

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 6-10, Noise Control – Arts and Entertainment Activities

Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments.

Bill 6-10, Noise Control – Arts and Entertainment Activities, sponsored by Councilmember Elrich and then-Council President Floreen, was introduced on March 2, 2010. A public hearing was held on March 23, 2010, at which the only speakers were representatives of Strathmore Hall Foundation and the Greater Capital Area Association of Realtors (see testimony, ©12-15).

Committee worksessions The first Transportation, Infrastructure, Energy and Environment Committee worksession on this Bill was held on November 22, 2010, at which the Committee recommended enactment of this Bill with comprehensive amendments, summarized and discussed below. The Bill with Committee amendments had been scheduled for Council action on November 30, but was dropped from the agenda to allow Councilmembers to resolve outstanding issues. At a second Committee worksession, held on March 28, 2011, the Committee deleted one of the major amendments it had inserted at its first worksession and recommended other amendments, described below. The major amendment the Committee deleted at its second worksession is now the subject, in revised form, of Expedited Bill 16-11, which is scheduled to be introduced on May 18.

Original Bill As introduced, Bill 6-10 would set different noise level standards for certain seasonal arts and entertainment activities. It would also exempt noise levels created by those seasonal arts and entertainment activities, up to a higher maximum level, from being treated as a noise disturbance. In addition, a potential homebuyer would be notified about certain seasonal arts and entertainment activities near those areas.

As introduced, this Bill would allow a performing arts facility (such as, but not limited to, Strathmore Hall) which conducts at least 5 outdoor arts and entertainment activities (such as concerts or films) each year to, at its option, annually file a noise mitigation plan with the

Department of Environmental Protection (DEP). DEP would review but would not approve the plan. Having filed the plan, the facility would then be subject to a higher maximum noise level from 11 a.m. to 11 p.m. during April through October – 75 dBA versus the normal 65 (daytime) or 55 (nighttime) levels that apply to residential areas.¹ If an arts facility conducts fewer than 5 outdoor events, under the current law² it can apply for an event-by-event waiver, which is good for up to 30 days, and would not have to file a noise mitigation plan.

Urban district redraft 1 On November 17, attorneys William Kominers and Robert Brewer, on behalf respectively of the Bethesda and Silver Spring urban districts and Chambers of Commerce and the Strathmore Hall Foundation, submitted a redraft to Bill 6-10's sponsors. This redraft:

- limited the scope of the seasonal activities provision to any “qualifying performing arts facility” that is County-owned or -operated and designated by a Council resolution after a public hearing, and deleted the “more than 5 performances” requirement;
- inserted a new provision, applying only to the urban districts (currently Bethesda, Silver Spring, and Wheaton), which would essentially waive applicable noise limits for any “permissible performance location” recommended by the urban district advisory or corporation board and designated by the County Executive; and
- deleted the homebuyer notice requirement.

The Transportation, Infrastructure, Energy, and Environment Committee reviewed this redraft at its worksession on November 22 and recommended enactment with further amendments, described below.

Bifurcation In a memo dated March 21, 2011, the County Executive recommended splitting the Bill, as previously recommended by the Committee, into 2 parts: one focused on County-owned or -operated performing arts facilities, to be contained in a smaller Bill 6-10, and a new Bill focused on performing arts facilities in urban areas, to be introduced as a new Bill. In its March 28 worksession, the Committee accepted this bifurcation and recommended a further revised version of Bill 6-10, which is shown on ©1-8. That Bill is before the Council, along with the second Bill, to be introduced as Expedited Bill 16-11.

Original Issues/2010 Committee amendments

1) Should this increase in the applicable noise limits at specific performing arts facilities be allowed?

The first section of this Bill (from ©3, line 52 to ©5, line 98) applies only to specific County-owned or -operated performing arts facilities designated by the County Executive (see ©3, lines 33-42). (The Bill had originally required designation by Council resolution after a public hearing.) This provision is intended mainly to cover Strathmore Hall, but it could also

¹For a description of the various decibel levels, see ©19.

²See County Code §31B-11(a).

apply to Black Rock Center for the Arts and other facilities. To qualify, the facility management must file and annually update a noise mitigation plan.

The management of Strathmore Hall Foundation (see testimony, ©12-13) in particular is concerned that occupants of the new housing development (Symphony Park at Strathmore) being built nearby would file a noise complaint during any outdoor performance event (concert or film) which exceeds the relatively low 55 dBA nighttime noise limits. In their view, the ability to apply for an event or 30-day waiver, which the current law allows, is not sufficient because they need to schedule outdoor events and sign performers well in advance. They also argue that the upper noise limit in this Bill, 75 dBA, is not excessive and would not offend nearby residents. The description of decibel levels on ©19, furnished by Strathmore Hall Foundation, compares 75 dBA to an “average radio or vacuum cleaner”, or, we would say, loud enough to notice. Under the County noise law, these measurements are taken at the property line, not at the noise source.

While DEP, the County’s noise control enforcement agency, has received few complaints about concerts or other seasonal outdoor entertainment activities, that doesn’t necessarily mean that the public does not object to them. DEP has received few if any complaints about outdoor events at Strathmore recently, but in 2006 residents of nearby neighborhoods vociferously objected to noise from several outdoor movies. Strathmore management since revised its outdoor operations to reduce the resulting noise levels.

The County Noise Control Advisory Board (see memo, ©16-17) did not support this Bill and instead proposed that Strathmore Hall Foundation use the long-term (up to 3 years) noise waiver process allowed under the current law³. This process includes public notice and a hearing. In Council staff’s view, a 3-year waiver period is too long for these facilities.

Committee recommendation: Accept the concept of relaxing the applicable noise limits during certain hours and times of year at designated qualifying performing arts facility sites.

2) If a relaxed noise level standard is allowed, should DEP be required to approve a noise mitigation plan?

As introduced, Bill 6-10 only requires the applicant to submit a noise mitigation plan, which DEP would review but not approve or reject. The 3-year waiver process which the Noise Control Advisory Board prefers does not expressly require the applicant to submit a noise mitigation plan, although DEP could require one as a condition of approving any waiver.

Council staff had recommended that DEP be directed to report to the Council and public on the adequacy and effectiveness of each noise mitigation plan before the Executive designates a site, and to advise each facility operator at any time if the plan it submitted does not take full advantage of reasonably available noise control technology.

Committee recommendation: do not require DEP to evaluate the adequacy and effectiveness of each noise mitigation plan before the Executive designates a site, but direct DEP to annually advise the Council and Executive whether the prescribed noise levels remain

³See County Code §31B-11(b).

appropriate for each site and on the extent of compliance with them (see ©5, lines 94-98). **In its later worksession, the Committee recommended deleting all requirements for and references to a noise mitigation plan.**

3) Should a blanket waiver of the applicable noise limits in the urban districts be allowed?

The new section of the Kominers-Brewer redraft (from ©5, line 99 to ©8, line 162) applies to the urban districts (currently Bethesda, Silver Spring, and Wheaton). The redraft would effectively waive applicable noise limits for any “permissible performance location” nominated by the urban district advisory or corporation board and designated by the County Executive without a public hearing (see ©3, lines 28-31).⁴ To qualify, the location’s management must file and annually update a noise information report, which is less rigorous than the noise information plan required for a County-operated site.

Urban district representatives argued that downtown residents and visitors expect more noise and often seek it out, and realize that higher decibel levels from music or theater performances are part of the downtown “scene”. DEP staff say that few if any noise complaints have been received for downtown entertainment activities. But for another view, see the letter from a County resident on ©18 protesting Silver Spring outdoor concerts.

The operating theory behind this provision is essentially that the urban district managements will not want to offend their residents and customers, and thus will not accept noise levels beyond what is generally acceptable in a downtown area. While this statement may be generally valid, the draft relies on a rather open-ended process that includes no defined role for either DEP’s noise enforcement staff or the public. It also waives all current County noise limits and imposes no upper noise limit at all, so if an overly enthusiastic urban district allows an overly enthusiastic concert promoter or bar to book the loudest rock band available and let them play through the night, the nearby residents would have no statutory recourse (although it would not preclude any affected person from filing a nuisance action in court).

Council staff recommended that the Committee sever this provision from the rest of Bill 6-10 and introduce it as a separate Bill with its own public hearing. Because current urban district activities have generated few if any noise complaints, in our view this provision appeared to be a solution in search of a problem, which needs more public exposure before receiving serious Council consideration.

Committee recommendation: accept the concept of shifting responsibility for noise levels at certain outdoor performance sites in urban districts to the urban district after the Executive designates the site as a permissible performance location. Tighten up this authority by requiring 30 days’ advance public notice before a site is nominated or a performance approved, clarifying that the Executive can revoke a site designation at any time, and require the urban district board to report annually on its experience with this authority and to forward each noise

⁴Because this proposal only applies to outdoor arts and entertainment activities, it would not affect the Fillmore in Silver Spring or any other indoor entertainment venue.

complaint it receives to DEP. As previously noted, the Committee later recommended removing this provision from Bill 6-10 and treating it as a separate Bill.

4) What if any disclosure should residents near a performing arts facility receive?

Bill 6-10 requires the seller of any residential property within 300 yards of a covered performing arts facility to notify any buyer that seasonal arts and entertainment activities at the facility would be subject to special noise limits (see ©8, lines 163-185). At the hearing the Greater Capital Area Association of Realtors (GCAAR) objected to this added disclosure requirement, partly because it would add to many other required notices recently inserted in County law (see GCAAR testimony, ©14-15).

This kind of pre-sale notice has another flaw: it's not clear when it would be triggered because a performing arts facility could begin an outdoor concert program at any time, and home sellers would not necessarily know when the facility has applied for the special noise standards under this Bill.

As an alternative form of notice among others, GCAAR suggested directing the performing arts facility to notify surrounding homeowners. However, this would not reach prospective homebuyers before they buy in that area. GCAAR also suggested that new homebuyers in the Strathmore Hall area be given a notice tailored to that facility, or some disclosure be required to be included in homeowners' association and condominium documents for developments near a performing arts facility.

The urban district redraft deleted this notice provision altogether because the Strathmore Hall Foundation is now satisfied that it is not needed. Council staff concurred because, as drafted, this provision raised too many operational issues to be feasibly enforced.

Committee recommendation: delete the required notice from the Bill.

Revised Issues/2011 Committee Amendments

The Transportation, Infrastructure, Energy, and Environment Committee considered these issues and made these recommendations at its second worksession on March 28.

5) Should the urban districts amendment be deleted from this Bill and considered separately?

As previously noted, the County Executive submitted a memo on March 21 (see ©20-21) recommending that Bill 6-10 proceed to enactment without the urban districts provision, which would be addressed in a new Bill that the Executive expected to send to the Council "within the next several weeks". On April 27 the Executive submitted the new Bill, which is scheduled to be introduced as Expedited Bill 16-11.

Committee recommendation: amend Bill 6-10 to delete the urban district provision on ©5, line 99 to ©8, line 162.

6) How should qualifying performing arts facilities be designated?

In his latest memo (see ©20), the Executive also recommended that Bill 6-10 be amended by deleting the requirement on ©3, lines 38-42, that the Executive designate each qualifying outdoor performing arts facility in an Executive Order published in the County Register, and the Executive's authority to revoke any such designation. Executive staff argued that the list of such facilities is short and clear, and that this provision is flawed because it does not contain any standards for the Executive to follow in designating them or revoking that designation.

In email messages with Council staff, Executive staff indicated that, along with the outdoor areas at Strathmore Hall and Black Rock Center for the Arts, which have been publicly discussed in connection with this Bill, other County-owned facilities where the relaxed noise limits allowed by this Bill could apply include Veterans Plaza in Silver Spring and "any County facility made available through the Office of Community Use of Public Facilities at which an arts and entertainment activity takes place, any public right-of-way which is used for an arts and entertainment activity, and any County owned surface parking lots used for arts and entertainment activities (e.g., Wheaton)". In addition, Glen Echo Park, as a County-operated facility, would also qualify.

