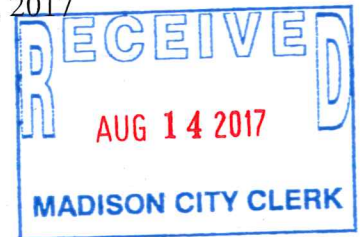


CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: August 11, 2017



MEMORANDUM

TO: Alcohol License Review Committee 

FROM: Assistant City Attorneys Jennifer Zilavy and John Strange

RE: Edgewater Hotel Entertainment License

The Edgewater Hotel (“EDGEWATER”) applied for and was granted an entertainment license in May, 2014. The license was never paid for or picked up. Because the Edgewater never paid or picked up the entertainment license, it was not included in the renewal the following year. The Edgewater has hosted live music events since its opening without having an entertainment license.

The outdoor live music events have generated noise complaints that have resulted in response from the Madison Police Department on numerous occasions. Alder Zellers has received repeated complaints from neighbors regarding the noise generated by the outdoor live music events.

It was discovered on July 3, 2017, that the Edgewater did not have an entertainment license and that they had been operating without an entertainment license for the past 3 years. The Edgewater was notified the afternoon of July 3, 2017 that they did not have an entertainment license and that they would need to immediately cease live entertainment. The Edgewater was informed that they could obtain 5 temporary entertainment licenses from the City Clerk’s office and that they needed to apply for a permanent entertainment license if they wanted to continue hosting live music events.

The August 7, 2017 neighborhood meeting held at the Edgewater was attended by several neighboring residents. Some of the residents had no complaints about the outdoor live music events hosted by the Edgewater. Some of those with no complaints live a fair distance from the Edgewater and do not live in the “noise impact zone.” Other residents, those living in the “noise impact zone,” complained about the frequency of the outdoor live music events. Even those neighbors who

believed the noise from the outdoor music events was unreasonable, stated the events would be more bearable if they were held less frequently. The Edgewater's summer music event schedule was impressive. Live music on the outdoor plaza at least three nights per week with approximately 70 live music events between May and September. Some neighbors spoke of three nights of live music in a row every Thursday, Friday and Saturday, and stated that the noise from the live music events interfered with their ability to experience peace and tranquility in their home during those outdoor live music events.

The City of Madison and the Edgewater negotiated and entered into an agreement, the Public Access Management Agreement ("PAMA"), regarding the use of the public access components of the Edgewater. That agreement covers hours of operation, public access rules, and events and activities in the public access areas. The PAMA states that the Edgewater shall "obtain and keep in full force and effect all necessary registrations licenses and permits, including, without limitation, such occupational, sign and other licenses, as may be required for the operation of the Public Access Components. Manager shall comply with all Legal Requirements."

There is nothing in the PAMA that states that the Edgewater is entitled to an Alcohol Beverage License, or that the Edgewater is entitled to an Entertainment License. It is completely within the City's discretion to grant or deny either one of those licenses. It is because the Edgewater has an alcohol beverage license that they are required to have an entertainment license if they are going to host live music events. If the Edgewater did not have an alcohol beverage license, they would be able to host live music events without the entertainment license.

At the time the Edgewater appeared before the Alcohol License Review Committee ("ALRC") for their Alcohol Beverage License, the ALRC asked Assistant City Attorney Anne Zellhoefer how the entertainment license interacted with the PAMA. In a memorandum to the ALRC, which is attached, Attorney Zellhoefer pointed out the sections of the PAMA dealing with permitted uses, hours of operation, and open areas. Additionally, Attorney Zellhoefer pointed out that "the right of the Edgewater under the PAMA to have live entertainment at its Events is subject to the requirement that it procure an Entertainment license prior to doing so." While acknowledging this requirement, Attorney Zellhoefer further wrote that the ALRC "may not, however, condition the Edgewater Entertainment License (if one is granted) on terms that are different from or conflict with those included in the PAMA." In her conclusion, Attorney Zellhoefer specifically addressed the question regarding hours of operation, stating again that if the City

grants the Edgewater an entertainment license it should “include the same hours of operation as the PAMA,” which are 8 am to 11 pm.

Alder Zellers is seeking to restrict the number of live music events the Edgewater hosts on the outdoor plaza only. There is no request to restrict the number of events the Edgewater can have in that outdoor area or any other place on the hotel property. The only restriction Alder Zellers is interested in is limiting the number of live outdoor music events to balance the interests of those neighbors negatively impacted by the frequency of the live music events and the interests of the Edgewater in hosting such events. Imposing this condition is not contrary to any of the terms or conditions of the PAMA because the PAMA grants no right to hold an “entertainment license event” to begin with.

As stated earlier, the Edgewater is not entitled to an entertainment license. There is no requirement that the ALRC grant the entertainment license. The same is true for the alcohol beverage license. There is nothing in the PAMA that requires the City to issue either of these licenses. Thus, the Edgewater has no entitlement via the PAMA to host live music events. If the ALRC decides to issue the entertainment license, Alder Zellers’ proposed condition restricting the number of live music events is an appropriate exercise of the committee’s discretion and is not contrary to, and does not further restrict, any of the terms contained in the PAMA. The Edgewater would still be entitled to use the public access area for general and special events that do not require an entertainment license, including for example, their weekly outdoor movie events.

