

**MINUTES
PLANNING COMMISSION MEETING
CITY OF WHITE BEAR LAKE
MAY 22, 2017**

The regular monthly meeting of the White Bear Lake Planning Commission was called to order on Monday, May 22, 2017, beginning at 7:07 p.m. in the White Bear Lake City Hall Council Chambers, 4701 Highway 61, White Bear Lake, Minnesota by Chair Jim Berry.

1. CALL TO ORDER/ROLL CALL:

MEMBERS PRESENT: Chair Jim Berry, Erich Reinhardt, Mary Alice Divine, Marvin Reed, Peter Reis, Ken Baltzer and Mark Lynch.

MEMBERS EXCUSED: None.

MEMBERS UNEXCUSED: None.

STAFF PRESENT: Anne Kane, Community Development Director, Samantha Crosby, Associate Planner, Elizabeth Showalter, Planning Intern and Amy Varani, Recording Secretary.

OTHERS PRESENT: Keith and Jan Dehnert, Robert Cutlip, Sheila Faulkner, J.J. Maleitzlin, Daron Close, Rich and Elaine Anderson, Katie Luceys, Emilie Hofman, Emily Sampair, Brooke Sicard, Caroline Sass, Lexi Cooper, Meghan Master, Jim and Deb Tiepary, Cory Monsoon, Connie and John Winterhalter, Jeff and Mary Voss, Sue Haglund, Bruce Haglund, Cathy and Larry Parker, Jeanenne Rausch, Shelly Leruge, David Olson, Rosetta Mason, Brad Mason, Brent Mason, Scott Neal, Nick and Karen Dirius, Joe and Shelly Pasma, Frank Watson, Linda Patsy, John and Barb Gangl, Clint and Mary Rowles, Don and Helen Petrison, James and Judith Anderson, Therese and Jim Picha, Renee and Bob Nelson, Cyd Bulger, Judy Smith, Dan Lander, Steve Skolnick, Mike Preston, Rich and Sharon Prokosch, Melanie Smith, Dan Emery, Randy Birkinbree, Mike Gagan, Don McGruder, Paul Soucheray, Jen Soucheray, Pam Butzer, Krista Batckna, Tim Klegin, Patty Hall, Rogen and Mary Kurtz, Margaret Jones, Sandra, Kevin and Mary Wolfley, Julie and Brad Longueville, B. Richard Paten, Peggy Palson, Bob and Patty Dempsey, Carol Patt, Lee Wolfson, Joe Remley, Mike Ramert, Linda Kolb, Rob Schroeder, Melissa Heller, Julie Anderson, Tom Bulger, Melissa Johnson, Marran Brezovec, Gerald Brezovec, Rod Oakes, Nancy Oakes, Laura Bonne, Eric Lindberg, Mike Judy, April Pate, Rob and Sue Hachberg, Debbie Miller, Bev Williams, Dave Holm, Lori Thein, Tara and Reed Vanderzee, Mark Ashby, Danelle McLeod, Bob Elsholtz, Christine Cermak and Raymond Cermak, Marelee Elsholtz, Helen Duritsu, Angela Schneeman, Carol Drieling, Roxanne Wilcox, Erin Wilcox, Mike and Liz Tibbetts, Sheree Ingebritson, Sonya Vaughn-Orton, Jason A. Orton, Tim Geck, David Scheer, Wayne Lilygren, Kate Booth, Shelly Ring, Nick Hall, Pete Sampair, Steve and Patti Breblee, Herb Tousley, Briana Fernandez, Luke Fernandez, Will Gilberg, Lauren Carlson, Dave Ryan, Bryant More, Caryn More, Mike Parenteau, Ray Cermak Jr., Eric

Wiski, Darlene Veiman, Bob McLeod, Patti Brekke, Steve Brekke and Brian McGoldrick.

2. APPROVAL OF THE MAY 22, 2017 AGENDA:

Member Reinhardt made a motion to move Item 4.E to the top of the docket. There was no second, and the motion failed.

Member Baltzer moved for approval of the agenda. Member Lynch seconded the motion, and the agenda was approved (7-0).

3. APPROVAL OF THE APRIL 24, 2017 PLANNING COMMISSION MEETING MINUTES:

Reis asked staff about the approval of the separation of one lot into two lots. One of the added conditions was to have a shared driveway for the two lots. There was talk about it being an alley or a driveway. When does a driveway become an alley? Kane stated that it was referenced as an alley during the public hearing. Staff clarified in the condition that it would be a private shared driveway if the developer chose to put that up along the north side of the lot. Reis recalled that one of the rationales for having it be a shared driveway rather than an alley is that way the City is not in any way involved in snow plowing. Kane confirmed that was correct. Reis asked what if there were seven houses, not three and there was a desire to have it become an alley? Can they appeal to the City? Kane stated that the City's public works department maintains alleys, including snow removal; however, they are not a top priority so it would be after they finish their other routes. They'd have to dedicate the full width of the right-of-way unless they could get their neighbors across the property line who are already served by private driveways to dedicate their half of the alley or incur the entire alley-width in their back yard. It would be giving up quite a lot of land as well for that alley. Reis asked if alley status could be conferred by the plea of the land owners? Kane stated that's why staff clarified that it's a private driveway easement; there's only two benefiting properties and the City has no role in it at all.

Member Reis moved for approval. Member Reed seconded the motion, and the minutes were approved (7-0).

4. CASE ITEMS:

A. Case No. 17-1-SHOP: A request by **Meghan Master** for a Special Home Occupation Permit per Code Section 1302.120, in order to operate a beauty salon in a single-family residence for the property located at 2268 Sierra Drive.

Showalter discussed the case. Staff recommends approval.

Berry opened the public hearing. No one came up to speak. Berry then closed the public hearing.

There were no questions from the Commissioners.

Member Lynch moved to recommend approval of Case No. 17-1-SHOP. Member Reed seconded the motion, and it passed by a vote of 7-0.

- B. Case No. 17-2-SHOP:** A request by **Therese Picha** for a Special Home Occupation Permit per Code Section 1302.120, in order to provide massage therapy in a single-family residence for the property located at 3390 Auger Avenue.

Showalter discussed the case. Staff recommends approval.

Berry opened the public hearing. No one came up to speak, so Berry closed the public hearing.

There were no questions from the Commissioners.

