

MEMORANDUM

TO: The Mayor and Carrboro Board of Aldermen

FROM: THE BROUGH LAW FIRM, PLLC/Bob Hornik 

RE: Noise Ordinance Review/Summary

DATE: May 28, 2015

This memorandum is intended to follow up the discussion at the Board of Aldermen's May 26th meeting, during the continuation of the public hearing on the South Green project. There was considerable discussion of the Town's noise regulations and proposed conditions contained in the staff report on the project. I understand that this memorandum may be shared with the applicant and with neighbors (particularly, the Roberson Place neighbors who have expressed some concern about potential noise impacts associated with the proposed development). Hopefully, this memorandum will be helpful in understanding how the Town's noise regulations work, and the Town's authority to enforce and, if necessary amend, its noise ordinances.

The Town's "noise ordinance" is found at Town Code Section 5-11 and 5-12 (copies attached). This ordinance applies generally throughout the town - to residential uses and commercial uses.

Section 5-11 contains some **general prohibitions** on the "emission from any property... [of] noise that is **both** (1) Sufficiently loud to frighten or pose a danger to the health of or seriously disturb any person who, if the noise [comes from private property]...is located on other premises... or if the noise [comes from the street or other public property] is located on private property or the street or other public property, **and** (2) Louder or of greater duration, or otherwise more disturbing than is reasonably necessary for the performance of some lawful public or private function, enterprise, operation or activity." This is a general prohibition of unreasonably loud noises, or of noises that may not be unreasonably loud but continue for unreasonably long times, which pose a health threat or frighten a person. This regulation applies to commercial and residential uses.

A court would likely impose a "reasonable person" standard in an enforcement proceeding regarding an alleged violation of the noise ordinance, such as whether, under all the circumstances, the noise is sufficiently loud or disturbing that a reasonable person of normal sensitivity would be disturbed by it. So, for example, a very brief loud noise (an "impact noise" or "impulse noise") - perhaps like emptying a trash can into a dumpster in the ordinary course of the operation of an enterprise - would likely not be considered a violation. However, repeated instances of the same type of noise in a short time period, or

continuous loud noise associated with an event or activity at times and of duration that an ordinary person of reasonable sensibilities would find objectionable, would be more likely to constitute a violation.

Section 5-12 contains an illustrative (not exhaustive) list of noises prohibited under section 5-11. Subsection 1 prohibits playing recorded sound or any musical instrument "so as to disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially in the operation of schools, churches, etc." Subsection 2 prohibits noise from drums or amplified sounds made for promotional purposes. Subsection 3 prohibits loud and raucous noise after 11 p.m. associated with parties/gatherings. Subsection 4 prohibits the use of tools and equipment – such as chainsaws and jackhammers in certain locations and between certain hours. Finally, subsection 5 prohibits unreasonable barking/howling, etc., of pets between 11 p.m. and 7 a.m.

Complaints regarding violations, or alleged violations, of the noise ordinance are often made to the Police Department, which has the ability to respond to complaints even during non-business hours.

Town Code Section 5-21 establishes the penalties and remedies for violations of the Town Code noise ordinance standards. Violations constitute misdemeanors (low level crimes) and may be prosecuted as such. Violations can also be pursued as civil matters which could be pursued in civil court. Remedies include equitable remedies such as injunctions or orders of abatement, which a court would have authority to issue. Violations also subject the offender (under our noise regulations that would be the person/entity in control of the premises) to fines and escalating civil penalties for repeat offenses.

Section 15-163 of the Land Use Ordinance (LUO) establishes noise level limitations for three use classifications, Manufacturing (4.000), Automobile repair shop or body shop (9.400) and retail sales with subordinate manufacturing (2.150) in relation to the zoning of adjacent lots. Specific maximum noise levels are included for these uses as they may generate noise that tends to have an annoying or disruptive effect upon directly adjacent uses. The maximum decibel level (adjusted) for each use at the property line with an adjacent residentially zoned property is 50 from 7 AM to 7 PM and 45 from 7 PM to 7 AM. Subsection 15-163(f) provides additional requirements for "impact noises" (sounds that occur intermittently rather than continuously, and which do not occur for more than one minute in any one hour period), in excess of the standards established in the table included in subsection (e) (copy attached) may occur between 7 a.m. and 7 p.m. in any event. None of the noted uses are proposed in the current application. Complaints about violations of the noise regulations found in the LUO fall within the Planning Department's "jurisdiction". Unlike the Police Department, which always has personnel on duty, the Planning and Zoning staff is usually only available during business hours.

