

LICENSE HEARING MINUTES
The University Club of St Paul, dba The Commodore, 79 Western Avenue N
Thursday, August 14, 2:00 PM
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Legislative Hearing Officer

The hearing was called to order at 2:00 PM

Staff Present: Dan Niziolek, Department of Safety and Inspections (DSI) Deputy Director; YaYa Diatta, DSI Zoning Manager (remote participation)

Licensee: John Rupp, Applicant/Owner

Others in Attendance: Tim Sullivan, 1068 Lombard Avenue; Kim Ward, 79 Western Avenue N, #606; John O'Brien, 675 Goodrich Avenue; Elaine Elnes, 79 Western Avenue N, #202; Charles Silversen, 79 Western Avenue N, #202

License Application: Class B Entertainment License and to modify existing license conditions to permit the establishment to provide entertainment events to their customers for a business with the following existing licenses Liquor On Sale - 181-290 Seats, Liquor On Sale - Sunday and Limited Entertainment B licenses

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's office to take an adverse action on the application, which could involve review by an administrative law judge.

Minutes:

John Rupp: I've owned the property for 40 years. During that time, I've operated the business where entertainment is provided by customers renting the space. This change would allow me to also run entertainment events like shows. Right now, only private parties can do that. This is a minor change.

Dan Niziolek, Department of Safety and Inspections (DSI) - Licensing, gave a staff report for licensee The University Club of St Paul, (License ID# 43940), d/b/a The Commodore, located at

79 Western Avenue N. The application is for a Class B Entertainment License and to modify existing license conditions to permit the establishment to provide entertainment events to their customers for a business with the following existing licenses Liquor On Sale - 181-290 Seats, Liquor On Sale - Sunday and Limited Entertainment B licenses.

DSI is recommending approval with removal of the following license conditions:

- Entertainment will be provided by persons renting the licensed premises for wedding, anniversary, retirement, or similar family and/or social function(s).
- The licensee shall fully comply with and be subject to the requirements of section 411.04 (b) (5), (6), & (7).

DSI is also recommending that the following license conditions remain:

1. The licensee shall be responsible for compliance by all renters and users of the licensed and contiguous premises.
2. Install storm windows to reduce the penetration of noise on windows facing Holly Avenue and install locking mechanisms to insure that these windows cannot be opened during events with music or other entertainment within six months.
3. Install drapery capable of absorbing sound, reducing sound penetration and preventing strobe light penetration on windows facing Holly Avenue within six months.
4. The south (Holly Avenue) door will be secured and a Crash Bar and sounding device installed to insure that this door is used as an emergency exit only. This condition must be met immediately.
5. All loading and unloading will be done through the service entrance located on the north side of the building. Blocking of driveways and exits by vehicles will be prohibited and unattended vehicles will not be allowed to remain in the fire lane.
6. A qualified security guard will be on the premises before, during and after the scheduled time of the event in order to prevent excessive noise, illegal parking, public drunkenness or violations of rules for use of the property. One security guard will be on duty for events less than 100 persons and two security guards or one guard in direct communication with staff for events over 100 persons.
7. Entertainment will end at 12:00 midnight.
8. There will be full compliance with City ordinances including the noise ordinance and those regulating the consumption of alcohol outside of the building.
9. A phone line will be maintained to allow residents to contact Commodore staff directly during all events.
10. A smoking area will be designated that is agreeable to the residents association. Smoking in and around other entrances and/or exits will be prohibited.
11. The property and ground will be cleaned up by the morning following any event.
12. Appropriate signage will be installed to assist in enforcement of City ordinances, license restrictions and rules regarding use of the property.
13. A listing of upcoming events will be posted in an appropriate location. A weekly update is suggested.

The District 8 Summit-University Planning Council was informed of the application by the applicant. Building conditions, N/A; Licensing approved with conditions; Zoning approved.

Hearing Officer Vang: Do you have any questions at this time?

Rupp: No.

Hearing Officer Vang: Do we have an updated conditions affidavit?

Niziolek: Not with me.

Hearing Officer Vang: Do you agree to these conditions?

Rupp: Yes.