Member Baltzer moved to recommend approval of Case No. 17-2-SHOP with the conditions listed in the staff report. Member Reis seconded the motion, and it passed by a vote of 7-0.

- C. Case No. 17-12-V:** A request by **Cox Contracting on behalf of David & Lynn Howe** for a 5 foot variance from the 30 foot setback for a side abutting a public right-of-way per Code Section 1303.230, Subd.5.a.4, in order to construct a new single family residence 25 feet from the south property line for the property located at 4935 Johnson Avenue.

Showalter discussed the case. Based on comments received from the neighbor to the north, Condition #7 was added to the resolution. Staff recommends approval.

Lynch asked about the address. Doesn't it get turned to keep the setbacks? Showalter responded the address will still be 4935 Johnson Avenue.

Berry asked if the applicant has been made aware of and agreed to Condition #7. Showalter confirmed that was correct.

Berry opened the public hearing. As no one came up to speak, the public hearing was closed.

Member Reis moved to recommend approval of Case No. 17-12-V with the conditions listed in the staff report. Member Baltzer seconded the motion, and it passed by a vote of 7-0.

- D. Case No. 08-3-Sa and 17-13-V:** A request by **Admiral D's** for a Conditional Use Permit Amendment per Code Section 1303.227, Subd.4 and a 50 foot variance from the 50 foot setback from the Ordinary High Water Level of White Bear Lake per Code Section 1303.227, Subd.7.d.4 in order to construct a 1,012 sq. ft. building addition and provide rooftop seating for the property located at 4424 Lake Avenue South. **TO BE CONTINUED AT APPLICANT'S REQUEST.**

Kane stated that the application is being continued to the July 31st Planning Commission meeting at the applicant's request.

Lynch asked for clarification on when the case would then go to the City Council. Would it go to the August 8th City Council meeting? Kane confirmed that was correct.

- E. Case No. 17-3-CUP:** A request by **Tally's Dockside** for a Conditional Use Permit Amendment to expand the existing restaurant to the east side of the road, per Code Section 1303.227, Subd.4.a, with a maximum of 125 seats on "Music by the Water" nights: Wednesdays, Fridays and Saturdays, Memorial Day through Labor Day for the property located at 4441 Lake Avenue South.

Crosby discussed the case. She gave the history of Conditional Use Permits that were issued over the years. The operations have grown in intensity over the years and there are some aspects of the business that no longer comply with code, primarily seating and parking. Based on the actual parking available to the business, staff recommends that non-music nights not exceed 57 seats. In order to bridge the gap between non-music nights and music nights, an additional 27 parking stalls are needed to service this business. Staff proposes that overflow parking be accommodated on their former public works site. Crosby went over the proposed conditions in the resolution of approval. Due to the lack of parking available, staff must recommend denial of the applicant's request for permanent seating at 85 and 125. However, subject to a temporary arrangement for off-site parking and with the appropriate parameters and controls in place, staff recommends temporary approval of 57 and 125 seats, subject to the conditions listed in the staff report.

Reis asked about the condition that the smoker that sits outside CJ Hooks restaurant not be used for cooking. Is that a food safety issue? Crosby confirmed that was correct. It's for display purposes only.

Reis asked if the Planning staff proposal about a shuttle to the old public works site was communicated to the applicant. Crosby confirmed that was correct. It's a multi-part endeavor. The applicant would need to reach out to the shuttle company and start negotiations with the City and enter into a contract.

Lynch asked Crosby to again show the chart that illustrated the approved amount of seating at Tally's as well as two other area restaurants. Lynch asked if this is the approved amount of seating, not necessarily parking. Crosby confirmed that it was a seating count. It does not delve into what parking is necessary to accommodate the seating.

Berry asked if it's generally 2-1/2 seats per parking stall. Crosby confirmed that was correct.

Berry asked if a letter was sent to the applicant in 2014 that he should amend his Conditional Use Permit. Crosby confirmed that was correct.

Berry opened the public hearing.

Keith Dehnert, 3396 Glen Oaks Avenue, applicant. He is the owner and operator with his wife Jan of Tally's Dockside. He indicated that he served on the Planning Commission a few years ago. He gave the history of the establishment. The music has always been amplified, not acoustic. Tally's has evolved over the years. Their main goal for tonight is to save "Music by the Water" and to continue to operate Tally's Dockside for many years to come. On non-music nights, he's asking for 63 seats, which is 21 car parks versus 19, which are the two that are coming off of the street end. On music nights, adding an additional 62 seats, giving 125, the same number presented by staff. That is being met by overflow parking by using a shuttle to the old public works site. He thanked city staff for coming up with the solution. He feels that the constraints that are being outlined in the resolution seem unreasonable and will make it very hard to continue as a business. He would ask the Commission and staff to allow them to continue to work with staff to come up with solutions to the issues.

Berry stated that Dehnert has been operating way beyond where he should be, based on what was approved on his Conditional Use Permit. Dehnert stated that every time he received a letter about it from staff, it changed. The grandfathered wasn't in, there was winter parking that was there, there were only 10 car parks that were part of the ramp. He was waiting for the tax rolls to show that they had 20 parking spaces in the ramp. With the ramp in place, they have been operating with an additional 20 parking spots that they pay for that are in there. He will not dispute that they might have gone over a touch on seating. However, they will come back into compliance. They will put together a new seating plan to match the approved seating to 63. They have one business. They had to remove the second address and the second business. They now call it the Hooks building and the boat house. It operates under one business and one business name. The liquor license is held by their corporation, Dockside Waterski Company, doing business as Tally's Dockside. They hold it at 4441, which is the Hooks building and then they cater across the street, which allows them the off-premise catering that they use.

Berry asked if he had any objection to the movable, stackable seating for the additional seats for music nights. Dehnert thought that was a workable option. Berry wondered if it included the benches. Kane stated that the benches, if they're going to be there on non-music nights, do have to count towards the seats. Dehnert stated that their plan is to work with staff on direction that they will be putting together the seating plan to come up with 63 on non-music and 125 on music.

Berry asked if Dehnert had a main concern that he wants to work out. Dehnert stated that the boat rental is a major issue. To him that seems like an unreasonable constraint. The dock issue is unreasonable. He doesn't understand why the entrance needs to be moved to the south side. Berry stated that it was to control the open containers coming out of that area. They have to control people bringing in their own chairs, and make sure that the bike and walk path is clear and the street is clear. Dehnert stated that they can provide a staff person to monitor the entry/exit; their proposal is to not relocate the entrance to the south side, but to narrow up the entrance on the existing side so one person can control it and no one is there milling about. The problem with controlling the path is that it's a walking path. People stop and talk.

