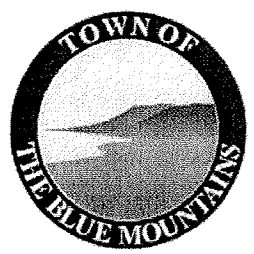


D.4

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Council
 MEETING DATE: April 14th, 2008
 REPORT NO.: SRB.08.15
 SUBJECT: 2071400 Ontario Limited, 53 Bruce Street South, "The Dam Pub", Request for Relief from the Noise By-law
 PREPARED BY: D. Finbow, Director Bldg & B/L
 Sharon Long, Admin. Assistant Bldg & B/L

A. Recommendations

THAT COUNCIL receive Staff Report SRB.08.15 and that Council adopt one of the following:

THAT COUNCIL hereby authorize relief from the Town's Noise By-law to 2071400 Ontario Limited (o/a "The Dam Pub"), 53 Bruce Street South, so as to permit the making of noise ("Outdoor Patio Dining Music") on Thursday and Sunday from 7:00 p.m. to 9:00 p.m. and Friday and Saturday from 7:00 p.m. to 11:00 p.m. from May 1, 2008 to October 12, 2008.

OR

THAT COUNCIL refuse the request from relief from the Town's Noise By-law to 2071400 Ontario Limited (o/a "The Dam Pub"), 53 Bruce Street South.

B. Background

The Request & Public Notice

1. The Town is in receipt of a request from the Operator of the subject premises for relief from the provisions of the Noise By-law (Addendum "A").
2. In response to this request, Town Staff provided notice (Addendum "B") to neighbouring property owners within 60 metres of the subject property.
3. Comments to this circulation are attached for Council's information.

The Noise By-law

1. Section 3 of the Noise By-law (Addendum "C") authorizes the making of noises or sounds authorized by the municipality.

2. Section 3 of the Noise By-law also permits the making of noises or sounds related to the non-residential use of land permitted by a by-law enacted by the municipality pursuant to the applicable Zoning By-law from 07:00 to 19:00.
3. It is important to note that "Outdoor Patio Dining Music" in itself outside of 07:00 to 19:00 is not prohibited. It becomes prohibited in the instance where a radio, television, phonograph, or any other electronic device, or any musical or sound producing instrument of whatsoever kind is played or operated in such a manner or with such volume likely to disturb the peace, quiet, comfort or repose of any inhabitant.

Previous Requests for Exception

Council has on a number of occasions granted relief from the Noise By-law for Special Events such as significant family gatherings, "special" birthday celebrations and weddings as well as Community Events such as Old Fashioned Christmas and The Blue Mountains Public Library Annual Parking Lot Party.

Summary

1. The proponent is effectively requesting that "Outdoor Patio Dining Music" be permitted where such may be played in such a manner after 19:00 that it may disturb the peace, quiet, comfort or repose of an inhabitant of the municipality.
2. A copy of this Staff Report has been provided to the proponent.

Recommendation(s)

Town Staff have prepared two different resolutions (or options) for Council's consideration. In addition to these options, Council may consider other alternatives related to the cessation of the "Outdoor Patio Dining Music".

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

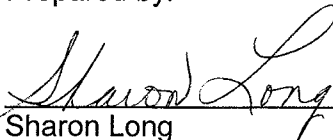
D. Budget Impact

N/A


E. Addendums

- A. Request from The Dam Pub
- B. Sample Notice Letter & Circulation Area
- C. Office Consolidation of the Noise By-law
- D. Correspondence received by April 8, 2008.

Prepared by:


Sharon Long
Administrative Assistant, Building & By-law

Respectfully submitted by:


David Finbow
Director, Building & By-law

A.

Noise By-law Variance Request

For THE DAM PUB

Stephanie Price

53 Bruce Street

Thornbury Ont

519-599-2110

email: stephanie@thedampub.ca

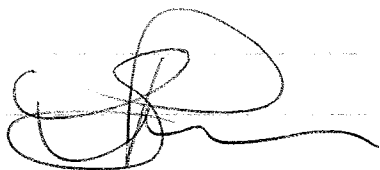
Requesting a variance for

May 1st through to October 12th 2008.