Hearing Officer Vang asked the applicant to talk about the business: history, hours of operation, number of employees, etc.

Rupp: The place was built in 1920, and public entertainment was going on, so it's been 100 years. I've been operating this business for 40 years, and 20 years or so I began running it as a private event space with private entertainment. I began to explore the option of live public entertainment, but then COVID hit. We have one of the most famous entertainment venues in the city, and I want it to be open for the public. It's also a business decision. I can't reopen the space to the public without booking live entertainment as part of the business. Without the public entertainment, we will just stay a banquet venue and be closed for everything except private events. The space deserves live entertainment, as has been occurring since 1920.

Hearing Officer Vang: What types of entertainment will you offer?

Rupp: Jazz, poetry slams, music festivals, performing arts groups, things like that. It would be eclectic. The space would still be available for private events. We would like to be open 7 days a week, but until business picks up, the plan is to be open from Thursday through Sunday. It won't be amplified music for things like hip hop or rock and roll.

Hearing Officer Vang: Condition 13 says that a listing of upcoming events will be posted, with weekly updates suggested. Was that list ever posted?

Rupp: Probably not. This idea has been shelved for a while. We've been teetering on the verge of bankruptcy ever since the pandemic. People will criticize my performance, and some of that is legitimate, but nothing material. This is a first-class operation. WA Frost (Frost) is in its 50th year and I've had the University Club for 41 years. They've had no issues.

Hearing Officer Vang: Will you have any issue with that condition going forward?

Rupp: No. We will be posting the schedule online.

Hearing Officer Vang: We may want to re-word Condition 13 to clarify what "appropriate location" means whether the notice be available digitally or physical posting to allow for more residents to be aware. I read the condition as being currently available in a physical space.

Niziolek: We can more clearly define it.

Rupp: An online posting is better, so it can be more consistently up to date.

Hearing Officer Vang: So, your business model is adding public entertainment, in addition to private?

Rupp: Running events can be a headache. The customers book entertainment they are familiar with. I've been in the restaurant business for 50 years. Private events are harder to manage people. They can welcome people who drink too much. This will be better than just an event venue because those are harder to control.

Hearing Officer Vang: Do you have security for private events?

Rupp: I have competent employees. We've never had problems with fights, weapons, or drugs. We've seen hundreds of thousands of customers at Frost. We have more staff in the room than with a private event, so it's easier to manage.

Hearing Officer Vang: Are there similar businesses in the area or is this the only one of its kind?

Rupp: High Hat is a small business that's similar. The owner, Michael Noyes, used to be the general manager at Frost. We've talked about creating Cathedral Hill entertainment venues. There's not a lot of live entertainment in the neighborhood. Sometimes High Hat or Sweeney's have live music. The plan is to have The Commodore be the dominant player. We will be rebranded in that way. People can expect to find entertainment there. A letter asked us to close at 10pm, but that is not doable. To be viable, we need to have two shows a night when we're open. The second one will likely start at 9pm and be done around 11pm or 11:30pm. We are thinking of it as a district-wide strategy.

Hearing Officer Vang: Do you plan to open 7 days a week?

Rupp: We will be open Thursday through Sunday initially. We will be competitive with Crooners or The Dakota, both in Minneapolis. We're still going to have private events. People can't just drop in every night. They will need to check availability.

Hearing Officer Vang: Are you operating yet?

Rupp: Just private events is all we're allowed to do. Frost is doing outdoor events, but I lay off about 30-40 summer staff as it gets colder, which is a lot of value and would like to move it to The Commodore as the seasons change.

Hearing Officer Vang: How many staff will you have?

Rupp: We have 100 at Frost in the summertime. 30-40 people will be at The Commodore at a time. It will be run together with the University Club to keep labor costs in check. People rotate between the two locations.

Hearing Officer Vang: What will be your hours?

Rupp: We are considering brunch on Saturday and Sunday, though that's being reevaluated. If we did weekend brunches, we would open at 4pm on Thursday and Friday, and 11am on Saturday and Sunday.

Hearing Officer Vang: The footprint is big. Is it like a banquet hall?

