

Bond Case Briefs

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MUNICIPAL ORDINANCE - VERMONT

In re LaBerge NOV

Supreme Court of Vermont - September 2, 2016 - A.3d - 2016 WL 4582182 - 2016 VT 99

Neighbor sought review of decision by Development Review Board that overturned notice of violation issued by town zoning administrator.

The Superior Court, Environmental Division, concluded that landowners violated town noise ordinance. Landowners appealed.

The Supreme Court of Vermont held that:

- Noise ordinance was not unconstitutionally vague on its face;
- Noise ordinance was not unconstitutionally vague as applied;
- Admission of standards on noise levels was warranted; and
- Decibel measurements taken by sound expert were admissible.

Town ordinance prohibiting unreasonable noises was not, on its face, unconstitutionally vague under due process clause. In addition to incorporating an objective “reasonableness” standard, ordinance identified key factors in assessing reasonableness: intensity, duration, and frequency—guidance that further focused the reasonableness inquiry, guarded against arbitrary enforcement, and puts individuals on notice of the law’s requirements.

Town ordinance prohibiting unreasonable noises gave landowners fair notice that noise levels produced from motocross racing on their property were proscribed, and therefore, as applied to landowners, ordinance was not unconstitutionally vague under the due process clause. Noise level at property line, 80 decibels, was very high, and neighbor testified that noise was extremely loud, irritating, assaultive, and disruptive.

Admission of world health organization standards on noise levels, used by neighbor’s expert in forming opinion relating to noise levels produced on landowners’ motocross track, was warranted in proceedings to determine if landowners violated town noise ordinance. Expert’s testimony was based in part on the standards, and expert testified that the standards were typically used as a reference level.

Decibel measurements taken by sound expert were admissible to show level of noise on date of alleged ordinance violation by landowner through operation of motocross track, despite fact that measurements were not taken on the date at issue; neighbor had taken own measurements on date at issue, accompanied expert during his measurements, and testified that the sound level was identical to the level on the date at issue.