Given the breadth of these possibilities and the non-discretionary nature of the process if the Executive's amendment is adopted, Council staff recommended that some individual site approval mechanism be retained. Perhaps more important, some authority and process to revoke the applicability of the relaxed noise limits should be built into the law to allow the County to respond quickly, without having to amend the underlying law, to unexpected community impacts or abuses of the limits. At the March 28 worksession, Executive staff modified their position to concur with Council staff. **Committee recommendation:** retain the designation and revocation requirement on ©3, lines 38-42.

7) Should the standards and process for qualifying performing arts facilities be tightened up in response to community concerns?

In response to comments the Council received recently from Strathmore-area residents (see ©22-40), Council staff recommended that the Committee consider some or all of the following modifications to the qualifying performing arts facility noise limits provision in order to better balance the equities between facility operators and neighborhood residents:

Operations

- **sunset** this provision in 2 years, so that the Council, Executive, and public can assess how well it worked and what effects it had on neighboring residents;
- **reduce the time of year** the relaxed noise limits can apply from April 1-October 31, as currently proposed, to June 15-August 31, so that it falls outside the school year;
- alternatively, allow relaxed noise limits **only on weekends** during April through October, or during the "shoulder months" (April, May, September, and October);

- apply the higher noise limits only to **events open to the public**, since many of the neighborhood complaints appear to involve noise from private parties held on Strathmore's terrace (the Bill now uses a broader term, "readily accessible to the public", on ©2, line 7, in its definition of "arts and entertainment activity");

Oversight and monitoring

- require the operator of each facility to **post its noise mitigation plan** on its website and notify neighborhood residents who put their names on a list that the plan has been filed;
- require the operator of each facility to show that it has **consulted with neighborhood residents** before it files a noise mitigation plan;
- authorize DEP to **approve or reject** each noise mitigation plan, require an approved plan before the higher noise limits apply, and direct DEP to consider public comments and the effect on the community generally before approving a plan;
- allow DEP to charge an **application fee** (set by Method 2 regulation) for each noise mitigation plan filed, and set aside those funds for DEP's monitoring of performances, including the annual report required on ©5, lines 94-98;
- alternatively, require the operator of each facility with higher noise limits to **retain a qualified noise monitor** to report on compliance with the applicable noise levels at its events.

At its March 28 worksession, the Committee declined to adopt any of these staff recommendations, although Councilmember Berliner would have limited the time periods as Council staff suggested. Instead the Committee encouraged Strathmore management to work with its neighbors to resolve outstanding issues. Strathmore management held a meeting on the same day (see letter, ©47-48), at which they and community representatives apparently agreed on a number of mechanisms to resolve future outdoor noise and related issues.

The Committee also concluded that the requirement for a noise mitigation plan should be removed from the Bill because preparing one would be costly and unnecessary. DEP would continue to be required to annually advise the Council and Executive on compliance with the noise levels in this provision and whether those levels remain appropriate for each applicable facility.

Committee recommendation: allow County-owned or -operated performing arts facilities to exceed current noise standards during certain time periods. See ©3-5, lines 52-98. A more readable "clean" copy of this provision is shown on ©50.

8) Effective date The Committee did not discuss when this Bill should take effect, but Strathmore representatives suggested that it be made an Expedited Bill so that the relaxed noise standards could apply to this summer season (see Strathmore 2011 outdoor concert schedule on ©49). If the Council agrees, this can be done by amending the Bill to add the following section at the end of ©8:

Sec. 2. Expedited Effective Date. The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

This packet contains:	<u>Circle #</u>
Bill 6-10 with final Committee amendments	1
Legislative Request Report	9
Fiscal Impact Statement	10
Hearing testimony	12
Memo from Noise Control Advisory Board	16
Letter re concert noise in downtown Silver Spring	18
Decibel scale	19
County Executive memo (March 21, 2010)	20
Comments from Strathmore area residents	22
Strathmore Hall Foundation response to neighbor comments	41
<i>Bethesda</i> magazine article about Symphony Park development	43
Symphony Park site plan	46
Strathmore Hall Foundation letter (March 30, 2011)	47
Strathmore 2011 summer concert schedule	49
New §31B-6A (clean copy)	50

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Bill No. 6-10
Concerning: Noise Control – Arts and
Entertainment Activities
Revised: 5-13-11 Draft No. 6
Introduced: March 2, 2010
Expires: September 2, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Elrich and Council President Floreen

AN ACT to:

- (1) set different noise level standards for certain arts and entertainment activities;
- (2) exempt certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance; and
- (3) [[require certain notices to be given to certain potential homebuyers near certain arts and entertainment activities; and]]
- [[(4)]] generally amend the County noise control law.

By amending

Montgomery County Code
Chapter 31B, Noise Control
Sections 31B-2 and 31B-5

By adding

Chapter 31B, Noise Control
Section 31B-6A [[and 31B-6B]]
[[Chapter 40, Real Property
Section 40-12D]]

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 31B-2 and 31B-5 are amended, and ~~[[Section]]~~
~~[[Sections]]~~ Section 31B-6A ~~[[is]]~~ ~~[[and 31B-6B are]]~~ is added, as follows:

31B-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Arts and entertainment activity means a performance of artistic or creative work, such as a play, film, music, or dance, which is readily accessible to the public, whether or not admission is charged. Arts and entertainment activity includes the time necessary to set up and remove any structure or equipment used in the activity.

[(a)] * * *

[(b)] * * *

[(c)] * * *

[(d)] * * *

[(e)] * * *

[(f)] * * *

[(g)] * * *

[(i)] * * *

[(j)] * * *

[(k)] * * *

[(l)] * * *

[(m)] * * *

Noise mitigation plan means a document that identifies noise mitigation equipment, materials, and methods which are sufficient to comply with applicable standards for an outdoor arts and entertainment activity.]

[(n)] * * *

[(o)] * * *

[(p)] * * *

[[Permissible Performance Location means a defined area in an urban district which is:

- (1) used for an outdoor arts and entertainment activity; and
- (2) nominated and designated as provided in Section 31B-6B.]]

[(q)] * * *

[[Performing]] Qualifying performing arts facility means the outdoor area of a building, outdoor seasonal, temporary, or permanent stage, or other clearly defined outdoor area or space, which is [[located at a venue that primarily presents live theatrical, musical, or dance performances]]:

- (1) used for an outdoor arts and entertainment activity; and
- (2) owned or operated by the County; and
- (3) so designated by the County Executive in an Executive Order published in the County Register. The Executive may revoke a designation at any time by publishing an Executive Order revoking the designation in the County Register.

[(r)] * * *

[(s)] * * *

[(t)] * * *

31B-5. Noise level and noise disturbance violations.

- (a) Maximum allowable noise levels.
 - (1) Except as otherwise provided in Section 31B-6(a), 31B-6A, [[31B-6B,]] and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

* * *

31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

(a) [[If [[more than 5 performances of]] an outdoor **arts and entertainment activity** will be conducted at a **qualifying performing arts facility**, the [[owner or manager]] operator of the **facility** may file a **noise mitigation plan**, prepared by an acoustical engineer or consultant, with the Department. The **plan** must include:

- (1) performance requirements;
- (2) the types of noise mitigation measures that the facility will use;
and
- (3) information about the impact of the proposed **arts and entertainment activity** and the planned noise mitigation measures on the performers, the audience, and the occupants of [[nearby]] properties within 1000 feet of the perimeter of the **facility**.

The Department must make each **plan** filed with it available to the public and send a copy to the Noise Control Advisory Board.]]

[[b)] If the [[owner or manager]] operator of a **qualifying performing arts facility** submits a completed **noise-mitigation plan** to the Department and conducts [[at least 5]] all outdoor **arts and entertainment activities** each year in accordance with that **plan**, each]] Each outdoor **arts and entertainment activity** held at [[the]] a **qualifying performing arts facility** must not exceed the following noise decibel limits:

- (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
- (2) at all other times, the maximum allowable noise level set in Section 31B-5.

80 ~~[(c)]~~ (b) A ~~[(person)]~~ **qualifying performing arts facility** which has ~~[(filed a~~
 81 **noise mitigation plan and otherwise)] complied with this Section must
 82 not cause or permit noise levels from an outdoor **arts and**
 83 **entertainment activity** ~~[(which is subject to this Section)]~~ to exceed the
 84 standards in subsection [(b)] (a).**

85 ~~[(d)]~~ (c) Any outdoor **arts and entertainment activity** ~~[(subject to)]~~
 86 conducted at a **qualifying performing arts facility** which has [(filed a
 87 **noise mitigation plan and otherwise)] complied with this Section
 88 [(which meets the standards in subsection (b))] must not be cited as
 89 causing a noise disturbance.**

90 ~~[(e)]~~ (d) ~~[(For a **qualifying performing arts facility** to remain in compliance~~
 91 with this Section, its [(owner or manager)] operator must update its filed
 92 **noise mitigation plan** as necessary to reflect significant changes in
 93 programming and noise control technology, and must file an updated
 94 **plan** with the Department not later than March 15 each year.]] The
 95 Department must annually advise the Executive and Council, and the
 96 operator of each **qualifying performing arts facility**, whether the noise
 97 levels specified in this Section remain appropriate for that **facility** and
 98 the extent of compliance with those levels.

99 **[[31B-6B. Noise review procedure for outdoor arts and entertainment**
 100 **activities in urban districts.]]**

101 ~~[(a)]~~ A defined area located in an urban district may qualify as a **permissible**
 102 **performance location** if the area is:

- 103 (1) nominated for that purpose by the applicable urban district
 104 advisory committee or urban district corporation board of
 105 directors after the committee or board has:

(A) given at least 30 days' public notice on the website of the applicable County regional services center that it is considering a nomination of a specific area; and

(B) reviewed and approved the nomination at a regularly scheduled monthly meeting; and

(2) after it is so nominated, designated by the County Executive as a **permissible performance location** in an Executive Order published in the County Register. The Executive may revoke a designation at any time by publishing an Executive Order revoking the designation in the County Register.]]

[[(b) If an outdoor **arts and entertainment activity** will be conducted in an urban district, the owner or operator of the designated **permissible performance location** where the **activity** will be conducted must first file a noise information report with the applicable urban district advisory committee or corporation board of directors. Each noise information report must:

(1) describe each **arts and entertainment activity** to be conducted at that **location**;

(2) list each performance date and time;

(3) specify who will sponsor each **activity**;

(4) describe the target audience for each performance; and

(5) identify the **permissible performance location** for each **activity**.]]

[[(c) The urban district committee or board must review each noise information report at a regularly scheduled monthly meeting and advise the owner or operator whether each proposed outdoor performance is consistent with the goals and objectives, vision, and mission strategy of

the district. The committee or board must first give at least 30 days' public notice on the website of the applicable County regional services center that it will review a noise information report at a specific meeting. This review may occur in conjunction with the nomination of a **permissible performance location** under subsection (a).]]

[(d) If the owner or operator of each **permissible performance location** submits a noise information report and receives the advice of the applicable urban district advisory committee or corporation board, each outdoor **arts and entertainment activity** conducted at the **location** as specified in the report must be treated as complying with the noise limits in Section 31B-5 and must not be cited as causing a noise disturbance.]]

[(e) To remain in compliance with this Section, the owner or operator of each **permissible performance location** must update its noise information report as necessary to reflect any significant changes in the type of planned **arts and entertainment activities** and any additional **arts and entertainment activity** not previously described in the report. An updated noise information report may be filed at any time, but an updated report must be filed not later than March 15 of each year before any outdoor **arts and entertainment activity** may be conducted at that **permissible performance location** during that year.]]

[(f) In its annual report filed under Section 68A-12(d), each urban district must list each **permissible performance location** that the district nominated during that year and each noise information report that it reviewed. The report also must list the types and number of noise complaints about **outdoor arts and entertainment activities** in the district that the district received during that year and discuss the

district's response, if any, to those complaints. The district must forward a copy of each written noise complaint that it receives to the Department.]]

