

LICENSE HEARING MINUTES
Fitzgerald's, 173 Western Avenue North
Thursday, January 24, 2019, 2:00 p.m.
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 2:00 p.m.

Staff Present: Kristina Schweinler and Ross Haddow, Department of Safety and Inspections (DSI)

Licensee: Chuck Repke, representing the applicant/owner

License Application: Liquor Outdoor Service Area (Patio)

Other(s) Present: Reverend Jo Beth Marshall, Elmer Pierre, Pauline Hanson, Michael Costello, Jennifer Nelson, Josh Score

Legislative Hearing Officer Nhia Vang made introductory comments about the hearing process: This is an informal legislative hearing for a license application. This license application required a Class N notification to inform neighbors and the District Council about the application and provide them with an opportunity to submit comments. The City received correspondence of concern/objection, which triggered this hearing.

The hearing will proceed as follows: DSI staff will explain their review of the application, and state their recommendation. The applicant will be asked to discuss their business plan. Members of the community will be invited to testify as to whether they object to or support the license application. At the end of the hearing, the Legislative Hearing Officer will develop a recommendation for the City Council to consider. The recommendation will come before the City Council as a resolution on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

There are three possible results from this hearing: 1) a recommendation that the City Council issue this license without any conditions; 2) a recommendation that the City Council issue this license with agreed upon conditions; or 3) a recommendation that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge.

Minutes:

Legislative Hearing Officer Nhia Vang asked Mr. Repke if he was legally authorized to make decisions on behalf of the applicant regarding conditions placed on the license. Mr. Repke said for the purposes of the hearing, he represented Madison Equities and the Madison Group. Ms. Vang asked for clarification. Mr. Repke said nothing that happened at the hearing would remove his client's right to public hearing before the City Council if they disagreed with Ms. Vang's recommendation. He said he would have to discuss any recommended conditions with his client.

Ms. Schweinler said Mr. Repke was not in that position, and decisions would have to be made directly by the licensee. Ms. Vang said she may not be able to make a recommendation at the conclusion of the hearing in this case. She asked whether Madison Group was the same as Mr. James Crockarell. Mr. Repke said Jim Crockarell was the president of Madison Equities which owned multiple properties and several restaurants in St. Paul. Ms. Vang said the situation may limit her ability to negotiate conditions with Mr. Repke, if any came out of the testimony heard. Mr. Repke said he would recommend any reasonable conditions to the owners, but the president of Madison Equities was not going to attend a hearing on an individual license.

Neighbor Pauline Hanson stated that it was her understanding that this was their opportunity to provide input and that a decision would be made. Mr. Repke said everyone still had a right to a public hearing before the City Council. Ms. Vang clarified that all testimonies would be considered as she developed her recommendation, which would come before the City Council under Consent. She said there was no opportunity for public testimony at that point unless the Council member chose to open it up for a public hearing. She said this licensing hearing served as the public hearing. She said the testimony at the license hearing would be recorded as part of the minutes and shared with the Council members.

Staff report:

Kristina Schweinler, Department of Safety and Inspections (DSI) gave a staff report. She said Building review was pending submission of building permits and additional information, License was a recommendation for approval with conditions, and the Zoning site plan review was in process and awaiting submission of revised plans.

Existing License Conditions

1. Licensee agrees to operate the establishment in compliance with Section 409.02 of the City of Saint Paul Legislative Code as a "Restaurant".
2. Licensee agrees to close the establishment at 12:00 a.m. midnight. All patron/customers shall vacate the premises by 12:30 a.m. each day of the week as per City Zoning Code (parking requirement) and Section 409.02 of the City of Saint Paul Legislative Code.

Recommended Additional License Conditions

3. Any outdoor activities related to an outdoor seating area shall comply with applicable State and Local rules and regulations, including but not limited to Chapter 293 Noise Regulations of the City of Saint Paul Legislative Code.

