

MINUTES
Special Meeting of Lake Shore City Council
Monday, March 21, 2011
6:30 PM Lake Shore City Hall

Mayor John Terwilliger called the March 21, 2011 Special City Council meeting to order at 6:30 p.m. The pledge of allegiance was recited.

Roll Call: Mayor John Terwilliger. Council Members present: John Bukovich, Susan Amacher, Doug Miller and Lyle Kline; City Attorney Steve Qualley; Police Chief Steve Sundstrom; City Administrator/Planning and Zoning Administrator Teri Hastings and City Clerk Patti McDonald. There were 82 people in the audience.

PUBLIC HEARING – *The Lake Shore City Council will conduct a public hearing on March 21, 2011 at 6:30 pm in the Council Chambers of the Lake Shore City Hall. The purpose of the public hearing is to discuss possible changes in the liquor ordinance. Copies of the ordinance are available at city hall or on the city website at www.cityoflakeshore.com. The Mayor said the council will go through the document by subdivisions to make comment on each paragraph before moving forward. Each person that has a comment must step up to the microphone and state their name and address for the record.*

Teri received 28 emails; some of the emails were received prior to the release of the draft ordinance. Overall there were 4 unknown (residence wise), 16 Lake Shore residence opposed to some aspect of the ordinance, 7 people opposed to the ordinance that were non city residents, there was one email in support that commented a compromise could be reached, but they were not a city resident.

Draft 2 is the topic of the public hearing; the first change to be discussed is **Subd. 9. Outdoor Areas**. Every outdoor area must be approved as part of the original licensed premises or by the grant of an application for expansion of the licensed premises. The expansion or change in the current usage of the outdoor area of the licensed premises shall require a public hearing. Changes in usage shall include live entertainment (other than those held as special events), non-live music, radio, or other forms of entertainment such as games. In permitting new outdoor areas or expansions, the City may restrict the days, hours, nature, volume and other aspects of entertainment in any outdoor area, including a prohibition against all forms of non-live music, radio, television or other entertainment, to protect the safety, repose, health and welfare of residents, businesses and other uses near the establishment. Discussion for paragraph one.

Kevin Knutson (8346 Timber Lane) asked where it states that business as usual if you already have an established area. If it's not stated on the original application, a new application can be submitted to include all areas. Except where a special event would need approval from the city council.

Lee Johnson, Zorbaz, asked if there is a plat showing what exists. This information should be on the original license application and if it is not the license can be changed by submitting a new application with the change.

The second paragraph: The City Council may authorize an establishment to conduct entertainment not otherwise allowed under its license in an outdoor area by permit temporarily for special events. Applications for such permit shall be filed with the Lake Shore City Clerk. The Council may restrict the hours of operation of an outdoor area based upon proximity of the area to residential dwelling units, and upon considerations relating to the safety, repose, health and welfare of residents, businesses and other users near the establishment for special events. The City Council may review the operation of any outdoor areas in connection with renewal of the on sale license for the establishment; or at any other time for good cause. Violation of the terms and conditions of this section shall be grounds for

revocation, suspension, or refusal to renew the on sale license for that portion of the licensed premises pertaining to the outside area. Teri said this is similar to how the city operates currently. Doug Miller asked what would violate this paragraph and who determines the severity of the repercussions. The council is in charge of any ordinance violation that takes place.

Rebecca Selnow (Tall Timbers in Nisswa) asked about the sentence *The City Council may review the operation of any outdoor areas in connection with renewal of the on sale license for the establishment; or at any other time for good cause.* What constitutes good cause and doesn't this make it rather subjective? She thought she heard earlier that if the business is already running they can continue with business as set forth previously. The council has the right every year to review a renewal before granting approval. There is nothing about grandfathering in renewals of liquor licenses. She asked the council to consider reading everything before voting on the subdivisions.

John Terwilliger commented about the first draft ordinance and was dropped because it is already part of the ordinance.

SECTION 6.91. Noise and Nuisance Standards. In addition to all other noise and/or nuisance standards provided for in the Lake Shore City Code, or through Minnesota Statutes or any rules or regulations provided through the Minnesota Pollution Control Agency or otherwise, all establishments that sell liquor, beer or wine either at on sale or off sale shall abide by the following noise and/or nuisance standards.