[[Sec. 2. Section 40-12D is added as follows:]]

[[40-12D. Disclosure of noise from certain arts and entertainment activities.

(a) If any residential real property is located within 300 yards of a performing arts facility where 5 or more outdoor arts and entertainment activities which are subject to special noise level standards under Section 31B-6A have been conducted during the previous 12 months or are scheduled to be conducted in the next 12 months, any seller of that property must disclose to each prospective buyer, before the buyer signs a contract to buy the property, that certain seasonal outdoor arts and entertainment activities conducted at that facility are subject to special noise level standards which may exceed otherwise applicable noise limits.

(b) A prospective buyer must indicate, by signing an addendum to the contract or a separate section of the contract printed in boldface type in a clearly demarcated box, that:

(1) the seller has provided the information required by subsection (a); and

(2) the buyer understands that:

(A) nearby property may be a source of periodic noise from seasonal outdoor arts and entertainment activities; and

(B) the buyer may obtain more information about noise limits on these activities from the County Department of Environmental Protection.]]

LEGISLATIVE REQUEST REPORT

Bill 6-10

Noise Control – Arts and Entertainment Activities

DESCRIPTION:	Sets higher noise level standards during specific hours and seasons for certain arts and entertainment activities. Exempts certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance. Requires potential homebuyers near covered outdoor performance areas to be notified about potential noise from arts and entertainment activities at those areas.
PROBLEM:	Certain outdoor performing arts activities with substantial community support may violate current evening noise standards.
GOALS AND OBJECTIVES:	To allow reasonable, enforceable standards to apply to seasonal outdoor performances, and to notify potential neighbors that outdoor performances with different noise standards may be held nearby.
COORDINATION:	Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 17, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 6-10, Noise Control – Arts and Entertainment Activities

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This bill will establish a “seasonal noise level standard” that exceeds otherwise applicable noise standards for qualifying outdoor arts and entertainment activities that consist of more than five performances at a performing arts facility. To qualify for the seasonal noise level standard, the owner of the facility must file a noise mitigation plan, prepared by an acoustical engineer or consultant, with the Department of Environmental Protection. The plan must specify, among other things, the types of noise mitigation measures that the facility will employ and the impact of the proposed arts and entertainment activity and of the noise mitigation measures on the performers, the audience, and nearby properties. The Department of Environmental Protection must make the plan available to the public and send a copy to the Noise Control Advisory Board.

In addition, potential buyers of residential real property located within 300 yards of a performing arts facility subject to the seasonal noise level standard must be notified by the seller that there may be periodic noise from nearby seasonal outdoor arts and entertainment activities that may exceed otherwise applicable noise limits.

FISCAL AND ECONOMIC SUMMARY

This legislation does not appear to have a fiscal impact on the County, although the exact scope of the facilities affected is still to be determined. The noise mitigation plan submitted by the owner of a performing arts facility will not require processing or approval by the Department of Environmental Protection, except for making it available to the public and to the Noise Advisory Board. However, it is uncertain at this time whether the legislation will affect County-sponsored seasonal outdoor activities, either by restricting them or by requiring the County to pay for the preparation and implementation of a noise mitigation plan.

Office of the Director

Nancy Floreen, President, County Council
March 17, 2010
Page 2

The Department of Finance has determined that this bill will not have an overall economic impact. However, it is unclear what effect, if any, the notification requirements contained in the proposed bill may have on sellers of property in the vicinity of performing arts facilities, or on the real estate industry.

The following contributed to and concurred with this analysis: Stan Edwards, Department of Environmental Protection; Mike Coveyou, Department of Finance; and John Greiner, Office of Management and Budget.

JFB:jg

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Bob Hoyt, Director, Department of Environmental Protection
Stan Edwards, Department of Environmental Protection
Mike Coveyou, Department of Finance
John Greiner, Office of Management and Budget
John Cuff, Office of Management and Budget

Remarks from Eliot Pfanstiehl, President & CEO
Strathmore Hall Foundation, Inc.
March 23, 2010

Re: Bill No. 6-10
Noise Control – Arts and Entertainment Activities

Good Evening: Council President Floreen and Members of the County Council:

My name is Eliot Pfanstiehl, President and CEO of Strathmore Hall Foundation. Strathmore is a performing arts center that offers both indoor and outdoor concerts and performances, art exhibitions, film and other outdoor festivals, and various educational services for the benefit of the public. Strathmore is one of the performing arts centers that will benefit from the proposed Noise Ordinance amendments.

For the past 24 years, Strathmore has presented hundreds of concerts, art exhibitions, community festivals, and outdoor movies while welcoming thousands of artists and several million citizens to the 11 acres campus. Strathmore has become synonymous for the cultural quality of life for the residents of Montgomery County, in part due to the free outdoor events offered every year on the lawn and in the Gudelsky Gazebo.

During the last 3 years, Strathmore has been working with two developers on the American Speech-Language-Hearing Association (ASHA) property developing "Symphony Park", a 112-unit condominium project, which borders the Strathmore campus to the north. With the proposed change in the use of the site from office to residential use, and coupled with the close proximity of the proposed residences to the Strathmore campus, this could compromise the continuance of all outdoor activities at Strathmore, unless certain changes are made to the County's current noise regulations.

During the summer of 2007, the County Department of Environmental Protection monitored sound levels from our outdoor concerts and the NIH Film Festival. Virtually all the events violated the County's nighttime residential noise standard of 55 dBA maximum at the nearest proposed property line.

We believe this proposed amendment is important for addressing inherent conflicts between the new neighbors at Symphony Park, the current Noise Ordinance and the cultural events desired by County residents, and note that such an amendment would further ensure future compliance of Strathmore's outdoor events with the Noise Ordinance.

(over)

Remarks from Eliot Pfanstiehl, President & CEO
Strathmore Hall Foundation, Inc.
March 23, 2010

Re: Bill No. 6-10
Noise Control – Arts and Entertainment Activities

pg 2.

The Board of Directors of the Strathmore Hall Foundation, Inc. represents the larger community and is guided by its primary objective to protect the substantial public investment in the Strathmore facilities. With the capital investment of \$48 million each by both Montgomery County and the State of Maryland to build the Music Center, we were concerned about maintaining our mission in the face of this new development.

In addition to the public funds expended, Strathmore generated private contributions and earned income over the years that now exceed \$50 million dollars. Protecting this public and private investment is our moral and fiduciary responsibility.

We maintain that the County Council should amend the current Noise Ordinance to create an exception for the outdoor activities for the cultural arts centers of Montgomery County. Unless the Noise Ordinance is amended, it will only be a matter of time before the most accessible programs will be curtailed by citizen appeals to the ordinance.

We want to thank you for allowing us to testify this evening and I would be happy to answer any questions you may have.



Bill 6-10
#1

**TESTIMONY OF THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®
BEFORE THE MONTGOMERY COUNTY COUNCIL REGARDING
"BILL 6-10, NOISE CONTROL – ARTS AND ENTERTAINMENT ACTIVITIES"**

March 23, 2010

Council President Floreen and members of the council, my name is Shelly Murray and I am the 2010 President for the Greater Capital Area Association of REALTORS® ("GCAAR") – the voice of Montgomery County and the District of Columbia's nearly 9,300 REALTORS®, property managers, title attorneys and other real estate professionals. On behalf of GCAAR, I would like to make some comments regarding Bill 6-10.

REALTORS® Supportive of Disclosure

As many of you on the Council know, GCAAR has worked very closely with you in the past on similar issues related to disclosures in the real estate contract. For example, the Historic Preservation, Special Protection Area, agricultural, and most recently development districts and estimated tax disclosures. GCAAR fully understands the intent of this new legislation and that it is important so that homeowners and future homeowners are fully aware of any arts and entertainment activities going on within a certain distance from their homes. Therefore, GCAAR would like to work closely with the Council to find the most sufficient and adequate way for residents to understand the arts and entertainment activities in the county.

Prior to this hearing, GCAAR met with lead sponsor Councilmember Elrich to discuss many of our concerns that we have with yet another disclosure to the real estate contract. While GCAAR is generally supportive of disclosure because it helps a buyer make a more informed decision about a particular piece of residential property, we have many concerns with the recent increase of government regulations on the real estate transaction, the mandates of disclosures and the extra paperwork that they add to the real estate contract. As I'm sure many of you are aware, over the years the real estate contract has gone from only a few pages to a very lengthy, thick and overly cumbersome document. GCAAR has been working very hard over the years to find ways to simplify and streamline the contract. And every new real property disclosure potentially adds another page to the contract. And since this particular issue only affects a small part of the county residents, we are concerned that the disclosure language is broader than necessary right now.

A Better Way for Notification

GCAAR very clearly understands that there is a need to notify buyers of certain state and county laws. We had a very good discussion with Councilmember Elrich on how to modify and amend



14

the legislation to see if there is a way to remove the element of the real estate transaction and maybe look at some type of public notice requirement. We have several suggested changes that might accomplish the same goal without putting the burden on a seller to disclose an item that is probably more feasibly accomplished through a public notice requirement.

Here are some of our suggested changes:

- Offer an amendment to change Section 40-12D to change the language so that it is NOT a disclosure that a seller has to provide the buyer with;
- Change the disclosure to be a “Notice Requirement” on the performing arts facility where 5 or more outdoor arts and entertainment activities are held. They must notify all homeowners within 300 yards that this facility is subject to special noise levels standards:
 - a. The notice must include information on the county’s noise ordinance, noise levels permitted to this facility, the activities conducted by the facility, homeowners’ rights, etc.
 - b. This notice should satisfy any legal issues as long as the notice is provided and it also should be distributed in a certain timeframe should the facility choose to change their activities
 - c. We would suggest the notice also be provided every 6 months or at least on an annual basis;
- HOA/Condo docs – another way and an additional way would be to look into having this notice included in the HOA/condo documents so that buyers will be made aware that they are purchasing within 300 yards of a performing arts facility
- Master plan – look to see what is listed on the master plan and if there is anyway a buyer could see this on a master plan
- Property tax records – the property tax records provide a lot of detailed information about a home. Is there a way to include this information in an address search of a home?
- Strathmore Hall specific – All potential buyers must be given a notification that Strathmore Hall is within 300 yards of where the homes are being built. The notification would provide further information on the county’s noise ordinance.

GCAAR looks forward to continuing to work on this issue to find a proper solution so that all homeowners and future homeowners are properly notified about arts and entertainment activities near their homes. Thank you for your consideration of GCAAR’s perspective on this issue.



057886

NOISE CONTROL ADVISORY BOARD

MEMORANDUM

July 6, 2010

TO: Nancy Floreen
President, Montgomery County Council

FROM: John Fuchs
Chair, Noise Control Advisory Board

SUBJECT: Bill 6-10, Noise Control, Arts and Entertainment Activities

The Montgomery County Noise Control Advisory Board (NCAB) has reviewed proposed Bill 6-10, Noise Control, Arts and Entertainment Activities, sponsored by Councilmember Elrich and Council President Floreen. Bill 6-10 would establish different maximum noise levels for certain arts and entertainment activities and, in some cases, would exempt the noise from these activities from being treated as a noise disturbance. We were fortunate to have Mr. Dale Tibbitts, from Councilmember Marc Elrich's staff, attend our June 14, 2010 meeting along with representatives from several of the County's Regional Services Centers.

The NCAB is mandated by law to advise the County Executive, County Council, and the Director of the Department of Environmental Protection on noise control issues. Pursuant to this mandate, at its last meeting the Board and its guests discussed several concerns regarding Bill 6-10 and provides the following comments:

- The definition of a "performing arts facility" is vague and could easily be misused.
- As written, noise mitigation plans do not need to be approved, just submitted, and there is no recourse if an entity does not follow the noise mitigation plan. There may be consequences associated with a County approval that would limit the County's enforcement powers.
- There is no oversight or enforcement. The County may have resource limitations in these areas.
- The burden of proof for a disturbance is on the affected property owner.
- Noise mitigation plans are not required to be posted for public viewing, unlike a permit. There was discussion about the mechanism for disclosing the special noise considerations during real estate transactions of affected properties.
- It is unclear whether there is an appeal process or what an appeal would involve.
- The term "exempted residential" requires further definition or clarification as it applies to this topic.