Ms. Vang said there was a lot still pending; she asked Mr. Repke to provide a status update. Mr. Repke said they acquired the liquor license when the Salt Cellar left and it became Fitzgerald's about a year ago. He said they currently had parking at the YWCA across the street as well as 11 or 12 spots on the site. He said some of the on-site stalls were going away for a patio, and rather than leasing additional spaces, they decided to acquire the Urban League building for additional parking. He provided a copy of the site plan. Ms. Vang noted it was more recent than the one that was part of the hearing packet. Ms. Schweinler said the site plan was not being discussed. Mr. Repke said the parking and patio license were interdependent and going hand-in-hand in conjunction with each other.

Mr. Repke reviewed their process. He said they had gone to the district council in June to make sure they had their support before closing on the building to be demoed for the parking. He said they had district council approval pretty much throughout the process. He said he felt reasonably sure they were getting close with the site plan, and that's why they were moving ahead with the permits for the patio. In response to a question from Ms. Vang, he said they were adding 28 spaces that would meet their parking requirement. He said he thought the support from the district council was due in part to the fact that they were adding permanent parking for Fitzgerald's rather than leasing 13 spots in a hidden parking lot. He said the parking would be regulated with a card-in, card-out system to provide free parking for their customers. He said what they were looking for in a patio was to do what other patios in the area did, and there was nothing unusual about their patio request.

Ms. Vang asked Mr. Repke whether they planned to continue the agreement with the YWCA. Mr. Repke said they did not. He said a problem with leased parking was that customers didn't use it, and would park on the street rather than park in a lot that wasn't adjacent to the business. He said the new parking would be visually tied to the building and be signed. In response to a question from Ms. Vang, he said they would end up with the same amount or number of parking spaces they had now, as well as three 5-spot bike racks which would count as three additional parking spaces. He said the bike racks would be split between the parking area and restaurant.

Ms. Vang asked whether her understanding was correct that the patio would seat about 150. Mr. Repke said it maximized at that but realistically they were looking at 100 seats. Ms. Vang asked whether patrons would have to go through the restaurant to access the patio. Mr. Repke said he believed they should be allowed to be able to enter from the outside. He distributed a rendering. He said they could enter through a secured door and be greeted by someone. He said it was pagoda-style with a partial roof and walls on the exterior which would control access. Ms. Vang asked whether it abutted Red Cow (neighboring restaurant). Mr. Repke said their property went right up to their wall, and it made most sense to close it off rather than creating a gap that would have to be regulated. He said if it was necessary to open it up to allow the other business access, they would do that. Ms. Vang asked whether it was all handicapped accessible. Mr. Repke said it was all sidewalk level. He pointed out the additional access to the patio through the restaurant. Ms. Vang noted the alleyway off Western and asked whether the patio could be accessed that way. Mr. Repke said that was the service entrance where trash went in and out; he said theoretically someone could enter but not intended for service. Ms. Vang asked whether deliveries would be made on that side. Mr. Repke said they would. He said they were going to be left with four parking spaces there that they had not designated for anyone in particular. He said he would hope they would be handicapped or employee spots, and not requiring as much use of that entrance and exit. He said that was currently the main entry and exit to the site. Ms. Vang asked whether the driveway allowed for two-way traffic. Mr. Repke said it was wide enough, but the land to the north of the driveway was owned by somebody else, and it would not be unusual for one of the cars to go on that land. He said their people weren't supposed to be on the other owner's land. He said he believed it was owned by the Red Cow.

Mike Costello spoke from the gallery area and said he owned Red Cow property and the alley behind. Mr. Repke said they were not supposed to be on Mr. Costello's property but it did occur. He said they were hoping with the new parking lot there would be radically less of that.

In response to question from Ms. Vang, Mr. Repke said the trash bins would be in the back where currently there would be parking, towards the west end of the property. Ms. Vang asked if it would be enclosed. Mr. Repke said he assumed they'd make reasonable efforts to enclose them. Ms. Schweinler said that would be addressed in site plan review, and might change. Ms. Vang asked about lighting on the patio. Mr. Repke said that was also part of site plan process, but the idea was to have decorative lighting, lower lighting for dining. He said Justin Sutherland, who was a major chef and was currently on Top Chef, was taking over the Madison Restaurant Group, and they were looking for this to be a place where people went for a dining experience. He said it was a tough area to do business without a patio, and people were lured to patios for dining experiences.