For further background information for the ALRC’s consideration, I have attached partial transcripts from Plan Commission, Common Council, and ALRC meetings showing various discussions, responses, and concerns regarding amplified music at the outdoor space at the Edgewater.

Copy w/ attachments: Alder Zellers
City Attorney Michael May
Captain Jason Freedman, Madison Police Central District
Matt Carlson, Michael Best
Dan O’Callaghan, Michael Best
Anne Monks, Deputy Mayor

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: May 12, 2014

MEMORANDUM

TO: Members of the Alcohol License Review Committee

FROM: Assistant City Attorney Anne Zellhoefer

RE: Application by Edgewater Management Company, LLC for an 18+ Entertainment License

Question

Edgewater Management Company, LLC (Edgewater) submitted applications for a Class B combination license and an 18+ entertainment license for its hotel property scheduled to open in August of this year. At its April 23rd meeting, the Alcohol License Review Committee approved the Class B combination license, and referred to its next meeting the 18+ entertainment license application. The ALRC posed the following question to the Office of the City Attorney: "How does the entertainment license interact with the expectations in the PAMA and current land use approvals?"

Answer

The Public Access Management Agreement (PAMA) and the land use approvals do not negate the need for Edgewater to apply for and receive an entertainment license prior to allowing live entertainment on the licensed premises. Neither the terms of the PAMA nor the land use conditions may be altered by the ALRC without the approval of the Common Council and the agreement of Edgewater.

Background

The Common Council conditionally approved Edgewater's application to rezone the property in May of 2010, and approved the PAMA in January of 2011. The City is a party to the PAMA and is bound by its terms. The PAMA governs certain outdoor areas of the Edgewater Hotel property, and provides for public access to those areas in accordance with the PAMA's terms. The PAMA grants the Hotel Manager the right to schedule, organize, host, and cater public and/or private Events on those outdoor terrace areas, to charge for such Events, and to construct and place audio-visual equipment in the Event areas. Events may occur between the hours of 8 a.m. and 11 p.m. During the detailed Common Council debate and discussion of the PAMA, various Council members moved to add, delete or amend terms of the PAMA (see Approved Proceedings of January 18, 2011 meeting, File No. 20664), but no one moved to amend the hours of operation or to delete the Manager's ability to construct and place audio-visual equipment in the Event areas.

The approved Zoning Text defers to the PAMA as regards hours of operations and activities on the outdoor terrace. The Zoning Text includes the following three excerpted provisions:

Permitted Uses:

The following are permitted uses within the District:

8. Outdoor Open Spaces and Terraces as shown on the approved plans. These areas shall be used in accordance with the Public Access Management Agreement.

Hours of Operation:

The hours of operation ("Hours of Operation") of the occupied spaces will be varied. It is anticipated that activity will occur within portions of the District on a twenty-four (24) hour basis. The Hours of Operation for events on the outdoor terraces will be described in the Public Access Management Agreement.

Open Areas:

The Project has approximately 75,000 square feet of open areas including walkways, green space, terraces, balconies and rooftops, as shown on the Approved Plans. The publicly accessible open areas and the rights, terms and conditions of said access are more particularly described in the Public Access Management Agreement and the related Public Access Easements as defined and referenced in the Public Access Management Agreement.

The right of Edgewater under the PAMA to have live entertainment at its Events is subject to the requirement that it procure an Entertainment License before doing so. The PAMA explicitly provides that the Hotel Manager is to comply with Legal Requirements, which is defined to mean "applicable requirements under all laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction over the Real Property." Like all ventures seeking to conduct live entertainment on a licensed premise, Edgewater is required to comply with Sec. 38.06(12)(b), MGO, which provides that "No premise shall be deemed a Center for Visual and Performing Arts without first obtaining a license as required in this Section." The ALRC may not, however, condition the Edgewater Entertainment License (if one is granted) on terms that are different from or conflict with those included in the PAMA. Under the PAMA, the City acknowledged that the Hotel Operator or Manager is permitted to hold Events and conduct daily activities and operations, which may involve the use of audio-visual equipment and the serving of food and beverages, in and around the open terrace and other public access areas consistent with the terms of the PAMA.

Conclusion

Through its approval of and execution of the PAMA, the City has agreed to the use of the open terrace areas of the Edgewater Hotel between the hours of 8 am and 11 pm for certain Events. The ALRC may not alter, condition, or further restrict any of the terms contained in the PAMA without the agreement of the Council and Edgewater. If issued, the Entertainment License should include the same hours of operation as set forth in the PAMA.

A copy of the PAMA is attached to the Legistar file for your reference.

cc: Alder Ledell Zellers
Assistant City Attorney Roger Allen

**Partial Transcripts of Plan Commission, Common Council and The
Alcohol License Review Committee Meetings Regarding The Edgewater Hotel**

EDGEWATER PRESENTATION BEFORE THE COMMON COUNCIL—JANUARY 28, 2010

02:42:00—Dunn, Hammes Co: Fundamental Issue: How can we activate this space in every way possible 12 months out of the year....How can we design this space in a way that it allows us to maximize the revitalization and activity for the public. These are some studies that we've done. We're looking at **small concerts**, a **weddings** configuration, and some kind of **exhibit space** that might be an extension during the **art fair**. On a day to day basis how would you lay out that space to encourage as many people as the space can support so this is somewhat similar to the Union Terrace, let's say. And then how can we design it so we can optimize the operational use of the space but also create a great urban environment that people want to spend time in.