Lynch was under the impression that the reason for moving the entrance to the south side was not only that but as people mill about to get in or out, that sometimes people are waiting. If people are coming in and out and waiting to get in, he'd rather have them off the path entirely. He thinks that was part of the logic of moving it to the south side. Dehnert stated that it's a public walk way. He doesn't know whose right it is to say they have to go. How do they enforce that? They don't want there to be safety issues. Berry stated that the problem is when people block the path completely.

Berry stated that the main misconception is that this is not an amphitheater, it isn't a public space, and it isn't a public park where an event is happening. It's right in the middle of private businesses. It cannot encroach and impede on the other businesses nor on the public property. Dehnert asked how a private person can control a public area. He doesn't have the right to say "You can't stand there", because it is public property. He also doesn't want to say he's promoting standing there either.

Kane stated that, at least for the first year trial basis, that if they narrowed the entrance to a 36" or 40" opening, that might accommodate things better and then the City will need to monitor it throughout the season. In the past there have been people with drinks and seating in the right-of-way.

Dehnert stated that they don't want a continuance of this case. He wants to get it done. He wants music to continue. He wants people to continue coming down there. He wants people to enjoy the area. The ultimate goal is businesses need to succeed. He doesn't want the whole piece of pie, he just wants a little bit. So much traffic is down there, not just because of his business, not just because of Acqua, or Admiral D's or the VFW. People are going back and forth between the businesses. There can be open containers with people that are walking along there. There are open containers coming out of the marinas, because people have brought their coolers. They have their own beverages. It hasn't been sold by any liquor license holder. Dehnert has added signs and started staffing a person towards the end of last year. They will have one person designated to ensure alcoholic beverages do not leave his business.

Dehnert brought up the port-o-potties. Public restrooms are far away, down at the other end of Boatworks Commons. It's not conducive for the area. The bathrooms were put in for the marina. They didn't get zoned for the liquor permit. They were not told they needed to be zoned. To his knowledge, they followed the process of where they needed to get to where they are today.

Berry asked if, with the bathrooms on the south side, that was proposed in order to accommodate the south entrance and the fact that they're not counting those two parking spaces as actual parking spaces on the leased property there. Kane responded that when the lease was entered into, either in 1999 or 2000, port-o-potties were acceptable and desirable there. The City had just purchased Johnson Boat Works, and was just working through the Marina Triangle plan. The City anticipated that permanent, year-round public restrooms would be a desired

component of whatever came for the future redevelopment of the Johnson Boatworks site.

With what staff previously said about shrinking the entrance at its current location and not relocating it to the south, and the applicants desire to continue to utilize those two parking spaces to count towards their seating, staff still has concerns about vehicles backing in and out. Staff would like to talk with the Dehnert's further on who would be utilizing it and that it would not be customer parking that may come and go throughout the evening. There's a question as to whether it will count. With regards to the port-o-potties, other staff members and elected officials have sought to open up that view for some time. The city engineer has looked at alternate gas tank designs to try to lower that so that the vista from Whitaker Street to the lake could be opened up. Because the public parking and public restrooms have been provided elsewhere, the reasons those were put in there temporarily have been addressed elsewhere in close proximity.

Dehnert stated that, because of the constraint it was outlined that the fence would come down; however, the fence is a screen for the fuel tank. The bollards are around there to protect the fuel tank. The port-o-potties are between the bollards and the fuel tank and are relatively out of sight, behind the fence. Having the port-o-potties removed would be very detrimental.

Dehnert talked about the boat rental. It was put in place to his knowledge for the grandfathered clause. To him, grandfather means it's on-street parking. If they look at the history of that area, the amount of on-street parking that used to be there in the 1990's when they started down there, and what's there today, a lot is gone. A lot has been moved into the public ramp. Whitaker Avenue used to be double-sided parking. The north side is now gone and that property is now leased to Lakeside Shops. The property from them north to the VFW was all drive-in, angled parking. Now with the parking ramp, it doesn't start until well past the new restaurant that's going in there. To the south of them, that was angled parking all towards the Kowalski's parking lot. It has been redone to just a small number of parallel parking spots. A lot of on-street parking has been taken away.

Reinhardt asked Dehnert if they're requesting approval for Wednesday, Friday and Saturday. Dehnert confirmed that. Reinhardt asked how it impacts the neighbors. Dehnert stated that there are letters in the packet. There's a feeling that he's having an impact. That's why they're going to comply with the amount of parking spots they have. They will put the seating plan together that will meet their 63 non-music nights. They have come up with an off-site parking plan, with the help of staff so they can continue. He thinks it's a fabulous idea.

Reinhardt stated that a lot of venues, especially ones that serve alcohol, employ off-duty officers. They would be empowered to help with public safety for the right-of-way. Would that be possible? Kane responded that there was some conversation regarding that, but that presumes that there's enough police staffing to fill those volunteer slots if they sign up. The City Manager had expressed some reservations about the ability to do so with off-duty officers. Dehnert stated that if issues started to arise from that, he'd be one of the first to say they'd want to address that.

Divine asked Dehnert for clarification on the reservations towards boat rental limits. She's assuming he's talking about not renting boats on music nights. Does he currently serve food and alcohol to the boats? Dehnert confirmed that they do. Divine noted that then they'd be serving alcohol off premises. Dehnert stated that it's considered catering. They can cater off-premise. Berry stated that they'd need to make an amendment to their liquor license, and have liability insurance.

Reed stated that for renting boats on music nights, hasn't staff already calculated in the 10 spots that are reserved for their marina to come up with 125 people? Isn't that figured into the calculation for music nights? Crosby indicated that the 10 stalls for the marina are included. The boat rentals do not have any stalls associated with them. They're creating an additional demand for parking that have no provisions for being met.

Reis thanked everyone who was present tonight. It's a great example of why this City works so well.

Reis stated that he hasn't found the amplification of the music oppressive. He stated that heavy rock might be a different thing. Dehnert reiterated that from the very start, the music has been amplified.