JUL 14 - 7 AM 8:39
MONTGOMERY COUNTY
CLERK

Nancy Floreen
July 6, 2010
Page 2

Following the informative discussions during our June 14th meeting, the NCAB recommends that the County use the provision for a three-year noise waiver that is currently allowed under Chapter 31B of the Montgomery County Code to address the underlying issues that introduction of Bill 6-10 is expected to resolve. It is possible that slight modifications to the current code may be required, but the legislative activity involved would be less than the introduction of a new law.

Mr. Tibbitts also stated that the NCAB Chair is welcome to attend the upcoming work session on this proposed legislation. I am happy to accept the invitation and will attend the working session on July 15th to discuss our comments before the County moves forward with Bill 6-10. Thank you for your attention to this matter.

cc: County Executive Isiah Leggett

6-30-10

LETTERS TO THE EDITOR

Turn down the volume in urban centers

I am writing to express my continued frustration with the volume of the concerts in downtown Silver Spring. They drown out every attempt at conversation for 100 yards.

When concerts are in force, it is impossible to eat outside at the restaurants — the wait staff cannot hear our orders and I cannot hear them. Managers have told me they are not allowed to complain about the volume. Even inside, the sound drowns out ambiance and any music inside.

I can't have friends call to ask where to meet me, because it is impossible to hear them over

the phone. Even walking down the street toward the AFI theater, it is not possible to just have a conversation until we get around the corner.

This Saturday there was a chess tournament (with players) struggling to concentrate over the ear splitting, static-filled sound.

As a professional who follows health issues as part of my job, I recognize this as clearly loud enough to permanently damage hearing. I can't imagine that it is within allowable decibel limits. If it wasn't our own government sanctioning it, there would be tickets and arrests. Parents should not be forced to decide between the fountain and

their children's safety. Employees should not have to choose their jobs or their hearing.

I like the music most of the time. However, I'm not going to permanently ruin my hearing for it.

My calls have been met with empty promises to lower the dangerous volume. What organization is accountable to the employees, diners, and families in downtown Silver Spring for the dangerously high decibels of the noise here? When will the decibel levels be enforced? Who will take responsibility and supervise this activity?

Andrea Chamblee, Silver Spring

For general comparisons about noise related issues please refer to the following. All measurements are based on a distance of 6 feet (industry standard):

- 30dBA is a whisper
- 45 dBA is rustling of leaves, background music
- 52 dBA is typical desktop computer
- 60 dBA is normal conversation
- 75 dBA is average radio, vacuum cleaner
- 80 dBA is busy office
- 82 dBA is inside coach section of typical passenger jet
- 85 dBA steady sound levels for a working shift of 8 hours of is the maximum generally permitted as per the 1983 OSHA Published Standards.
- 100 dBA tractor or power saw
- 120 dBA is chain saw, jackhammer or snowmobile
- 135 dBA is jet taking off, rock concert
- 140 dBA is threshold of pain, gunshot or siren



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 21, 2011

TO: Valerie Ervin
County Council President

FROM: Isiah Leggett 
County Executive

SUBJECT: Bill 6-10, Noise Control – Arts and Entertainment Activities

I am writing to express my support for noise legislation that addresses the importance of outdoor performances at arts and entertainment venues and amenity spaces in our urban areas. These activities provide, at a minimum, three significant positive contributions to the well being of County residents and businesses. First, these arts and entertainment activities materially enhance the quality of life for County residents. Second, they provide positive activities in urban areas that help to deter crime and create a safe environment. Third, they generate significant economic spillover as people dine and shop at area businesses in connection with attending arts and entertainment events.

Bill 6-10, Noise Control – Arts and Entertainment Activities as originally introduced was aimed at addressing performing arts facilities, but did not address outdoor programming that is desirable within our urban areas – areas in which there is an expectation of higher levels of noise. The Transportation and Environment (T&E) Committee adopted certain amendments requested by two local Chambers of Commerce to address the urban areas. I believe those amendments, which were proposed after the public hearing on the original bill, should be considered as a separate bill and be modified to be more consistent with other County laws and department authority.

While I support amending the noise law to address outdoor arts and entertainment activities generally, I recommend that the Council proceed with the Bill 6-10 as amended by the T&E Committee with two exceptions. The first exception relates to the language which was added by amendment to require that a qualifying performing arts facility be designated as such in an Executive Order. Because there are no standards in the amended bill to address the circumstances under which a designation would be granted or revoked and the definition of “qualifying performing arts facility” is otherwise sufficiently clear, I recommend that the Executive Order language be deleted as unnecessary.

Secondly, I recommend that Bill 6-10 proceed without the language relating to urban areas in Section 31B-6B which was added as an amendment by the T&E Committee. I will be sending a new bill to the County Council to address arts and entertainment activities in our urban areas within the next several weeks. I will ask the Council to adopt that bill as emergency legislation following a public hearing.

Valerie Ervin, President
March 21, 2011
Page 2

Bill 6-10, as described above, makes appropriate changes to the County's noise law to address the types of outdoor concerts and entertainment that occur at our premier performing arts facilities such as the Strathmore and Black Rock. I urge the Council to adopt the bill to provide a clear regulatory climate to allow for programming by qualifying performing arts facilities.

Executive Staff are available to answer Council questions and to participate in any future worksessions on this bill.

c: Tim Firestine, Chief Administrative Officer
Marc Hansen, County Attorney
Jennifer Hughes, Special Assistant to the County Executive
Kathleen Boucher, Assistant Chief Administrative Officer
Diane Jones, Assistant Chief Administrative Officer
Bob Hoyt, Department of Environmental Protection
Stan Edwards, Department of Environmental Protection

THE WHITE FLINT COMMUNITY COALITION

Representing the wishes of the people of the White Flint area

Councilmember Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 6-10, Noise Control - Arts and Entertainment Activities

Dear President Ervin and Members of the County Council:

The White Flint Community Coalition, launched in April, 2009, is comprised of seven community bodies representing more than 3,200 households and 8,500 residents living in or adjacent to the White Flint Sector. While we have supported vibrant mixed use development, focused around the Metro, we have remained concerned about preserving and protecting our existing quality of life in our residential neighborhoods.

Bill NO. 6-10 -Noise Control - Arts and Entertainment Activities impacts our communities in two directions: From the south we are in close proximity to the Strathmore Music Center; North of us lies the White Flint Sector planned to become an Urban District. Both development activities pose different concerns for us. We ask the following:

1. Bill 6-10 should be split into the two major parts based on the two major sections in the bill:
 - Section 31B-6A. Seasonal noise level standard for qualifying arts and entertainment activities
 - Section 31B-6B Noise review procedure for outdoor arts and entertainments activities in urban districts
2. Section 31B-6A, dealing with noise limits for the Strathmore Music Center should be delayed until such time as the noise impact upon the community can be evaluated. At the present time, due to construction, the communities are separated from Strathmore by barren fields and construction equipment.
3. Section 31B-6A should be reworked to provide meaningful public input and to assure protections for existing residential communities abutting or in close proximity to an existing or proposed Urban District.
4. There should be opportunity for public discussion of both portions of the revised bills.

*Combining the strength of community bodies representing more than
3,200 households and 8,500 residents in or near the White Flint Sector*

Crest of Wickford Condominium Association · Garrett Park Citizens Association
Garrett Park Estates-White Flint Park Citizens' Association · Luxmanor Citizens Association
Parkwood Residents Association · The Sterling Condo HOA
Timberlawn Homeowners Association · Wickford Community Association

Thank you for considering our comments.

Sincerely,

Della Stolsworth, (on behalf of the
White Flint Community Coalition)

Montgomery County Noise Bill 6-10

Concerns of Strathmore's Neighbors

Strathmore Place Homeowner's Association Garrett Park Estates – White Flint Citizens' Association Wickford Community Association

1. Current regulations: Maximum level of 65 dB during the daytime, 55 dB after 9 PM. The new bill would allow for increased noise levels to 75 dB from 11 AM to 11 PM (the decibel scale is logarithmic and each increase in ten dB is a *10 fold increase* in the sound intensity or loudness. Thus, *allowing an increase from 55dB to 75dB is a one hundred-fold increase in actual sound intensity.*
2. The current statute already has a mechanism that would allow venues to apply for a waiver to increase sound levels on a case by case basis.
3. Strathmore Music Center is located in a residential area and there are no sound abatement barriers to block excessive noise from our communities. Houses on Strathmore Avenue are 250 yards from the new festival lawn area and 400 yards from the Gazebo. The new homes at Symphony Park are planned to be 50 yards and 200 yards respectively.
4. Even under the current regulations, some members of our communities have complained that the noise levels are so loud that their windows rattle during some of the Strathmore outdoor events.
5. The Montgomery County Noise Control Advisory Board, a citizen advisory board to the Department of Environmental Protection (DEP), did not support this Bill (July 6, 2010) and instead proposed that Strathmore Hall Foundation use the long-term (up to 3 years) noise waiver process allowed **under the current law.**
6. What scientific information has been provided that would justify changing the current noise level regulation?

Major Problems with Bill 6-10

- Time frame should be **only during summer school vacation**. New bill extends the time frame to April – October which will seriously impact students during the school year.
- There are no provisions for monitoring of compliance
- There are no mechanisms for oversight, or enforcement. The County DEP does not have the resources to enforce the law.
- Noise mitigation plans - Only requires the applicant to submit a plan, which DEP would review but not approve or reject. Where is the funding to come from for DEP to do anything other than a cursory review? DEP's budget will be tight just to deal with existing responsibilities.
 - Plans are not required to be posted for public viewing, unlike a permit.
 - There is no recourse if an entity does not follow the noise mitigation plan.
- The burden of proof for a disturbance is on the affected property owner. Bill 6-10 places the requirement of monitoring and enforcement on the local residents. Who is in a better position to absorb such an expense? Who actually would have the expertise to demonstrate compliance with a worthwhile noise mitigation plan? The answers to these two questions is Strathmore.

- The residential communities surrounding Strathmore have not had the opportunity to participate in the process of considering this bill. Most of us were not even aware of it until last December, after the testimony had been taken from the interested moving parties.
- Decisions are being made while a major constituency is not even available to voice their concern, namely the future residents of Symphony Park whose houses will be right next to the Strathmore Music Center Festival Lawn and Gazebo where outdoor events will be held.

Recommendations:

Our group of Community Associations in the area surrounding Strathmore Music Center, request the T&E Committee to recommend that the Council delay consideration of this bill for a year or two. During this period, Strathmore can still conduct outdoor concerts and request a noise waiver using the existing waiver procedure. In that time period, Strathmore Music Center and Symphony Park can actually install the noise mitigation features they have in mind.

Insufficient information is known about the noise projection from outdoor concerts in the new configuration with Symphony Park housing directly adjacent to the areas that Strathmore may use (concerts at the Gazebo or on the Festival Lawn). The Council is being asked to “trust” without getting any real verification.

We believe the producers of an event (meaning Strathmore) should be responsible for ensuring and enforcing adequate monitoring. Thus, in order to put on outdoor activities, Strathmore should pay for the installation and independent calibration (on an appropriate periodic timeframe) of sufficient noise monitoring equipment to DEMONSTRATE COMPLIANCE with the noise regulations.

Proper operation of the monitoring equipment would be a requirement for holding an outdoor event. Strathmore would be required to operate this equipment for all outdoor events, **including** private outdoor receptions held at the mansion and/or on the deck surrounding Symphony Hall. Adherence to the current noise control standards for an appropriate period (such as 2 years), should be considered a prerequisite to even beginning discussions with, and gaining community support for making reasonable adjustments to the authorized noise levels for outdoor events. Any time an outdoor event is occurring at Strathmore (be it public or private), Strathmore must have a person on premises with the power and authority to enforce noise control.