Rupp: Yes. The building was built in 1920 with the ballroom. John O'Brien, who's here, would know better. Following the 1979 gas explosion, the ballroom went away. O'Brien, who's here to speak against, me, his father rebuilt it. The space you're pointing to is replacing the ballroom

downstairs. We're functioning the way the building was used in 1920, with the ballroom moved out of the basement and onto the main floor.

Hearing Officer Vang: So, it's two levels?

Rupp: It's split floors. There's a 4-foot elevation change from entrance up to lounges and dining rooms that are raised. The elevator just allows accessible movement between the two.

Hearing Officer Vang: Are these strobe lights on the site plan?

Rupp: We have no plans for strobe lights.

Hearing Officer Vang: Two locations on the map indicate where strobe lights are.

Rupp: Those are stages.

Hearing Officer Vang: My mistake. What do the two stages mean?

Rupp: The stars (on the site plan) are locations not within the 6-story apartment building. No one is singing or performing underneath residential units. It's essentially an adjacent building. The middle stage location is a space about as big as the singer and an accompaniment standing. It sounds like a bigger thing than it is. That is for background music with a lighter cover charge. That might be used regularly, but as I said it isn't inside the building. Both of those areas are not inside the condominium. They're separately owned properties. The way the doors that connect the two spaces work is that if somebody is performing there, you can see that person in the other area. There's flexibility depending on depending on attendance. One stage or the other will usually be used at one time, though both being used is possible as we transition from one event to the other. We would not have two venues playing at the same time all evening.

Hearing Officer Vang: Is last call at 11:30pm?

Rupp: Yes.

Hearing Officer Vang: Are staff trained to check for underage drinking? Are underage people allowed in for shows?

Rupp: Yes, staff are trained. People under 21 can enter for shows if they are accompanied by an adult. We won't serve alcohol to underage people. I've never had an allegation of that.

Hearing Officer Vang: Will you be directly managing?

Rupp: I live across the street. The way I operate right now is I have one operational guy and then below him are various managers. That guy reports to me. He floats between the 3 locations. Almost every day, I visit all 3 places just to make sure that there's no issue.

Hearing Officer Vang: Are your staff readily available if a neighbor has an issue?

Rupp: We could do a better job and are willing to do so within reason.

Hearing Officer Vang: Have you ever had instances of misbehaving customers?

Rupp: I don't have many. Sometimes we have drunk family members at private events. We have staff who can escort people out if need be. I have a good relationship with police and don't get ignored by them, though that really hasn't been necessary. We don't have that clientele.

Hearing Officer Vang: Do you have video surveillance?

Rupp: Some, but it could do better. We don't need it. We have employees there. The Frost patio has 30 staff out there on a good summer night.

Hearing Officer Vang: What is the parking situation?

Rupp: There's a parking lot with 84 stalls. I don't control it. It's owned by O'Brien, who wrote a letter against me, and the condo association. I'm an owner within the condo association, so it is a parking resource. Tangentially related, is that the City could add parking by removing the one-sided street parking restrictions in the neighborhood. I have tried to get this changed for years. I moved into neighborhood 55 years ago. Western was 2-sided parking then.

Hearing Officer Vang: So, Holly Ave and Western Ave are one-sided parking only?

Rupp: Yes. There used to not be as much of a need for off-street parking because people were working downtown or at the capitol and taking the streetcar.

Hearing Officer Vang: Do you provide parking?

Rupp: People can park in the north lot along with residents' second cars or guests. The demand profile of parking will be easier to manage because a shift to fewer private events will cause less emptiness with a sudden spike.

Hearing Officer Vang: How are customers directed when you think an event may exceed parking capacity?

Rupp: Frost has large events and less parking. People find places or walk. For signage, the lot says it's for the bar and restaurant, the squash club, and the condo association. The sign was put up by condo association. I noticed that Eric Lein wrote a letter about the confusion of people who pull into the wrong driveway. I know the signage isn't perfect, but I don't control it.

Hearing Officer Vang: Is parking information posted on the website?

Rupp: Probably. If it's not there it will be. I will check.

YaYa Diatta, Department of Safety and Inspections (DSI) - Zoning, gave a staff report. This is a permitted use for the area. There are no parking minimum requirements for this application.

