



Beyond piano instruction: A decade of evolution and revolution



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A fundamental change in attitude precedes a revolution. Two changes-my divorce and my attendance at a state MTA convention-began a decade of growing pains with my piano studio. As a single parent with two children, parttime piano teaching was no longer an option. My initial concerns were growth and summer income. A state convention provided the means by which I could grow; an Apple IIGS computer, Mac Plus, Tap Master, Pitch Master and cassette deck escorted me into the world of technology. I collected lab fees in June, which provided more income. My twentyfive students grew to forty. I was invited to speak at the MTNA National Convention's technology symposiums in 1988 and 1989. My mentality had shifted from housewife with parttime income to a professional piano instructor.

1986-1991: Growth and Expansion

Interview No. 1: The Councilman, the Internal Revenue Service and Independent Contractors. By 1990, the equipment in my studio included two digital pianos with headphones. I could now offer partner lessons. My Schimmel grand piano was used for performance and private lessons. I had remodeled a second studio adjacent to my lab and hired another teacher. The forty students had grown to seventy-five. I had already encountered the Internal Revenue Service and argued that the teacher I hired was an independent contractor. I lost that battle and learned how to do payroll and quarterly taxes. This was my first indication of the problems that lay ahead.

During a routine interview with the father of a prospective student, I discovered that he was a former city councilman who had written the zoning law that I suspected I was violating with my home occupation. I discussed my deepest concern with him-the future of my growing studio. He confirmed that I was violating a zoning law. Within a week, I was introduced to the head of the City of Phoenix Planning Department, the very entity that had the legal authority to close my business.

Interview No. 2: The Planning Department, Home Occupations and Use Permits. I learned more than I ever wanted to know about home occupations. The City of Phoenix does not actively search for violators; however, when a complaint is filed, the course of action is very clear: obtain a use permit or stop doing business. A use permit for a home occupation restricts the number of clients in order to control traffic flow. There is no written law that determines how many clients are allowed; each case is decided individually. Historically, five to six round trips per week are allowed on a residential street. (Streets are classified as major thoroughfares, feeder streets and residential streets.) That translates into ten to twelve students per week. Traffic flow creates a dilemma for home occupations such as music teaching. The use permit is not a workable solution for any home music instructor, fulltime or parttime. The City of Phoenix offers no protection to the music teaching profession as a home occupation due to the fact that it generates some traffic. A secondary issue was that a home occupation cannot have employees who are not family members. I was violating the ordinance on two issues: traffic and the teacher I employed.

Residential/Office (R/O) Property and Text Amendments. I was advised to become proactive in proposing a change to the zoning code, specifically the code that covered R/O properties. (The only district that allows music teaching in the City of Phoenix is R-5. An example of an R-5 property is an apartment building.) The R/O properties are often renovated houses for use by doctors, lawyers, accountants or dentists. These houses typically are not attractive residential properties due to their location on a major street. The City of Phoenix considers this type of property to buffer and protect residential neighborhoods from commercial real estate development such as shopping centers and office buildings. Music instruction is not listed among those professional occupations able to buy R/O property.

I learned that a citizen can initiate an amendment to an existing ordinance for a fee of \$1,350. But since council was planning to revise the R/O code within the year, the fee was waived. I went on record with the City, proposing a change to the existing R/O ordinance that would allow the teaching of music in R/O properties. My proposition stated that music teaching was an ideal transitional occupation that would protect neighborhoods and furthermore, was historically part of a neighborhood setting. By taking an active stance in attempting to change the status of my business, I had placed myself in a different perspective with the Planning Department. This was the single most intelligent action I could have taken in my battle with the City of Phoenix.

Schools. Schools are allowed in residential neighborhoods. I asked the Planning Department what criteria determines the status of 'school.' I was informed that a school gives a degree or a diploma. I argued that music teachers are professionals and

our businesses are worthy of the classification 'school.' We have a certification program for teachers based on education; we have specific educational programs for students. Private elementary schools and Montessori schools are a basis for comparison. They do not grant a degree, and many Montessori schools are found in residential neighborhoods. The Planning Department reluctantly agreed to write a letter stating that my studio was a 'school.' However, the letter was based on the fact that a graduate student from Arizona State University had received a one-hour credit at my facility; furthermore, a private high school had waived a fine arts requirement for a student taking piano lessons.

This gray area of 'school' warrants serious investigation by any teacher facing zoning problems. National certification has potential significance in the area of business classification.

Interview No. 3: The Complaining Contractor. A red flag went up during an interview with the father of a prospective student, a neighbor and contractor who had given me a bid on remodeling my second teaching studio. I was uncomfortable as this man griped about his financial situation and his personal life. The "poorme" story evolved into repeated delinquency in lesson payments. Months later, I was still owed \$250. I told him summer lessons were not available until his account was paid in full. His surly attitude translated into his registering a zoning complaint with the City.

1991-1995: Strife and Survival

On a quiet afternoon in late July 1991, I was served with a citation from the City of Phoenix to stop conducting business from my home. I panicked.