PLAN COMMISSION (PC)—MARCH 22, 2010

02:24:00—James Tye: Will the hotel create more noise and more activity that's a detriment to the neighborhood? No, it's simple. Why do you build a hotel? You build a hotel to rent rooms for people to sleep. Right? If the idea that the hotel is going to create an environment that's not conducive to sleeping or resting for people who are going touring in town is ridiculous. It doesn't go with the business plan. Let's look at the positive addition the hotel will bring to the neighborhood.....

05:26:00—Ald. Kerr (PC): Amplified sound, can you speak to that?

Bob Dunn: Obviously there are city ordinances that we'd have to adhere to. I do expect that that will be further developed in the management agreement. There was a comment made earlier that I think is just a practical reality that if we're putting residential units in the building and we're hosting north of 180 hotel guests, hopefully most evenings of the year, it would seem odd to me that we would simply just completely disregard noise.

05:29:00—Ald. Cnare (PC): Tell me a little bit more about the kind of events that you're going to be planning.....How many people might you be able to hold in your ballroom? And what kind of conference business do you expect to do? Can you give me some scale on the types of events?

Amy Supple, Hammes Co: Space is designed to be fairly flexible but it is not as it's been characterized as a large convention center hotel. It's not that type of hotel. The space has been designed to be flexible. The ballrooms break down into smaller component parts.....We could have outdoor weddings. We did a rough fit of a 160 guest wedding outdoors. If you plan an outdoor wedding always use an indoor space.

PLAN COMMISSION (PC)—DECEMBER 6, 2010

01:14:00—Tim Gruber (PC): I'm wondering about sound from events coming from these spaces and how that may affect the immediate and not so immediate neighbors depending on the sound level and I don't see anything in this about that so I'm wondering how you will control the sound. I understand currently that when there's a band it's down on the dock level. I don't think you hear it much on the Langdon level at all. You might hear it out more on the lake. What can you offer us or the community in terms of that?

Amy Supple: We've given a lot of thought how the events areas would work within the context of where we're at and so thru discussions both with the planning staff and with Atty. Zellhoefer. From a sound standpoint we've talked about there's a sound ordinance and discussions with Matt Tucker, he's just said there's a sound ordinance that dictates when you can and cannot do these things. In addition to that we've put hours of operation into where the events can occur and one thing, [CHANGES THE SUBJECT] I'm glad you brought that up, because one thing that's been confusing to people is that terrace hours and event hours don't match up. That wasn't an error or an omission. The reason for that is we want to shorten the hours of operation to allow for the sound to, uh, or events to close quickly so that's actually why that actually exists.

Gruber: I'm sorry, but I don't see where the limitations are of the hours for events to happen. I see under #2 that it should maintain continuous public access from 7 AM to 11 PM. But I don't see where there's a limit, a time limit, for the special events.

Supple: Well they can happen at any point during the course of the day.

Gruber: But you had said you would limit them or are you saying the noise ordinance is what will limit that.

Supple: Essentially the noise ordinance will limit the noise on the terrace and that's what we'll need to live to and respect.

01:18:00—Gruber: Were there any perimeters for the general events?

Supple: The general events really to specify what those are, those aren't necessarily something where the public can't come to. The general events simply allow us to do programming in the areas of the terrace so there's no defined number of days or anything like that, but it's also not necessarily, it has been characterized as a private space and that's not necessarily the case either. This could be an **art fair, a concert, any number of events.**

01:25:00—Fred Mohs:So what do we do about that [sound, music and noise]? Gruber was asking about that. That's a good subject. What are the limits? Can we have rock bands here or not? We haven't even talked about that. That's a good subject. We're in the middle of a residential neighborhood. Who wants to live in a place with regular rock bands?... How bad do we want to make this for people who live around here? It's a strong residential community.... We should ask ourselves, how will this thing be enforced? Let's say there's a rock band down there.....How do you inject a rock band into that environment without really hurting the residential character of the neighborhood?..... This site could be successful without a rock band without any band. Are we going to sacrifice the neighborhood, people's standard of living for this?

02:12:00—Gruber: There was some discussion about music. I wouldn't want the music to be excessively loud to bother neighbors and the hours of operation are going to be important as far as that goes too... I don't think the music has to be that loud. It shouldn't be. In this document we could reference the noise ordinance. The decibel level at the property line should be that of the noise ordinance.

