

DRAFT, not yet adopted by KMAC

Kensington Municipal Advisory Council Minutes

Special Meeting of February 1, 2005

Council Members present:

Chair: Reyes Barraza

Vice Chair: Pat Tahara

Secretary: Richard Karlsson

Council Member: Kay Reed

Council Member: Pam Brown

1. The meeting commenced at 7:00 p.m. All members were present.
2. There were no citizen comments on any subject beyond that of the Special Meeting, which was to discuss the draft Contra Costa Fundraising Ordinance.
3. **Public Comments regarding Proposed Fundraising Ordinance.** Chair Barraza opened the meeting by explaining the general purpose of the proposed ordinance, and to address the concerns in Kensington regarding the concerts that had occurred at the amphitheatre on Coventry Rd. He explained that the proposed ordinance would make “fundraising” as defined a permitted use on private property in the unincorporated area of Contra Costa County. He continued that to hold such fundraising activities, an administrative permit would be required but would be issued unless the zoning administrator found one of three factors would be violated. Those three factors were that the fundraising activity would: 1. unreasonably interfere with parking and traffic flow, 2. cause excessive noise or 3. threaten public health and safety. Chair Barraza noted that none of these three factors were otherwise defined in the ordinance. The number of events that could be held within a year were limited, under the administrative permit portion of the ordinance, and a permit had to be obtained at least 60 days in advance of any fundraising event. If, however, an individual exceeded the number of events allowed in a year under the administrative permit, the owner might then apply for a Land Use permit, which Mr. Barraza noted would ‘run with the land’ and such permit would be transferable to subsequent owners of the land. Under the land use permit, the zoning administrator could condition the issuance of the land permit by imposing reasonable conditions concerning the time, place, manner of the event and include requirements to protect the safety of persons and property, and the control of traffic. Chair Barraza then advised how the ordinance provided what conditions might be imposed and finally reviewed the section detailing the requirements of the permit application.

Approximately 30 to 40 individuals attended the meeting, some staying for the entire meeting, others staying for part of the meeting. Ms. Toni Folger-Brown was the first speaker and she presented a letter, which she read, and indicated that her comments were supported by the Coventry Road residents. The letter objected to the proposed ordinance on five grounds: 1. she believed that the problem had been resolved by Contra Costa County taking action against the owner of the amphitheatre on Coventry Road and assessing fines. She also believed that Senator Torlakson would not support SB952, prior proposed statewide legislation, which would have permitted such concerts and which legislation she believed was motivated by special interests. 2. She believed that the scope of the ordinance was too narrow, as only charitable fundraisers would be covered, and it would not impact parties, weddings and other social events that may cause noise and nuisance. 3. She questioned that the permitted uses under the ordinance could or would be regulated by all applicable laws listed, as the unincorporated areas of the County do not have laws that provide such regulation of noise and nuisance. 4. She believed that the Administrative Permit section of the ordinance was improper, as citizens were not notified until after a tentative decision had been reached. She also noted to those present that any appeal of the decision would require a trip to Martinez. 5. She finally objected because the ordinance failed to address how it would be enforced by local authorities, a concern because in the past there had been no adequate enforcement when concerts hosting 200 to 300 people had occurred. She therefore believed that the ordinance was unnecessary, was designed to assist special interests, and recommended against its adoption.

The next speaker was George Kwei who resides at 10 Kenilworth. He indicated that his property adjoined 500 Coventry Rd (the location of the amphitheatre) on two sides. He believed that the proposed ordinance was bad legislation and found it to be very confusing. He also believed that, based upon past experience, it would be difficult to enforce.

Tim Hoyer, who lived on Coventry Rd. next spoke and indicated that it was his belief that this was special legislation designed to assist the property owner at 500 Coventry Rd. He believed that this legislation, like SB 952, was designed to benefit special interests. He also believed that all sides of the issue needed to be heard in advance of adoption of any new laws.

Ted Groom, 464 Coventry Rd. next spoke and stated his opposition to the ordinance. It was his opinion that the use of the amphitheatre was illegal and an ordinance should not be adopted in an attempt to make it legal.

Leonard Shwartburd, of 511 Coventry next spoke. He believed that it was important to look at the history of the use of this property. That history had indicated that whether legal or illegal, the owner of the property continued to use it as he saw fit. That in the past it was demonstrated that there was no concern for the neighbors, that the owner had violated existing laws and been fined three times. Based upon past behavior, Dr. Schwartzburd, believed that one could predict future behavior, and he used the example of a camel nosing under a tent

to urge rejection of any permissive legislation. He urged KMAC to oppose the ordinance as the County was finally getting tough on enforcing existing laws and he urged the County to let that process continue.

Kathy Stein, of Beverly Road, next spoke and stated her view was that the new ordinance was like a permission slip to the owner to continue as he had done in the past. She believed that the limitations had to be mandatory and clearly defined.

