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Agenda Items: ID#19-11672 (2:00 P.M.)

Date: 12/12/2019

2019 DEC 11 P 3:28

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Additional Information

Item(s)

File ID19-11672 (2:00 P.M.) - Actions pertaining to noise regulations at the Woodward Park Amphitheater

1. BILL – (For introduction) Adding Section 10-112 to the Fresno Municipal Code relating to noise regulations at the Woodward Park Amphitheater
2. ***RESOLUTION – Regarding contracts for use of Woodward Park Amphitheater (Subject to Mayor's veto)

Contents: Letter from Mr. Dirk Poeschel

Supplemental Information:

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December 11, 2019

Councilmember Gary Bredefeld
Council District 6
2600 Fresno Street, Room 2097
Fresno, CA 93721

SUBJECT: Woodward Park Noise Limitations

Dear Councilmember Bredefeld,

Reference is made to your efforts to reduce the noise emitted from the Woodward Park events. My firm represents the Park Fort Washington Homeowners Association (Association) which was formed as part of the Dominion master planned community. The Association represents 1,388 single family homes and 1,058 apartments dwellers. The Association's west boundary is immediately adjacent to Friant Rd.

The Association has been complaining about the noise levels from Woodward Park (Park) amplified music since such music was allowed at that facility. Many Association members and property owners in nearby subdivisions purchased their property with the understanding that there would be no amplified music at the Park.

The original plans for the amphitheater had a capacity of between 1,000 and 1,500 people and did not include amplified music. Subsequently, the city of Fresno granted a Conditional Use Permit essentially to itself allowing amplified music at the Park. At that time, the Association along with others expressed concerns that the city's intent to allow amplified music at the Park was inconsistent with the *passive park and bird sanctuary* contemplated by the Mr. Ralph Woodward land grant to the city. Concerns were also raised that Park noise could impair adjacent resident's peaceful enjoyment of their properties. This is precisely what has happened.

On April 26, 1993 former city planning director Mr. George A. Kerber wrote to the city planning commission chair regarding Conditional Use Permit No. 92-80 that "*serious noise problems are anticipated*" and that "*Noise monitoring...has produced readings far in excess of the City's Noise Ordinance. Since city staff does not monitor these events and since there is no enforcement, the noise will only get worse*".

My experience as a homeowner proximate to the Park for the past 30 years, is that the Park has been operated without adequate supervision, in clear violation of the city's noise ordinance and the corresponding Conditional Use Permit. I am aware of property owners that have sold their homes because the noise levels have become so annoying. I am also aware of property owners whose windows rattle during concerts and others where pictures and china rattled from excessive

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noise from Park events. Many Park events typically violate the Park Conditional Use Permit requirement that the use not adversely affect nearby properties.

Some time ago, there was an event at the Park and the Association security services received numerous phone calls concerning a concert being held at Liberty Elementary School which is located at 1250 E. Liberty Hill Rd. Upon investigation, the noise associated with the complaints came from the Park. To put those complaints and the related power of the noise from that Park event in perspective, Liberty Elementary is 7,920 +/- feet from the Park amphitheater. Imagine the volume of excessive noise and harm being caused to those residents closer to the Park.

Based on my experience, I have been as far as 5,000 feet away from the Park and could hear every word of the music being played. Some suggest that there have been very few complaints about Park noise. This is likely because the noise impacts have occurred so long without resolution, people have just quit calling the city to complain.

On two occasions Association representatives and others from areas also proximate to the Park met with then city manager Mr. Bruce Rudd and provided him detailed information about the nature of the complaints associated with Park events. The complaints came from the Association and from property owners as far north as Grupe Lakes and from property owners south of Shepherd Ave. All owners shared the same experience of unnecessarily loud and disruptive Park events thwarting the quiet enjoyment of their properties.

At the first meeting, Mr. Rudd assured us the city was going to retain a noise expert to determine the nature of the noise impacts. No noise study results were provided to the Association. A city staff person was assigned to monitor Park noise and a phone number was provided to that person so that if noise levels became too high, residents could call and modifications to the event noise levels could be made. Not much time passed when this person was transferred, and that process ended.

