

Alison Foulis - City Clerk

From: Rebecca Markwick - Associate Planner
Sent: Monday, January 08, 2018 10:27 AM
To: Alison Foulis - City Clerk
Subject: FW: Complaint: 2 Fern Avenue

Rebecca Markwick
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From: Marcia McGovern [mailto:marshmcgovern@gmail.com]
Sent: Monday, January 08, 2018 9:55 AM
To: Rebecca Markwick - Associate Planner <AssociatePlanner@cityofbelvedere.org>
Subject: Fwd: Complaint: 2 Fern Avenue

Please add this entire thread to the Appeal hearing packet.

----- Forwarded message -----

From: **marcia mcgovern** <marshmcgovern@gmail.com>
Date: Mon, Sep 11, 2017 at 9:15 AM
Subject: Complaint: 2 Fern Avenue
To: bvanson@cityofbelvedere.org, Irene Borba - City Planner <iborba@cityofbelvedere.org>, cmiddleton@cityofbelvedere.org

September 11, 2017

Dear City Manager, Building Official and City Planner,

This is a formal complaint regarding the construction project at 2 Fern Avenue; Owners Suzanne and Gerry Morgan, General Contractor Hachman Construction.

The Homeowners and General Contractor have been violating certain terms of the Belvedere Municipal Code, their Design Review and Building Permit thereby creating a public and private nuisance. It is unclear how many of the infractions the City is aware of. We respectfully request the City abate this nuisance which is preventing us the use and comfortable enjoyment of our home which is directly above and severely impacted by the subject job site.

The Homeowner and Contractor have violated the terms of their Design Review and Building Permit in the following ways.

BELVEDERE CITY COUNCIL
AGENDA ITEM
- LATE CORRESPONDENCE -
Meeting Date: 01/08/2018
Item Number: 10

1. Working without a permit: The contractor started demolition without a permit. He informed the Building Official that he was installing a “construction fence” when in fact he had started demolition without a permit. The Building Official contacted him and advised him he may not start demolition until his permit was issued.

2. Working on weekends and prior to 8:00 AM: The contractor has been working on weekends, violating the noise ordinance and violating the terms of his DR and permit. On Saturday, September 2, 2017, Labor Day Weekend, Hachmans subcontractor Wacker arrived early in the morning and began work, making excessive noise and dust during a Holiday weekend. Belvedere Police responded to a noise complaint and informed the contractor his permit prohibited him from working on weekends. The contractor stated he “did not know he couldn’t work on weekends”. The GC, Tim Hachman is a longtime Belvedere resident so this response strains credulity. In addition, his men frequently start work before 8:00AM (including starting today 9/11/17 at 7:40 AM) making loud construction noise. Construction work is not allowed on weekends; only Monday-Friday 8AM-4PM pursuant to Belvederes building permit rules, and conditions of Design Review. Hachman is in clear violation of his permit, multiple times for doing so.

3. Generation of hazardous conditions and air pollution: Hachman has been repeatedly creating and failing to contain or mitigate hazardous conditions and air pollution. On Wednesday, August 30, 2017, workmen at 2 Fern generated a 40ft x 40ft x 40ft cloud of dust and smoke accompanied by the odor of burning wood. This grey cloud of dust/smoke rose from Fern Avenue upward 40 plus feet to envelope two homes on Madrona Avenue, including our home at 170 Madrona, and was sufficiently large and odorous enough to simulate smoke from a possible fire. Out of an abundance of caution, TFD was notified to rule out fire and in response to the TFD, the contractor claimed his “truck was going up a steep slope, spinning it’s tires, making a lot of smoke and dust” admitting they generated the huge, odorous, dust/smoke plume. The particulate debris and air pollution generated by this contractor negatively impacted our home necessitating a thorough clean up and hepa-filtering of interior spaces to return clean air to our domicile.