Subd. 1. Outdoor Music. All outdoor music and/or speakers which are located outside of the licensed premises must be turned off by 10:00 p.m. on Sunday through Thursday and by 11:00 p.m. on Friday and Saturday. All outdoor music which is played through outdoor speakers prior to 10:00 p.m. on Sunday through Thursday and prior to 11:00 p.m. on Friday and Saturday must comply with the noise decibel readings as set forth by the Minnesota Pollution Control Agency and/or the City of Lake Shore noise ordinance standards, whichever is stricter.

Lee Johnson, Zorbaz, said they have a problem with this portion. He thanked the people that came to support Zorbaz. Lee said that he has been with Zorbaz for 20 years and worked with Teri and the Zorbaz in Crosslake. He gave a history of when Zorbaz opened. Lee set up some music at the 60 decibel in the back of the room so people would understand as they came in what decibel level is allowed. The noise of the people talking over powered the music. The city bought a decibel meter in 2009 to measure the music at the property line. While measuring the music one time a bus went by and it was at about 85 decibels. The outside bar does the majority of the business for Zorbaz and they want the music out there. There is family that has complained. Steve said that the bass is what the complaint is. Lee said that it takes a lot of bass to travel over 100 feet. Lee talked about the speaker adjustments that Zorbaz has made at the request of the city. He said that there had been a couple times that the music got left on so Zorbaz has put the outdoor music on a timer. The next complaint that he had wasn't his music. Steve said that the complaints he had have been because of Zorbaz. Lee said that the game that the complaints came from Zorbaz will not run it after 10:00 p.m. He said that they did a few things before coming to the conclusion it will not work. He said he wants to be good neighbors and let the people realize that they do work with the city to make things right. Lee said they need every single hour and every single minute to make it all work for them.

Bruce Zirbes (8175 Harold Lane) said that 60 decibels isn't a lot; however it carries quite far on a summer night. The boat traffic passes; the music at Zorbaz doesn't pass and the sound continues until 2:00 a.m. He said he is not a sound engineer, but wanted to let the council know it is very loud. Bruce said that they do hear bass and knows from what he has read that it takes a lot of bass to travel. Steve asked if they hear or feel it in the winter months. Yes, sometimes. Steve asked if he thought it could be the music from the inside of the building. It possibly could.

Mark Hecker, Brainerd, asked Bruce to comment on how long he has been at his current residence and if he knew that Zorbaz was there before he bought his property. Bruce said he purchased about 4 - 4 ½ years ago. He said they asked the sellers if they heard noise from Zorbaz and they claimed they didn't hear anything.

Jeff Olson, East Gull Lake, said that he thinks of the lakes as a destination point. He may have made a mistake when he first came here 26 years ago because he moved right behind BIR and said the noise was too much. He said that Zorbaz brings a benefit to the economy and a destination that is enjoyed to the approximate 12 groups that he brings there as he is the director of Camp Confidence. He is in favor of maintaining the hours as they exist right now.

Michelle Zirbes (8175 Harold Lane) said she agrees that Lee J is making adjustments, but hasn't had the opportunity to talk with Lee J. When she asked the sellers if there was noise they told them that they didn't have any noise. She said that they also looked at the ordinance which allows for people to enjoy their property. She said she isn't trying to be a poor neighbor, but would like to enjoy her property on a beautiful night.

Pat Rafferty (1271 Diana Drive) said he has been here since the early 70's. He said that before they purchased their property in 1985 they traveled the lake to listen for noise, etc. Pat said that in recent years because of DWI's, Lee J was instrumental in helping set up the shuttle service. Pat said that he has worked for Cass County Economic Development and all of the economy here is tourist driven; we need the revenue coming into this area and hopes the council doesn't vote to take away from the economy.

Larry Juaire owns the shuttle service that works out of the area and if Lee J's business hurts so does his.

Tom Eisler (7982 Ridge Road) his family has been here since 1945; he doesn't hear the noise and he is right across the bay. He supports what Lee J is doing. He hears more noise from the boats.