If this legislation is passed, we urge the Council to put in a sunset provision of 2 years. This would then allow the Council and all of the interested parties (especially the residents of Symphony Park which is not constructed as yet), to review the results of the noise level monitoring during the first few years.

It would be best if Strathmore and the local residential communities could agree on a noise monitoring plan that would allow Strathmore reasonable assurance that it is meeting the noise regulation and would allow the residents the ability to monitor the noise level in real time (possibly on the internet). Strathmore has not reached out to the neighboring communities. Often times, all stakeholders are brought together to see what kind of accommodations can be developed.

Submitted: March 24, 2011

William H. Neches, MD – President Strathmore Place Homeowner’s Association

March 12, 2011

David L. Comis
President, Wickford Community Assoc.
11005 Waycroft Way
Rockville, MD 20852

The Honorable Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Bill 6-10, Noise Control

Dear President Ervin:

The Wickford Community Association (a community of 50 homes just north of Georgetown Prep) recently became aware of Bill 6-10 and wishes to request that the Council delay consideration of this bill for a year or two. During this period, Strathmore can still conduct outdoor concerts and request a noise waiver using the existing waiver procedure.

Insufficient information is known about the noise projection from outdoor concert configurations that Strathmore may use. Delay will allow Strathmore the opportunity to take sound readings at various locations to ensure their efforts do, in fact, limit sound levels to those approved by the County. Once Strathmore can demonstrate this history of noise control, then a dialogue/negotiation with surrounding homeowners may result in a proposed Bill that is fully supported by Strathmore and the surrounding community.

Thank you for your consideration of this matter.

Sincerely,
David L. Comis
President, Wickford Community Association

cc: Council members
Michael Faden, Senior Legislative Attorney

March 13, 2011

David L. Comis
President, Wickford Community Assoc.
11005 Waycroft Way
Rockville, MD 20852

The Honorable Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Bill 6-10, Noise Control

Dear President Ervin:

I previously sent you a request to delay Montgomery County Council action concerning Bill 6-10 for a year or two in order to develop some history for outdoor concerts at Strathmore. In the event the Council determines that it will move forward with the Bill at this time, I would request the following concerns be addressed.

The Wickford Community Association (a community of 50 homes just north of Georgetown Prep) recently became aware of Bill 6-10 and wishes to oppose the Bill in its current form. Bill 6-10 unnecessarily changes the dynamic of the situation strongly in favor of Strathmore to the detriment of the surrounding communities. As such, we request the Bill be modified to address reasonable concerns expressed below.

Concern 1: This Bill should not be placed on the Council's agenda until 1) Strathmore and the local communities have sat down and talked through the issue and, 2) a second public hearing is completed. To date, this has not happened. Certainly the Council would prefer to have Strathmore and the local community associations come to the Council with an agreed upon proposal rather than a bitter disagreement. Even if agreement cannot be reached, a discussion should certainly occur before the Bill comes before the Council for a final decision.

Concern 2: Bill 6-10 does not require public comment and approval by an official entity. This provision is unacceptable. By removing a public comment and approval process Bill 6-10 removes interaction with the local community and will precipitate an adversarial relationship, hurting Strathmore and the local community. This need not occur.

We support the requirement for Strathmore to submit a noise mitigation plan (drawn up by an acoustical engineer or consultant) that limits noise to a specified level (currently proposed to be no more than 75 dba at the property line of a surrounding home or place of residence, to include live-in students at Georgetown Prep). We believe this plan (with proposed event dates) must be made public and be actively advertised to communities that would be expected to have evening noise levels greater than 55 dba. Such dissemination could be through surrounding community associations or through limited mailings. Residents who would be affected (those within the 55 dba threshold) should be allowed, and encouraged to comment on the acceptability

of the schedule and the plan. Ideally, the initial feedback should be directed to Strathmore who would make reasonable accommodation to valid points. However, the community must have a means to publically address issues that Strathmore is unwilling or unable to change. The community comment should be part of a public hearing in front of a body that has the authority to direct Strathmore to make changes. This protects the community from unreasonable decisions made by Strathmore, and protects Strathmore from unreasonable requests (or an outright veto) from the surrounding community.

Suggested change: We ask that Paragraph 31B-6A. Seasonal noise level standard for qualifying arts and entertainment activities, Section (d) be modified to read: "Any outdoor arts and entertainment activity [[subject to]] conducted at a qualifying performing arts facility which operates within an approved [[has filed a]] noise mitigation plan and otherwise complied with this Section [[which meets the standards in subsection (b)]] must not be cited as causing a noise disturbance." We further ask that the noise waiver process of Paragraph 31B-11 (a or b) be utilized in preference to Paragraph 31B-6A Section (e). Include public disclosure and a public hearing provision in front of a designated approval board to address issues of those who may have evening noise levels increased above the current 55 dba threshold (which may include residents more than 300 meters from the Strathmore grounds).

Concern 3: Bill 6-10 allows Strathmore to submit a 3 year plan. Strathmore feels that a 3 year plan is necessary in order to sign on and produce appropriate events. We believe this may be a reasonable concern and, subject to the inclusion of the suggested changes in Concern 2 above, would agree to working with a three year time horizon (which could be updated annually, again subject to public comment and an approval process). This would meet the legitimate concerns of Strathmore and still give the local community the opportunity to adapt, adjust, and suggest changes IN ADVANCE of the events. Such a plan would also allow potential home buyers in the surrounding community to know, in advance, how their home will be affected by their proximity to Strathmore.

Concern 4: Bill 6-10 places the requirement of monitoring and enforcement on the local residents. We believe the producers of the event (meaning Strathmore) should be responsible for ensuring and enforcing adequate monitoring. As such, we strongly believe that, in order to put on outdoor activities, Strathmore should pay for the installation and independent calibration (on an appropriate periodicity) of sufficient noise monitoring equipment to DEMONSTRATE COMPLIANCE with the noise regulations. It would be best if Strathmore and the local community could agree on a noise monitoring plan that would allow Strathmore reasonable assurance that it is meeting the noise regulation and would allow the residents the ability to monitor the noise level in real time (possibly on the internet). Proper operation of the equipment would be a prerequisite for holding an outdoor event. Strathmore would be required to operate this equipment for all outdoor events, to include private outdoor receptions held at the mansion and/or on the deck surrounding Symphony Hall. Proper operation of the equipment and adherence to the current noise control standards for an appropriate period (such as 2 years), should be considered a prerequisite to even beginning discussions with, and gaining community support for making reasonable adjustments to the authorized noise levels for outdoor events. Any time an outdoor event is occurring at Strathmore (be it public or private), Strathmore should/must have a person on premises with the power and authority to enforce noise

regulations, and real time contact information for this person should be posted on the Strathmore website.

If the Council ultimately decides that noise levels will be increased from their current levels, then the following additional changes should be strongly considered.

Concern 5: Bill 6-10 allows for increased decibel levels between April and October. This is too long a period of time. Increased levels may be appropriate for late nights outside of the public school year (meaning June 15th to August 31st). The days are longer then; adults and children tend to go to sleep later in the evening. Allowing for increased noise levels until later in the evening may be tolerated without major impact of the fabric of the Wickford community.

Suggested change: We ask that Paragraph 31B-6A. Seasonal noise level standard for qualifying arts and entertainment activities, Section (b) (1) be modified to either specify the dates of June 15th thru August 31st, or the time when public schools in Montgomery County are not in session.

Concern 6: Bill 6-10 does not distinguish between school nights and weekends. For periods outside of mid June to late August, the surrounding community has an expectation of quiet during the evening and sleeping hours associated with normal work and school days. As such, evening noise should not be considered for school nights (meaning Sunday through Thursday evenings). In addition, as this is not the summer, 9 p.m. is the accepted quiet time for the neighborhood (as is enforced in the current regulations). Suggested change: We ask that Paragraph 31B-6A. Seasonal noise level standard for qualifying arts and entertainment activities, Section (b) (1) be modified to provide that all activities outside of the time period agreed upon in Concern 5 (above) should be limited to Friday and/or Saturday and end by 9 p.m.

Thank you for considering these issues.

Sincerely,
David L. Comis
President, Wickford Community Association

cc: Council members
Michael Faden, Senior Legislative Attorney

Faden, Michael

From: Stephen Szara [siszara@earthlink.net]

Sent: Thursday, March 24, 2011 10:53 AM

To: Faden, Michael

Subject: Sound level around Strathmore

Dear Members of the Council Transportation and Environment Committee:

The Director of Strathmore is proposing an astonishing, unnecessary and community-destructive 100-fold increase in the sound intensity (55 to 75 on the decibel scale means the energy of the sound waves at 75 is a multiple of 100 times the energy at 55 - scientific explanation of this fact below) of public and private events held on small grounds in the middle of thousands of homes, town-homes and high rise condos.

That increase is unnecessary for the participants in the public and private events, or in likely concerts by promoters, to hear every sound produced by the performance fully. It is therefore unnecessary for any reasonable performance he may wish to plan. So the only reason can be an intention to plan larger very loud type music events such as e.g. big rock concerts.

The increase will mean that the sound carries many time further into residential communities (at 55 it can already be heard in a home 600-900 yards from the venue; at 75 it will reach a quarter of a mile. The increase will severely impact residents' lives, their enjoyment of where they have lived since well before Strathmore outdoor events, their fatigue level at school and work, and for some, their health.

Critical for the Committee's assessment of this Bill are these realities of the physics of sound, because the numbers 55 to 75 seem modest when on that scale the difference is huge, a MULTIPLE of 100 in noise level.

Here's why: The range of human hearing, from faint sounds to, literally, eardrum damaging sound wave pressure is such that a logarithmic scale is used to conveniently represent that range is double digits, rather than having to use very large numbers with many zeros. The decibel scale is convenient mathematically, but **the log decibel scale makes profound increases in sound pressure ("loudness") seem small because we all typically think, use and compare linear, not log scales. E.g. rulers, bath scales, increasing fines for offenses, budget planning, car mileage odometers and GPS mileage calculations all use linear scales, where the size of the unit of increase is constant (e.g. miles or ounces).**

With the log scale of decibels the size of the unit of measurement, one decibel, becomes bigger by a MULTIPLE of 2 for each three decibel increase, and thus a MULTIPLE of 10 for every 10th decibel increase. 55-65 is not adding 10 but multiplying by ten the sound energy at 55; 65-75 is another multiplying by ten the energy at 65. Thus, 55 to 75 is an increase of 100 times in the loudness energy of the sound waves broadcast into Strathmore's neighbors' homes, decks and minds.

So Strathmore is proposing to use an amplified megaphone 100 times larger to project sound from public events, private parties and promotor-sponsored events into our homes. This is a very aggressive act against neighbors with whom the Strathmore leadership has never even bothered to

inform, much less consult on the matter.

I ask the Council to be mindful that sound generated 100 times louder has 100 times the sound wave pressure energy and will carry far further than the existing nighttime events do. **For comparison an air pellet gun with 100 times more pressure than a target gun becomes an extremely dangerous weapon that can cause injury at great distances.** If this outrageous increase in noise level is allowed the Council will hear complaints from residents in a quarter mile radius--thousands of residents will be harmed

Those events already rattle windows, disrupt quiet family time when families rejoin after days of school and work, and seriously disturb those who must go to sleep at 9 or 10 p.m. for the next day's work, school, church, and other commitments.

In my own case, already have serious problems with falling asleep in the evening due to some of the medications I am taking for other medical problems. Raising the noise level would make things intolerable as all the bedroom windows in my house are facing the Strathmore grounds.