02:14:00—Michael Basford (PC): Absolutely some more details about what is going to be allowed here. Completely echoing Mr. Gruber's comments about music of course. **When we provide a conditional use permit for a coffee house with an outdoor area that provides music, we make some rather detailed rules here. We need to see those sorts of things as well.**

PLAN COMMISSION—JANUARY 10, 2011

00:46:24—Amy Supple: We heard a lot of people speak very very strongly in support of the terrace and having activating the terrace and having events—a **fun public space, ice skating, dining, art fairs, concerts—all of these things**....The other thing I wanted to address.... How the terrace will operate?...Will it be a detriment to the neighborhood and will it be a nuisance to the neighborhood? **Our primary business is to have people sleeping there.** We have residents who will be living in condominiums there. Those are the people who will be residing and sleep closest to where these active events are on the terrace and it is not in our interest to have this be an unruly space in any way.....I would ask that you in the statements that are made a lot of people tend to suggest that we only want this to be a very active loud space and that is, in fact, not the case. We want this to be a fun environment that everyone can enjoy.

01:02:00— Michael Herfitz (PC): I'm still struggling with real world examples of what general events are. You mentioned **weddings**. The language says you can use on a year round basis so obviously you can do a lot with this space and I'm trying to find out what that would be.

Supple: Frankly we want to do a lot with this space. We want to have a lot of different types of events here. We envision everything. It could be a **dance**, it could be an **art fair**, **it could be a Thurs. night concert**, it could be a **party**, during the winter months it could be **kids skating on the ice**. It could be **a lot of different things**. I couldn't list all the types of events it could be. The only comparison I would use is it would be similar to Monona Terrace. The difference between what's happening here and the types of events that might happen on Monona Terrace....

01:25:00—Rosemary Lee:The condo owners and hotel guests will be physically very much closer to the public access area with far greater exposure to the events held there. The Bellview Apt. building is very close to Monona Terrace. We are close enough that we are aware of events at the the terrace. The Management there makes sure that events don't bother us as I'm sure the Edgewater management will do so. And remember Monona Terrace is owned by the City, it's not a private developer like the Edgewater Hotel Company will be.

COMMON COUNCIL—JANUARY 18, 2011

02:09:00—Amy Supple:....We're investing more than \$18 million into this space and the infrastructure to support the public use of the terrace including the use for programming for events activities, things like **the ice skating in the winter, dining, art fairs all of those sorts of things**. And the city's return on investment really is predicated on our ability to operate the space and maintain the space as a facility for public use as an events facility into the future. **From the noise perspective this is a critical question that's come up during the course of our discussions and I think the most important thing related to noise is to remember that our primary business is to have people sleep in the hotel.** We have residents living above the hotel and the expectations of our guests and the residents living at the party, uh, project, will be no different than the expectations of any neighbors in the neighborhood.

The PAMA is actually more restrictive than Madison city ordinance. It specifically states that we are obligated to follow the Madison city ordinance as related to noise but it also puts additional controls in place that restrict the hours of operation for the terrace.....we added restrictions to when we could clean up after events in order to limit the amount of noise at the terrace.....There's been a request for limiting the amount of time related to

when you could set up and take down on event and the reality is I can envision events that might occur of a sailing event, a biking event or something that occurs— a water sport event that might take more than 24 hours to set up or take down. We just, at this point, we don't know how long it will take to put those events up or take them down and therefore we ask for the flexibility that is afforded to other event spaces in the City to work and maintain the operations of the terrace.

02:42:00 —Supple...The ability to have flexibility in the programing is key to our business model.

02:46:00—Fred Mohs: Ownerships in hotels change. You can't rely on who's going to own it, how they're going to operate it...We have a lot of concerns.

02:51:00—Supple: I really want us to have the flexibility to operate and host and have events on the terrace especially and this really relates to some of the larger events that would likely be special events but some of the larger events that will do exactly what, I think, we all talked about during the TIF debate which is make the terrace a distinction for Madison, make the terrace something that drives visitation to the city, drives spending in the city and the ability to operate the space in order to allow for that sort of event to occur is critical.

02:54:00—Supple: We need the ability to be competitive and to function like any other events facility in the City. This is not something that Monona Terrace which is a public city owned facility, those sorts of provisions and restriction aren't put on Monona Terrace. And as a private venture here we just want the same flexibility to respond to the needs of people who want to host events whether we know about it a year in advance or 5 days in advance or whether it's a big event or a small event and we just ask for the same flexibility that others have.

Ald. Eagan:...You talked a little bit about alining interests with noise and space so would it also be true to say your interest..... to have loud music for your guests at 10 or 11 pm?

02:55:00—Supple: I can't speak strongly enough about that, the people who will be sleeping closest to the terrace and where these events will occur will be our guests paying money to stay in the hotel so there's acceptable standards and expectations that they will have related to the operation of this terrace that are very much aligned with the neighbors. In addition.....there's condo owners who are living there 365 days a year and will expect, they may be gone for periods of time but they're permanent residents who have expectations no different than the neighborhood. We have to live within the expectations of what our guests and our residents would expect as well as what is acceptable with the neighborhood.

03:36:00—Ald. King:I heard Ms. Supple say a couple of times that we all know that this is new, we don't know what's going to happen so maybe the doomsday scenario of all these tents is going to come true and there's going to be noise until 11 PM, 7 days a week. Who knows. But based on what you just told me at least what I read in here we're stuck with that, the provisions of this language and we can't reopen it unless they agree as well. If I'm on the other side it doesn't seem like that's really going to happen. So is there....

Atty. Zellhoefer: There's this dispute resolution procedure written into the agreement where each party, if there's a default, can provide the defaulting party with a certain number of days notice. The party will then have time to cure. If that fails then the process goes to mediation between the parties.