Joe Newfield (Bar Harbor Townhouses) said that there is more noise from the boats in the channel. He doesn't hear noise from Zorbaz.

Mark Anderson (Bar Harbor Townhouses) said he founded Channel Inn and Granny's Pub in 1982 and put the patio in. He said there has always been noise the life of the channel creates noise. He said that back in the day the problem was parking. He said there were about 800 people on the patio on one summer night and it is nothing new to have noise from the patio. Mark is a pilot and compares it to people that move under the Minneapolis flight path and then complain about the airport.

Sharon Wettland (8391 Robinhood Way) said she has lived here for over 10 years and worked in the restaurant business for over 25 years. She was dumbfounded that the noise that is being talked about is being attached to a liquor license. If you want a noise ordinance write a noise ordinance or amend the one you have and feels this is strong arming. She said that the unemployment is 16% in the area and doesn't agree with the ordinance proposal.

Tom Hanson (Zorbaz Founder) said that they have 11 restaurants of the same likeness in a lakes area. He said that they don't have any noise issues, nor have they had to address any noise issues from the other businesses. He said that when he looks at restaurants that are for sale he looks for the road blocks to success that would prevent him from buying. He said that people want certain life styles when they live in the lakes area. Zorbaz has between 60 and 80 employees with a payroll of over a half million dollars. He had a letter from Ron and Gia Herman who owned the home that Zirbes now own and they said they didn't hear the music when they went into the home. They could hear music when they were outside sometimes. He said they couldn't have a successful business if they couldn't have people out on the deck enjoying the summer. Steve Sundstrom asked if the Detroit Lakes successful. Yes it is. Is there a noise ordinance for the speakers? It is the same as Lake Shores, which is 60 decibels. Steve

asked if he knew the Paul Keena. Yes, Tom knows he is the Police Chief in Detroit Lakes. Steve said that the noise ordinance isn't the same and there is a shut of time of Midnight on Friday and Saturday nights the outdoor speakers need to be shut off except for 4th of July and holidays. The sound cannot be heard from 50 feet from the source of the noise. Tom said they don't have outside speakers and they have never one time been told to shut down their music.

Cole Hanson (Detroit Lakes, Zorbaz) asked to address the questions that Steve asked. He said that Detroit Lakes Zorbaz is 8,000 square feet fully enclosed and fully insulated. This is two different issues. There music is not comparable and they meet the criteria in Detroit Lakes. The Mayor asked if there are any other Zorbaz that allow music until 2:00 a.m. No there is not, however the city is asking to decrease the square footage by 50 %, which is unappealing without music. Lee J said that music is playing in any restaurant. The first year they didn't have a DJ or any music and there was no business what so ever. Music is very important to his business.

Kevin Knutson said that even if the music has to be shut off, the sound would still travel. He said as long as they meet the 60 decibel requirement why they are here in the first place. He said people come to Zorbaz for the appeal and requiring them to shut the music off won't alleviate the sound problem. There are about 16 days in the summer that are nice enough on weekends; then take out 4 of them because of rain and that leaves about 12 to 14 days that they are allowed to be outside to do business.

Mark Meixner (Nisswa) said he has been going to Zorbaz since it opened. He commented that historically, Bar Harbor has been here for a long time and they are in their third building with traffic going through that channel this area has been the center of activity and he doesn't understand why the city would ask them to change.

Dan Kuhn (Music General Productions) put the music system in Zorbaz in 1997 and has since updated to be in compliance with the 60 decibels level. The system is not designed to allow for the bass to travel for more than 150 feet, which is fact. What is being heard is the kick drum from the music; he explained that and the frequency that is being carried over the water with the wind direction is in the 1K range. Lyle Kline said that being in a band they have been asked to turn their music down. He said that, as it gets louder in the establishment the music level gets louder. Steve said that Zorbaz operated within the guidelines of 60 decibels throughout the year of 2010. Some of the thumping could be from the building itself. Last year the game seemed to be the main complaint. Lee J said they haven't had a live band at night for about 3 years.