Hearing Officer Vang: Do you have people being escorted out during closing?

Hearing Officer Rupp: The manager on duty and host will be watching the parking lot and can guide people if need be. We have signage for people exiting to encourage them to respect the residential area.

Hearing Officer Vang: Has there been any enforcement action against Rupp in the last few years?

Niziolek: Our computer downs are down, so I'm basing this on recollection. There was adverse action related to building permit issues. That was resolved successfully. There was disagreement over which permits were required, which led to adverse action. This was related to the west dining room and not operations. The action did not result in new conditions being placed on the license.

Hearing Officer Vang next invited interested parties to speak.

Tim Sullivan, 1068 Lombard Ave: I'm opposed to the application. If it's approved, I want additional conditions implemented. I want to be precise in these issues. Rupp says he is the owner, but there are entities involved here that are bigger than a single person. The property is owned by 79 Western LLC. That entity has a liquor license at this location. The University Club is not at this location. We don't know if there is a lease or rental agreement between 79 Western LLC and The University Club. This is not ready for consideration because we don't know who is operating it or the arrangements. The University Club is a nonprofit operating from a remote location. We need to know who is legally liable and responsible. There also appears to be an entity called The Commodore. That is not precise. These entities are at play, not just Rupp. This matters for enforcement and insurance. Some letters note problems of compliance in the past. It's not clear who matters of noncompliance are enforced against. There was a \$24,000 fine for operating an unlicensed facility. There was consideration of if property taxes were paid. If they are not current, this should not be considered. Pivoting from the legal considerations, there are also issues of noise, access, parking, and entertainment. There are significant fire safety issues as well. The fact that I should have to compete with customers for parking is a problem. For security, it's not enough to just say you have staff there to police a crowd. That does not make people feel safe in their homes. For noise, the Dakota Jazz Club has 2 shows per day and density far beyond what homeowners here should have to experience. This consideration should not proceed.

Niziolek: The inspector who did the final review is out right now, which is why I'm here. I can go back to the office once our records are up just to confirm details. Whenever we have a license application, we are going to confirm if the property owner leases to the operator or if they are also the operator. We confirm that everything has been done correctly to make sure there's no issues or lack of clarity. Regarding taxes, we have to make sure taxes are current or that there's a plan in place with the state to address that. At this time, we have not reviewed that. We will look at that before issuing a license.

Hearing Officer Vang: How are complaints handled and investigated?

Niziolek: If it's called into the Police Department, they handle that. If it's called into the Department of Safety and Inspections (651-266-8989), we investigate.

Sullivan: What happens if a licensee wants to operate at a place they don't own?

Niziolek: They can lease. They need to show that they have the ability to operate there.

Sullivan: What if there is a 2nd licensee at the same place?

Niziolek: Who are you saying are the two licenses?

Sullivan: It appears that the University Club and an entity called The Commodore both have

licenses there.

Niziolek: I will look into this when our records are back up. You can't have two liquor licenses at the same licensed premises. Licenses are not transferable and need to be done through applying to the City.

Hearing Officer Vang: And that is applied separately.

Niziolek: Yes. All 3 businesses mentioned today have their own license.

Sullivan: I would like that to be verified. The license number on the application is for the University Club.

Niziolek: You can have a business address but then operate elsewhere. If you are a company and have 6 establishments, you could have a lease to operate at those different locations. They would have separate business address, but their license would be attached to that operating property.

Sullivan: Would a license at a physical location be transferable to a second physical location? You need a second liquor license, right? To have an application for an amendment, you'd have to have the applicant be the license holder. If there were a license for a given property, it couldn't be for a remote property?

Rupp: The University Club has its own license. The Commodore is the trade name for this license. The real estate is owned by 79 Western LLC and is rented to the University Club, who does business as The Commodore. I own all corporations 100%.

Hearing Officer Vang: Who is responsible if enforcement action is taken?

Rupp: The license holder, the University Club.

Niziolek: The property owner has to be interested, though, because revocation will keep the premises from being able to serve liquor for 15 years. It's the license holder is who we hold accountable, though.