We also made various suggestions to Mr. Rudd to mitigate the Park noise issues. The owners group suggested a simple reduction in amplifier volume, a relocation of event loudspeakers directed away from the residences and installation of sound curtains.

At our second meeting with Mr. Rudd, the Association and others were assured the city was complying with its noise ordinance and its Conditional Use Permit. The owners provided Mr. Rudd with aerial maps indicating distances from the Park to complaints about excessive noise supporting the fact that compliance was not possible given the nature and distance from the Park events.

Noise monitoring that was recently conducted by WSJ Acoustics, Inc. of Visalia confirmed noise levels of 68 to 69 dB at my home. Such levels at my home barely meet acceptable noise levels which is 3,375 +/- feet from the Park amphitheater. The attached aerial illustrates the hundreds

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of homes that are much closer to the Park than my home that are clearly experiencing unacceptable noise levels from the Park.

On November 2, 2014 a cross-country race was held at the Park and amplified music was provided for race participants. The event speakers located on Friant Rd. and Fort Washington Rd. were directed towards the homes east of Friant Rd. so at 8 o'clock in the morning the neighborhood was greeted with blaring Jimi Hendrix music. No city staff was present at the November race so a public facility with high intrinsic value and vast liability is simply turned over to a lessee who has no responsibility to comply with noise or conduct standards.

Park events that include obscenities can be heard over thousands of feet away. A May 6, 2018 Park event initiated complaints of obscenities over a mile from the Park amphitheater.

The city should operate the Park consistent with the standards required of private sector restaurants, nightclubs and other similar facilities. The city should comply with its noise ordinance and should take measures to mitigate Park event adverse impacts.

Other cities recognize the difficulty of the decibel measurement of noise to reflect the adverse impacts of low megahertz noise that can penetrate walls and windows causing vibration. During a recent American Planning Association seminar, attorney Shannon Brown, Esq. discussed a range of health impacts associated with exposure to noise from events such as those that take place at the Park. Brown suggested that the old standard of decibel measurement may not accurately interpret low frequency noise levels that are the most dangerous to public health and the quiet enjoyment of property.

Brown spoke of many cities incorporating noise standards that focus on noise as a measure of potential adverse impacts, injurious to and breaching of the community peace. To that end, it is respectfully recommended that the city:

1. Mandate an orientation of all performers to the noise sensitive areas proximate to the facility and mandate specific measures for noise and conduct compliance.
2. Require contacts for all event leases/licenses to prohibit obscenities and other unacceptable vocabulary.
3. Impose substantial penalties for exceeding event noise or conduct standards.
4. City staff should be present at all events with the authority to impose immediate mitigation for activities that are inconsistent with the event agreement.

The Association thanks the current Downtown Fresno Rotary President Ms. Brandi Orth who has been very sensitive to noise issues. Previous Rotary representatives had no interest in addressing neighborhood noise complaints.

The aforementioned information amplifies the importance of permanent noise standards being adopted by the city that protect the quiet enjoyment of nearby Park property owners. All Park

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events should be subject to precise performance standards with clear responsibility for enforcement by city staff.

The Association desires to work cooperatively with the city to develop standards that protect the community from unnecessary, objectionable and harmful noise while allowing the community to enjoy Park events. On behalf of the Park Fort Washington Homeowners Association, thank you for this opportunity to comment on this important matter. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Dirk Poeschel" followed by a horizontal line.