Thurs & Sundays ~~at~~ 9:00 PM.

Fri & Sat. 11:00 PM.

Outdoor Patio Dining Music.





Town of The Blue Mountains

26 Bridge Street East
Box 310
THORNBURY, ON N0H 2P0
www.thebluemountains.ca

April 2nd, 2008

HAND DELIVERY AND REGULAR MAIL

**RE: Noise By-law Exemption Request
53 Bruce Street South ("Dam Pub")
The Blue Mountains**

Please be advised that the Town is in receipt of a request from the owner and/or operator of the subject premises for an exemption to the Town's Noise By-law. In particular, the owner and/or operator is requesting permission to:

Permit the making of noise from May 1st through to October 12th, 2008 on Thursday & Sunday evenings until 9:00 pm and Friday & Saturday evenings until 11:00 pm for outdoor patio dining music.

This request will be considered by Town Council at its regularly scheduled meeting on April 14, 2008. If you wish to provide your comments related to this request, you can do so by delivering a letter to the Town Clerk clearly marked "Noise By-law Exemption Request – 27 Bridge Street" or by email to slong@thebluemountains.ca both by April 8, 2008.

If you have any questions, please contact myself at 519.59.3131, extension 249 or slong@thebluemountains.ca.

Yours truly,

TOWN OF THE BLUE MOUNTAINS

Sharon Long
Administrative Assistant
Building & By-law

K:\BEO\2008\Noise\Residents 53 Bruce Street South.doc

BUILDING & BY-LAW DEPARTMENT
Phone: 519-599-3131 Ext. 249
Facsimile: 519-599-6032
slong@thebluemountains.ca



c.

CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

BY-LAW 2002 – 9

Office Consolidation
(By-laws 2002-60 & 2004-16)

Being a By-law to prohibit or regulate noises within the municipality likely to disturb.

WHEREAS Section 210 (138) of the *Municipal Act*, chap. M.45, R.S.O. 1990 and amendments thereto enables the councils of local municipalities to pass by-laws for prohibition or regulation within the municipality of noises likely to disturb the inhabitants;

AND WHEREAS section 61 of the *Provincial Offences Act*, chap. P.33, R.S.O. 1990 and amendments thereto provides for a general maximum penalty upon conviction not to exceed \$5,000.00;

AND WHEREAS it is deemed expedient to pass a by-law for the prohibition or regulation of noise within the municipality in a format that would allow enforcement by both a Municipal Law Enforcement Officer and the Ontario Provincial Police;

NOW THEREFORE the Council of the Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. THAT no person shall make noise or cause noise to be made or permit noise to be made that would be likely to disturb the inhabitants of the municipality.
2. THAT for the purposes of Section 1, the following noises or sounds, among others, shall be deemed likely to disturb the inhabitants of the municipality:
 - (a) The sound or noise from, or created by, any radio, television, phonograph, or any other electronic device, or any musical or sound producing instrument of whatsoever kind when such radio, television, phonograph, device or instrument is played or operated in such a manner or with such volume likely to disturb the peace, quiet, comfort or repose of any inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel, or any other type of residence.
 - (b) The yelling, shouting, hooting, whistling, singing, or any other sound made by an individual in such a manner which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence.
 - (c) The operation of construction vehicles or the act of construction between the hours of 19:00 hours of any weekday to 07:00 hours of the next weekday save and except Saturday from 08:00 hours to 13:00 hours which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence, unless written permission to specifically extend or alter the hereinbefore mentioned time periods has been given in writing by Council.

- (d) The sound from the operation of any powered or non-powered tool, for domestic purposes (other than snow removal) which is operated in such a manner likely to disturb the peace, quiet, comfort or repose of any inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence, between the hours of 23:00 hours of one day to 07:00 hours of the next day (09:00 hours on Sundays).
- (e) The persistent noise made by any domestic pet, or any animals kept for commercial purposes, likely to disturb the peace, quiet, comfort, or repose of any inhabitant in the same building or in the neighbourhood, at any time.
- (f) The grating, grinding, rattling noise or any other noise caused by a condition of disrepair or maladjustment of any motor vehicle or other vehicle whatsoever or part or accessory thereof likely to disturb the peace, quiet, comfort or repose of any other inhabitant within the municipality.