Rupp: The University Club has its own insurance for operations like liquor liability for each location, and property insurance. We have property insurance that covers the real estate in each of the 3 places, namely the owner. There is no legal entity called The Commodore.

Niziolek: I will confirm all of that.

Hearing Officer Vang: Because of your testimony, I will not read your letter right now, though I will note it is in the record.

Michael John O'Brien, 675 Goodrich Ave: My comments today supplement my letter. The Class N Notice says licenses are not transferable. The 1993 license is for the University Club. How is it that a 1993 license for them can be applicable to The Commodore? Why did he not indicate whether he was renewing or asking for a new license in that 1993 application? You can see that it's left blank.

Niziolek: So, what's the transfer?

O'Brien: If he's renewing his license that sounds like he's renewing his University Club license at the Commodore. If he's asking for a new license that would go through a whole string of requirements, neighborhood approval, and whatnot. I do not remember that ever happening in 1993.

Niziolek: That could be just a renewal.

O'Brien: He didn't indicate that. It should have been flagged and rejected back then.

Niziolek: Staff would have understood it as a renewal application. I can confirm that when our records are back up.

O'Brien: Rupp also says he owned it for 40 years. I owned the banquet room. My father built it in 1976 along with the squash club. He built what was then the banquet room. Rupp acquired it from us in a lawsuit back in 2001. For him to portray that he's always owned it for 40 years, that may relate to part of the property, but it does not relate to this room.

Hearing Officer Vang: Who owns the room?

O'Brien: Rupp. He won it in a lawsuit. It has its own pin number and its own separate identity, having been a squash club property. It is now attached to the condo association. In my opinion and in the opinion of my legal counsel, the people using that room have no right to park in the parking lot whatsoever. To suggest that his parking rights extend to that room is not true. I own 3/5 of the parking lot and am working with a developer. I'm wanting to sell my property. That could mean the part of the lot that I own is developed and that it could be reduced by 3/5. There cannot be an assumption that there is plenty of parking.

Hearing Officer Vang: Are spots clearly delineated?

O'Brien: Stalls are marked yellow and there is signage. I have a small area I want just for my members. That could be disputed and if it wound up in court, I hope it does. It was done in response to my members not having parking. They also get blocked in when long lines of cars are waiting for an attendant to park their car for them. We haven't talked yet about the Fire Certificate of Occupancy (FCO). In going through City records, it seems as though there have been long stretches where he's been having events and there has been no FCO. How is that possible? I know there was a \$25,000 fine mentioned earlier. Customers expected are 300 to 600. Where will they park? That is a nuisance to the neighborhood. Despite not having parking minimums, St. Paul still has the responsibility to require things for reopening, like off-street parking. It's high time that the City steps forward and says that in the interest of public safety, for fire safety reasons, for fire truck navigating reasons, for pollution reasons, for all the other reasons that are the problematic with bars and restaurants and nightclubs, that to avoid an ongoing nuisance for the neighborhood, Rupp needs to provide dedicated parking. Rupp could buy me out if he wanted to. He could buy my share and put a 2 or 3 level parking structure on there. If he wants 600 people coming through, he has that option. To grant this license and allow him to destroy this neighborhood with these cars is unfair. The condo association also has a declaration covering the property saying that any encumbrance of the common elements requires prior written consent of all owners. Has the association ever had a 100% vote on allowing Rupp to encumber the common elements like the parking lot? That needs to happen. It also states that no alterations to the bar area can happen without 75% approval. Has that happened? Before the City offers any kind of license there should be a vote from the association, there should be clarification on parking, and I unfortunately forgot a 3rd thing I was going to mention. You need

to have a clear conversation about fire trucks being able to get in and out. There is only one entrance to the parking lot. When does the City step in? You can't just say you don't have anything to do with parking. The area still needs to be safe. I remember the previous banquet room. It was underground and became the garage. Now, the sound is going out into the street. It will be a major problem for the neighbors. The space is not conducive to live entertainment.

Hearing Officer Vang: Because of your testimony, I will not read your letter right now, though I will note it is in the record.