Ms. Vang asked whether the hours for the patio would be similar to those other businesses in the area for the business. Mr. Repke said they were looking for similar hours during the summer time, and that an earlier closing would mean they'd be booting people out before darkness.

Ms. Vang asked whether there would be increased staffing with the patio addition. Mr. Repke said they were hoping to have more staffing because there was more business. Ms. Vang asked how many employees there were now. Mr. Repke said he didn't know for sure. He said they were hoping they'd have the same customer count in the summer, but on the patio. He said they didn't have any illusion about filling the restaurant and filling the patio, and were probably going to have the same count of 100 to 150 in an evening.

Ms. Vang asked Mr. Repke to walk her through their petition process; she said the percentage as verified by staff was 39.32%. Mr. Repke indicated that his count was slightly different from staff's count. Mr. Repke said that counting the John Rupp properties as residences even though it was being used as offices, that's what the number was. He said as far as they were concerned they were better than 50% on the count. He said they went to the district council back in June with that issue. He said there was a high number of people living in the condo building with limited access. He said they met with condo association but couldn't go door knocking, and a significant number of the condos were non-owner-occupied. He said they went through the district council process and had the same approval as if they'd have had that. Ms. Vang said she assumed they had used the district council to gauge support but had also door-knocked. Mr. Repke said they had door-knocked the houses in the area, sent notices to people in the building, asked for people to sign postcards, and he believed they did an event at the building itself. He said they made a strong effort to get it, and they explained it to the district council and they (district council) supported it, and their petition was as legitimate as a petition that had 100 signatures.

Ms. Vang asked whether a description of the process was submitted to DSI. Mr. Repke said he thought they had submitted something, but if not, he would be more than happy to provide it.

Ms. Vang reviewed the district council correspondence: she said the district council sent a letter of support in June, expressed some concerns in December, and then yesterday had sent a letter of support for the liquor license. Mr. Repke said there was no concern, other than that they wanted to make sure they had a hearing in the neighborhood, and they did, which was attended by one of the residents currently present. He said there was a committee meeting two weeks ago, and a

meeting on Thursday where the public could comment. He said it was his understanding that the district council had asked for the license hearing to be delayed so they could have a hearing in the community one more time, and it was a unanimous vote. Ms. Vang noted that the district council didn’t recommend any additional conditions.

Ms. Vang opened the public hearing.

Reverend Jo Beth Marshall (165 Western Avenue) asked about Mr. Repke’s use of “they,” “them,” and “those”; she said there were more condos than just one and she wasn’t clear on who was invited to the meetings and when. She said she had responded as she could to the information she had, but she didn’t have anything about a meeting last week.

Ms. Vang said she didn’t know how the district council sent out their notifications; she asked Mr. Repke if he knew. Mr. Repke said he didn’t know about the notification process either. He said the district council notified him, and there was at least one resident there.

Pauline Hanson (404 Dayton Avenue) said she had learned about the Tuesday meeting by happenstance during a phone call made to the district council on the Friday before when she called looking for guidance on how to address this issue because the City Council, Mayor, and DEO of the Madison Group had been unresponsive. She said she attended the Tuesday meeting and the issue of notification was raised, and there was a mention from someone that they didn’t post because they had low turnout.

Ms. Marshall asked for clarification of the statement “that equaled 100% agreement” (related to the petition requirement). Mr. Repke said he just meant that from their standpoint, approval of a petition was the same, legally, whether they got all the signatures or got the district council to sign off. Ms. Vang asked DSI staff to clarify.