I have also attached a Noise Level Chart which I found online via a "google" search, and a copy of Appendix J from the LUO, which provides a table of "Common Indoor/Outdoor Sounds". These are included to provide some frame of reference for consideration.

Regarding Enforceability of Noise Ordinance and/or Proposed Conditions.

Among the neighbors' concerns is the enforceability of noise ordinances and conditions of approval. First, regarding any specific conditions which might be part of approval of the conditional use rezoning application – those conditions are certainly enforceable through the typical LUO enforcement processes. Two of the conditions now being considered, and considered to be acceptable by the developer are more specific than the Town's noise ordinance (and the LUO), and may be enforced via the Town's zoning enforcement process. Practically speaking, initially, complaints about violations of conditions of approval would be handled through the zoning enforcement process. In the vast majority of zoning enforcement processes, compliance is achieved through informal enforcement. When that does not work, more formal notices of violations, assessments of civil penalties and, ultimately, suspension or revocation of permits are available remedies. Depending on whether the enforcement proceeding is contested, there could be an appeal process before the Board of Adjustment for alleged LUO noise violations or violations of conditional use permits conditions of approval. It should be noted that nearly all developers/property owners seek to avoid these enforcement procedures, which can be distracting, time consuming, and expensive.

There is a different enforcement process available for violations of Town Code Section 5-11 or 5-12, as discussed above. These provisions were adopted under the Town's general "police powers", and may be enforced by the Town through the process and remedies available under Town Code Section 5-21. Enforcement of these types of violations is typically the result of complaints received by the Carrboro Police Department, which I understand may provide some comments and/or statistics about noise ordinance complaints received. Police Department responses to noise complaints frequently result in voluntary compliance by the person in control of the property on which the noise is generated.

Finally, the Town always has the right to exercise its "police power" to amend the Town Code to address circumstances not currently addressed by the noise ordinance. The Town Code amendment could be made generally applicable throughout the Town's jurisdiction, and could address specific concerns which arise based on experience with noise complaints. In this regard, Town Staff has been asked by the Board of Aldermen to consider and report back to it over the next year regarding possible amendments to the way the Town regulates noise issues.

CONCLUSION

The Town has the authority and ability to enforce the conditions of approval now proposed via the zoning enforcement process established by the LUO. The Town also has the authority to enforce the provisions of the Town's noise ordinance found at Town Code Sections 5-11 and 5-12. The tools available to the Town are both informal (written notice to the owner/operator/developer) and more formal (police enforcement action – which could include criminal charges, or zoning enforcement action, assessment of civil penalties, and judicial intervention in the form of orders of abatement or injunctive relief). If enforcement of the existing conditions or ordinance standards prove problematic, the Board of Aldermen also has authority to amend the Town Code, including the Land Use Ordinance, to expand the regulation of noise levels making them more responsive to specific conditions and concerns.

Article II

MISCELLANEOUS OFFENSES

Section 5-11 Noise Generally

No person may authorize or cause the emission from any property or source under his control any noise that is both:

- (1) Sufficiently loud to frighten or pose a danger to the health of or seriously disturb any person who:
 - a. if the noise emanates from a source located on private premises, is located on other premises (including other dwelling units or rented premises located on the same tract of land), or (Amend. 4/27/82)
 - b. if the noise emanates from a street or other public property, is located on private property or the street or other public property, and
- (2) Louder, or of greater duration, or otherwise more disturbing than is reasonably necessary for the performance of some lawful public or private function, enterprise, operation, or activity.

Section 5-12 Particular Noise (Amend. 11/16/93)

The following are declared to be illustrations of noises prohibited under the foregoing section, and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The playing of any radio, television, tape recorder, phonograph, or similar electronic device or any musical instrument so as to disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theater, library or other similar place of assembly.
- (2) The use of any drum, loudspeaker, or other amplification instrument or device for the purpose of attracting attention by the creation of noise to any performance, show, ale, display, advertisement of merchandise, or other commercial venture.
- (3) Any party or assembly of persons in a dwelling unit or on residential premises producing loud and raucous noise after 11:00 p.m. that tend to disturb the comfort, quiet, or repose of persons in other dwelling units or on other residential premise. The person in possession of the premises where such a part or assembly of persons takes place shall be deemed responsible for the emission of loud and raucous noises under this subdivision. (Amend. 4/27/82)
- (4) The operation or use of any of the following tools, machinery, or equipment, when such operation or use takes place (i) outside of a fully enclosed structure; and (ii) within 300 feet of a residentially occupied structure that is not in the possession of the party responsible for the noise at issue; and (iii) after sunset on any day or

before 7:00 a.m. on any day except Sunday and before 12:00 noon on Sunday. However, this prohibition shall not apply when work must take place on an emergency basis for health or safety reasons, or when work is undertaken within a public street right-of-way by (i) a utility pursuant to an encroachment agreement, (ii) the town, or (iii) the North Carolina Department of Transportation. (Amend. 1/16/2001)