Reis asked about the off-site catering provision. He gathers that they cover all appropriate laws with insurance so that it's a non-issue. Dehnert stated that it has to be in place because technically they cater across the street, from CJ Hooks over to Tally's.

Reis asked if staff was comfortable with the shuttle resolving the issue of parking. Kane stated that staff is comfortable with providing it as a potential solution on a trial basis. Some discounts, coupons or an appetizer might entice those who arrive first, at 5:00-6:00 p.m. It will be in Tally's best interest to get the shuttle service to work successfully.

Reis stated that if these music concerts are good revenue-producers for Tally's that they would be the same thing for others in the area. Admiral D's already has musical performances. He could see Acqua and the VFW doing it too. The new restaurant could conceivably do it. The issue of parking is going to be an issue for everyone. There's no reason why the shuttle service couldn't work for other new entrants to this. If the shuttle thing fell through for some reason, isn't there still the opportunity to, on a temporary basis, lease parking spaces from the Trach family that owns the huge parking lot? Dehnert stated that he's tried that. There are other options out there. Stillwater is moving people with a trolley. Reis stated that everybody is talking about collaboration.

Reis also wanted to address the port-o-potties, the fence, the gas tank, and opening up the vista at the foot of Whitaker. There was some talk about a different format gas tank that would be lower, or a different profile. Dehnert stated that he and city engineer Mark Burch talked about it. It can't go below ground. For the gas tank regulations, they require vent tubes to go anywhere from 10-15 feet up in the air.

For the size tank that they need, they could create a shelf and drop it down. However, they weren't gaining enough vista with that alternative. Because of the Boatworks Commons development, they planned on addressing it at another time. He's not against addressing that. That was also at the time that they were addressing why they were not looking at putting a centrally located restroom facility in. They were willing to run the sewer system through their facility. At the time they were starting that, Tally's didn't even have sewer service. Through the redevelopment they did get sewer and water connections installed.

Reis asked if fuel tanks that are within proximity of moving traffic have to have a special kind of tank; a tank within a tank. Dehnert explained what type of tank it is. They worked with the fire marshall in White Bear Lake to put the correct one in at the time. Reis stated that if the different format tank is resolved and the need for the fence to hide the tank comes down and the vista is then opened up, there might still be the need for vents. They would only be 3", 4" or 5", they wouldn't be obstructive.

Reis asked about the port-o-potties. If the fence is down, the port-o-potties would be visible; they're visible all during Manitou Days. Kane stated that staff has not delved into the lease agreement; the City Council has asked them to do so later this year. Staff doesn't have all that information together. It was one of the elected officials who raised the concern with having the port-o-potties there now that public restrooms have been provided elsewhere in the vicinity. Kane stated that staff has not been able to give the Council all the information they want on the leased areas, not only Tally's, but all leased areas in the City. Generally, the Planning Commission has purview over the property in which the land use application is being presented to and not necessarily on leases that the City Council has jurisdiction on outside of that area. Staff really did try to craft conditions that would allow Music by the Water to continue with certain parameters. The Council will always have the authority to change that lease agreement. It's a two-party agreement and they can make that proposal. Reis asked if the issue is the port-o-potties at that particular location. If so, could the port-o-potties be placed somewhere other than the street end? Kane indicated that the leased area covers the street end. She doesn't know where else the port-o-potties could go. They have not been delving into finding that solution because they thought that the solution was permanent, year-round public restrooms. They are 450 feet away, but within the general vicinity. She believes CJ Hooks has a one-person uni-stall as well. Perhaps a permanent solution could be provided within Hooks' building. Reis asked if the port-o-potties, if desired, could be put somewhere else on the property. He asked if they're there only during the music nights. Dehnert stated that they're always there. He would like to ask that they stay. Because they're enclosed, they can be out-of-sight. If the fence is an issue, that can be updated. That can be taken care of. He thinks that the port-o-potties are an integral part of the marina and their facility down there.

Baltzer stated that one possibility with the amplification is using a decibel meter and seeing how loud it is. He addressed the service on the docks. What about the general public that comes up to fill up with gas; what if they ask if they can have food? Crosby stated that as of now, staff's research of the liquor license and their

understanding of the issue is that the liquor license does not extend to the docks, no matter whose boats they are. The business cannot serve liquor to any of the boats on the docks. Baltzer asked about food. Crosby stated that if the City Council extends the liquor license to allow the serving of liquor, the food could go with it. Baltzer asked if the food could go without the liquor. Crosby stated that it is not an approval that he has asked for, or is being considered for at this time. Staff would need to conduct additional research. Kane stated that what they want to try to understand is if it's one more staff person, and the shuttle is working well and employees are parking off-site, she doesn't think they'd have a concern with that. But it wasn't a part of the request and they're trying to get approvals primarily for Music by the Water nights. Baltzer felt that in the process, staff has included a lot of fringe items that kind of rake the applicant over the coals, in his opinion. Kane explained that staff is trying to find ways to allow Music by the Water to continue. The zoning entitlements that Dehnert currently has is for 12 seats in the summertime. They're just trying to apply the zoning regulations in a way that will work.

Dehnert stated that he's in agreement with Baltzer. He came to staff with a request for seats. The conditions that came back are now regulating him well beyond seats. Berry stated that he thought that a lot of the concerns were around the liquor sales to start with. The food catering concern ends up coming up behind that. Dehnert stated that they were asked to clarify their seating, and they brought in a seating plan. It wasn't a service plan, a food plan, or an alcohol plan, but the constraints that came back were no boat rental, no serving, no port-o-potties. He wanted the opportunity to communicate, get the facts together, find out where they're headed so they can come up with an agreeable solution to both them and the City. They recognize why staff wants to do a temporary arrangement with this, but all that means is they get to go through this again in September.

Lynch stated that parking affects everything. It overflows into the boat rental and the liquor license because everything is a little bit interconnected. Regarding the shuttle, it may be both a solution and a problem. He thinks it's a great idea but may also cause a lot of problems. Asking people to park $\frac{1}{4}$ to $\frac{1}{2}$ mile away is something that people aren't going to want to do naturally. It isn't a solution that you yourself can solve; because if you're doing a shuttle, and everybody else isn't, or they don't have something else there, it could be a potential problem both for you and for them. There need to be incentives involved, and need to be some sort of way to get people to do it and change their way of thinking about how they're going to experience the marina area. He would like to see the parking lot next door used as well because it's convenient. Dehnert stated that it's a private lot. Lynch thinks that figuring out some way that everybody can get through this summer to find out whether or not 125 seats work, or whether there's no problem, and everyone is using the shuttle. We need to get through the summer to find out if it works. For him, staff's recommendations are a great starting point. He has a feeling that businesses all along this stretch are going to have to find compromises.