I have lived here for 27 years, long before the current Strathmore leadership started outdoor public events, and loud private functions with bands on the Music Center Terrace. This has always been a quiet residential area at night. Strathmore's outdoor events have been tolerable, though disturbing and clearly audible inside my home. Allowing a 100-fold increase in loudness will seriously degrade my quality of life

Stephen Szara, M.D., D.Sc.
10901 Jolly Way
Kensington, MD, 20895

Faden, Michael

From: George Nolfi [dr.nolfi@verizon.net]
Sent: Thursday, March 24, 2011 11:36 AM
To: Faden, Michael
Subject: please provide this memorandum to Councilmembers on T&E

Memorandum for the Montgomery County Council regarding Bill 6-10

Please consider the following six realities of the risks and harm the proposed increase in allowable noise level will cause.

1. *Renters of the facility (private parties or promoters of commercial events of a type that may bring other problems as well) will be allowed to power loudspeakers 100 times louder than is now allowable (see characteristics of the logarithmic decibel scale, with it's multiplicative, not additive nature below). Why doe anyone who rents the Terrace or the Gazebo/lawn area need to be given the right to be so disturbing when we neighbors don't disturb their festivities? Why does some 'here today, gone tomorrow' event promotion business need to be given the right to push it's sound much further into neighboring communities with 100 times greater amplified air pressure force of each sound wave, and 100 times greater force to push their sound into private residences against the will of those residents? There is no fair or reasonable reason for this Bill.*
2. *Since Strathmore's Administration has never extended the neighboring totally residential communities even the courtesy of a notice regarding it's intentions to seek this huge increase in permissible disturbance to us, much less the civility of a consultation to work out a mutually acceptable presence, with the existing noise limits (amount, days of week, hours, months) this Bill is a license for an aggravation of those arrogant attitudes towards supportive neighbors. There is no fairness to residents in passing this bill that will further encourage Strathmore's administration to thumb it's nose at the very neighbors who volunteer and donate to it's operations.*
3. *Given that attendees at outdoor events (again public and private, which are a greater risk) have never had trouble hearing every note or word of a performance or speaker (as anyone like myself who has attended many will testify), what in God's name does Strathmore's administration have in mind that will require amplifiers and speakers 100 times more powerful than at present??? If attendees at private and public events can fully hear all they need to hear, there is no fairness or reason to give facility renters a carte blanche to "reach out and 'bang' on neighbors' windows.*
4. *The elephant in the Council Chamber here is the unspecified events such as rock bands (music I happen to like by the way, so familiar example only) with multiple huge speakers at a lavish private event, or before thousands of fans on the now expanded lawn. This Bill allows a band to crank up its amplifiers so that the sound waves will be physically felt (as railroad train is by someone standing at a crossing), not only heard, sitting on our decks. What are we to do, wear ear plugs to sleep, play our newsradios, stereos, TVs excessively loudly to try to blot out the noise being thrust into our homes? There is no fairness or 'equal protection' to the entirely residential areas that adjoin the Strathmore property if the Council gives such commercial promotional agents and music groups the right to disturb residents of those areas at will, when the 100 fold increase in amplifier volume is not needed for their ticket purchasers. They don't need the volume of the announcer and music at Nationals Park.*
5. *The present law was developed with EPA, OSHA and known science about sound perception and transmission. And it provided a safety valve protecting the rights of impacted residents while providing*

a venue or other sound source a procedure to obtain exemptions for exceptional or unavoidable circumstances. It is an intelligent, practical piece of public policy and public protection, allowing for unusual needs of unusual events and extenuating circumstances. Bill 6-10 trashes all those values and that utility of the existing, established noise law that has served us well. In order for affected residents to have a seat at the table the allowable limits must not be increased. Under the existing limits, the Strathmore program can proceed unharmed, and Strathmore can work with it's neighbors to resolve any problems that may arise.

6. Proponents of 6-10 are being misleading when they suggest they are just requesting a modest increase. Acoustically, a 100-fold sound pressure intensity increase is being proposed. This is understood because of the mathematical differences in the decibel scale (a log scale) compared to the linear scales we more routinely see in daily life, such as a tape measure or a thermometer, a car speedometer, a tire pressure gage.

The log scale of sound intensity (the actual pressure of sound waves hitting an eardrum or windows of a house) means that going from 55 decibels to 75 decibels increases sound wave air pressure 100 times. An accurate comparison is putting a one pound weight on your shoulders for a walk, then increasing it to 100 lbs. but having someone tell you that it is only 30% increase. Your pain tells you they are being deceptive.

On a logarithmic base scale, which the decibel scale is, 55 to 65 means the intensity at 55 MULTIPLIED BY 10, not just adding 10. The same applies with an increased intensity to 75, which is ten times that at 65, with the result that the sound intensity from outdoor events at Strathmore will increase 100 fold.

Thank you for considering this request that you retain the fair balance of Strathmore and community interests and fair process for dealing with extenuating circumstances embodied in the present law by defeating the unfair and un-needed amendment 6-10.

George Nolfi
5113 Strathmore Ave.
dr.nolfi@verizon.net

Faden, Michael

From: Edward Lijewski [ed.lijewski@gmail.com]
Sent: Thursday, March 03, 2011 1:40 PM
To: Montgomery County Council
Cc: Faden, Michael; stan.edwards@montgomerycountymd.gov
Subject: Who's Kidding Whom? Strathmore's Outdoor Events—The Elephant on the Lawn (and the Patios)

Date: March 4, 2011

To: **Montgomery County Council** County.Council@montgomerycountymd.gov

Cc: Michael.faden@montgomerycountymd.gov;
stan.edwards@montgomerycountymd.gov

From: Edward Lijewski, 5200 Bangor Drive, Kensington, MD 20895

Subject: Who's Kidding Whom? Strathmore's Outdoor Events—The Elephant on the Lawn (and the Patios)

Reference: Bill 6-10, Noise Control – Arts and Entertainment Activities.

Strathmore Music Center must not be granted waivers to exceed existing noise level standards for its outdoor music events. Strathmore Music Center must schedule only events which will not exceed those standards.

Who's Kidding Whom? Or, An Exercise in Delusion Strathmore Music Center is in a principally residential neighborhood. The communities of Strathmore Place, western areas of Garrett Park Estates, and St. Angela Hall are its current immediate neighbors, with residents of Symphony Park townhouses soon to be its newest and nearest neighbors. Even cursory views from above (attached screen grab from Google Earth and Symphony Park Site Plan) make perfectly clear that Strathmore's outdoor events have been and in the future will be held with minimal distances between its nearby and soon to be immediate neighbors as well. Allowing Strathmore's outdoor events to exceed existing noise level standards is a certain prescription for many seriously displeased neighbors of Strathmore who otherwise whole-heartedly support its indoor programs.

SMC did not reach out to its neighbors re noise from earlier outdoor events; only when some neighbors complained to MC EPA about excessive noise were sound measurements taken (2006) all but one of which exceeded existing noise level standards did SMC focus on this issue.

Telling, nor did SMC reach out to its current neighbors regarding its promotion of the subject bill to allow it to exceed existing noise level standards.

Equally tellingly, nor did council Member Floreen, a resident of Garrett Park, inform the Garrett Park Estates-White Flint Park community association or any of those GPE-WFP residents residing closest to SMC to solicit views on how the subject bill would affect them.

The ostensible reason for not doing that regarding the subject bill is the focus on likely objections from residents of Symphony Park to noise from SMC's future outdoor events.

The proposed measure for dealing with future objections from Symphony Park neighbors, in addition to the covenant to be included in all property deeds, is to preempt such likely objections, even to noise exceeding current level standards, by granting a waiver to exceed existing standards and extend the allowable hours and calendar period for doing so. Granted, Symphony Park residents will have received information on that before they move in, but few if any of those residents will have any personal experience or reference point for how those noise level standards will actually affect them. And, with Symphony Park homes likely to cost close to \$1 million, those residents individually and certainly collectively will be able to obtain highly qualified legal counsel to represent them vis-a-vis intrusive or excessive noise from SMC's outdoor events into their homes. This is the exercise in self-delusion represented by the subject bill and its supporters and proponents. Neither the covenant in Symphony Park deeds nor a noise level waiver as in the subject bill should it be passed will resolve the issue with reasonable confidence now and going forward.

So, what will resolve the issue? One thing and one thing only: SMC must schedule only those outdoor events which by their nature and size (artists and musical genre) will not exceed existing noise level standards and otherwise be a nuisance to immediate and nearby neighbors. Essentially this means no or only minimal and restricted use of sound amplification, and probably requiring tickets/passes (even if free of charge) to manage the size of audiences.

If the subject bill is approved, it will assure immediate and long-term acrimony and disharmony between affected residents and SMC. No other outcome could be reasonably predicted. A residential community does not abide continued noise intrusions exceeding established level standards as such excesses negatively affect and diminish residents quality of life. A personal experience illustrates this point: a neighbor objected to music he considered too loud from an outdoor party at an adjacent house. When his request to lower the volume didn't work to his satisfaction, he moved his own phonograph outdoors, directed its speakers toward the offending noise, and turned up the volume. Neither side budged for several hours. Why shouldn't a Symphony Park resident consider such a drastic move if he/she was truly bothered by noise from SMC's outdoor events and had no other legal recourse?

I have been a resident of GPE-WFP since 1968 and at my current address since 1974. Increasingly, our community is negatively affected by noise which need not be generated or generated at existing levels. Sounds (noise) from SMC's outdoor events are heard in my yard, and with windows open in my living room and bedroom. Sounds (loudspeakers) from the Pike's Peak 10K race each April are heard similarly. Loudspeakers used at Georgetown Preparatory School track and field events are heard similarly. Loudspeakers used by the Korean community at their annual fair held on Holy Cross High School athletic field are heard similarly. Loudspeakers at Grosvenor Metro Station and on Metro trains are heard similarly. None of these unwanted and unnecessary intrusions into and diminishment of my and other residents quality of life is warranted. Each and all either exceed noise level standards, or if not their sound levels nonetheless should be monitored and reduced to minimal effective levels in consideration of residents rights to not be bothered by noise. A telling characteristic common to all unwanted noise described above is that it typically is under supervision of individuals and largely involves people who do not live in the immediate and affected neighborhood.

If SMC is allowed to exceed existing noise level standards, these and any other similar future events are

likely to feel free and unrestrained to blast away their play-by-play announcements over loudspeakers and further degrade our neighborhoods' rightful expectations of peace and quiet untrammelled by external disturbances.

SMC generates unwanted noise not only in outdoor lawn events, but also in events held on its parking lot and parties/receptions held on its two patios. The latter can be particularly bothersome occurring during warmer weather evenings as noise ("music") is heard from one's patio or even bedroom with windows open—needing to close the windows to block out the noise is particularly maddening.

SMC's location on a hilltop and architectural design make it imperative that SMC management vigilantly monitor and manage noise generated on its property—in SMC-sponsored events or in private party receptions or parking lot events. Noise generated on SMC's two patios bounces off the angled north walls of the Music Center and is directed northward towards St. Angela Hall and homes on the north side of Strathmore Avenue, thus probably resulting in a larger noise impact on those affected areas.

Street Parking Issues With outdoor events at SMC (and Georgetown Prep) typically come major parking issues in our neighborhood streets as waves of cars often turn off Strathmore Avenue on Jolly Way to park on adjacent streets. Yes, the streets are public and anyone can park on them. The issue for concerned residents is the number of people in cars parking on both sides of streets such that only one-way traffic is possible. As well, many looking for parking consciously ignore parking regulations and standard protocol (don't park right at the corner; don't block driveway entrances). Littering by such parkers occurs also; and affected residents may be rightfully concerned that some few who seek parking could return to the neighborhood later for possibly nefarious purposes.

A 2005 SMC outdoor event featuring Nils Lofgren, an artist of renown who grew up in Rockville (<http://www.thebigtickets.com/concerts-event-tickets/pop-rock/nils-lofgren-tickets>) resulted in huge numbers of people from all over the Metro area most of whom parked in our neighborhood; many cars had license plates from Virginia and West Virginia. Noise from that event was equally objectionable to many residents. SMC hasn't repeated a mistake of overreaching of that scale to date, but little would prevent it from scheduling something similar in the future if the subject is passed. Georgetown Prep's outdoor athletic events bring surges of non-resident cars onto upper GPW-WFP and Strathmore Place streets with similar inconsiderateness on the part of many of the drivers of those cars.