In response to a question, Secretary Karlsson stated his belief that, without benefit of knowing Mr. Scher or living in the immediate area of the amphitheatre, this was not a good ordinance for the community. It was vague as to its terms, permitted a use that had not previously been allowed, and provided for a mandatory administrative permit – unless the zoning administrator made contrary findings. He further noted that if the use exceeded that allowed under the administrative provisions, the potential result was a land use permit that allowed permanent use of the property for such events. It was therefore his view that the ordinance was one of expansion, not limitation.

The next speaker was Bob Giusti, 112 Willow Lane, a Kensington resident for 47 years. During most of the time he resided in Kensington, it was a quiet place. Then, when the amphitheatre began having music, it was no longer quiet and no longer residential. He believes that the new ordinance would weaken existing codes and he was therefore in opposition and believed that the existing codes should remain in place.

Jack Walker, 560 Coventry Rd. then spoke and commented that his experience was that for 25 years he lived in peace and quiet in Kensington with his family ... then suddenly he was forced to listen to concerts based solely upon the proximity of his property to the amphitheatre, which he likened to balcony seating over a concert hall. He believed that the proposed ordinance was a permission slip for these concerts to continue and he therefore objected to it.

Joan Gallegos then stated that it was her observation that if the ordinance in some form was not adopted, that then there might be more special legislation proposed. Ms. Gloria Morrison of Windsor Ave., stated that it was her view that since Senator Torlakson was now the representative for Kensington, he would not support any unfavorable special legislation.

Linnea Due then stated that she had previous concerns about the ordinance, but this news was horrifying to her. She indicated that they were finally getting help from the County but this seemed like a reversal.

Jane Riley, 556 Coventry Rd., indicated that they owned two lots adjoining to the property where the amphitheatre was located and had lived there for 48 years. She stated that the County was finally doing what is proper now and they needed KMAC and County support to uphold the existing codes.

John Stein then spoke and indicated that there was a clear trend in the room against the ordinance and wondered if there was anyone in favor of the ordinance in the room, and encouraged them to step forward so that those present could hear their views.

Mr. Danny Scher, owner of the property at 500 Coventry then spoke. He indicated that he was also not in favor of the ordinance, that there were sections of it he found objectionable. He further stated that he was more than willing to meet with the neighbors to see what they could work out, which he said he offered two years ago. He indicated that he does not like going to the local stores and having people not make eye contact with him and that he had lived in Kensington for 17 years. He stated that in the past he has invited all neighbors to his concerts, and that the purpose of his concerts was to raise money for those less fortunate and for charitable organizations, as well as for political candidates. He indicated that the concerts cost him money and that he also does the community fund-raising events for free, at a personal cost to him, at the amphitheatre. He indicated that he had held only three events in the prior year and they were only for a few hours per year. He agreed that the ordinance should not be adopted as written but for reasons other than those stated. He believed that the disturbance to the neighbors was a small price to pay when compared to the benefits to such organizations as breast cancer prevention, Jewish Films and other charitable organizations his concerts supported. He does not want to be a nuisance. To close, he stated that he offered two years ago to meet with neighbors, he was renewing that offer tonight. But he felt that if the response was absolutely “no”, then there was nothing further to talk about and they could have war but he did not like what has happened in the past and they should all put down their swords and work together.

Dr. Schwartzberg responded with two observations. First, that such a meeting would be a farce, because the concerts were in violation of the code and no one could agree to violate the laws. Second, neither he nor any of his neighbors objected to the organizations or politicians benefited by the concerts; the primary issue was the venue not the cause(s) supported. He argued having large concerts in a residential neighborhood was inappropriate regardless of the beneficiary. He noted that there were approximately 50 people in attendance at the meeting by his count and all were against the ordinance and the concerts. He also noted that Mr. Scher’s comments were inappropriate and to say that “we could meet and agree or have war” was insensitive toward his neighbors and the community.

It was then noted by a prior speaker that the Shakespeare Festival, at John Hinkle Park, had to relocate because of the objections of neighbors. In this speaker’s view, the same could be said for the Scher amphitheatre, as it was an inappropriate venue for concerts due to its location in a residential neighborhood.

Linda Lipscomb, who did not reside in the immediate neighborhood stated that she believed that this issue should be directed toward the legislators; that there were any number of beneficial activities for which one might raise funds, but they

would not be proper within a residential neighborhood, particularly in an urban neighborhood, such as Kensington. She believed these concerts to be a commercial activity and that they should not be allowed simply because one desired to do have them.

Mr. Walker then added, as an example, that it was perfectly alright to have a game of “pick-up” basketball, but an NBA final game playoff would not be acceptable in the backyard of an adjacent home.

(Apologies to those additional persons who may have spoken but were not noted in the minutes due to the woefully deficient shorthand skills of Secretary Karlsson)

Chair Barraza then indicated that KMAC, after having heard from the neighbors, would then discuss the matter publicly among themselves.