Dehnert stated that there's a financial burden, while not large, that has been put on them for the shuttle service. In addition, it's proposed that he give up his boat rental

and lose his port-o-potties. He feels that some of the conditions are unreasonable; it's not a business decision that a business person would make.

Berry asked how many boats Dehnert has for rent. Dehnert answered that he has 16 boats.

Reed addressed the proposed south end entrance. Dehnert has indicated that he's willing to assign a staff person to monitor that. Can't they do that at the existing entrance? Kane answered that it might be reasonable, especially if it's narrowed up and can be monitored better. Staff would be receptive to that solution.

At this point, Berry opened the public hearing.

James Lessnar, 157 Loretta Lane, Mahtomedi: He has spent tens of thousands of dollars at Acqua, because of a Tally's music night. He's spending money in the whole community because of this event. He used to go to Stillwater, but now he's in White Bear Lake most of the time. He uses the satellites when he's out walking around the lake. It's a public service that they don't charge for. For a small business owner, it seems restrictive that staff comes up with a plan of growth just to be commissioned out of business. It's a negative to the community, our image and to the people involved.

Betsy Larey, 1302 N. Birch Lake Blvd., White Bear Lake: She stated that the City has no idea who is parking where and why they're parking there. She brought up parking issues during Marketfest. She wondered why the City decided to put a restaurant in Boatworks Commons instead of office space. For the City to turn around and not let Tally's rent their boats or let anyone sit on their boats is ludicrous. The parking problem is so big you can't dump it on one person.

Sid Bulger, 2527 Lake Avenue, White Bear Lake: She has lived in White Bear Lake for 20 years. She has been enjoying Music by the Water since it started, enjoying Tally's before that. Many people walk, bike, canoe, kayak and take their boats over to Tally's. There's got to be some way to adjust the need for parking, because it's the one business that you go like that. When she goes to Acqua or Kowalski's, she drives her car. The port-o-potties are a community service. They can't go, they need them.

Debra Wederhold, 4310 Old White Bear Avenue, White Bear Lake: She walks to Tally's. For them, this space by the lake was the main draw for them moving from Shoreview to White Bear Lake. It's a place where people greet and gather and form friendships. They have brought their grandkids to Tally's since they were babies. Her kids drive up from Bloomington on Wednesday nights to enjoy the Music by the Water. Why is the City attacking and harassing them?

Jennifer Koehn Bebel, 1932 5th Street, White Bear Lake: Tally's is a community gathering place. The problems that are coming up tonight are community problems. They're not just problems for Tally's, Acqua, the VFW or Admiral D's. They're problems for Washington Square Grill or any business downtown. We need to work together and take the skills from the community and work with the city planners and

staff in creating an analysis for this parking problem. She volunteers to help with that process. She's certain that there are other people here that would be willing to help. However, the process needs to start in the Fall for the upcoming summer.

Alan Spaulding, 45 Windy Hill Road, Sunfish Lake, MN: He's one of the owners of the Boatworks Commons. He stated that you should always have fun whenever it's not at the expense of somebody else. There's a lot of emotional talk here tonight. The facts are that CJ Hooks has approval for 25 seats and is allocated ten (10) parking spaces in the new parking ramp. They paid \$32,000 through assessments. For Acqua, they paid \$58,000 in assessments and Mizu paid \$141,000 for their allocated parking spaces. The party that uses it by far the most has paid by far the least. They were charged based on having 25 seats. The new restaurant was charged based on having 110 seats. Acqua was charged on having 89 seats. There's a discrepancy. So to get by without paying their share of parking and then expanding that use in comparison to the other businesses, in his opinion, is not fair. The amount of parking that they're providing is not their fair share, and they did not pay for their fair share of the current parking that the City worked incredibly hard to create with the new parking ramp.

Johnathan Gacek, 4311 Cottage Park Road, White Bear Lake: He is friends with Daron and Nicole (Close) and also Jan and Keith (Dehnert). This issue tears him apart. He looked at reviews on-line. There are no negative reviews for any of the surrounding businesses regarding parking or amplified music. There are positive reviews from surrounding businesses that they get to enjoy the neighboring live music. He patronizes both businesses several times a week; sometimes he has dinner at Acqua and then has a drink at Tally's afterwards. He asked whose parking spot is he supposed to park in?

Robert McLeod, 2581 Meehan Drive, White Bear Township: To him, this feels like a contrived analysis that this is about parking spaces. Him and his family bike up to White Bear Lake. He can't believe that's not part of the business analysis. Tally's is two parking spots short or you can't rent boats because they're (the City is) going to ignore that people walk. It's the mainstay of White Bear Lake. He indicated he did not think it was fair for staff to give the applicants the conditions just last Friday. He avoids Highway 61 on Marketfest night.

Scott Neal, 1 Lilly Pond Road, North Oaks: They are patrons of both Acqua and Tally's. If this is really about parking then the solution needs to come from everybody. He believes that a big part of this issue might be the City's. He would encourage staff and the Planning Commission to open up negotiations with the man who owns the White Bear Shopping Center. He went there many times during the summer last year and he never had a problem finding a parking spot.

Nino Nardeckia, 706 Hall Avenue, Birchwood: As an ex-councilmember for Birchwood, he understands the difficult position the Planning Commission is in. He appreciates that they need to act on the best information they are provided. He was a career planner in the military and understands their job from a planning perspective. He noted what Spaulding said about money spent on parking slots and allocations and that Tally's has benefitted disproportionately in getting more benefit

than he (Dehnert) paid for. He believes that was a completely erroneous, unfounded statement. He asked for the proposal to go back to staff for further negotiations with Dehnert.

Clint Rowles, 2127 Birch Street, White Bear Lake: He's lived there since 1984 with his wife. He is one of the musicians that plays at Tally's a couple of times a year. The benefit of amplified music is there's a volume control on it. It can be turned down. He suggested downloading a free app that makes your phone a decibel meter.