3. THAT this By-law does not affect:

- a) Any bona fide agricultural use or practice engaged in by a bona fide farmer or employee thereof.
- b) The operation of snow-making machinery or snow-grooming vehicles.
- c) The operation of snow-removal equipment.
- d) Noises or sounds authorized by the municipality. (By-law No. 2002-60)
- e) Noises or sounds related to the non-residential use of land that is permitted by a by-law enacted by the municipality pursuant to Section 34 of the *Planning Act* between the hours of 07:00 hours and 19:00 hours. (By-law 2002-60)
- f) Noises or sounds related to the non-residential use of land that is permitted pursuant to the regulations made under the *Niagara Escarpment Planning And Development Act* between the hours of 07:00 hours and 19:00 hours. (By-law 2002-60)
- g) Noises or sounds authorized by the Blue Mountain Village Association originating within the "Village at Blue Mountain" (Parts 1-40, 16R-7451) between the hours of 07:00 hours and 23:00 hours. (By-law No. 2002-60)
- h) Noises or sounds related to the use of lands known as Part of Lot 5 and Part of Lot 6, Concession 8, Roll No.: 7-046-02, by the Blue Ridge Sportsmen's Club Inc. between the hours of 08:00 and 21:00 on any day, subject to any Provincial or Federal Statute or Regulation with regard to the discharge of firearms and/or weapons. (By-law 2004-16)

4. THAT every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a penalty as provided in the *Provincial Offences Act*.

5. THAT should any section, clause or provision of this By-law be declared by a court of a competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or in part hereof, other than the part which was declared to be invalid.

6. THAT Township of Collingwood By-laws No. 92-28, 95-37 and 96-9, Town of Thornbury By-law No. 20A-1983 and Town of The Blue Mountain By-law No. 2000-44 are hereby rescinded and repealed.

Read a first and second time this 28 day of January, 2002.

Read a third time and passed this 28 day of January, 2002

.....
Ross Arthur, Mayor

.....
Stephen Keast, Clerk

D

Town Clerk
Town of Blue Mountains
26 Bridge Street East
Box 310
Thornbury, ON

April 7, 2008

Re: Noise By-law Exemption Request – 53 Bruce Street South (Dam Pub)

Dear Sir:

This communication is in response to a letter received at Errinrung dated April 2, 2008, regarding a local pub requesting an exemption to the noise by-law. As the President of the Nursing Home Resident's Council, I represent 60 elderly people living in a near by long-term care home. While we have not had any concerns in the past regarding noise or loud music from the Dam Pub, we are concerned that an exemption to this by-law may lead to a problem. There is a fear that loud music may be blaring late at night and may disrupt the quiet and sleep of the residents at Errinrung.

Sincerely,

Marilyn Dobson
President
Errinrung Nursing Home Resident Council

Town Clerk
Town of Blue Mountains
26 Bridge Street East
Box 310
Thornbury, ON

April 7, 2008

Re: Noise By-law Exemption Request – 53 Bruce Street South (Dam Pub)

Dear Sir:

This communication is in response to a letter received at Errinrung dated April 2, 2008, regarding a local pub requesting an exemption to the noise by-law. As the President of the Retirement Home Resident's Council, I represent 54 elderly people living in a near by retirement residence. While we have not had any concerns in the past regarding noise or loud music from the Dam Pub, we are concerned that an exemption to this by-law may lead to a problem. There is a fear that loud music may be blaring late at night and may disrupt the quiet and sleep of the residents at Errinrung.

Sincerely,

Bill Livingston
President
Errinrung Retirement Home Resident Council

April 3/08

Re: exemption from Noise Bylaw

I/we wish to inform Town Council that the request by The Dam Pub is unacceptable to me.

Jan Pratt

58 Bruce St

58 Bruce St.

9 Louisa St.

Master. - special occasions.

Jack Pratt.

Apt. #3, 55 Bruce St. S.

