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Court Ruling Threatens Summer Concert Series

By Sophie Braccini

A brief comment by Mayor Ken Chew at the beginning of the last Moraga Town Council meeting revealed another development in the battle that has been raging for years between the Town and neighbors of the Commons Park who find the noise level generated by the summer concert series to be unacceptable. The Town lost the most recent battle and was ordered by the Court to conduct a full Environmental Impact Report (EIR) for the concerts.

"The Council has authorized an appeal of Judge Flinn's ruling, which we believe was wrongly decided and contrary to CEQA (California Environmental Quality Act) on both substantive and procedural grounds," said Council Member Dave Trotter, "When the Town files its appeal, the Superior Court decision will be stayed (i.e., not take effect) and thus have no effect whatsoever on the upcoming summer concert series. The concerts will proceed as planned, and unchanged, for the benefit of the broader Moraga community, subject to the same, sensible sound mitigation measures that the Town Council approved when it adopted the noise ordinance back in January 2009." However, the uncertainty placed over the very popular summer activity led the Moraga Park Foundation, which runs the summer series, to postpone the investment it had planned to make for the concerts.

"The Foundation is very disappointed because this ruling is delaying the proposed remodeling and the renovation we've been raising money for," said Foundation President Chuck Treat, "These concerts have been very popular with residents and neighbors alike for almost 30 years, it is one of the most fun multi-generational activities in town. If Norman Rockwell was still alive, no doubt that he would have come to the Commons to paint one of his famous illustrations of everyday life in America."

The series of events started years ago, with a lawsuit in 2005 against the Town.

The Town and the Park Foundation implemented measures to improve sound quality and diminish sound transfer. The lawsuit was dropped in 2006. At the end of 2008 the Town amended its general policy to exempt Town-authorized and sponsored events from the limitations of the sound ordinance and declared that such events could not be deemed a nuisance. According to the Mayor at the time, Lynda Deschambault, the intent of the amendment to the ordinance was not to increase the sound levels but to protect volunteers from nuisance lawsuits. However, the lawyer for a plaintiff had warned in 2007 that the Town would have to prepare a full-blown EIR before it could enact such an exemption.

The complaining neighbor, Joyce Beachem, did not respond to our request for a comment on the decision.

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