Niziolek: The license was suspended through the adverse action I mentioned earlier. Through that, they were assessed \$21,907 for the administrative law judge process, \$2,551.51 for deposition costs, and the \$500 penalty itself (City Council RES 20-12). Because they weren't paid on time, the license was suspended on October 13, 2020 (RES 20-547) and reinstated August 9, 2021, after payment was made. All occupancy disputes were resolved at that point. It was pertaining to the license because you can't operate a space without an FCO.

Hearing Officer Vang: This did not limit their ability to switch types of entertainment though. Were they forced to close?

Niziolek: Yes.

Hearing Officer Vang: Is this application subject to fire code review?

Niziolek: That's part of our determination. There was substantial fire review over the dispute with the west dining hall, so this property has been reviewed thoroughly.

Vang: But it's not at issue here?

Niziolek: No.

O'Brien: What will the violations be for punishments? It's hard to get him to pay up. He has judgements against him that he hasn't paid. Many are still active. If Rupp is found liable, there will be fight. It is not easy to collect on a judgement against him. I have documents that show that.

Rupp: I have substantial resources.

Hearing Officer Vang: Property taxes need to be up to date before license issuance, right?

Niziolek: Yes.

Hearing Officer Vang: Feel free to add your documents to the public record.

O'Brien: I will.

Kim Ward, 79 Western Ave N, #606: I object to the application unless there are conditions to accommodate the residents in the area. We've had issues with events like weddings where their fun comes at the detriment of my home. Most residents want to be accommodating but it can be challenging. Rupp said there would not be amplified music, but all the weddings have had that. I want clarification. I support the bar and restaurant reopening. I'm just concerned about having a nightclub venue with two shows, like the Dakota. When the bar was open Thursday – Saturday,

there was never parking until 9pm. 2 shows a night makes that even more challenging and brings more noise concerns for 4 nights a week. Even though the stages are not in the building, the building is concrete, and sound reverberates through the building. I want there to be no amplified music and for there to not be a second late show every night. This would be disruptive. I also want clarification on if there will be full-service meals, or will it just be a bar? Many existing license conditions have also not been complied with.

Hearing Officer Vang: Which ones?

Ward: #2 relating to storm windows, #3 relating to drapery, #4 relating to the crash bar on the door... There are two Holly Ave doors. People go outdoors to smoke and go out the emergency door directly below me. Their spoke blows right in my window. There is no qualified security guard. I would think they need to be identified. I can only think of one event with a security guard, which was a high school prom type of party. The phone line is also not complied with. I can't ever get a hold of them. There are also gas smells in the back hallway and trying to get someone to open the doors has been challenging. I'm also often out there the next day picking up trash like cups and glassware. We had a wedding and protest happen at the same time, and people from the wedding blocked the parking lot off with cones so protesters couldn't park here, but it blocked us out too. I had to move them myself.

Rupp: For the amplified music, I misstated. There will not be heavy amplification, and we will comply with City sound ordinance, and we have sound measuring equipment. If we aren't in compliance, that can be measured, and we could be found not in compliance. If City ordinance changes, we will comply with that. We want to stay a step ahead.

Hearing Officer Vang: Who should be contacted about issues with sound or people placing cones to block traffic?

Rupp: Yeah, that should not have happened. Someone could have removed them.

Hearing Officer Vang: Or they could have called someone who was responsible who could do so.

Rupp: It won't happen again. We will make it clear who people can call for either private or public events.

Hearing Officer Vang: I'm concerned about residents not being able to contact anyone about the gas leak.

Ward: The fire department took care of it.

Rupp: It was a pilot light issue. The Fire Department broke door down the door, which wasn't covered by insurance

Ward: That was a unique situation, and I called every number I had. The prior manager answered and gave me a different name, but I couldn't reach anyone.

Rupp: We will do better.

Ward: I'm concerned about legal sound levels. Do they account for us being in a residential area?

Rupp: That's a public policy issue.

Hearing Officer Vang: Does it make a difference if it's a residential or business area?

Niziolek: It does. Things are listed by time of day and the use. If there are concerns, you can call the police nonemergency number or 651-266-8989 for complaints to DSI. It would get referred to the licensing division and we would follow up on that.

Rupp: Regarding parking, we also want parking. That's why I brought up the street parking issue. For condo owners, there are also 50 spots underground for the property owners. Every unit gets a spot.