Ms. Schweinler said that the requirement of a petition needs to be signed by 60-90% of the residential properties within 300 feet of the property line. She said if the petition was under 60%, they could provide a letter stating how they went about getting the signatures and request the support of the district council. She said the district council was an advisory group and not a vote-giving group, but their support didn’t count as a signature. Ms. Marshall asked whether that meant the council got 90% of the signatures. Mr. Haddow said they (applicant) got 39.3% of the signatures. Mr. Repke said then the district council sent a letter of support and they (applicant) sent a letter that explained the signature process. Ms. Schweinler said the district council didn’t get a vote, and the petition was still at 39%. Mr. Haddow said there were 35 signatures out of a possible 89. Mr. Repke said the issue was still able to be in front of the Council for approval, so in a practical and legal sense it was the same. Ms. Schweinler said it wasn’t; she said the Council would make the final decision as to whether they would accept the 39%. Mr. Repke said without the district council’s letter, he wouldn’t have had a hearing. Ms. Schweinler said that was correct.

Ms. Marshall asked for clarification of the purpose of the hearing. Ms. Schweinler said this was a license hearing to consider making recommendations to the City Council. Ms. Vang reviewed the additional condition being recommended, and said the hearing was to review that condition

and any other conditions that might be added to address concerns. She asked Ms. Marshall what her concerns were.

Ms. Marshall said she lived right across the street and her only windows to allow for air faced the patio. She clarified with Mr. Repke that it was a pergola, which was open, and not a pagoda as he had stated. She said she was concerned about noise and loitering, and about any more lighting of any kind. She said the current lighting from Fitzgerald's came right into her living room. She said over the year since the business had become Fitzgerald's there had been problems with people loitering on the corner. She said she had counted as many as 24, mostly men, and had seen open liquor. She said they sometimes came across the street and sat and smoked, and she had been disrespected when she confronted them about smoking within 25 feet of the building. She said she had lived there for 23 years and had never seen a gang of single people hanging around other businesses in the area. She said her concern was that this was a different clientele which made for noise and for "uncomfortableness." She said the change to Fitzgerald's had resulted in increased noise, Salt Cellar (previous business). She said she had attended hearings related to changes at Nina's and the owner had been most gracious. She said the owner of Nina's had changed her hours to close earlier because of issues with that clientele coming across the street and using the bathroom and throwing up, and being not respectful. She said she felt this was a real concern for the neighborhood and a change from what she'd seen in her 23 years there.

Ms. Vang asked Mr. Repke if he would like to respond to the concerns. Mr. Repke said none of that behavior was appropriate and they wouldn't condone any of it, and were as outraged as Ms. Marshall about anyone behaving that way on the street. He said it was his understanding that they tried to do a reasonable job of moving that along, but they didn't police the street. He said he didn't know who the people were who were disrespectful to Ms. Marshall. Ms. Marshall said they had gone back across the street and into Fitzgerald's. Mr. Repke said if they had known who they were, they wouldn't have been allowed back in. He said Madison Group had top-notch restaurants and Justin Sutherland would now be managing. Ms. Marshall said that was related to food, and just represented a plan for the restaurant. Mr. Repke said they couldn't be successful in that area if we don't have a top-notch restaurant. He said they were making a significant investment to add the parking to improve the customer and make it easier for people to get there, and they were looking for it to be a good restaurant. He said it only had a restaurant license and didn't have a bar license, and their customers should be part of a dining experience which was the reason they had the earlier end time than other restaurateurs did. Ms. Marshall said she heard that expectation, but her experience was that people were still out across the street at 1:00 a.m., and staff was not around. Mr. Repke said that was because it closed at 12:00 and they had to have everybody out of the building at 12:30. He said Frost and Costello's (Red Cow) were open later, and if there were people on the corner at 1:00 or 1:30 they were not Fitzgerald's customers and hadn't been their customers for better than an hour and a half. Ms. Marshall said they didn't come to the area to dine at W.A. Frost and go home. Mr. Repke reiterated that their customers had to be gone at 12:30, and if Ms. Marshall was having trouble with someone standing on the corner at 1:00, he didn't know that it was his customer. He said if people were allowed back into their building after 12:30 they'd get a license violation and be closed. Ms. Marshall said she heard what Mr. Repke was saying, but she was talking about the experience she'd had over the past year, although not in the winter. She said over the years she'd witnessed