- (a) Earth moving or clearing power equipment.
- (a) Chain saws, brush cutters, wood chippers, or similar power equipment.
- (a) Power saws
- (a) Power driven hammers or jackhammers.
- (5) The barking, howling, whining, crying, crowing, or other noise making of any animal that occurs essentially unabated for a period of at least five minutes on at least three occasions during the hours between 11:00 p.m. and 7:00 a.m. (Amend. 9/24/02)

Section 5-12.1 Motor Vehicle Noises (Amend. 11/16/93)

The following are illustrations of noises, produced in connection with the operation or use of motor vehicles, that are prohibited under Section 5-11 and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The blowing of a horn on any motor vehicle except when the horn is used as a warning device.
- (2) The operation of any motor vehicle without a muffler or with a muffler that is so defective or so designed that the vehicle emits an unusually loud noise.
- (3) The operation of any motor vehicle so as to create unnecessary and unusual noise through the screeching of tires or racing of engines.
- (4) The operation or use of a motor vehicle with amplified sound produced by a radio, tape player, compact disc player or other soundmaking device or instrument within the motor vehicle such that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

Section 5-13 Discharge of Firearms and Air Rifles

(a) Subject to subsection (b), no person may discharge any pistol, rifle, shotgun, or other gun or any air pistol, slingshot or any like instrument used to eject a pellet or projectile within the town limits.

(b) Subjection (a) shall not apply to private citizens acting in justifiable defense of persons or property or pursuant to the lawful directions of a police officer nor to police officers acting in the lawful performance of their duties.

- (4) Coring and aerification.
- (5) Application rates of nitrogen, phosphorus, potassium, and/or iron in pounds per square foot, including adjustments for steeper slopes and areas near drainageways (streams, ditches, swales, and runoff conveyances) and impervious surfaces.
- (6) Timing of application.
- (7) Recycling of grass clippings.
- (8) Type of spreader (gravity or centrifugal).
- (9) Name and contact information of applier.
- (10) Reference document(s) used to develop the plan

Records shall be kept and updated annually to document the actual implementation of these components. Nutrient quantities stored and applied shall be documented via sales receipts or similar records.

(f) Landowners and other individuals applying nutrients to areas less than two acres in size are encouraged to adopt manage practices to reduce the risk of surface water impacts and apply nutrients at rates recommended by the North Carolina Cooperative Extension Service.

Section 5-21 Penalties and Remedies.

(a) A violation of any of the provisions of this chapter, other than those set forth in Article III, shall constitute a misdemeanor, punishable as provided in G.S. 14-4.

(b) A violation of any of the provisions of this chapter, other than Section 5-15, shall subject the offender to a civil penalty of \$25.00 for the first offense, \$50.00 for the second offense within a 30-day period, and \$100.00 for the third or any additional offense that occurs within any 30-day period. A violation of the provisions of Section 5-15 shall subject the offender to a civil penalty in the amount by which the contribution exceeds \$250.00. If a person fails to pay this penalty within 10 days after being cited for a violation, the town may seek to recover the penalty by filing a civil action in the nature of debt. (Amend. 11/18/08, 3/3/09)

(b1) A violation of the provisions of Article IV of this chapter shall subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00). In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable: (Amend. 11/18/08)

- (1) The degree and extent of harm to the natural resources of the town, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The cost to the violator or others of rectifying the damage;
- (4) The amount of money saved by the violator by noncompliance;

- (5) Whether the violation was committed willfully or intentionally, negligently, or as the result of an unforeseeable or unavoidable accident;
 - (6) Whether the violator promptly ceased the violation upon notice by the town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
 - (7) The prior record of the violator in complying or failing to comply with the provisions of Article IV of this chapter;
 - (8) The cost to the town of the enforcement procedures;
 - (9) Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection (d) below. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.
- (c) The town may seek to enforce this chapter through any appropriate equitable action.
- (d) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.
- (e) The town may seek to enforce this chapter by using any one or a combination of the foregoing remedies.