Renee Tessier, 2236 South Shore Blvd, White Bear Lake: She served for eight years as the Ward One councilmember in White Bear Lake. She thinks the parking issue can be resolved. Some of the constituents would appreciate it if they would turn the music down or redirect their speakers out towards Whitaker so it doesn't reverberate off the building or across the lake. The drinks have been a concern. She thinks it's time to get rid of the port-o-potties. It would be nice for them to have a real bathroom. She stated that Trach has a right to restrict parking on his private property – it is not his responsibility to provide parking for other area businesses.

Frank Watson, 2296 Floral Drive, White Bear Lake: For the past year and a half he has been taking parking readings at the Boatworks Commons ramp. When he first started counting, there were no cars in it. It went up to 10, 20, and then 50. Then summer started and Tally's started having music. He thought that the ramp was underutilized. Now on music nights, that ramp is almost full a lot of times. There are 114 spots. (The City) built this ramp to bring people down there. He noted that some of the Boatworks Commons tenants were parking in there until the City cracked down on it. The City has 78-85 spots for people to sit down there on the boardwalk. The ramp is underutilized a lot of the time, but on music nights it's a very popular place to park.

Daron Close, 1821 Orchard Lane, White Bear Lake: He owns Acqua restaurant. He's worked in 30 restaurants and currently owns 7 of them. Density and diversity options are absolutely beneficial to restaurants. You want more options so people come down and enjoy the place. Regarding seating capacity, they're over, Admiral D's is over, Tally's is over. Part of them deciding to open Mizu Japanese restaurant is because they're paying for 44 seats. With Yoga they only need 30. It helps the problem; if they don't do it, somebody else could come in and create a bigger problem as well. It's tough to regulate a business that doesn't have walls. There are different entrances. People don't need tables cause it's live music so they're standing up, so seating isn't even the biggest issue. That's why the docks come into play, because adding service to rental boats; essentially you're serving 40 more guests. It's a bad situation. Hopefully we can find a solution. The ramp is full on music nights. There's an empty space at Boatworks Commons, and somebody's got to move in. He believes in the area. There are 25 businesses down there. When he does look back at the initial parking formula, there was no accommodation for music across the street; it was never factored in.

Joe Remley, 4823 Lake Ave. S.: The staff are good friends of his. He is acquainted with some of the people on the Planning Commission. Minnesota has a history of

running businesses out of the state. Wittingly or unwittingly, it happens. He feels that pressure is being applied from somewhere.

Brian McGoldrick, 36 Moonlight Bay, Stillwater: He owns and operates Docks of White Bear Lake and Admiral D's Waterfront Tavern. There was a parking problem early on. He asked Crosby to put up a letter from 1995. It's a letter from Skip Johnson to the White Bear Lake Conservation District (see attached). There was a significant problem back then. McGoldrick does not own the White Bear Shopping Center. He has had a relationship with the Trach family since 1981, as a business partner and friend. They financed him. Before the Dehnerts started their events and got their liquor license, people would party in the parking lot and they'd leave 12-packs all over the place. Ron then hired a person to monitor the parking lot. McGoldrick gave the history and problems associated with the parking lot. He discussed the Tally's gas tank, ownership and leasing of the right-of-way, riparian rights and the redevelopment. The City of White Bear Lake has the most liberal marina parking requirements in the metro area. For every rental boat that you have, you have to have one parking spot. He has an expectation that the City treat everyone fairly and respect property rights.

Daron Close came back up to speak. Serving directly to the rental boats is falling under a caterer's license, and nobody's covered what that actually is. A caterer's permit is an annual permit that they pay \$300 a year for. It's a state-issued permit that requires that you have a full-service liquor license in attachment as your business. If you want to do catering events or off-site weddings, it allows you to serve drinks at those locations in association with food, they say as an incidental part of food service. Serving food, you can have a drink on the side. A caterer's permit is only for off-site events. It's not generally meant as an extension of use or a special event permit. In this case, the caterer's permit is being used as an off-site event across the street and now being piggy-backed onto an off-site event, as it relates to serving to the boats. One thing the state doesn't do is they don't touch on parking. That's because they assume you're doing it at some private residence or a different venue in a park. That's where the gray area relates to the seating on the boats with the additional seats, which requires additional parking.

Shelly Pasma, 5098 Cottage Lane, White Bear Township: She's been a friend of the Dehnert's for a while. Her sons work at Tally's. Their staff has been standing here all night in support of them.

Russell McPherson, 8315 140th Avenue NE, Columbus, MN: He goes to all of these establishments and enjoys them all equally. The planners say they want this and then Keith Dehnert has said well, I agree with some. We don't want to set precedence because he will be the first one at the City Council meetings if all the restrictions are enforced. He will be complaining about amplified music at Admiral D's. He will be complaining about Acqua, about their patio when people are waiting to get reservations or waiting to get in the patio and them blocking the path. All the businesses have some of these issues.

William Ramert, 2356 Lakeridge Drive, White Bear Lake: He's a longtime friend of the Dehnert's; he considers them his parents. People might sit on the shuttle for

two or three minutes, but they're going to end up saving that time with traffic leaving the parking lot. You're going to exit right onto Highway 61. They're responsible business owners; they don't do dollar shots or college night. They want to have a family-friendly environment. The port-o-potties are a necessity because of the boat rentals. People change in those. Everyone uses the restrooms before they go.

Judy Smith, 1501 Park Street, White Bear Lake: She appreciates that the Planning Commission has put up with this crowd of people who love Tally's and love the music. That's why she's there. In the last 10 years she hasn't always gone down and gone in to eat. She's out there on the walk. A lot of people are out there. She tries not to bring her chair anymore.

Reinhardt thanked everyone for showing up. Whether he agrees with their opinions or not, it says something. He comes here every month and volunteers his time. This is not a paid position. They're a citizen's advisory panel. He got the packet on Friday too. They didn't come up with the rules. They're here to decide if, as citizens, these rules are fair, and if we should agree partly or completely with them. There was a lot of redundancy, but a few good points came through. Music on the Water has gone on for 18 years with little to no meddling by the City. The reason why they're here right now is because it's changing to three nights each week or just under half the week. He gets the concerns of everyone involved. He thinks Music by the Water is really cool. You have to see it from both sides. He thanked the staff that are trying to work on this. Let's keep it calm. This is a decision that needs to be beneficial for the whole community.