employees coming out of Costello’s and removing people, but had never seen that at Fitzgerald’s. She said she had been very close, and others had called police. She said what her letter was about and her noise concerns didn’t have to do with what was inside the building. Mr. Repke said he saw Ms. Marshall’s letter and had communicated it to Mr. Crockarell, and he was concerned about and said if they’d known who it was they wouldn’t have let them in the restaurant. He said it didn’t do them any good to have people behaving like that, and that wasn’t the kind of restaurant that was going to be successful on Selby. Ms. Marshall asked what options she had, even at 12:00, short of calling police. Mr. Repke said he wished she would call the police. Ms. Schweinler and Ms. Vang also recommended that Ms. Marshall call the police. Ms. Marshall said her other concern was about noise coming from the patio. Ms. Vang asked whether noise reduction had been a consideration in the design of the patio. Mr. Repke said they could do certain things to mediate it, such as hanging plants, but it was outside and that was the purpose of the patio. He said Frost had had a patio successfully for 30 years. Ms. Vang recommended that the applicant look into ways to minimize the noise impact.

Ms. Vang stated that the letter from Reverend Jo Beth Marshall had been received, and that she had testified.

Mike Costello (393 Selby Avenue) said the original drawings showed exit and entrance to the new parking lot through his lot, but the new drawing was different so he was happy about that. He said there was a 2-foot area where the curbs were that prevented the patio from coming right up against his building. He said he was all for patios and more business in the area, and thought it helped everyone. Mr. Repke asked Mr. Costello if he had any problems with the parking lot on the other side. Mr. Costello said he had no problem as long as the alley was kept clear. Mr. Repke asked Mr. Costello if he thought more customers would use the new parking lot than used the lot at the YWCA. Mr. Costello said if it was going to be a nice lot, as in the drawing, then yes, and it would be a nice addition to Selby.

Ms. Vang noted that Mr. Costello’s letter and testimony had been received.

Elmer Pierre (165 Western Avenue N.) said his concern had to do with patio and the amount of noise, and the idea of 100 people outside having a good time would upset him. He asked Mr. Repke how high the wall would be facing Selby. Mr. Repke said he believed it was about four feet high and then they intended to have plants above it, but if somebody thought another foot would alleviate noise, it could be added. He said the main function of the wall was to control access. Mr. Pierre said Red Cow had done a really good job of handling noise from the patio after 10:30 with a capacity of 24, and Fitzgerald’s was looking at three times that many people. He said his concern was the noise level, and to him it was changing the atmosphere in which they lived. He said he had also lived there for 23 years, and was relieved to hear about proposed parking, as there was a high volume of traffic. He said he was concerned with the late serving hours, and he noted that the Fitzgerald’s website indicated 7 days a week with happy hour from 10:00 p.m. to 1:00 a.m. One of the people in the gallery showed Mr. Repke the website on her phone and said there was also a sign outside saying now open to 1:00 a.m. Mr. Repke said they only had a license to midnight, and that shouldn’t be happening.

Ms. Vang asked Mr. Pierre what time would be ok to make this patio work. Mr. Pierre said 10:00 p.m.; he said he believed Red Cow stopped serving outside at 10:00 or 10:30. He said he was not anti-business, and it was great having people come into the neighborhood, but he was concerned about the ability to sleep at night. Ms. Vang noted that Mr. Pierre’s letter and testimony had been received. She asked Ms. Schweinler and Mr. Haddow if they would look into the sign stating closing at 1:00 a.m. Mr. Haddow said they would. Mr. Repke said he would too.

Pauline Hanson (404 Dayton Avenue) said her concerns were parking and safety in the neighborhood. She said with the new lot and discontinuation of the agreement with the YWCA, there would be a net three new spots. She said there had been different renditions of the site, and an earlier notice stated a 10:00 closing, and now it was midnight. She said she believed the patio would be full, with overflow in the restaurant. She asked what information was presented with the petition. Mr. Haddow read the info on the petition, which stated there would be no music or live entertainment on the patio, the hours of service would follow their normal restaurant hours, and they were working on purchasing the Urban League property for additional parking, the patio would seat approximately 125 people, and the Summit University Planning Council supported the patio and parking plan.