The Crux of the Issue. The focus of the subject bill on decibel levels re SMC outdoor events misses the crux of the issue for affected residents which is that SMC **must** reduce the footprint and sound print of those events. From the opening of the Music Center in 2005, Strathmore's vision for its outdoor events schedules was often out of synch with its responsibility as a resident in a residential community. Yes, Strathmore held outdoor events prior to 2005 but none of those were of the scale and sound-size as those typically scheduled from 2005 onward. Strathmore **must** return that reduced but still viable and attractive and community-serving vision of scheduling events with smaller footprints and sound prints. The limitations of its location—on a hilltop, near to existing residential homes in upper GPE-WFP and Strathmore Place and St. Angela Hall, even nearer to residential homes now under construction in Symphony Park—inescapably requires no less if Strathmore expects to be seen as a responsible, considerate neighbor. SMC is not and should think of itself and its mission as a Merriweather Post Pavilion or Jiffy Lube Live (formerly Nissan) Pavilion.

If not, what we would be left to consider is marching around SMC as did Joshua with rams horns and

shouting residents so that the walls of the SMC collapse.

Please see this slideshow containing photos illustrating the proximity of Strathmore Place, upper Garret Park Estates, and St. Angela Hall to Strathmore Music Center, and photos taken from Strathmore Music Center's upper patio and lawn music pavilion looking towards those of its immediate neighbors.

http://s60.photobucket.com/albums/h28/PC_800/Strathmore%20Noise/?albumview=slideshow

Thank you for your consideration of and attention to these important matters.

Faden, Michael

From: Edward Lijewski [ed.lijewski@gmail.com]
Sent: Thursday, March 24, 2011 12:22 PM
To: Montgomery County Council
Cc: Faden, Michael; Edwards, Stan
Subject: Noise Bill 6-10

To: County.Council@montgomerycountymd.gov

cc: Michael.faden@montgomerycountymd.gov; stan.edwards@montgomerycountvmd.gov

From: Edward Lijewski, 5200 Bangor Drive, Kensington, MD 20895

Subject: Noise Bill 6-10

I provided initial comments regarding Noise Bill 6-10 on March 4, 2011; this email contains my additional comments on this matter.

Strathmore's Outdoor Music Events: Symphony Park Residents Will Have No Idea What They Are In For.

In an email thread attached, Symphony Park's sales agent replied to my questions about the area of the site plan (http://www.liveatsymphonypark.com/images/Site_Plan.jpg) identified as Festival Lawn. I used the "Contact Us" page of the Symphony Park website to ask what was intended for Festival Lawn, what kind of activities/events would take place there, etc. I said I thought Festival Lawn was very close to many of the planned residences and wondered about noise from possible events.

As shown in the email thread, very little information on such matters was offered, and nothing in particular about kinds of events, sounds likely to be generated, noise levels, etc.

This clearly demonstrates that many if not most prospective buyers of Symphony Park residences will be in for a big surprise, and an unpleasant one, as they experience not just the current, reasonable noise level standards and time durations for such Strathmore events, but substantially increased noise limits and extended day time and seasonal durations.

As my March 4th communication noted ("Who's Fooling Whom?"), Noise Bill 6-10 is passed solves nothing and actually lays the groundwork for a perfect storm of future neighborhood objections and opposition to Strathmore's outdoor events, by Symphony Park residents as well as by existing residents of nearby communities.

Strathmore Music Center Has Not Demonstrated That It Cannot Live With the Current Noise Level Standards.

Strathmore asserts in effect that it cannot book outdoor events which would perform within the current noise level limits. But, Strathmore has not demonstrated that that cannot be done. No proposal such as Bill 6-10 should be considered in the absence of clear evidence that: a) there are no artists/activities of any kind for outdoor events which would perform within the existing noise level standards; and b) that Strathmore had convincingly carried out a management plan to monitor and control noise from its outdoor events for such compliance. Neither of these conditions have been met or even attempted by Strathmore. Rather, Strathmore has made an end-run around these issues and existing neighborhood complaints about excessive noise from outdoor events by pleading to the County Council that it can only continue to hold outdoor events if the standards as in Bill 6-10 are put into effect. And, Strathmore, and Symphony Park, are not being totally transparent to prospective buyers of Symphony Park residences regarding what the current noise level standards are and how they might be affected by noise from Festival Lawn, much less how they might be affected to an even greater degree (twice as much, as the decibel increase in is logarithmic) by the standards of Bill 6-10. This is simply astonishing for its brazenness.

The Motivation of Strathmore's Neighbors Who Oppose Bill 6-10

I and many others who oppose Bill 6-10 firmly believe that Strathmore can book outdoor events which will comply with existing noise level standards. But beyond that we stand firm in our common goal of maintaining the quality of life in our totally residential communities and resisting unwarranted, unwanted, and total unnecessary intrusions of noise which exceed existing noise level standards from whatever source. We very much like our communities, our neighborhoods, our homes, in very large part because of what they were *before Strathmore* arrived; and we will work continuously to maintain those same qualities that drew us to where we do, while recognizing that Strathmore can become a good neighbor and a full partner with us in this effort.

The County Executive's Support for Bill 6-10 re Strathmore

I and many of my neighbors who share my views see in the County Executive's support for Bill 6-10 a failure to recognize the realities I point out above as well as those in my March 4th communication, while totally buying in to the fallacious premise that Strathmore has no option regarding scheduling outdoor events than to select artists/groups which will generate noise that cannot be monitored and controlled so as to comply with existing noise level standards. An objective review of the landscape/site plan for Symphony Park and Festival Lawn can reach no other conclusion than that Festival Lawn is completely inappropriate for events which would be allowed to generate noise at the increased levels of Bill 6-10. Strathmore can easily succeed in fulfilling its vision and mandate regarding outdoor events under existing noise level standards; it only needs to be told to do so.

Thank you for your consideration of and attention to this matter and related issues.

FYI , please click on this link which contains a few photos with identifying captions that show the closeness of Strathmore Music Center to Garrett Park Estates, Strathmore Place, and St, Angela Hall residences. http://s60.photobucket.com/albums/h28/PC_800/Strathmore%20Noise/?albumview=slideshow

Sincerely,

Edward Lijewski



March 24, 2011

Michael Faden, Esquire
Senior Legislative Attorney
Montgomery County Council
100 Maryland Avenue, 5th floor
Rockville, Maryland 20850

Re: Strathmore Music Center
Bill 6-10, Noise Control – Arts
and Entertainment Activities

Dear Mr. Faden:

At your request, this letter responds to Edward Lijewski's letter of March 4, 2011. Strathmore is very familiar with Mr. Lijewski, and has worked to resolve his issues with Strathmore since 2002.

Mr. Lijewski first contacted Strathmore in 2002 when the NIH Outdoor Movies series brought people, noise and traffic to his neighborhood. Over the next several years, Strathmore worked carefully with him to mitigate parking on neighboring streets. We were, for the most part, quite successful directing traffic to the Metro garage. He posted big signs (which we replaced with more professional ones and donated to him) at the entrance to Garrett Park Estates (Jolly Way) telling people they could not park there for Strathmore events. The police have advised him that public streets are for public use, so they could not tow or ticket cars parked there.

Strathmore also has engaged in efforts to lower the volume of its outdoor events and no longer hosts the NIH outdoor movies. Strathmore has received virtually no calls complaining about outdoor event noise since 2007.

Strathmore believes it is following the correct and legal procedure to modify the County Noise Ordinance by proposing a very specific time, volume and date "box" for our mission-related free outdoor popular programming on our property serving thousands of residents. We have worked diligently with the developers of the townhouses to be sure future residents will be fully advised and aware of the programming on the lawn. The only thing that has changed, now that volume is lower and curfews are enforced, is the on-site presence of new residents directly adjacent to the amphitheatre area.

Michael Faden, Esquire
Senior Legislative Attorney
Montgomery County Council
March 24, 2011
Page No. Two

To do nothing about the current County noise ordinance would mean that Strathmore would have to curtail all significant outdoor activity since the current noise generated by Rockville Pike already exceeds the existing noise ordinance levels virtually every day of the year. Strathmore is not proposing to bring in rock concerts. Strathmore carefully seeks to attract audiences able to be accommodated in existing parking garage capacities at Metro. We do not plan to restart the outdoor movies. We have designed the outdoor space so we can use highly directional speaker systems capable of restricting any acoustic footprint for amplified sound to the "oval" on the site. This is new technology we will purchase to continue our responsible neighbor policy.

We believe it is long since past time to review antiquated County Noise Ordinance standards for our increasingly dense populations throughout the County. As an example on the Pike, the recent Council approval of the White Flint Sector Plan with its clearly urban building designs, mixed use intent, and expanded transportation network only half a mile to our north reflects a reality that is not consistent with current noise strictures.

We have been transparent in voicing our concerns while working with the County to bring about an accommodation to the current law that fits all parties. We sought every Council member's opinion in individual meetings; cooperated with and utilized the professional noise studies conducted by DEP; hired our own acoustic engineer to develop new standards; drafted a responsible self-limiting "box" of time, dates and sound levels to allow programming while minimizing acoustic impact; and met with County staff, DEP, and a member of the Noise Advisory Board...Moreover, we have spent several years in discussions with the adjacent developers (first Centex and then Symphony Park as the affected party), the County Council members and their staffs, Executive staff and the County Attorney's office, our own Board, and our own Strathmore Community Advisory Committee of neighboring citizens and community groups (which has existed since 2003 for exactly this reason).

Mr. Lijewski's solution to allow only unamplified (acoustic) or extremely limited sound amplification for music in an outdoor venue is not a solution; it would be the death of a 28 year history of free, public outdoor music on the Strathmore Arts Center property. Unamplified sound, especially against the background traffic noise of the Pike, will be audible only to a very small audience. No sustainable model for sponsorship or tickets sales can cover an event of that character. That is not a reasonable solution.

Sincerely,


Eliot Pfanstiel
Chief Executive Officer

EP:cm



Jack McAurin of the Lessard Group describes Symphony Park as "a prototype of high-end, luxury townhomes in more of a European style."

COURTESY MICHAEL HARRIS HOMES

Symphony RISES

Developers of a new project next to Strathmore hope to strike just the right note with luxury homebuyers

By Christine MacDonald

Symphony Park at Strathmore will have all the bells and whistles that come with luxury townhomes—spacious interiors, customizable gourmet kitchens, master suites and baths. But it's not the bay windows and Juliet balconies that will set this Rockville community apart from the glut of high-end condos and townhomes currently languishing on the region's real estate market.

Past the English gardens adorned with sculptures and fountains, just a five-minute walk through a grove of shade trees, Symphony Park residents will come upon the development's namesake and inspiration: the Music Center at Strathmore, with its concerts, art exhibits, dance and yoga classes and other year-round cultural offerings.

The developer, Streetscape Partners, describes Symphony Park as an "integrated arts and residential community."



During the summer,

residents might throw open balcony doors and hear strains of Bach or Mozart wafting across the Strathmore's lawn. They'll also get a complimentary, three-year membership to Strathmore's "Circles," which normally would cost at least \$2,500 a year, and includes access to the center's members-only lounge, concierge ticket service and invitations to private receptions with the artists. The county-owned center hosts 160 live performances a year—everything from classical, country and rock 'n' roll to India's Nrityagram Dance Ensemble.

Priced at \$1 million to \$1.4 million (with pre-construction offers starting at \$900,000), the town houses were designed by the Vienna, Va.-based Lessard Group, the architectural firm behind several other upscale townhome projects in the area, including The Brownstones at Park Potomac in Potomac. But Jack McLaurin, who manages Lessard's single family and townhome department, sees this one as unique.

"It's one of the last buildable open spaces in Montgomery County," he says. And "we are trying to create a community that appeals to the patrons of the arts center and provide a home design that appeals to them. We think it will be a prototype of high-end, luxury townhomes in more of a European style."