Supervisor John Gioia then arrived, apologizing that he had been delayed due to a meeting regarding the library. He commented in response to a question from Andrew Reed, 728 Coventry Rd. as “to what the Supervisors were going to do” that this was a draft document and a starting point for discussions. He further stated that the ordinance was of county-wide significance and, while the primary issue was in Kensington, there had been one other instance in the San Ramon Valley where this issue had arisen. He stated that this issue was not currently on the Planning Commission agenda but that its next meeting was February 27th. Supervisor Gioia stated that the purpose was to clarify when various kinds of events could be held and under what circumstances, so as to eliminate doubt. He continued that the County would do the “right thing”, regardless of the issues and the sponsors.

Andrew Reed then asked the Supervisor that, “In light of the upswell of opposition, what would be a reasonable alternative to the proposed ordinance? Some events require permits, others do not; therefore what did he see as acceptable?”

Supervisor Gioia stated that the purpose of the meetings and public discussion was to provide input to the Community Development Department so that they could draft a document that would meet the greatest needs within the County. He believed that the proposed ordinance was vague and confusing, but stated that he and his staff were working with Contra Costa County Counsels Office to develop an ordinance that would meet the needs of Kensington and the entire unincorporated area of the County.

Dr Lawrence Thal then pointed out that the proposed ordinance referred to noise limitations but that while a Kensington noise ordinance had been discussed, none had ever been developed. Supervisor Gioia responded that this was because of the difficulty in adopting measurement standards, that an ordinance based upon a Trinity County ordinance had been proposed, but it was difficult to enforce or apply on a County-wide basis. He added that while the Kensington

Police Chief had stated his objection to the noise ordinance, in terms of enforcement of decibel level standards, he and the Fire Chief were not opposed to the most recent draft Fundraising Ordinance.

KMAC then discussed the proposed Fund Raising Ordinance and Chair Barraza opened by stating it was clear, based upon this meeting, that no one present was in favor of the ordinance as proposed. He continued that one of the primary objections to the ordinance was that it was vague and it instead needed to be specific as to required conditions before a permit should be granted.

Member Brown commented that the overall sentiment was in favor of no new ordinance, that the County should enforce the laws that are currently in effect and that if this ordinance were approved, it would not help the situation on Coventry Rd. Moreover, the conditions stated in the ordinance were vague and thus could not be enforced. In light of these concerns, she pointed out that the overwhelming desire was to maintain the status quo.

Secretary Karlsson noted that ordinances are generally drafted in response to a perceived problem by the Board of Supervisors and a desire to find a solution. While the solution may be unpopular, it was his view that attempting to come up with an acceptable solution might be preferable to doing nothing, particularly in light of the cover letter to the proposed ordinance that stated that statewide legislation was withdrawn with the understanding that the County would address the issue at the local level. Members of the audience expressed their views that statewide legislation was now unlikely, and that they would prefer to resist any new ordinance and work with existing codes.

Member Reed then expressed that she sensed that there was a clear feeling that this was an inappropriate activity in the community. Any ordinance that would allow such activities would not benefit the community and, if it was good for one person, it should be good for all, and she doubted this would be the case when it came to concerts in Kensington residential areas. Therefore she felt the question was: do we want everyone to do it, or no one? Should we allow commercial activities in residential areas as a permitted use, or should we maintain existing laws that make such uses illegal? She was of the opinion that existing laws work for this problem. She believed that six months notice under the ordinance should be required before a concert, not sixty days. She regardless, wanted to thank Supervisor Gioia for his considerable efforts in assisting Kensington in addressing this problem.

Patrick Tahara wanted to thank those who appeared at the meeting for their valiant efforts and continued to state that in his view the ordinance had no meaning without standards; it was vague and, without a noise ordinance, there could be no enforcement of the vague standards set forth in the ordinance. He continued that Kensington is unique urban area, that it was not similar to other unincorporated areas of the County and, noting that Supervisor Gioia had mentioned only one event outside of Kensington, he stated his belief that this was a unique issue that should be addressed in Kensington. He therefore hoped

that the Kensington community and Mr. Scher could work together for a solution but also noted that while the efforts to raise money for charitable purposes are valued, those efforts are misplaced in an urban residential area such as Kensington. It was his view that large commercial events should not occur in Kensington.

Thereafter a motion was made as follows: Whereas, KMAC believes that the issue addressed by the Fund Raising Ordinance is an important topic; and Whereas, the proposed ordinance needs a great deal more staff work; and Whereas, it is the view of KMAC that the existing laws worked well; and Whereas, between 30 and 40 people attended the KMAC meeting and all were opposed to the ordinance and no one spoke in favor of it; and Whereas, KMAC remains willing to work with the Contra Costa Community Development Department to develop a more thoughtful approach to an ordinance; now Therefore, it is resolved that "KMAC finds that the proposed Fundraising Ordinance does not address our community concerns. However, in the future, we are willing to work with the County on a more appropriate response if needed." KMAC further authorized and requested that Chair Barraza write a letter of transmittal to the County, expressing its concerns. The motion was adopted 5 – 0.

The meeting was adjourned at 9:20 p.m.

Minutes prepared by Secretary Karlsson