Ms. Vang said she had a question about the additional three parking spaces; she asked staff to walk through the parking calculation. Ms. Schweinler said the parking calculation was based on the size of the building and the fact they were a restaurant, and was dealt with within the site plan. She said her understanding, and noting they didn’t have a final site plan, was that they were required to have 28 spaces designated for Fitzgerald’s.

Ms. Hanson expressed concerns about the impact of employees parking on the street. She said she had to park a block-and-a-half to two blocks from her home, and was in essence a valet parker for her elderly father and her daughter with twins. She said she was a taxpayer and maintained the street but couldn’t park there. She said deliveries for the restaurant drove down Dayton, emergency vehicles responding to Selby came down Dayton, and Dayton was becoming a thoroughfare. She said there was a lot of pedestrian traffic and she was concerned about safety issues related to ingress and egress for parking, and the number of driveways within close proximity. She asked how that would be regulated. She said the area was in historic preservation, and she asked that that be considered. She said she wondered how many parking tickets were issued in this area every single day. She asked that the residents of the neighborhood and their current needs and the historical neighborhood be considered first. She said they already had restaurants with patios in their neighborhood, and she wanted to be able to live in the neighborhood safely and invite her family over. She said she liked the diversity of young and elderly, and felt if they made it impossible for people to get in there driving, they would have only young people living in the neighborhood. She said she felt this was premature before addressing traffic safety concerns of traffic, and didn’t think waiting to expand the patio would prohibit tearing down the building and adding parking.

Ms. Vang asked if Ms. Hanson had ideas for increasing safety. Ms. Hanson said less traffic; she said traffic was bottlenecked in one spot and racing around the block three or four times to get parking spots that were few and far between. She said she thought her block needed to be permit parking only. She said Mr. Repke acknowledged that employees parked on the street, and that he

tried to encourage them to park at the YWCA but they don't. She said the same clientele Ms. Marshall spoke about was ending up on her street, and with the Urban League going down she'd have it in the front and back of her.

Ms. Vang said permit parking was outside her scope; she referred Ms. Larson to Public Works. She said traffic safety was also controlled by various other departments. She asked Mr. Repke how the parking lot would be regulated. Mr. Repke said the parking lot would have a control arm so Fitzgerald's customers would have free parking. He said if a Red Cow customer wanted to enter they would require a high-priced credit card payment to stop them from being there. He said it was supposed to be exclusively their parking. Ms. Hanson said the behavior was her concern; Ms. Vang said that was her concern too. Mr. Repke there would be cameras on the outside of the building, and he would assume it would make sense to have cameras in the parking lot as well. He said if Ms. Vang wanted to say they needed security cameras in the parking lot observable by whoever was observing the other cameras, that was a reasonable condition; he said they had a liability issue. Ms. Vang asked how often the cameras would be viewed by staff. Mr. Repke said he didn't know. He said they could have film-back cameras; that would protect their interests, and he didn't have a problem with it, but if she was suggesting that someone should be watching the parking lot through a camera 24/7, that was insane. Ms. Vang suggested that someone could be monitoring the parking lot to ensure that as people were exiting (interrupted)... Mr. Repke said at that point it was cheaper to keep them at the YWCA because nobody was watching the parking lot there. He said if you get into a ridiculous condition it made sense to sell the land back for redevelopment and not do the parking lot. Ms. Hanson said Cossetta's had a parking attendant. Ms. Schweinler said Cossetta's was downtown. Mr. Repke said Cossetta's had a huge amount of traffic compared to what they did and people had to fight for those spaces. He said they were hoping (to control) that by having a little green slip (for parking validation for customers). Ms. Larson said the parking in her neighborhood was being fought for. Mr. Repke said the whole idea of doing this and the reason the district council was so supportive was that they were going to have 28 visible spots rather than 14 hidden ones. He said they had met their requirement legally with the current parking but were going way beyond that and making a significant investment to improve the parking situation. He said he agreed that 14 spots at the YWCA made the license requirements for them, but people didn't decide to park there. He said people would decide to park in this lot because it was right in front of them.