APPENDIX J

NOISE LEVELS [dB(A)] FOR COMMON INDOOR/OUTDOOR SOUNDS

OUTDOOR SOUNDS	dB(A)	INDOOR SOUNDS
	110	Rock Band
Large, Passenger jet landing 370 feet away		
Large, passenger jet taking off 1000 feet away	100	
Gas lawn mower, 3 feet away		Inside subway train (NYC)
	90	
Diesel truck, 50 feet away		Food blender 3 feet away
	80	
Noisy urban area (day)		Garbage disposal 3 feet away
	70	Shouting - 3 feet away
747 taking off 1000 feet away		Vacuum cleaner 10 feet away
Commercial area		Normal speech 3 feet away
	60	
		Large business office
Quiet urban area (day)	50	
		Dishwasher, next room
Quiet urban area (night)		
Quiet suburban area (night)	40	Small theatre/Large conference room (background)
		Library
	30	
Quiet rural area (night)		Bedroom at night
	20	Concert hall (background)
		Broadcast and Recording Studio
	10	
	0	Threshold of hearing

Art. XI SUPPLEMENTARY USE REGULATIONS

(e) **Table 1:** Maximum Permitted Sound Levels, dB(A), for 4.000 Uses (AMENDED 10/20/92)

Zoning of Lot Where 4.000 Use is Located	ZONING OF ADJACENT LOT (re: 0.0002 Microbar)				
	Residential	PUD	B-1-G, B2, B-1-C, B3 B4, PF	M1	M2
TIME OF DAY OF OPERATIONS	7:00 AM-7:00 PM	7:00 PM-7:00 AM	ANYTIME	ANYTIME	ANYTIME
M-1	50	45	55	60	65
M-2	50	45	60	65	70
O/A	50	45	55	60	65

Table 2: Maximum Permitted Sound Levels, dB(A), for 9.400 Uses (AMENDED 10/20/92)

ZONING OF LOT WHERE 9.400 USE IS LOCATED	ZONING OF ADJACENT LOT (re: 0.0002 Microbar)			
	RESIDENTIAL OR PUD	B-1-C, B2, CT, B-1-G, B3, B4, O, O/A	M1	M2
B-1-G, B4 or B-3-T	50	55	60	70
M-1	50	55	60	70
M-2	50	60	65	70

Table 3: Maximum Permitted Sound Levels, dB(A), for 2.150 Uses (AMENDED 04/15/97)

ZONING OF LOT WHERE 2.150 USE IS LOCATED	ZONING OF ADJACENT LOT (re: 0.0002 Microbar)			
	RESIDENTIAL OR PUD	B-1-C, B2, CT, B-1-G, B3, B4, O, O/A, PF	M1	M2
B-1-C	50	55	60	70

(f) Impact noises are sounds that occur intermittently rather than continuously. Impact noises generated by sources that do not operate more than one minute in any one hour period are permissible up to a level of 10 dbA in excess of the figure listed in subsection (e), except that this higher level of permissible noise shall not apply from 7:00 P.M. to 7:00 A.M. when the adjacent lot is zoned residential. The impact noise shall be measured using the fast response of the sound level meter.

(g) Noise resulting from temporary construction activity that occurs between 7:00 A.M. and 7:00 P.M. shall be exempt from the requirements of this section.

(h) The operation of dry cleaning machinery in the B-3 zoning district, including but not limited to steam boilers, vacuum units, steamers, dry cleaning machines, pressing machines

Noise Level Chart

Like 195

A noise level chart showing examples of sounds with dB levels ranging from 0 to 180 decibels.

dBA	Example	Home & Yard Appliances	Workshop & Construction
0	healthy hearing threshold		
10	a pin dropping		
20	rustling leaves		
30	whisper		
40	babbling brook	computer	
50	light traffic	refrigerator	
60	conversational speech	air conditioner	
70	shower	dishwasher	
75	toilet flushing	vacuum cleaner	
80	alarm clock	garbage disposal	
85	passing diesel truck	snow blower	
90	squeeze toy	lawn mower	arc welder
95	inside subway car	food processor	belt sander
100	motorcycle (riding)		handheld drill
105	sporting event		table saw
110	rock band		jackhammer
115	emergency vehicle siren		riveter
120	thunderclap		oxygen torch
125	balloon popping		
130	peak stadium crowd noise		
135	air raid siren		
140	jet engine at takeoff		
145	firecracker		
150	fighter jet launch		
155	cap gun		
160	shotgun		
165	.357 magnum revolver		
170	safety airbag		
175	howitzer cannon		
180	rocket launch		
...			
194	sound waves become shock waves		

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Noise Chart

Specifics about the measurement of a particular sound source can be found in the [Noise Navigator® Sound Level Database, E-A-R 88-34/HP](#), by Elliott H Berger, Rick Neitzel, and Cynthia A Kladden, E•A•RCAL Laboratory, 3M Occupational Health & Environmental Safety Division, an extensive compilation of data on noise level measurements, including many of the values appearing on this chart.

Learn more:

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