

**HINESBURG, VERMONT 05461**

OFFICE OF THE ZONING ADMINISTRATOR

Tax Map Number 9-1-79

July 31, 2013  
Matt & Judy LaBerge  
852 Hayden Hill Rd. West  
Hinesburg, VT. 05461

Dear Matt and Judy,

It is only fair that I begin this letter by letting you know that you won't be happy with it.

On July 22, 2013 I received a phone call from Gary Fenwick requesting that I come to his property to observe what he deemed an unreasonable noise, basically at his property line. After visiting with him, I came around to your property so that I could understand the issue more completely. At that point you stated that, per the Vt. Supreme Court decision filed January 6<sup>th</sup>, 2011, there was no limit on the noise that you could make. The last paragraph of that decision, # 16, is as follows:

*"In closing, we note that the primary source of friction between these neighbors revolves around the noise created by the motorbikes. All of landowners' neighbors are entitled to quiet enjoyment of their property as much as landowners are entitled to the benefits of the recreational uses of their own. The balance between the parties' competing conceptions of enjoyment is a difficult one, but one that was struck in this case through the application of local noise-related performance standards, with which landowners appear to now be complying. See Zoning Regulations § 5.12 ("No land or building shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or objectionable hazards by nature of . . . noise . . ."). The town's zoning regulations cannot now be used to exact further concessions from landowners' recreational use of their motorbikes by making a zoneable mountain out of a private moto-cross track. If neighbors experience a problem with unreasonable noise from landowners' track, they are well within their right to file a complaint in accordance with town's noise performance standards or request a specific change in the town's zoning bylaws."*

My interpretation of this is just the opposite from yours, and it states that while the track itself cannot be made to apply for a permit, noise is an issue that can be addressed.

When I was with Mr. Fenwick I observed that his decibel meter was recording noise intensity in the high 70's range for the smaller bike, and mid to high 80's for the larger bike, which is similar to the last time. When we spoke after my visit with him, you explained that the bikes were exactly the same ones that had been in use for years, that you hadn't been riding that much this year, and that the only ones riding were your two sons. You pointed out that you had planted a row of evergreen trees between your properties, and that you believe that the Fenwick's don't really use the property near your boundary. In my opinion you have done a lot to try and mitigate the impacts of their riding. As well, you explained that the older son was in the running for, as I remember it,

the Vt. State Championship. You also mentioned what appeared to be obvious to me, that they were good kids, and that the motocross kept them occupied, fit, and behaving well because they didn't want to lose the right to race. This all makes any decision that I am making relating to the noise even more difficult.

The zoning regulations have changed since I last found you in violation of the noise ordinance, as they now instruct me to consider duration, and frequency as a function of the "reasonable" test. Unfortunately, they contain no guide lines on what a reasonable duration or frequency might be. I have spent many hours researching this issue, trying to find some universally accepted standards for duration and frequency, and can't come with any examples of what might be considered reasonable.

The most basic requirement of my job as a ZA is that I am instructed to be literal in my application of the regulations. I am more than willing to try and interpret the wording of the regulations searching for universally accepted definitions of words etc. but I don't think that it is within my purview to define "reasonable" without some clear direction or examples from the ordinance. Therefore I am left with a choice of either finding that the duration and frequency are unlimited, or that the noise level in the high 80Db range is unreasonable at any duration or frequency.

I recognize that my application of the regulations is arbitrary, and certainly hope that they will be revised so that duration and frequency can be utilized in a fair manner.

All that being said, the buck stops here, and feel that I have no choice but to find you in violation of the Town of Hinesburg Zoning Regulations.

On July 22, 2013, I observed noise measurements in the high 80Db range coming from motorbikes ridden on your property. The duration of this sound was approximately 10 to 15 seconds, and its frequency was about every five minutes while I was present. The frequency of the use of the track, reported to be on or about June 3, July 7 and July 22. The combination of all of these factors has created an unreasonable noise.

Therefore, in conformance with Title 24, Chapter 117, Section 4451, I am hereby giving you formal notice that you are in violation of Town of Hinesburg Zoning Regulations Section 5.12 Performance Standards which says: *5.12.1 Unreasonable noises are not permitted. A determination of "unreasonable" shall include factors such as intensity, duration, and frequency (i.e., how often it occurs). .....This Section 5.12.1 shall not be construed to prohibit usual and customary residential activities or property maintenance.*

Please understand that if you fail to correct this violation within seven days of receipt of this notification by ceasing to use motorcycles that create unreasonable noise beyond your property line, it will be necessary for me to turn the matter over to the Town Attorney for whatever legal action the Town of Hinesburg deems appropriate. Such legal action could result in your being fined as much as \$100 (One Hundred Dollars) per day for each day that you continue in violation.

In accordance with Title 24, Chapter 117, Section 4465, should you disagree with this notice of violation, you have the right to appeal to the Hinesburg Development Review Board through this office in the Town Hall or via P.O. Box 133, Hinesburg, Vermont, 05461, within fifteen (15) days. A notice of appeal must be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why the requested relief is believed appropriate under the circumstances. The appeal must also be accompanied by an appeal fee of \$200, to be refunded if you prevail.

If this violation is repeated after the seven (7) day period and within twelve (12) months of this date, a court action may be instituted immediately, without providing an additional seven day opportunity to cure the violation 23 V.S.A. Section 4451

Sincerely,

Peter Erb,

Zoning Administrator, Town of Hinesburg

C.c. Joe Colangelo, Town Administrator; Bud Allen, Town Attorney; Gary and Fiona Fenwick; Alex Weinhagen.