Ms. Vang said Ms. Hanson did raise a legitimate question and Mr. Repke was going to get back to her in terms of current and proposed staffing, what kind of advice is being given to staff regarding parking.

Ms. Hanson asked that residents and quality of life be considered, and that parking and traffic safety be addressed first before adding 100 people. Ms. Vang said that was outside of her scope; she said a larger study could be requested by residents. Ms. Schweinler said that would be through Public Works. Ms. Vang encouraged Ms. Hanson to work with the district council to look into a traffic study.

Ms. Hanson asked that Ms. Vang recommend to Council that the license expansion be delayed until other issues were addressed.

Mr. Pierre said he thought of one more thing about noise abatement. He said Sweeney's on Dale Street had a patio with a plaster wall, and he wanted to point that out as noise abatement. Ms. Schweinler said Sweeney's did have many noise complaints and they put in the rock wall and fireplace because of an adverse action.

Ms. Vang stated that Ms. Hanson had testified so she wouldn't read her letter into the record and noted that her letter and testimony were accepted into the record.

Jennifer Nelson (165 Western Avenue) said she didn't have personal concerns other than those already brought up about safety and noise. She said she would like the restaurant to consider stopping liquor service at 10:00 p.m. or 11:00 p.m. and have on-site security until 1:00 a.m.

Ms. Marshall asked if they could request that a sound engineer work with the applicant. She said they had a lot of problems with sound at Nina's, and the sound engineer was helpful to Nina's and to her. Ms. Vang asked how that came about. Ms. Marshall said there was a public hearing because there were complaints about noise, and the powers-that-be requested a sound engineer. She said this was under previous ownership. She said everyone wanted a productive business but also didn't want smokers and people over-drinking in her front door space.

Ms. Vang closed the public hearing and offered Mr. Repke the chance to respond to suggestions.

Mr. Repke said he appreciated neighbors coming to the hearing and for providing their comments; that was part of the reason they went to the district council so soon, and he wished there had been better notification to those present. He said there was a significant number of residents in the area who enjoyed the patios in the neighborhood. He said Selby & Western had made radical changes in the last 50 years, and was an up-and-coming neighborhood, and their plan was to have a wonderful restaurant. He said it was a top chef bringing in good food, and they knew the clientele base they wanted, and it was not the hard drinkers or party atmosphere. He said he thought it would be a good addition and the parking would be better utilized with them having the patio and acquiring the additional property for additional parking.

Ms. Vang asked how patio staff would be monitoring noise and advising people to keep the volume down. Mr. Repke said they understood there was the potential for complaints, and would do what any responsible bar owner would do – confront people who were making too much noise because it didn't work well for their business. He said in summer time that's where most of the staff would be.

Ms. Vang asked staff whether they had a condition requiring a sound engineer for patios. Ms. Schweinler said they had for The Lexington and Ox Cart, as part of site plan review. She said a sound engineer could advise Madison Equities. Mr. Repke said Ox Cart was one of their restaurants. Ms. Vang asked whether it would be unreasonable to ask that Mr. Repke go back to the architect and have a sound engineer look at how that could be minimized. Mr. Repke said he would write that down; he said one limitation was that they didn't own the wall to the west and couldn't make modifications to it.

Ms. Vang said several people had talked about a reasonable closing time for the patio. She said she knew Madison Group wanted to have the same hours as the restaurant, but considering the concerns raised and the earlier closing hours of other neighborhood patios, she wondered whether Mr. Repke would be willing to take this back to the client, in terms of matching the earlier hours, as a good faith effort to try to address community concerns. Mr. Repke said he would be happy to take it back to his client. He said the main concern was going to be that this was their main summer clientele, and they had to close at 12:00 a.m. which meant service was stopping some time before that. He said he would go back and suggest maybe 11:00 p.m. to stop service, at least on the week nights.