John Terwilliger commented that it is unfortunate that the only people in attendance that have a complaint about the noise are the Zirbes. He said that he had phone calls with one being from an elderly lady that is very intimidated by this process and all they want is peace and quiet. During the comprehensive planning process, music was bought up. He said that there are 5 liquor establishments in the city, so this isn't all about Zorbaz and the Zirbes.

Gary Cook (Agate Lake) said that maybe March isn't the time to have a meeting like this. He said that more people would probably have an opinion if they would have the meeting in June.

Bob Payette (8000 Ridge Road) said that he has cabins to rent out and is happy with the ordinance the way it is.

Carol Nelson (Miller Lane) said that she has been in bed so many mornings and listened to the trucks in the gravel pit. What can be done about this? She said she knows that the business is needed in the area and this is part of life. The world is ruled by those who show up.

Teri said there are rules for the gravel pit and they have guidelines for the hours of operation. Yes, the city does receive numerous noise complaints from the gravel pit. Jet skis have guidelines too, but are not followed.

Dan Meixner said that whether it's a bar playing music, a motor cycle driving by at 2:00 a.m. or a boat leaving the public access at 5:00 a.m. there is people sleeping during all of those and they happen all summer long; it's the Brainerd Lakes area.

Clint Nelson (1075 Miller Lane) is speaking for Zorbaz and said that it is important to keep Zorbaz the way it is. There could be a difference in property values if the attraction/recreation is taken away.

The last section to address is **Subd. 2. Outdoor games and attractions.** All outdoor amusement-type games, contests or other activities that create noise as a part of such game shall be discontinued at 10:00 p.m. Teri and Steve worked with Lee J to include the words that 'generate' noise.

Mark Meixner asked how much noise. Steve said as long as it stays within the confines of the establishment.

Anthony Nelson has worked for Zorbaz since 1999 and depends on Zorbaz for his lively hood. He commented on Subd 1 Outdoor Music in that the all outdoor music which is played through outdoor speakers prior to 10:00 p.m. within the licensed area... well our patio is part of our licensed area. If the patio is listed on the original liquor license application it is considered part of the licensed area.

To discuss a portion of the Draft 1 ordinance that was dropped this portion is already on the books as of the ordinance amendment for the 2:00 a.m. closing was adopted June 23, 2003, stating that 'No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 2:00 a.m. and 12:00 noon on Sundays, and between 2:00 a.m. and 8:00 a.m. on Monday through Saturday', which means no consumption after 2:00 a.m. Steve is suggesting amending the 2:00 a.m. closing to 2:20 a.m. and amend the noon on Sunday portion to 10:00 a.m. Sunday sales starting at 10:00 a.m. must be in conjunction with the sale of food.

Tim Moore (7837 Lost Lake Trail) said he hears the music he lives about a quarter mile up the road. He hears the music and not the people talking. He said that he hears the music sometimes from 5:00 p.m. going another 4, 5, 6 hours. He said that it is preposterous to say they would have to shut down because they have to shut off the outdoor speakers. He said he cares for kids sometimes and they go to bed at 7:30 p.m. and he has to close the windows. He said there is no limit with the music on the front end. He said the city is asking to have a limit on the back end.

Bruce Zirbes said that he went online and looked at a couple cities on Lake Minnetonka for noise ordinances. Minnetonka is limited to 10 p.m. to 7 a.m. not audible at the property boundary of the building structure. Wayzata same time including audible at a distance of 50 feet or more. Steve asked if there are any bars in the state that are allowed to play music outside until 2:00 a.m. Someone suggested that Hard Rock Café in Minneapolis does.

Rebecca Selnow asked if democracy isn't just great. No only a citizen of the area she is a real estate agent. She talked to 8 other brokers and realtors with clients within a quarter of the Channel. She said that of the 17 that she talked to that wanted to sell; not one would make a statement or ever claim they were selling due to the activity or noise on the channel. She said that out of the people that purchased 6 people did so because of the activity in the lakes area. Give consideration to the fact that the majority is speaking tonight and are land owners here.

Nicole Swanbeck (8235 Gullwood Road) said she moved here in August from living St Paul where there are bars in the residential neighborhoods; they all have outside music. There is music and people live in the neighborhoods to walk to the bars.