Hearing Officer Vang: Ward identified issues of not complying with conditions. Could you talk about your sound mitigation strategies?

Rupp: Whatever it takes. We are looking into a sensor outside the building that would cut the power off to an amp if sound levels were exceeded. When an entertainer comes, we will make sure they understand the allowable range of sound. All live entertainment venues have these issues, and they are solvable. If we don't comply, there is recourse.

Hearing Officer Vang: For Conditions 3 and 4, was drapery ever installed?

Rupp: It's complicated. We don't want that. We want to comply with the sound ordinance and there are many ways to do that. Drapery could change the way the room sounds and might screw up the acoustics. We can do things with glass too. This is complicated.

Hearing Officer Vang: So, you want Conditions 2 and 3 changed to just say to comply with City sound ordinance?

Rupp: Yes. I talked to a sound engineer about strategies.

Hearing Officer Vang: Have you hired that sound engineer?

Rupp: No. I just looked at the window type they suggested.

Hearing Officer Vang: Are windows only on one side?

Rupp: Yes. I want conditions to just have us comply with ordinance.

Hearing Officer Vang: Can we do a condition for that?

Niziolek: All businesses must comply with our sound ordinance.

Hearing Officer Vang: Except they will have to do more because of the one wall of windows.

Rupp: Not necessarily. The sound engineer doesn't know if there's going to be a problem.

Hearing Officer Vang: Will you have a sound engineer at every event?

Rupp: No. We will have sound measuring equipment. I don't want to be held to a standard

beyond what's in ordinance. I may do specialty windows instead of drapes.

Hearing Officer Vang: We can explore modifying that condition. Have you hired an expert to determine what you will do to mitigate sound?

Rupp: We will be subject to the City standards. They aren't subjective. If we violate them, we can be held accountable.

Niziolek: At the end of the day, we enforce the City's sound ordinance.

Hearing Officer Vang: We want to mitigate things before they rise to a complaint.

Rupp: These entertainment shows will be easier to control than private events, which are harder to control when there's a bride and it's her big night. Entertainment could also mean silent films or comedians. There won't be riotous cacophonous music.

Niziolek: They must abide by ordinance. Beyond that, we can require things in conditions. If there are repeat violations, we can take adverse action. We encourage all business owners to be responsible. There is no easy solution.

Hearing Officer Vang: To help assure neighbors, I want to have conditions to speak to compliance with our noise ordinance and have mitigation measures.

Niziolek: I won't go there, as I don't think DSI can provide the legal guidance around that.

Hearing Officer Vang: We don't need to be specific. It can be broad.

Rupp: The responsibility is on me.

Niziolek: I don't want to create the perception that putting in curtains or doing a specific thing lets him off the hook for violating sound ordinance.

Hearing Officer Vang: We will come up with something.

Niziolek: This was probably written in the early 2000s. Given what we know now, especially as it relates to bass, drapes may not do much.

O'Brien: Opposite the Holly Ave windows are my squash club, which is open from 5:30am – 10pm. Windows facing my squash club should need to be soundproofed.

Hearing Officer Vang: I can't recommend anything being 100% sound-proof, but I will look into that. On Condition 3 and the door being used for people to leave to smoke...

Rupp: We don't allow smoking, but we don't have a good spot to allow smokers to go to. We could have them smoke on the north side, but residents of the building need to understand that will make parking more difficult.

Hearing Officer Vang: This is a condition that already exists. Who monitors that?

Rupp: The door cannot be locked because it's a fire door. We had an alarm with a hideous sound that we removed. I need to do something about that.

Hearing Officer Vang: Staff need to monitor that.

Rupp: It is monitored. The staff check on it when an alarm goes off.

Elaine Elnes, 79 Western Ave N, #202: I moved in in 1978 and live above the bar. A number of times a year I'm bothered by noise and music, and smoke coming in upstairs. I try to find someone to bring them inside because that is only an emergency exit. Next week I have the same problem. This needs to be fixed. I've also gone down to ask the music to be turned down. There are also noise issues when people leave late and talk, which can bother people on the north side of the building too.