Divine stated that they need to be fair when it comes to how many parking spaces businesses get. All through the City, it has to be fair. They can't make exceptions for one. She thinks the trial solution of a shuttle is an excellent idea. It would benefit all the businesses down along the lake. It could be advertised and promoted. The other issues to her are not as important. She has concerns about the food and alcohol permits for the marina. She doesn't understand what is legal and what is needed. She doesn't want the City having any liability if something should happen. She wants to make sure that the City Council has an opportunity to discuss this at their next Council meeting.

Reed looked at the conditions. He thought that Condition #4 needs to be expunged because Dehnert cannot control what people do on the trail and the docks. They could be bringing their own alcoholic beverages. It's beyond the scope of his business to police that.

Lynch asked if that is part of what a liquor license would do or not do. Kane indicated that as part of the extension that was approved, there was a map depicting exactly where it would go of what Tally's enclosed area comprised. It was extended in 2011, and that's the area that they have authorization for. It is covered under the liquor license. Reed pointed out that they could modify the language to say "No open containers outside of the premises on the Whitaker Street end".

Reed stated that it sounded like they had reached some sort of an agreement with regard to removing the necessity to move the main entrance to the south side.

There could be a modification to the existing customer entrance. Kane stated that staff was receptive to that. Reed stated that eliminating Condition #5 would be his recommendation. He'd modify Condition #6 so that it says "customer entrance" instead of "staff entrance", if that is what Dehnert has committed to doing. In addition, he'd add "into the premises" onto the end of "barring customers from bringing their own chairs". You can't control people out on the trail if they decide to bring their own chair. Regarding Condition #10, it sounds like Dehnert is not going to be able to bury the tank in its current location. If it's going to be there it's going to need bollards and fencing. He personally thinks the port-o-potties should stay. Regarding Condition #13, he thinks that "The music shall be acoustic only" should be excised.

Lynch stated that for Condition #6 they could take out the word "customer" before "entrance".

Reis stated he's in agreement with his colleagues.

The consensus from Reed and Reis was to leave Condition #8 as is for now.

Baltzer thought that Condition #8 should be pulled out. Baltzer asked if someone rents a boat at 1:00 in the afternoon, does he have to be in by 4:00? Why is he being punished if he wants to go out fishing until 6:00? Kane stated that it was intended for the pontoon boats, as they can have 6-8 guests on them. It was assumed that more cars would be associated with them. It wasn't geared at fishing. Staff would have absolutely no opposition to that. Baltzer has been down there during music nights, and those rental boats generally don't fill up until 6:00 or after. He would put it until 6:00 as opposed to 4:00. Kane asked if they prohibited seating of patrons in the rental boats when they're docked, would that be problematic?

Lynch asked Dehnert how late they rented the boats until. Dehnert stated they have to be in by dusk, with the exception of 4th of July when they can go out and watch the fireworks. Lynch asked if Dehnert could arrange it so that people who are renting pontoon boats must park in the shuttle area. Dehnert stated that he liked that idea. Lynch added that Dehnert could arrange for remote parking. Dehnert stated that he could also offer valet-style parking. He doesn't know the logistics with that yet. They did that a few years ago and it's something that they may want to explore. One potential that might be for the boats as they sit, that they're concerned with people that may be driving there to sit on them. Give them an option to set it up for Boatworks Commons people that have walked over. Give them an option to have bicyclists that have come down to go there. Give them that option that maybe they do have it as let's promote other ways to come to the area. Lynch stated that sometimes he does parking estimates; what they'll often do is figure out a percentage of people who actually do drive. If they expect that 80% of people here drive to, then you'd get a credit for the fact that the other 20% of people walk or bike. There may be some wiggle room in that. He's not going to try and guess what that might be, because his specialty is not marinas. That may be a way to help the numbers work a little bit better. He is not so much concerned about staff bringing food out to boats. If people are getting on their boats and launching them from wherever and boating across the lake, that's kind of like a parking spot, in his

opinion. They would be in the 20% that don't drive, they'd be boating. For food, he's okay with that as long as they have the proper okay for that sort of thing. Even if they don't, if they're parking at the pier and they want a burger, can they walk up the pier and get a to-go box? He thinks that some of these things are important to keep in mind that it's really complicated. He really appreciates them all sticking around for this. Having everybody play by the same set of rules is important. Getting the rules right is worth taking the time. He added that he'd like to keep the noise level condition in the resolution of approval, because he thinks it's important. Regarding port-o-potties, he doesn't mind them staying around but long-term it would probably be good to find a permanent solution other than port-o-potties.

Baltzer gave an analogy of a McDonald's drive-thru. It's in relation to serving food on the boats and counting people on the boats related to the parking. In the drive-thru, do we count the seats in the car as the number of people that we have to – Kane responded no, we just have a stacking requirement for that drive-thru. Baltzer asked if we don't count the people in the car as extra people sitting there, do we count the people on the boat as extra people sitting there if it's not actually on the premises? Kane indicated the distinction is if they came to the marina district and perhaps park in the public ramp to get on those boats, or did they come across the lake? In staff's mind there's a distinction. Baltzer felt that to him it could go either way. He still wants to take Condition #8 out or revise it in some way.

Reinhardt asked Dehnert how much the number of pontoons has changed since last year. Dehnert stated that there's been no change. He has 7 pontoons.

Divine asked whether they, with a catering license, were legally able to sell alcohol and food and serve the food to the boats in the water, off-premise? Kane stated that at present, the docks are not included in the extension area of where their liquor license was amended back in 2011. They would need to request that through the proper channels. The Planning staff does not process those requests. They will be in communication with the Departments that do. Not being an expert on liquor licenses, she can't answer the question whether or not a catering license may be extended to service the docks. That's certainly something that they will research and understand better before it's presented to the Council.

At this point, the Planning Commission went through all the conditions in the proposed resolution to discuss what they'd like to change or delete.

Berry asked if the Commissioners were okay with Condition #1 and Condition #2. The consensus was yes.

For Condition #3, the applicant wants 63 seats instead of 57 seats on non-music nights. Berry stated they can make up for everything with the shuttle. Kane pointed out that those spots will not be provided on non-music nights. She asked that the Commission let them continue to work to try to find a way to retain the 6 additional seats that are provided by those 2 spots. They're comfortable with 63 seats, they're just trying to find the safest, best place for those two additional spots.

For Condition #4, it's all part of the liquor license anyway. It was decided to eliminate the condition.