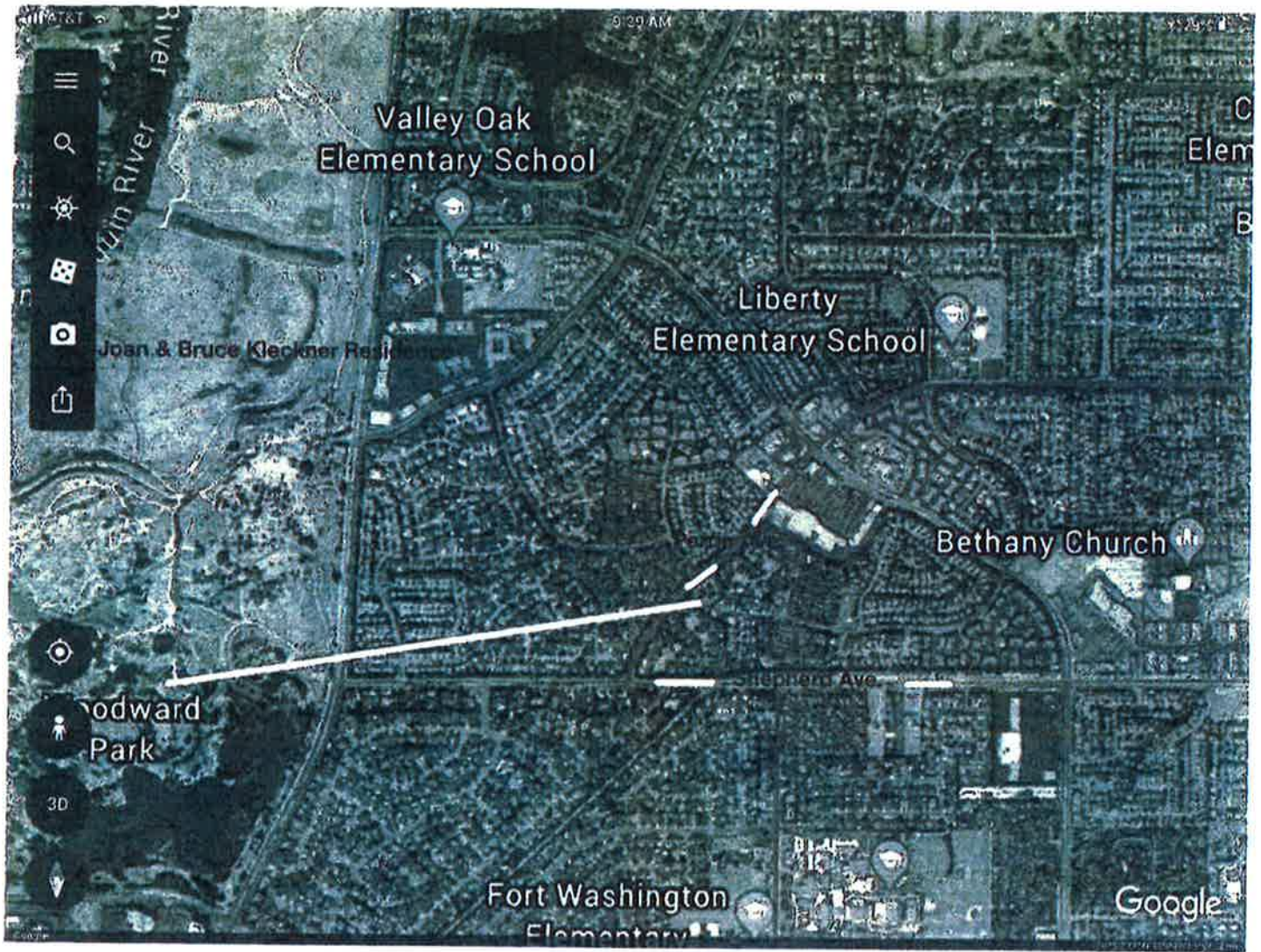
Dirk Poeschel, AICP

Attachments

cc Mr. Andre Nicolet
Mr. Ali Nekumanesh



KAYSI CURTIN
4,039 FT. AWAY



BRUCE KLECKNER.
4,000 FT. AWAY



Imagery ©2018 Google, Map data ©2018 Google 500 ft

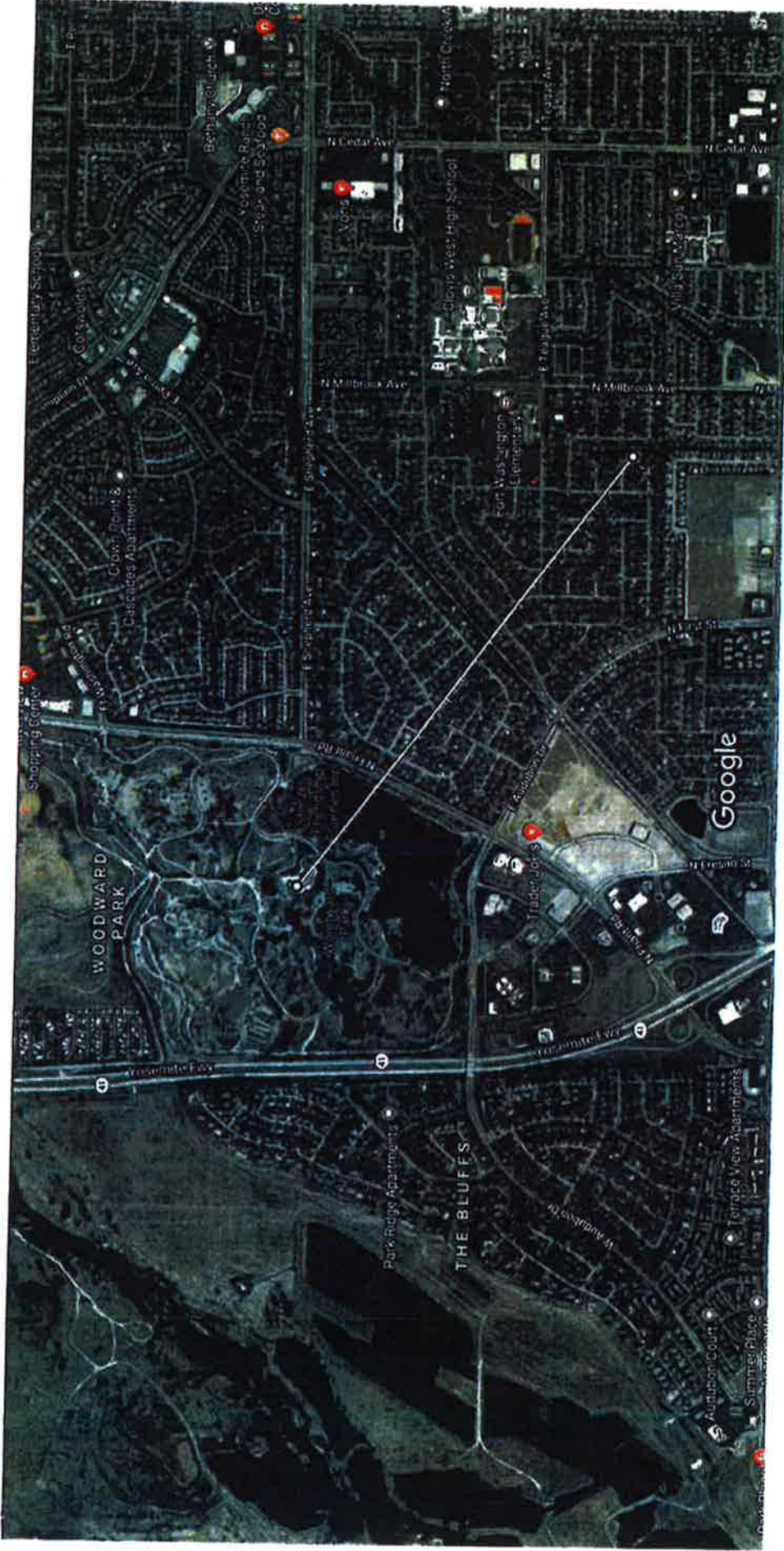
- **HEARS MUSIC WITH DOORS/
WINDOWS CLOSED**
- **EXPERIENCES VIBRATION
IN THE HOME**

Measure distance
 Total distance: 2,380.07 ft (725.44 m)

5/11/2018

Google Maps

MAY 6, 2018 CONCERT
890 E. PORTLAND AVE.



Imagery ©2018 Google, Map data ©2018 Google 1000 ft

REPORTS
OBSCENITIES

Measure distance

Total distance: 1.14 mi (1.83 km)



Valley Oak
Elementary School

Liberty
Elementary School

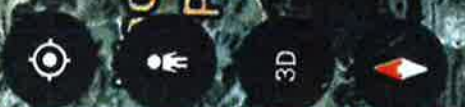
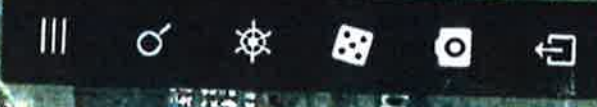
Bethany Church

Fort Washington
Elementary

7,920

3,375

Google



Woodward
Park

9:29 AM

33° 52' 17" N 119° 45' 13" W

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