Doug Miller said he wasn't in favor of the first draft. He doesn't want to attach the noise issue to the liquor ordinance. Susan Amacher agrees with Doug.

Dan Meixner said that the Subd 9. ...the council may restrict the hours of operation of an outdoor area based on the proximity of the area to residential dwelling units, and upon considerations relating to the safety, repose, health and welfare of residents, businesses and other users near the establishment for special events. Will it impact the area with more growth and development? Teri said the city always has that right. Looking at development patterns, Causeway cannot expand and it really isn't an issue.

Kevin Knutson asked if this will have an affect on the new purchase of Matty's and will they be operating under different rules and what if they want to put in a patio. A conditional use permit would have to be approved by the Planning Commission and the Council would have to approve by the grant of an application for expansion of the licensed premises.

MOTION BY JOHN BUKOVICH APPROVE SUBD 9 OUTDOOR AREAS OF THE LIQUOR ORDINANCE. SUSAN AMACHER SECONDED THE MOTION. IN FAVOR – BUKOVICH, AMACHER, KLINE AND TERWILLIGER. DOUG IS OPPOSED BECAUSE IT IS ATTACHED TO THE LIQUOR ORDINANCE. MOTION PASSED.

MOTION BY TO SECTION 6.91 NOISE AND NUISANCE STANDARDS. SUBD 1 OUTDOOR MUSIC. Steve asked if any concessions in the times could be made. The council decided not to act on this subdivision.

Lee J explained that the bar is dead at 11:00 and people come back after 11:00 for 3 more hours of business. Steve said that if it was turned down maybe people would not talk as loud. Zachary Dowd said that the music doesn't matter to him while talking next to people.

MOTION BY SUSAN AMACHER TO APPROVE SECTION 6.91 NOISE AND NUISANCE STANDARDS. SUBDIVISION 2 OUTDOOR GAMES AND ATTRACTIONS. LYLE KLINE SECONDED THE MOTION. IN FAVOR – AMACHER, BUKOVICH, KLINE AND TERWILLIGER. DOUG MILLER OPPOSED BECAUSE IT IS ATTACHED TO THE LIQUOR LICENSE. MOTION PASSED.

Teri read into record: **Subd. 1. Consumption.** It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on, around or adjacent to the licensed premises or outside areas on the licensee's property more than ~~thirty (30)~~ twenty (20) minutes after the time when a sale thereof can legally be made.

Subd. 2. Removal of Containers. It is unlawful for any on-sale licensee to permit any glass, bottle or other container, containing alcoholic beverages in any quantity, to remain upon any table, bar, stool or other place where customers are served, more than ~~thirty (30)~~ twenty (20) minutes after the time when a sale thereof can legally be made.

Hours and Days. No licensee may permit a person to consume or display liquor, and no person may consume or display liquor between 2:00 o'clock a.m. and ~~12:00 o'clock noon~~ 10:00 o'clock a.m. on Sundays, and between 2:00 o'clock a.m. and 8:00 o'clock a.m. on Monday through Saturday.

The existing ordinance of 10:00 a.m. is on Sunday. Lee J asked if 10:00 a.m. is only on Sundays. It is 10:00 a.m. on Sunday and it is 8:00 a.m. the rest of the week.

MOTION BY JOHN BUKOVICH TO APPROVE SUBD 1 AND 2 ON DRAFT ORDINANCE ONE AND INCLUDE THE HOUR CHANGE TO 10:00 AM ON SUNDAY. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

Doug doesn't want the noise issue attached to the liquor ordinance because he said the opportunity would be there to for the establishment to lose their liquor license.

The maximum of 60-decibel rule will be followed without acting on the ordinance amendment. Lee J said that they have checked the decibel level at various times of the day. Steve said that the elevation plays into the readings and they do the best as they can. Lyle Kline said that this can be revisited if it is abused. John Bukovich wants to bring the noise issue to the Planning and Zoning level if there is a violation.

MOTION BY LYLE KLINE TO ADJOURN THE REGULAR CITY COUNCIL MEETING OF MARCH 21, 2011 AT 8:30 PM. DOUG MILLER SECONDED THE MOTION. MOTION PASSED.

Transcribed by Patti McDonald
Lake Shore City Clerk