Ald. King: What I'm talking about is not really a default. I'm saying that in practice if something happens and there's unintended consequences to something we are voting on tonight and we don't really...it doesn't seem to me that we have a way out of that. Is that what the Plan Commission was trying to get at? I'm not trying to open a door to a can of worms but I'm kind of uncomfortable.....I don't think that's going to happen and I've said I don't think that's going to happen, but I don't know that that's not going to happen.

Atty. Zellhoefer: I think this would be an appropriate moment for Mr. Murphy to discuss the continuing jurisdiction of the Plan Commission.

03:38:00—Brad Murphy, Director of Planning: The project as you may recall received the approval of a Conditional Use for a Waterfront Development as well as several other Conditional Use Permits for outdoor eating areas, and as such the Plan Com. retains continuing jurisdiction over the project. The purpose for that continuing jurisdiction is to deal with complaints that might arise from time to time and for the Plan Com. to be able to hear those complaints for the purpose of determining whether or not the conditions of approval continue to be met and the standards, the Conditional Use Standards, continue to be met. The complaint is first heard by the Plan Com. The Plan Com. needs to make a finding that there's a reasonable probability that either one or more of the conditions of approval are not being met or that one of the Conditional Use Standards is not being met and then they would decide, if that were the case, they would hold a public hearing. The public hearing would be noticed, there would be testimony taken and after which the Plan Commission could apply additional conditions to the project in order to ensure that the project continues to meet the Conditional Use Standards.

The Plan Commission can only decide whether or not the Conditional Use Standards continue to be met and I don't recall seeing anything about public access in the Conditional Use Standards....Earlier this evening you heard someone testify that she thought the speakers should face toward the lake. That's exactly the type of thing that continuing jurisdiction for these types of uses deals effectively with. If somebody is facing speakers towards the residences it's very easy to suggest that the speakers be faced toward the lake. And in some cases that has happened for certain outdoor uses, but the Plan Com. can apply additional conditions to make those changes.

ALCOHOL LICENSE REVIEW COMMITTEE—APRIL 23, 2014

Edgewater Hotel

#24: Adult Alcohol and Beverage License

#19A: 18+ Entertainment License

03:21:00— Edgewater Atty. Rick Petrie: In February people from the hotel staff, myself, Alders Verveer and Zellers met before we filed the application to raise any potential issues that might be raised in respect to the license application. Before that meeting I had gone thru a PAMA that was a document that was heavy negotiated between the City and the new developer of the Edgewater regarding the scope of the activities that would occur in the outside areas primarily governing public access events. That particular document is many pages, is very specific and dealt with all aspects of operation with respect to the exterior areas, hours of operation, food and beverage service etc.

I thought to myself at the time that what would be perfect here would be incorporating the terms of the PAMA as a license condition on an alcohol beverage license because it is very comprehensive.....

After the meeting with Alders Zellers and Verveer I had a meeting with Capt. Gloede. I had provided a copy of the PAMA to Capt. Gloede before the meeting and Capt. Gloede indicated to me that he was very impressed by the scope and comprehension of the PAMA and agreed with me that that would serve as a good model in terms of incorporating it by reference as conditions that the Edgewater would have to comply with under the terms of its alcohol beverage license with respect specifically to the Alcohol Beverage License.....However, I would like to say that in my judgment the wisest thing to do is to honor the hard work that was done by the Edgewater and the City back in 2012 in term of the PAMA and **I would request that you incorporated that by reference as conditions upon the granting of the Alcohol and Beverage License.**

03:27:00—Atty. Petrie: Now just to briefly turn to the 18 + Entertainment License that is there because **there will be entertainment from time to time with live music on the plaza.** Clearly also inside the hotel. As you know hotels host many many weddings. The people who are invited to weddings are from all ages and all sizes in the family and people that are under the age of 21 will be on the premises when alcohol beverages are being served. I suspect there isn't going to be any great concern about the interior service of alcohol **at a top rank hotel operation.** I can tell you from my own personal experience that full service hotels generate almost no calls and are not considered problematic from a licensing perspective. I would ask you to seriously consider that and remind you too that if problems prove to develop it is a situation that can always be revisited and knowing people in Mansion Hill, and by the way they care for their quality of life, if problems do develop, there is no question in my mind that they will be coming back here asking for changes in the license.

03:36:00—Rosemary Lee: I think you all need to remember the developer who has millions of dollars invested in this is not going to allow loud, boisterous music and other noises on the outside venue because he doesn't want to lose his money.....Management is not going to allow things to happen that would disturb the **condo owners**, who will pay dearly for the privilege to living there or the **guests** from all over the world...the management is mindful of nearby residents and will not disrupt the use and enjoyment of residents' premises or their sleep.

03:44:00—Fred Mohs: I walk by these other hotels, the Concourse, the Inn on the Park, and the Hilton every day and they don't make a sound. Near other hotels you don't hear a sound, not a peep. I can't think of a hotel that makes noise....Maybe this is not going to be anything to worry about, but if it is, is there a way we can handle it?... We're just hoping that there's a mechanism if a mistake is made, if it does become noisy on an unacceptable level that this can come back here and be dealt with or there's a remedy that people don't have to fear this. I'd love to hear what can be done....It is illogical that this would be objectionably noisy but still—people have this fear.

