipment into its sound board, so it has control of the sound level. She said the speakers will be removed from the roof of the bandshell and placed on the stage, and that during the concerts the Town will monitor sound levels in the areas where the complaining neighbors reside using a trained person with calibrated equipment.

The Council was unable to vote on the proposed exemption because no environmental analysis had been done. Town Manager Phil Vince said the Town would hire a consultant to conduct an initial environmental analysis to determine whether the Town could issue a negative declaration if the proposed exemption would not impact the environment, or would be required to conduct a full-blown environmental impact report as the two complaining attorneys claim.

Two of the comments submitted were not about the concert noise, but

were from residents who wanted to make sure the proposed exemption would not extend to private property. One of those was from J.D. O'Connor, who said he had repeatedly experienced loud rap music emanating from the St. Mary's College area. Vince said the Town's current sound ordinance is so vague and subjective it would be difficult and costly to enforce in such a situation.



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