Rupp: We covered most of these issues already. We understand the constraints of the building, but live music is not new here.

Hearing Officer Vang: Elnes mentioned that people are outside smoking and drinking.

Rupp: That's illegal. The problem is that the emergency exit door alarm is broken, and I need to fix that.

Elnes: Someone should be stationed there when the alarm isn't working.

Rupp: I will buy a cellphone. The manager on duty will carry it so they can be found.

Vang: About security, there is a condition about having security guards. Has that ever happened?

Rupp: I understand that was referring to having security after events.

Hearing Officer Vang: And during. How do we define security?

Niziolek: We define that as somebody qualified in de-escalation and intervention. Them being identifiable is not required. We just need there to be people managing escalating situations.

Rupp: Our manager on duty is always trained in this. I have never overserved liquor.

Elnes: It would be good to have someone in front directing people and ensuring they are not causing disturbances. We're in a residential area.

Rupp: Frost has more customers than The Commodore. The manager is constantly traveling around it. It is surrounded by residential units. We are out making sure things are good for the neighborhood and for our business.

Elnes: People are talking right underneath my window.

Rupp: At Frost, we are also walking women to their cars. We have security.

Hearing Officer Vang: Because of your testimony, I will not read your letter right now, though I will note it is in the record.

Charles Silverson, 79 Western Ave N, #202: Elaine is my wife. We live above where the music is coming from. It's too loud and it lasts too late. It's hard to get to bed early. I've been told that I

have to let people be loud because it's someone's wedding.

Hearing Officer Vang next read into the record the letter of objection from Michael Schwarz, which raised concerns about traffic, parking, noise, and safety. She next read into the record the letter of objection from Eric Lein, which raised concerns about traffic and parking.

Rupp: Private events attract more drivers. When we have public events, we will get more walkers and people in the neighborhood. Frost gets a lot of neighborhood people.

Hearing Officer Vang next read into the record the letter of objection from Jessica Paulsen, which raised concerns about noise and lighting.

Hearing Officer Vang: Do your windows open?

Rupp: No. It could have happened, but it should not have happened.

Hearing Officer Vang: What is the interior lighting like?

Rupp: Sometimes the private events bring lights that they should not bring.

Hearing Officer Vang: Do you have curtains to keep light from going outside?

Rupp: There is no curtain solution that is effective for the space. It will ruin the acoustics.

Hearing Officer Vang: We do have a light nuisance ordinance. Is there a timing aspect to when loading and unloading can be for an event, which can be loud.

Rupp: Unloading is usually late afternoon. We want to be able to use the non-emergency Holly Ave door at the far westerly end to let somebody move equipment for entertainment directly onto the westerly stage from that location.

Hearing Officer Vang: Condition 5 says loading and unloading must be done through the north door.

Rupp: It would be helpful to add that we could use the westernmost Holly doorway for equipment for the western room. That shouldn't bother anyone.

Hearing Officer Vang: Can we do that?

Niziolek: We need to investigate that.

Elnes: You want to do loading and unloading off Holly Ave?

Rupp: Not using the emergency door below your unit.

Elnes: Still, all the people facing Holly can hear that noise.

Rupp: We have signs about being respectful and we hope people adhere to that. We will also have a manager on duty to handle security and courtesy.

Elnes: You should not be using it in a residential area when people are sleeping.

Rupp: The north door would have the same issue with those apartments. At least this way it would be less impactful to other houses.

Elnes: Sound travels.

Hearing Officer Vang: There's no perfect solution. Any final comments?

Rupp: The space has been here for 100 years. It deserves to be open to the public. Everyone living here moved into a place that they knew had live music. This was here before anyone else arrived. People move here for that. People come to this neighborhood for that.

Sullivan: That's why he lets people park in his driveway. He lives close enough so he can empathize and solve part of his problem with his property and is asking us to solve part of his problem with our property.

Hearing Officer Vang stated that after reviewing the records and considering the testimonies from all parties, that her recommendation will be forthcoming.

Niziolek: I also forwarded you (Vang) an e-mail of the resolution regarding the suspension as well as the actions related to it.

The hearing adjourned at 2:39 PM.