04:01:00—Ald. Bedar Sieloff: **For the public record describe what kind of amplified music are you talking about those maximum of 15 days allotted outside?**

Ron Moran, Edgewater General Manager: **The 15 days allow for the public space to be closed for special events.** They could be **outdoor concerts**, it could be anything from **a tailgate party** during the home football game weekends. It could be...**community events**...where it's a **charity event.** **It could be a variety.** We're a destination hotel so there's a variety of different things that could happen.

Moran: The amplified music is necessary.... one of the applicants said they had an acoustic guitar and somebody needed a microphone to be heard. You must have amplified music for when you play **"Here**

Comes the Bride” on an electronic keyboard. You must have amplified music in that space for it to come out. We have 202 guest rooms. We also have live-in residences that we have a vested business interest in making sure that they’re happy. **They’re going to be disturbed even before even the folks at 2 Langdon** are.

Ald. Bedar Sieloff:I’m just asking about **the amplified music sound**...out of the 15 days that under PAMA you’re allowed to have outside events and some of those you’re going to need amplified sound. Is your thinking of these 15 days that most of them you’re going to need to have the amplified sound until 11 PM or are most of them going to be done before 11 PM.

04:04:00—Moran: That would require me to take a guess. But I do want to clarify that the 15 events that are allowed we are allowed to close the public access. During the weekend there could be a **wedding** during the day every weekend and that’s certainly allowable as we’ll be the proprietors of the property. There could be a wedding in the afternoon. I would think that in a best case scenario for us as operators we would want to have a **wedding ceremony or maybe a dinner out on the plaza and then if they’re going to have a late night dance we would move that inside the building.** That’s what we would do as general practice. I don’t want a DJ out there until 11 PM. That’s not good. for me.....

Atty. Petri: If you’re thinking about the kind of community events that are going to be in that place/space, the time for them to be there will be **mostly in the daytime** to take advantage of the view and the lake . A lot of the events that occur downtown—the summer’s films. A lot of them most of them are in the **day time.** **They’re not at night.**

04:06:00—Moran:I really, really want to be a good neighbor. I want a year from now a number of people coming up and speaking in our behalf because we’re really creating hopefully something all of Madison can claim ownership and feel like it’s their place too because it’s not just a hotel, it’s a public space.....

04:09:00—Ald. Subeck: So I guess I’m wondering outside of the holiday issue...**I would imagine that much of the time that space is open to the public you wouldn’t have amplified sound anyway because you’re not constantly going to have a band, a DJ, a something that’s playing amplified music.**

Moran: **No, but you might have little acoustic guitar, a singer or a little 3 piece something like that that might have a little Fender amp there.**

Ald. Subeck: Sure that would have to be assumed if this condition were in place that would have to end by 10:00 on weekdays.

Moran: There is, no matter what, we always have to be in compliance with the noise ordinance.

04:10:00—Ald. Subeck: This isn’t unique to the Edgewater. We deal with establishments that are very near residences frequently. I can remember a while back on the south side where we had an instance of an **apartment building being behind a bar and the sound was a problem.** It wasn’t anything that those folks did wrong. It’s simply the set up. I could say the same for this. This is obviously a much bigger venue a little more downtown but there is housing nearby. People don’t like sound in their windows no matter how you slice it. I’m trying to come up with a balance and trying to figure out if we can make Ald. Zellers’ conditions

work. It sounds like if we were to approve the conditions Ald. Zellers has requested you would like to ask that we would make some exemptions for certain holidays should they fall on a weekday.

Moran: It would be great if we had an option to address that at one point.....Having the ability to address that and having flexibility in that, we'd love an option for that.

04:12:00—Ald. Zellers: We do have residences so close by.....I would emphasize that the request is really modest to have the cut-off of **amplified music** during the week. They can have events every day, every night of the week if they choose. The 15 days is only the maximum amount of time that they can completely shut down the area for events. I think that 10 [PM] is a pretty modest request. Certainly I've heard from a number of people who would like to have **no amplified music** out there. Frankly I can kind of understand that. We want this hotel to be successful, we want them to do a good job. I think this is in harmony with that goal.

04:23:00—Atty. Allen: I spoke with Atty. Zellhoefer today. She's the person who negotiated on behalf of the City. It was her intent that this PAMA agreement would cover alcohol and set forth the terms and conditions on the license to the extent that the hotel is agreeing to any modifications, if that's what they are indeed doing then that negates any concern for abrogating the agreement on our side. But in speaking with both the hotel's attorney and the prominent attorney from the neighborhood there was an additional condition that the parties agreed upon and they asked to be incorporated into the license and that is **the hotel will come before the ALRC 6 months after opening for a status update**. At that time if the neighborhood has any further concerns they can bring them to your attention and you can address them or if necessary the City Attorney's office can address those concerns.