P. Pratt

46 Bruce St S.

Ian Masters

37 Elma Street

M. Kivell

68 Bruce Street S

I. Roberts

58 Bruce St. S

STOX

75 Bruce St. S.

Bill + Maura
Kostiniuk

15 Louisa St

4/7/08.

Ike & Anne Kennedy have no objection to
the music from "Ike Ham Pub". In fact,
we enjoy it. Anne Kennedy !!

April 8/08

Town Council
Town of The Blue Mountains

Re Noise Bylaw Exemption Request
53 Bruce St. S (Damn Pub)

Dear Council Members,

We are grateful to have this opportunity to voice our opinion on the ongoing problem called the Damn Pub. They have been a damn nuisance for the last two years. We have for the most part suffered in silence but now you have asked for our comments — thank you.

Ongoing music and noise at all hours is but one of the new problems we face since the Pub opened. There are also traffic/pedestrian conflicts, parking overflow problems, car alarms going off, countless delivery trucks backing up into traffic or blocking lanes, bottle smashing + collection and drunken patrons outside the pub yelling, laughing, swearing, etc — sometimes quite late at night.

Of all these problems, the easiest one for the pub to control is the playing of music outside. If we have a noise bylaw to protect residents from noise perpetrators then I can't see any reason to allow this exemption. Unless the Pub's desire to attract more customers and make more money is more important than our right to the quiet enjoyment of our property.

As my representative I request that you vote against this request and uphold the bylaw that ensures my peace + quiet.

Jan Pratt
58 Bruce St.

April 8/08

Town Council
Town of the Blue Mountains

Re Noise Bylaw Exemption Request
93 Bruce St S (Dam Pub)

Dear Council Members

I have been in touch with Bill + Marta Kostiwuk (15 Louisa) who live on the lane behind us + have been disturbed by noise + music from the dam Pub in the past. They are out of the country right now and not able to get home before the Council Mtg. on April 14.

They have asked me to speak on their behalf + communicate to you that they are not in favour of the request by the Dam Pub to be exempt from the Noise Bylaw.

Jan Pratt

Apr. 6/08

To Town of the Blue Mountains
Town Council

Re: Noise by-law exemption request
53 Bruce St. S.
aka Daw Pub.

Prior to this property ownership there was a restaurant and for 15 years we lived directly across the road. We never had cause to call for help or deal with issues of noise, traffic or rowdy patrons. Such is not the case anymore.

We have tried to reason with the owner, only to be met with rudeness and bullying. The Daw Pub is in a residential neighborhood and has to be treated as such.

The current by-law is there to protect this neighbourhood and, in my opinion, works just fine. The Daw Pub should not be given this exemption, and to quote the owners response to our concerns, "if you don't like it you can move"



53 Bruce St. S.

Sharon Long

From: Jim Hunt [jimary1@sympatico.ca]
Sent: Saturday, April 05, 2008 5:53 PM
To: Sharon Long
Subject: Noise By-law Exemption Request

We have no objection to the Noise By-law Exemption Request - 27 Bridge St. from the Dam Pub if the patio remains at the front of the pub and the music is suitable outdoor patio dining music.

Jim & Mary Hunt,
17 Louisa St. E.,
Thornbury

Sharon Long

From: Woolner [fivews@rogers.com]
Sent: Wednesday, April 02, 2008 5:05 PM
To: Sharon Long
Subject: Noise By-law

I was wondering if it is possible to get a copy of the noise by-law. Upon receipt of your letter regarding the Exemption Request for the Dam Pub, it brought to my mind all the times in the past few summers when we have been kept awake till 1-2am with noise from The Mill and Carraiges (or whatever it is called now). It would be nice to have a copy of the bylaw when/if we need to call this summer. I realize some noise is inevitable, but some nights it is just WAY beyond reason, and FAR too late into the night.

Shirley Woolner
14 Louisa St E
Thornbury
519 599-3968

(Also - your phone number is incorrect on the letter!)

RE: Noise BY-Law Exemption.

Hi Sharon,

Noise from the Dam Pub has not been an issue for us. We have 2 properties that buffer us between them.

John K. Adwell

Att: Sharon Long
Buildings By Law Dept.