For Condition #5, everyone agreed to scratch the south entrance creation.

For Condition #6, the Commission decided to remove "staff" in front of "entrance". The wording "per Condition #4" should be deleted, as Condition #4 was deleted. In addition, the wording "into the premises" was to be added onto the end of the sentence.

For Condition #7, Reed suggested letting this one stay in until it's time to look back on this after Labor Day and see how they did. Then they can see if there's some kind of engineering alternative.

Regarding Condition #8, Lynch is okay with them serving food to people there as long as all their necessary permits say they can. He'd like to find a way to have the Dehnert's be able to rent boats later. He thinks there's a creative solution there in which they can get them to do that, whether it's valet parking or a shuttle. Maybe there needs to be a discussion between staff and the applicants between now and the City Council meeting. Berry stated that this is a temporary trial to see what works and what doesn't work. They're going to revamp this and save what they can. The thing that Dehnert brought up with people coming in from the apartments or by bike, if they're not driving in, that if he has a way to identify that he could put those patrons in the seats of the pontoons, and therefore it wouldn't affect any parking stall. Lynch stated that a creative solution this summer would go a long ways between getting things approved for next year. Lynch asked them (Dehnert and staff) to please work together to come up with something good.

Crosby pointed out that the property has already, in these approvals that they have before them this evening, been granted a 20% reduction for parking, which is based on that concept of people walking and biking and other things. So that consideration has already been taken into account.

Reinhardt gets staff's reasoning on this whole thing. His thoughts are that if it worked out last year, he doesn't see why it wouldn't work out this year. They didn't have any restrictions on boat rentals last year and they had just as many pontoons. Lynch agreed.

Kane responded to Reinhardt's point that last year may not have been an issue, but Mizu wasn't operating last year and there wasn't a 65-70 seat restaurant in Boatworks Commons. When Frank Watson said earlier that he observed the parking spike in the ramp on music nights last year, that was a great thing. They've had an underutilized public resource in that parking ramp, but they know there were a lot of things that had to fall into place in securing a restaurant operator who was willing to take on a lot of the challenges that the developer created with the design of that two-story building. It took a lot longer than staff would have wanted. She thought back to 2012, when the PUD for the overall Boatworks Commons was approved, a restaurant was a very important component, and that's why staff continued to try and find a creative solution to attract a restaurant to add to the

variety and layering that makes the whole Marina Triangle interesting. It may be better to be more cautious this first year and see how it works out now that Mizu will be opening in June.

Reis stated that they're at an impasse on Condition #8. They can delete it, and ask that the planning staff wordsmith it with the Dehnert's to try and get some resolution, or they can wordsmith it themselves into something that works. Reis' suggestion would be to delete Condition #8 with the understanding that staff will work with Dehnert over the next couple of months to come up with some resolution. There was consensus to do that.

Berry is looking forward to seeing how this whole thing can be accomplished with the off-site parking. It's only going to get bigger. And we're trying to get more people in a confined space without screwing it up. That's what they need to do, try different things and see what works.

For Condition #9, it was decided to leave it alone. Condition #10 they're deleting, the lease negotiations will address those things. Conditions #11 and #12, no changes. For Condition #13, they're taking out "The music shall be acoustic only". There were no changes to Conditions #14 through #19.

Reis stated that a couple of rocks have been thrown at the staff. He feels a strong need to defend them. They're really good at what they do. He's spent 1/3 of a century in corporate America, and he's never met people who are brighter or more hard-working than our planning staff. They have to start from a different posture than any of you (the audience) or the Planning Commission. When we come on the Planning Commission, we get a thick book of codes. The reason there are codes is to defend us, you and me. He gave an example of how zoning is used. The staff has to comply with those zoning requirements. The Planning Commission's job then is to try and interpret them and say "Well, it's only a 1% variance, maybe in this case, to comply with a Tally's or a new garage; maybe we could give them a variance." If people want to come to some Planning Commission meetings, they routinely offer those variances if they don't bust a code too badly. That's an interpretation of what they do as volunteers. They're great staff.

Berry summarized what they did to the conditions.

Member Reis moved to recommend approval of Case No. 17-3-CUP with all the modifications to the conditions as discussed. Member Baltzer seconded the motion.

Crosby clarified that this included denial of a permanent approval, as well as approval of the temporary request.

The motion passed by a vote of 7-0.

- F. Case No. 17-3-Z:** A request by **Spade Landscaping** to amend the text of the B-3 zoning district to allow contractor's yards as a conditional use.

Kane discussed the case. Staff recommends approval. If it does get through the first and second readings with the City Council, Kane would anticipate they'll have a specific Conditional Use Permit application to review before the summer's end.

Berry asked why Kane would suggest a limit on the size of the lot. Kane doesn't know if they want to encourage 10 acre landscape contractor yards. If any of the auto dealerships redevelop, she hopes they would go to higher, better uses than landscape contractor's yards. Their value is not necessarily in the land. As the Commission and City Council are aware, the City has limited area to grow. As properties redevelop, she thinks it'd be better to have the value increase more than significant large sites. She'd be comfortable up to 3 acres. We don't have a whole lot of those eligible properties.

Lynch would be fine with 2 acres. If somebody comes in and they say "I have 2-1/2 acres, I'd really like to do this" they can do a variance – or they can change the code and say "3 acres is fine".

Lynch pointed out that the applicant has 12-15 employees, but only 11 stalls. Crosby stated that he has his own vehicles that some employees take home with them and then they take to the job site with them; maybe two or three vehicles. Kane stated that they'll iron that out as part of the Conditional Use application. This is just for the text amendment.

Berry opened the public hearing. No one came forward to speak. Berry closed the public hearing.

Berry asked if anyone would like to suggest a maximum size. Lynch suggested a 2 acre maximum size. There was consensus that it sounded good.

Member Reed moved to recommend approval of Case No. 17-3-Z with the modification to a maximum 2 acre size. Member Reis seconded the motion, and it passed by a vote of 7-0.

5. DISCUSSION ITEMS:

A. City Council Meeting Minutes of May 9, 2017.

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B. Park Advisory Commission Meeting Minutes – April 20, 2017.

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6. ADJOURNMENT:

Member Reed moved to adjourn, seconded by Member Lynch. The motion passed unanimously (7-0), and the May 22, 2017 Planning Commission meeting was adjourned at 11:07 p.m.