The Planning Department and Zoning Enforcement. I immediately called my zoning attorney and learned that the Planning Department protected me because I was on record for initiating a text amendment that would affect the location of my business. During the next four years, I received two citations from Zoning Enforcement-a different entity than the Planning Department-to stop doing business within ten days. In September 1994, I received a summons to a criminal court trial for having continued to violate a zoning ordinance. My attorney and I learned that there was no communication between Zoning and Planning. Every time a new zoning officer read my file, I was served again. My business survived this onslaught from the City for four years-a historical first, since most violators are closed down within thirty days. Supportive neighbors wrote a letter on my behalf to the City stating that they supported my home piano studio and that traffic was not a problem. (I had been there for twentytwo years.) This had no impact. Anyone can register a complaint and the City must follow the ordinance.

City Council and Text Amendments. After lengthy discussions with the planning department staff, a text amendment for the R/O zoning code was presented to City Council. At this time, the local chapter of MTNA became involved. News coverage on the amendment distorted facts; one report gave the impression that the City was going to shut down all home music studios. Unfortunately, the Planning Department's amendment restricted the number of clients that could be on the premises of a home studio. No restrictions were placed on how many clients an attorney, doctor, dentist or accountant could have. Usage was solely determined by the size of the property and required parking. The text amendment was not passed due to this unfair restriction placed on the music teaching profession. Council was to meet with members of the local MTA to rewrite the proposal. (As of September 1997, the meeting still has not taken place. The Council meeting was in April 1993.) My attorney advised me to drop the matter and let the amendment float. I was still on record for initiating change that would affect my business and thereby retain my protection by the Planning Department for as long as the amendment remained on the books.

Venturing into the real estate market, I learned that finding an R/O property was difficult. To rezone a residence to R/O on a major thoroughfare is costly and timeconsuming, so my attorney advised against this strategy. My search for viable real estate intensified as I considered commercial office buildings, houses on major streets, and commercial office space.

Residential Real Estate. My attorney informed me that a use permit or variance from the City was only half the picture for residential property and use permits. Any residential property has CCRs-codes, covenants and restrictions-whether or not there is an active homeowner's association. Ninety-nine percent of the time, CCRs explicitly state that a home business is prohibited. Even if the City granted a permit, any neighbor could sue and win based on the deed restrictions. Therefore, as a prospective buyer, I would need to have 51% of any given neighborhood sign an amendment to the existing codes and covenants.

I faced failure, frustration and fear on an almost daily basis. I was too big for a home occupation and too small to survive in a commercial setting. I tried to purchase five different houses located on major streets with the intention of obtaining a use permit for a home occupation. I knocked on doors explaining my business and the protection it would offer the neighborhood. Many doors were slammed in my face.

One piece of property had enough frontage to qualify as a school. I discussed with my attorney the possibility of calling my business a school and was informed I would have to meet city code and go through Development Services.

Commercial Buildings and Commercial Office Space. A shopping center with a twenty-four-hour store and the semblance of protection during the evening hours is prime rental space. A less expensive option was a small business complex where all of the businesses would close before dark-not ideal for safety. I calculated that I would need to expand by 50% to meet my current income in order to relocate in commercial office space. I would be lucky to find a three-year lease; in all probability, I would have to sign a five-year lease. There was no way to control rent increases. My build-out would be costly. I incorporated my business, preparing for what seemed to be the inevitable solution. I was in escrow with a commercial building for five months, only to learn that it would cost me \$30,000 to move a telephone pole. The financial burden of renting commercial space and paying a home mortgage spoke financial suicide to me.

Churches, Private Schools and Music Stores. My music lab became an obstacle as I investigated moving my studio into existing, properly zoned space. I needed too much space. Giving up the lab was not an appealing option. Renting space from a church, school or music store was not workable because I could not share space. I contacted many churches and schools. I even proposed renting land and erecting a building on a church or school parking lot. I was unable to make this creative idea work. I lost two years pursuing an arrangement with a private school whose new building didn't materialize.

1996: Compromise and Resolution

In March 1996, I found another house with business potential. In researching the deed restrictions, I discovered there were none after the acre parcel was subdivided into three lots in 1977. In other words, the neighborhood could not sue me if I was able to obtain the required city permits. The location was perfect: a corner lot on a major thoroughfare with a church across the side street. The floor plan was ideal; a two-car garage could easily be converted into a lab and there was an existing carport. The living quarters would be completely separate from the studio. An offer was made contingent upon a use permit. A contractor estimated \$15,000-\$20,000 to undertake the remodeling project.

My primary concern was applying for a use permit as a home occupation. After all, I had an employee; furthermore, there would be a restriction placed on the number of students per week. My attorney talked with the hearing officer "off the record." Was there a way in which a home occupation could have one employee? The advice given was if the client needed the services of an employee due to a disability, then the City was bound by the Americans With Disabilities Act to waive this restriction. During 1994, I had been on crutches for eleven months due to a chronic back problem. I was

advised to obtain doctor's statements about my physical health and the prognosis of my condition. But now I was no longer on crutches. In addition, I was advised to not mention how many students were enrolled in the studio.