The units will be more London row house than Georgetown town house, McLaurin says, with paler façades, reverse gables and turret-style roofs. The builders have opted for molded brick, solid wrought-iron railings, cast-stone door and window frames and limestone steps.

Each four-story unit will measure 3,000 to 4,000 square feet, including a

top-level loft and two rooftop terraces, one above the garage and another at loft level. Buyers can add an elevator, one of many options. The larger residences overlook private front gardens, as well as the communal garden spaces beyond. The roof terraces, meanwhile, overlook gardens and landscaped back lots.

The overall effect will be "a spacious feeling," says McLaurin, who notes that the site plan was inherited from Centex, the Dallas-based homebuilder that abandoned its blueprints for the property in 2008 after the real estate market crashed. Centex had finalized the layout and won county zoning approval to build 112 townhomes on about half of the 18-acre site. The new developers kept the site plan, the number of units and even the name. For everything else, McLaurin says, they went back to the drawing board.

"We had the interests of Strathmore in mind in everything we did, and we engaged them in the process," he says. For instance, designers nixed plans for terraces facing the concert hall out of respect for Strathmore patrons who might not want a view of residents' rooftop parties. And "we don't have a clubhouse, per se," he says, "but we hope people will use the Strathmore to fulfill the same social needs."

That's also the hope of Eliot Pfanstiehl, Strathmore's CEO. Pfanstiehl has been one of Symphony Park's biggest supporters since the American Speech-Language-Hearing Association (ASHA) sold the parcel last May to Streetscape Partners, a newly formed venture that brings together two longtime local players: Virginia-based luxury builder Michael Harris Homes and former Federal Realty executive Ron Kaplan of Bethesda. The Philadelphia-based real estate investment firm, Lubert-Adler Partners, is providing financing.

"There's nothing else like it that I know of," Pfanstiehl says. "If you love the arts, you can't do better than this."

Pfanstiehl's approval marks an about-

face: In 2005, when ASHA announced that it had struck a deal with Centex, Pfanstiehl told *The Washington Post* he was "appalled" by plans to add housing so close to the concert hall, which the county had just opened next door to the 1899 Strathmore Mansion. The music center already was contending with complaints from nearby residents about the noise from its outdoor concerts.

When Centex walked away from a substantial deposit two years ago, several developers sought the property before Streetscape closed the deal. Its tweaks to the project are what won over Pfanstiehl.

Construction began in the summer of 2010. The units will be move-in ready by this summer, with pre-sales already under way.

In addition to offering 17 of the town houses at below market prices that correspond to the county's affordable housing requirements, Streetscape will deed the county 5 acres containing an amphitheater and adjacent woods.

Real estate developers have long used cultural attractions as a lure for homebuyers. The Watergate's distinctive, curved architecture was drawn up in the early 1960s to match the planned but later aborted designs for The Kennedy Center. More recently, Arts District Hyattsville features art galleries and artist studios, and Abdo Development plans an arts walk—a pedestrian footpath flanked by art galleries, artists' studios, shops and eateries—to run down the center of the neighborhood it's building around Catholic University in Northeast D.C.

"I think it's a great thing for the developers to be part of a great community like Strathmore," says Bob Youngentob, president of the Bethesda-based EYA, which is building Arts District Hyattsville and competed against Streetscape for the Strathmore parcel. "Partnering with the community in which you are developing is a very important part of developing

today and in the future."

Derek Hyra, associate professor of urban affairs and planning at Virginia Tech, sees Symphony Park as part of a trend that started in dilapidated cities across the country. "It's part of a type of branding to attract a certain type of person," he says.

There likely will be fewer parking woes, a lower crime rate and less urban grit than in places like D.C.'s Penn Quarter or even Georgetown. And proximity to Metro's Grosvenor-Strathmore station is a big selling point, according to observers.

However, WorkScore, a website that rates neighborhoods on how easy it is to walk to the store, bank, Metro and other public places, gives the Strathmore Avenue and Rockville Pike address just a 68 out of a possible 100 points, meaning it's "somewhat walkable." Washington's Dupont Circle, by contrast, has a 98 walk score.

That means that although residents will be able to amble over to the Metro, a Baltimore Symphony Orchestra performance, afternoon tea, or a yoga class at Strathmore, they'll likely drive to the grocery store, the mall, the country club or to a restaurant for dinner.

But McLaurin envisions an even more walkable neighborhood around Symphony Park as the county's 20-year plan for the White Flint area gets underway with its "smart growth" mix of housing, restaurants and shops along the Rockville Pike area just north of the concert hall.

"It's going to get more dense and a lot taller," McLaurin says. "There's going to be more living and walking along this corridor."

Stephen Melman of the National Association of Home Builders says developing an arts community is a particularly smart gambit in Montgomery County, where the novelty may distinguish Symphony Park from its competition and help attract buyers among the county's affluent and highly educated population.

"Everybody's competing," Melman says.

symphony rises

He notes that even once successful concepts such as golf course communities are failing as buyers are slow to re-enter the real estate market. Townhome and condominium projects have been particularly vulnerable since the real estate market imploded. Despite that, he thinks the arts concept might give Symphony Park an edge.

Ironically, among the projects to falter elsewhere is a residential development in Las Vegas, also planned around a performing arts center and also named Symphony Park. Groundbreaking has been pushed back several times, and it's now looking at a 2017 start date, according to Sam Gladstein, a vice president with Newland Communities in Las Vegas.

Locally, some observers wonder if homebuyers will pay upwards of \$1 million for townhomes with a Rockville address. Bruce Lemieux, a real estate agent who tracks county sales on mcorealestate.com, says units at the top end of the county's residential market have taken the longest to sell and have required the steepest price reductions since the market bust. He points to townhomes by the same architectural firm that have been languishing, some for a couple of years, at an arguably better address: EYA's Park Potomac, a short drive from Strathmore.

"The upper end of the market is just tough," he says. "The big draw will be quality of life and location—near the Red Line. The Strathmore membership is a nice gimmick, but I don't think that will be a big draw." But Symphony Park's Kaplan thinks the tie-in with Strathmore will be a big draw. "The Music Center at Strathmore is an architectural and cultural jewel of this region, and we believe residents will be drawn to the incredibly diverse and wide ranging programs at Strathmore, be it a summer outdoor concert or a Friday night jam session in the Mansion." ■

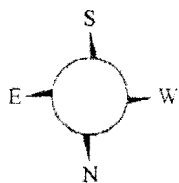
Christine MacDonald is the author of Green, Inc.: An Environmental Insider Reveals How a Good Cause Has Gone Bad (The Lyons Press, 2008). She lives in Washington, D.C., and has written for The Boston Globe, Los Angeles Times, The Dallas Morning News and The Nation. To comment on this story, e-mail comments@bethesdamagazine.com.

SYMPHONY PARK

— AT STRATHMORE —



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March 30, 2011

The Honorable Valerie Ervin, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20852

Dear President Ervin:

Bill 6-10, Noise Control – Arts and Entertainment Activities

I wanted to pass on the results of a meeting Strathmore hosted on Monday evening, March 28, 2011 with some of the citizen groups that submitted comments on the proposed noise control amendments. The T & E Committee meeting discussing the noise proposal was held earlier in the day. Attending the meeting at Strathmore was:

William Neches, President of Strathmore Place HOA
Barbara Berschler, resident of Strathmore Place
David Comis, President of Wickford Community Association
Robert Knoll, President of Garrett Park Estates-White Flint Park Citizens Association
Natalie Goldberg, resident of Garrett Park Estates-White Flint Park Citizens Association
Bill Carey, Director, Donor and Community Relations, Strathmore
Eliot Pfanstiehl, CEO, Strathmore

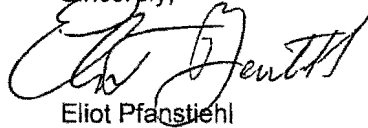
The group discussed the T & E Committee's recommendations from earlier in the day with the people who did not attend the work session. I also took the opportunity to talk about Strathmore's previous efforts to work with the community on noise issues in connection with the NIH Film Festival and the current need to raise the sound levels in anticipation of our new neighbors at Symphony Park. We continued to talk about the noise proposal and I assured the group that it did not mean Strathmore intends to present summer outdoor concerts 6-7 days a week at the 75 dba level. I also reiterated that the NIH Film Festival would not be returning to the Strathmore campus in its current form. Interestingly, some representatives were disappointed to learn that fact. However, if an advance in speaker technology creates a reasonable solution to noise bleed outside our property line, then we would consider those types of presentations, in the future.

The results of this meeting were as follows:

- Representatives from Strathmore Place HOA, Wickford Community Association, and Crest of Wickford Condominium Association will join and attend our Strathmore Citizens Advisory Committee meetings. The Strathmore Citizens Advisory group meets regularly during the year.
- Strathmore will establish a procedure for representatives of the Strathmore Citizens Advisory Committee to contact a representative at Strathmore at anytime to complain about any noise issues resulting from outdoor activities.
- Strathmore will provide the community representatives on the Strathmore Citizens Advisory Committee with a 3 year plan of outdoor concerts being proposed. The plan will include programming information such as, proposed dates and times; staging on campus; and the placement of speakers.
- As a result of our discussion and the proposals by Strathmore in the meeting, the attendees now appear to be comfortable with Strathmore's position on the noise control amendments.

My staff also spoke to Christopher Keller, Mayor of Garrett Park, and he said that the Garret Park community did not see any downside to the noise proposal and he believes it benefits all of the local residents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eliot Pfanstiehl', written over the printed name.

Eliot Pfanstiehl
CEO

cc

Council Member Phil Andrews
Council Member Roger Berliner
Council Member Marc Elrich
Council Member Nancy Floreen
Council Member George Leventhal
Council Member Nancy Navarro
Council Member Craig Rice
Council Member Hans Riemer
William Neches, President of Strathmore Place HOA
Barbara Berschler, Resident of Strathmore Place
David Comis, President of Wickford Community Association
Robert Knoll, President of Garrett Park Estates-White Flint Park Citizens Association
Natalie Goldberg, Resident of Garrett Park Estates-White Flint Park Citizens Association

Faden, Michael

From: Bill Carey [BCarey@strathmore.org]
Sent: Monday, March 28, 2011 12:32 PM
To: Brewer, Robert G.; Faden, Michael
Cc: Eliot
Subject: RE: Letter to Michael Faden

Mike:

Attached is a copy of Strathmore's Free Summer Outdoor Concert Schedule in the Gazebo for 2011. This year Strathmore is partnering with some of the local embassies to feature international music from that country.

June 22: Labrassbanda (Germany)

June 29: (Israel)

July 6: Chopteeth Afrofunk Big Band

July 13: Armand Ntep (Cameroon)

July 20: Andes Manta (Peru)

July 27 Watcha Clan (France)

August 3 Edwin Ortiz and Orquesta La Romana

August 10 Red Baraat (India)

August 24 Uke Fest

If you need any additional information, please let me know.

Bill

Bill Carey | Director, Donor & Community Relations
Strathmore | 5301 Tuckerman Lane | North Bethesda, MD 20852-3385
301.581.5135 (o) | 301.581.5201 (f)
bcarey@strathmore.org

Ask me about The Strathmore Circles
<http://www.strathmore.org/circles/>

31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

- (a) Each outdoor **arts and entertainment activity** held at a **qualifying performing arts facility** must not exceed the following noise decibel limits:
 - (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
 - (2) at all other times, the maximum allowable noise level set in Section 31B-5.
- (b) A **qualifying performing arts facility** which has complied with this Section must not cause or permit noise levels from an outdoor **arts and entertainment activity** to exceed the standards in subsection (a).
- (c) Any outdoor **arts and entertainment activity** conducted at a **qualifying performing arts facility** which has complied with this Section must not be cited as causing a noise disturbance.
- (d) The Department must annually advise the Executive and Council, and the operator of each **qualifying performing arts facility**, whether the noise levels specified in this Section remain appropriate for that **facility** and the extent of compliance with those levels.