Ms. Hanson referred to a letter dated October 1, 2018 from Mr. Crockarell indicating hours of operation would be 11:00 a.m. to 10:00 p.m. Sunday through Saturday. Ms. Vang noted that the letter was part of the application packet. Mr. Repke said if Jim (Mr. Crockarell) said it, it was up to Ms. Vang. Ms. Vang asked Mr. Repke to take it back to his client; she said it was in the letter, and residents had raised it as a concern, and if Mr. Crockarell was agreeable she would add it as a condition of a patio closing time of 10:00 p.m.

Someone from the audience said one of her main concerns was security, and she had suggested an on-site security officer. Ms. Vang asked staff under what circumstances security staff was required. Ms. Schweinler said during the adverse action process if there had been a problem. Ms. Vang asked if there had been any adverse actions against Fitzgerald’s in the time they’d been open. Ms. Schweinler said no. She said typically the total number of patrons being served didn’t increase with a patio, but patios were typically used 21 times a year. She said in other places with remote parking for liquor establishments, they had asked that the business have someone out there picking up litter during the hours they were open. She said that was another “eyes on” but they didn’t want anyone to risk their own security, and didn’t want to recommend conditions that would put people in jeopardy. She said she always recommended at these hearings that if neighbors saw something they should call police. She said the idea that they were already voluntarily putting cameras out there made a big difference because people didn’t want to be watched doing something stupid, and the cameras gave the police another avenue to find out what was happening. Ms. Vang said she liked the camera idea and it was something she’d like to explore as well for Mr. Repke to take back to his client.

Ms. Hanson suggested that they retain YWCA parking and have parking for people or staff to utilize. Ms. Schweinler said that was an arrangement they (the business) made and not a license condition, and she wasn’t sure how it was working because Moscow on the Hill was required to have a shared parking agreement with the YWCA. Ms. Hanson said that it was more addressed to Mr. Repke. Mr. Repke said he would bring that back. Ms. Schweinler suggested making it mandatory for staff parking at YWCA. Mr. Repke said he was thinking of those back spaces for that too.

Ms. Vang said there were a couple of possible conditions that Mr. Repke would take back to his client for consideration. She said she would withhold her recommendation pending that, and pending the review of the site plan. She asked whether Zoning had seen the new revised plan. Mr. Repke said the only real change was moving the curb cut to the center. He said the tables inside the patio were just an example.

Ms. Vang said she was notified on a letter to Mr. Crockarell and Ms. Kortgard, having to do with Liquor On Sale stoppage, and there was some suggestion of change in ownership. Ms. Schweinler said there had been several articles in newspapers and the City received concerns from Gambling and Alcohol Control and that ownership of the establishments had changed. Mr. Repke said the ownership hadn’t changed. He said the new chef was now managing, but it was still owned by Madison.

Ms. Vang said going forward, everything would be dependent on Mr. Repke following-up with his client and getting back to her, and then Ms. Schweinler would start drafting some preliminary conditions, depending on how the conversations went.

The hearing adjourned at 3:44 p.m.

Following the hearing, several proposed conditions were worked out on May 14, 2019 and were agreed to by the Madison Equities Group. They are as follows:

Existing License Conditions

1. Licensee agrees to operate the establishment in compliance with Section 409.02 of the City of Saint Paul Legislative Code as a "Restaurant".
2. Licensee agrees to close the establishment at 12:00 a.m. midnight. All patron/customers shall vacate the premises by 12:30 a.m. each day of the week as per City Zoning Code (parking requirement) and Section 409.02 of the City of Saint Paul Legislative Code.

Recommended Additional License Conditions

3. Any outdoor activities related to an outdoor seating area shall comply with applicable State and Local rules and regulations, including but not limited to Chapter 293 Noise Regulations of the City of Saint Paul Legislative Code.
4. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the parking lot at 401 Selby associated with the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.
5. The outdoor patio seating area shall close by 10:00 p.m. each day of the week. (The use of this patio will require sign-off of on all permits for both the patio and parking lot being constructed at 401 Selby and 173 Western.)

6. Licensee will retain an acoustic engineer to perform a noise impact analysis and follow all recommendation for mitigation of noise impacts in compliance with state and local rules and regulations.

The Conditions Affidavit was signed and submitted on May 20, 2019.