04:26:00—Ald. Subeck: You said that the negotiation included alcohol. **Entertainment licenses are very separate from Alcohol Licenses**. Not everybody who gets an alcohol license asks for, and even if they do ask for one, they sometimes do not receive an entertainment license. So are we assuming that particularly if we can reach some agreement, but with or without an agreement **are we able to put limits on the outdoor amplified sound?**

Atty. Allen: That is a question that I was not prepared for and am still not prepared to answer tonight because there's some language in the document about the set up and take down of audio visual equipment. I was told that the parties negotiated what they thought was an all encompassing agreement at least in the City's perspective and I can not see any concern about amplification of music or other sounds. In the materials that's provided that was just printed off sometime around 4:30 so I had admittedly a brief conversation with both the City Attorney and Atty. Zellhoefer so on that particular issue but again it sounds to me to be agreement between where you're going and the Edgewater that I would say that the two parties are agreeing to modify the agreement if it even encompasses that element.

04:28:00 —Ald. Bidar-Sieloff: The key here is, I was trying to do that in my first questioning is to determine whether we've reached an agreement or not because I understand that the PAMA is a binding document. We've signed it, we negotiated it so can the applicant get back up there and tell me whether you're agreeing or not to the restriction of 10 PM for the amplified sound...for amplified sound the 10 PM on weekdays. Yes or No. It's not a catch question. I'm just trying to see if there's an agreement or not.

Bob Dunn: The statement is correct. We spent a considerable amount of time 2 years ago plus negotiating this agreement specifically to deal with all the issues that are being discussed here tonight. And we came to an agreement with the City that our hours of operation are what are set forth in the management agreement specifically to deal with at the time how we would serve alcohol; where we would serve alcohol; how we could deal with set up and take down of events; and how we would deal with amplified sound; all the other things that come into play with this type of events. So you know it's a little troubling that we're back here renegotiating something that we spent quite a bit of time on over a period of months several years ago. Having said that, when we met Ald. Zellers yesterday I'm not uncomfortable that the areas that we're talking about for the operation and sale of alcohol namely the auto drop-off and the Cafe terrace. We don't mind restricting those because its not our intent to service and sell alcohol in those areas. There's no good reason for us to do it. As Ron said, individuals may come out of the bar with a glass of wine and sit out on the terrace on a nice evening. You know it's a little harder for us to police that but it's not our intent to sell alcohol on those areas nor to service those areas with waitstaff to sell alcohol. We felt like that was a reasonable compromise.

What we're not particularly interested in is being in a position where we've got different time frames around every event that we schedule here. We agreed before to hours of operation that take it to 11 PM during weekdays and week nights. We have a duty and obligation to operate this hotel in a reasonable way for the neighborhood but from our standpoint most importantly as it relates to our guests at the hotel. Beyond that I think I can speak very clearly on behalf of the residents of the Edgewater of which **I will be one. We're closer to the operation sitting right above it and will be impacted more by noise and the sale of alcohol and sound and all the other operational issues that come into play.**

I'd be happy to provide you with a letter from every one of the condominium owners that states very clearly that they're comfortable. We went thru this with all the condominium owners. They're comfortable with the management agreement as it was agreed to with the City. We've gone thru this in great detail once before. We're willing to make some further compromise because I think it's fair and reasonable and it's the way we intend to operate the property. From the onset here we'd like to stick by the other terms of the agreement as they were agreed to with the City simply because **we've gone through all these issues with great effort and I think good reason and that's what brought us to the terms that were set forth in the management agreement** once before. We want to be a good partner, we want to be a good neighbor. We want to operate a great facility. I think our staff brings phenomenal credentials to deal with these kinds of issues but we'd like to deal on the issue of where we'll operate **and leave the hours of operation as they were set out in the original management agreement. [8:00 AM to 11:00 PM]**

04:32:00—Michael Donnelly (ALRC):I just want to learn more about the situation...Can you point out where in the agreement it talks about amplified sound and hours for amplified sound?

Dunn: It basically references city ordinances to deal with sound and what have you but it's not specific on where we can have staging and amplified sound and that type of thing but we spent quite a bit of time on it. When we were going thru the management agreement we felt the language that we put together with our staff and the City Attorney was more than adequate to deal with the kinds of situations that we'll deal with when we're hosting events on the terrace.

Donnelly:Does the management agreement say that there are specific hours during which you can and cannot have amplified sound?

Dunn: In terms of hours of operation it sets out that from 8 until 11 we can host events, if you will, on the terrace. After 11:00 at night it's in our interest to shut down the terrace and that would mean we can't continue to host events, alcohol etc. So in terms of the hours of operation we're limited to what was agreed in the agreement as it relates to the ordinance of noise and sound. **Every property in the City has to abide by the noise ordinance.** That's clearly in your City ordinance and we're not treated any differently than that in the management agreement.

Donnelly: It's very common obviously, as you say, the noise ordinance applies to every body at all times. It's common that when somebody applies for an entertainment license that **there are restrictions not just on , 'don't break the law with too much noise' but that you have specific hours of operation.** So are you saying that that is not explicitly covered one way or the other in the management agreement?

Dunn: I think it is because it very clearly limits the hours of operation during which we can have events on the terrace. We can't go any later than 11:00 in the evening.

Donnelly: So it doesn't explicitly say during those hours of operation you can have amplified sound but you believe that is implied by the wording of the agreement?