I was uneasy with this plan, and angry that I was forced to hide the nature of my business as if I was conducting criminal activities. What sense did it make to go from one illegal operation to another and risk everything I owned? Why should I hide the size of my business from an exceedingly active homeowners' association that was determined to keep all businesses out of the area in which my property was located? At least one-third of my clientele belonged to this association. I had experienced enough internal sabotage.

My attorney applied for a use permit for a home occupation. I argued that I should apply for a use permit as a school instead. Four problems must be addressed when considering school classification: the number of students, the size of the property, the number of parking spaces and compliance with the building code, and the ADA Act:

Schools are restricted to the number of students on the premises at any one time. The fact that a typical music studio does not have all its students present at the same time is a critical point in the music teacher's favor.

Schools must have acreage for playgrounds. This is irrelevant for a music studio and can be overcome by a variance.

The number of teachers, not the number of students, determines the number of required parking spaces.

Small businesses must meet building code and comply with the ADA Act. For me, this translated into a one-hour burn firewall separating the house from the studio; the cost was approximately \$20,000 and was inspected by the City four times. Two large handicap-accessible bathrooms became part of the design. Handicapped access to one studio entrance as well as access to public transportation was mandatory.

I did not want to lose this choice property that had taken four years to find. I would not apologize for the size of my studio and risk everything I owned to simply recreate another illegal business operation. Neither would I use my medical history as a way to circumvent the home occupation requirement. The owner of the building I wanted to buy agreed that he would continue to work with me if a second hearing took place. I prepared "Plan B" in the likely event that the City restriction on my clientele would be unacceptable.

One week before the hearing, my architect and I visited Development Services to

discuss the ramifications of becoming a school. We discovered a critical fact: I would have to meet city code whether I was a home occupation or a school. The deciding factor was that the issuance of a building permit triggers the use permit, thereby alerting the Planning Department. The end result is that the property must be brought up to code in order to proceed with a building permit. I was mentally and emotionally devastated by this news. Where was my zoning attorney during the past four years? I had entrusted my entire livelihood to this attorney's expertise, and spent approximately \$15,000 on legal advice that had failed to disclose a critical factor in my case. To make matters worse, his daughter was one of my students.

I fired my attorney. Another hearing was set three weeks later to apply for a use permit and variance as a school. Against the advice of several people, I represented myself at the hearing. The Planning Department told me that the opinion of my immediate neighborhood would be a stronger consideration for the hearing officer than the power of the homeowner's association as an entity. Therefore, I wrote a letter to the immediate neighborhood informing them of my usage and of the upcoming hearing. I collected fiftyone signatures supporting my endeavor from a total of sixty homes. I also gathered forty signatures from current clientele who were members of the same homeowners' association. I purchased aerial photographs of the surrounding area and outlined the five pre-existing schools that were within the boundary of the North Central Corridor. I acquired a plat map and illustrated how traffic would not pass through the neighborhood. I presented photographs of the church and the additional parking spaces. At this time, I called MTNA national headquarters and was referred to the national chair of the Independent Music Teachers Forum, who wrote a letter supporting the teaching of the arts. A member and friend who was not on the board of the local association presented this letter at the hearing.

I obtained three letters from educational institutions to validate my status as a school. A private elementary school stated it would release students from school to take piano lessons. The music department at Arizona State University stated that a music student could receive a graduate credit in pedagogy for working and observing in my facility. A charter high school confirmed that a student could receive a fine arts credit toward high school graduation by taking piano lessons or working in my lab. I learned that I would spend approximately \$60,000-\$75,000 to bring the residence into compliance with the city code. The homeowner's association informed me that they would keep me from relocating my business into their Central Corridor.

The hearing turned out in my favor. The City thought my use of this property was ideal and that my business would protect the neighborhood. I was restricted to having

no more than twelve students present at any one time, based on the 1,500 square feet of space allocated as business. I could have only two instructors teaching at one time. I could teach only piano. My large technology lab remained intact. A sign for the school was allowed. I can live with these restrictions. Another hearing will be held in three years to determine my compliance with these restrictions.

The homeowners' association filed an appeal. Upon learning that there were no deed restrictions on the property, the association withdrew the appeal. Remodeling began three weeks after the hearing, and I moved into the studio eight weeks later: September 23, 1996 marked the first week of lessons. Two complaints have been registered about the sign. Some neighbors think that the sign devalues their property. The sign remains on the building. My school, Music Works Academy, has a current enrollment of 125 piano students.

Conclusion

Since the use permit as a home occupation is not suitable for a business that generates traffic, what is the solution for the future of the music teaching profession in neighborhoods? In Phoenix, home music studios are illegal. Do we continue to run our businesses in fear, hoping to avoid the issue by being nice to neighbors? Neither the city nor the local MTA have tackled the problem that determines the future of our home-based businesses. Other music teachers are scared when a situation like mine arises. Attention is directed to the fact that there is no protection for our home-based business whether it be parttime or fulltime. The City does not wish to address this problem unless a complaint is registered. The classification of a school seems to meet the needs of even a small studio with only one instructor. Is it possible that a national effort directed at recognition of home music studio instruction as 'schools' would help alleviate neighborhood problems across the country?

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