On Friday September 8, 2017 the GC’s subcontractor, ASA Drilling, set up a portable, diesel fueled drilling compressor in the driveway (directly under our home at 170 Madrona) and ran this heavy machinery for 8 hours. The exhaust fumes were extreme, causing unremitting headache and nausea to the owner of 170 Madrona, even with all windows closed, forcing her to leave her home. Bay Area Air Quality Management was contacted. The Bay Area Air Quality Inspector visited the job site and immediately confirmed there was significant odor, exhaust and air pollution being generated by the heavy machinery and registered a “Confirmed Complaint” with BAAQM against 2 Fern Avenue.

Upon arrival at the site, when attempting to discuss the matter with the contractor, *the BAAQM Air Inspector learned there was no job superintendent on site. He was told by a workman, “If you don’t like it, write a letter to my boss”.* The BAAQM Inspector waited over one hour and finally, GC, Tim Hachman, arrived to the job site and was informed by BAAQM that there was a Confirmed Complaint of air pollution from the equipment he was using and the uphill neighbor had had to leave her home for the day to escape the negative impacts of the air pollution. The BAAQM Inspector asked Tim Hachman to stop the machinery a bit early so complainant could return to her home (It was about 4:30 pm on Friday) and Hachman refused stating “I have a contract and I’m not going to stop the machinery”. He also initially refused to inform the BAAQM Inspector when he would be finished with the air-polluting equipment he was using but finally committed to the Inspector that he would finish that day. Finally, Hachman was informed by the BAAQM Air Inspector that additional Confirmed Complaints against 2 Fern Avenue by BAAQM could result in a Citation for Public Nuisance by BAAQM.

5. No job superintendent on site. On Friday, September 8, 2017, the BAAQM Inspector was unable to locate any job superintendent on site which is an infraction of the BMC that could (and should, considering the degree of air pollution negligently generated by this Contractor on 9/8/17 and on 8/30/17) result in a stop work order.

6. Status of Encroachment permit . BMC 13.04 et seq. requires an encroachment permit for any work in the City ROW, RV notwithstanding. All manner of heavy equipment, debris, materials, trucks and work on this job, take place every day in multiple areas of the City ROW and the trucks hang out into the roadway, sometimes impacting through traffic and Emergency vehicles. Kindly provide me a copy of the 2 Fern encroachment permit issued to this job since the date the permit was issued, through today’s date. If there is none (and none are noted on the City website and none is visibly posted on the job site) this constitutes an infraction of BMC 13.04 et seq. Both a retroactive encroachment permit from date of

building permit issuance through today, plus a valid, daily, encroachment permit for the duration of the job should be obtained as is required by every resident using the City ROW to do work or store materials/machinery.

In summary, Homeowner and General Contractor for 2 Fern Ave appear immune to the negative impact of their job on the quality of the air and environment as regulated by the State of California, the negative impact their job is creating for their uphill neighbor's ability to use their home and their community in general. They have made it clear they have no intention of voluntarily adhering to existing rules and regulations set forth by Belvedere Municipal Code or their Building permit and show no signs of willingness to abate hazardous conditions and air pollution which are harming their uphill neighbor.

We have a right to the use and comfortable enjoyment of our home. We respectfully request the City enforce its rules and regulations pursuant to the BMC as it relates to construction at 2 Fern Avenue; many of which relate to safety and community well-being. 2 Fern Avenue is only a few months into an 18 month project and already has at least four documented violations which qualify as nuisance. This bodes poorly for the next 14 months.

Thus, we respectfully request the City advise the owners/contractors to have a superintendent on site during all hours of construction as per BMC and their permits/DR, contain all particulate and aerosolized debris and odors within the job-site, cease polluting the air in violation of California and BAAQM guidelines, stop working on weekends and prior to 8:00AM, abate excessive noise and make best efforts to minimize the negative impact of the job to their uphill neighbor.

Thank you for your prompt attention to this matter.

Marcia McGovern

170 Madrona Avenue