Dunn: It's pretty clear that just the nature of hosting events, we always use **weddings** as the example of what types of events we'll host out there. I've been to a lot of weddings and it's pretty unusual that you'd have a wedding and you wouldn't have **amplified sound** or you wouldn't serve food or you wouldn't serve beverages or you wouldn't have the kinds of activities that come with a wedding. That's why I say we spent a lot of time on this and thought about the types of events and they got the language that the City Attorney was comfortable with and it went before Council and we spent a lot of time negotiating and getting approval of this agreement to deal with exactly the types of issue you're concerned about.

Donnelly: First of all, I understand your frustration and I'm really sorry for asking again, "Do the words amplified sound appear in the document?"

Dunn: I'd have to go back and read it. I don't recall specifically whether it says amplified sound and I don't want to say 'yes' and be incorrect in that. I'm not particularly frustrated. I'm just trying to understand. Is your concern, can we have amplified sound at midnight?'

Donnelly: No....

Dunn: The 10:00 is sort of a new, as of today it's a new issue. I mean it came up in a letter that we received maybe yesterday. It just came up in the last day so it doesn't speak in this agreement to 10:00. It simply says in this agreement that we can host events. and again this was approved by the Council, we can host events between early morning hours 7:00, 8:00 in the morning to 11:00 at night, 365 days a year. The intent when we put this agreement together was it would allow us to host community events during those times of operation and we originally started with something that, I believe was going as late 1:00 in the morning and we turned that back for the sake of dealing with these kind of issues.

Dunn: We've been thru all this and it was ultimately adopted by the Council so what it speaks to is the period of time during which we can operate and it's **clear that the intent was the nature of events that we would be hosting would have amplified sound.** We'd sell food and beverage and you'd have public activities

there. I just can't answer it without reading it, Does it say amplified sound? **Clearly the intent was most every type of event we will have there will be selling food and beverage, hosting people, having amplified sound and what have you.** Not every event will have amplified sound but many of them will.

04:38:00—Atty. Allen: Mr. Donnelly, to answer your question, that phrase does not appear in the document but if you looked at Sec. 9 which defines events, p.10, 9 (a) (iii) talks about audio visual equipment that's under general events. If you look at special events, Sec. 9 (b) (iii) again it uses that same term, audio visual equipment and to community events Sec. 9 (c) (ii) it again uses that term audio visual equipment. I know the parties are interested in quite frankly both the neighborhood and the applicants are interested in having this resolved tonight. I didn't work on this agreement. I was told it was an all encompassing agreement. To me there is a tolerable? argument that it intended to encompass amplified sound but the only way I'd know for sure is to have the City's representative that negotiated this agreement speak to you. It may be right for a referral.

04:41:00—Ald. Bidar-Sielaff:I honestly do not see how many times the hotel is going to have very loud music until 11 PM right outside the hotel so I think that we're being unreasonable and over discussing something that probably is not going to won't happen that frequently because I don't see myself paying \$300 per night to be awake until 11 PM by house music or techno. So I'm pretty sure it's going to be run in a reasonable way. This is a **high end establishment** that's how they're going to run it....I think I understand why we want protection but at the same time I really think this is not Plan B. **This is an outside area of a high end hotel.I just do not see that they're going to have constantly amplified music outdoor to 11 PM.**

04:43—Ald. Subeck: I disagree with Ald. Bedar-Sieloff because **I don't know that an agreement that we make such as this PAMA can dictate the issuance of an Entertainment License or an Alcohol License for that matter.....**certainly we can say our intent is that you can do this. These are separate licensing processes so not only does it no where actually say in the document there's any guarantee that you can have amplified music until a certain time. **My feeling is that it really couldn't because the Council can't force a future Council or future body or a future committee to issue a license in advance of even having the final place done so to speak.** I am going to suggest that we do restrict it to ending at 10 PM weekdays. This seems certainly reasonable.

Quite frankly this goes above and beyond the standards we set in many other neighborhoods. On Monroe St. we make people end with these kinds of things, **sometimes indoors, at 9 PM.** Same thing over on the east side. We often end things at 9 or 10 and often times they don't even involve an outdoor component so I don't think this is something where we're asking something extraordinary and there are neighbors who live very close to this establishment. In most cases they happen to be **rental not owner occupied** which may be why we don't necessarily see the people who live in those apartments here at these meetings. **Often times they're not as connected with City government but they deserve the same protections as a homeowner in the Monroe St. neighborhood or the Willy St-Atwood area.**

4:44:00—Ald. Mike Verveer—Conditional Use Permit. License holder should return within 6 months of opening

S. Ellmore, N. Johnson, J.M. Fisher, A. Gates; "An Inside Analysis of the Social, Comic, and Political Effects of the Edgewater Redevelopment," UW-Madison, Geography 565; 2011

Interview with Amy Supple, p.13: The Hammes Company sees the Edgewater as an opportunity to create a public space overlooking Lake Mendota with amenities similar to those of the Memorial Union Terrace, but is seen more as a "Union for Adults".

Interview with Bob Dunn, p.19: [Dunn] compared the public terrace of the redevelopment project to the Monona Terrace and said they would function similarly and complement each other. The public terrace would be a place for **weddings, business and company events, and ice skating during the winter.**