

#1

**Christianson, Eric**

**From:** Judith Guyot [activst1@yahoo.com]  
**Sent:** Saturday, June 01, 2013 10:49 PM  
**To:** David Hart; annzam2001@yahoo.com; Christianson, Eric; edmitchell@wisc.edu; Subeck, Lisa; Woulf, Mark; Verveer, Mike; msd@foolproofplan.net; rdlepak@wisc.edu; Bach, Richard; Allen, Roger; stevenson.samuelb@gmail.com; tlc@mailbag.com; Zilavy, Jennifer; Rummel, Marsha; Tracy Gallo; lynn.lee90@yahoo.com; rguyot@gmail.com; corey@planbmadison.com; Rico@planbmadison.com  
**Subject:** Fw: [MarqNA] Plan B nightclub should get license renewal but still fails at the simple things

Hello all,


This email is an invitation to review the The Eastsider referenced below for a current and comprehensive opinion about Plan B before your meeting of the ALRC this week.

Thank you.

Judith Guyot

----- Forwarded Message -----

**From:** The Eastsider <editor@willystreetblog.com>  
**To:** MarqNA@yahoogroups.com  
**Sent:** Thursday, May 30, 2013 9:23 PM  
**Subject:** [MarqNA] Plan B nightclub should get license renewal but still fails at the simple things

 In a few days the Alcohol License Review Committee will hold a separate hearing to further examine the renewal of Plan B nightclub's alcohol license.  
 This is the second straight year the establishment, located at 924 Williamson Street, has received extra scrutiny rather than their license being renewed in a block by the City of Madison.  
 On Sunday, I took Plan B co-owner Rico Sabatini up on his challenge to take a late night walk on Jenifer Street and see that noise from his club was not an issue. I concluded that they are not trying hard enough.  
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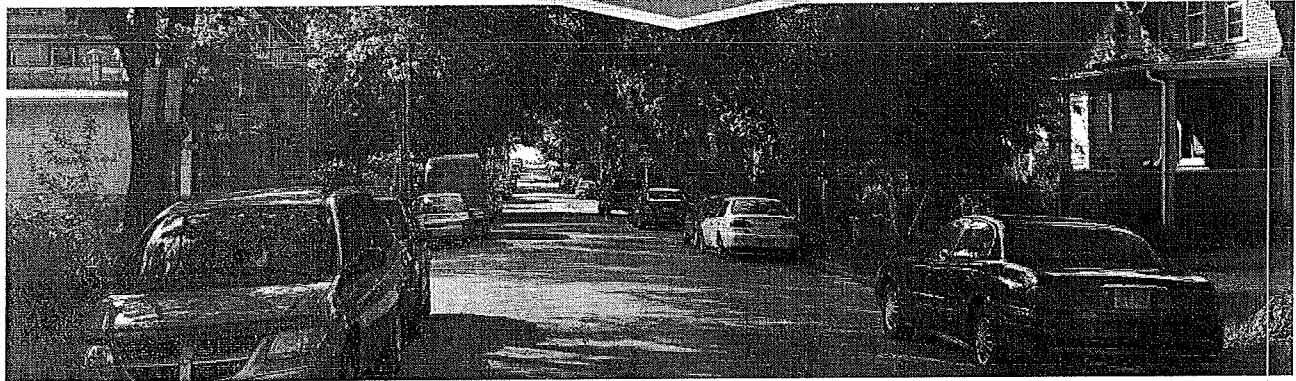
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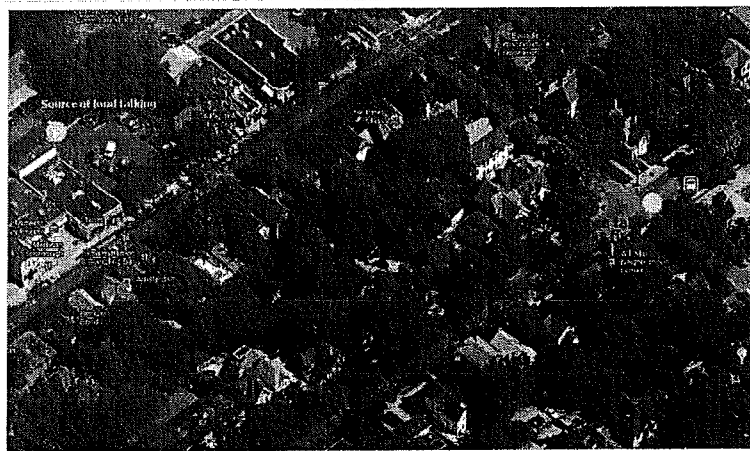
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## Opinion: Plan B Should Try Harder

Posted on May 29, 2013 by TheEastSlider

Nightclub should get license renewal but still fails at the simple things



My location (right) on the night I heard the somewhat typical Plan B hubbub. Without trying, I was able to clearly hear talking and music from over 200 yards away. Base image courtesy: Google

In a few days the Alcohol License Review Committee will hold a separate hearing to further examine the renewal of Plan B nightclub's alcohol license. This is the second straight year the establishment, located at 924 Williamson Street, has received extra scrutiny rather than their license being renewed in a block by the City of Madison.

This blog has looked at the various reasons for the problem surrounding Plan B's operation, and both the owners of the club and neighbors affected by the noise have legitimate beefs. But it was not until Sunday night, May 26, when I took Plan B co-owner Rico Sabatini up on his challenge to take a late night walk on Jenifer Street, that I concluded that Sabatini and his partner Cory Gresen are not trying hard enough.

Full disclosure: I will be 40 this year. I have a background in audio production, I am a huge electronic music fan, and I love how the Marquette neighborhood has evolved into the best place to live in the city. My parents are one of the three families that live on Jenifer Street who have been affected by the noise and have been the most vocal. My parents have lived there since 1970 and, along with others, have considerable sweat equity in building the foundations for establishments like Plan B and the Willy Street restaurant renaissance to flourish decades later.

It is through this lens that I cheered on places like Plan B for continuing to diversify the neighborhood, and resisted buying into the increasing complaints about the noise. The folks that built this neighborhood, I thought, were being a little harsh about things and needed to accept the youth movement that actually wanted to live here.

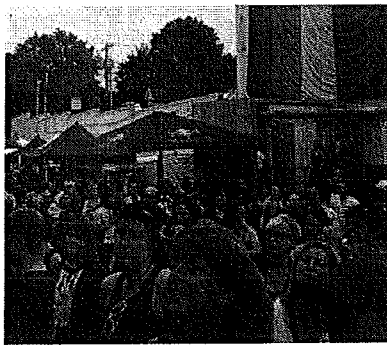


While not a packed parking lot, patrons linger too long. Plan B seems to be failing at the simple aspects of noise control despite promises.

But that was prior to moving back home a year ago, living in my parents' basement. While my father complained about the bass thumping keeping him awake all night, I didn't understand until I saw my septuagenarian parents turn into zombies from lack of sleep.

Up until recently, my occasional overnights at their house only exposed me to random encounters with loud screaming and yelling when Plan B patrons leave and melt into the neighborhood to retrieve their cars. Too often patrons would have loud, protracted, alcohol-fueled conversations outside their cars instead of getting inside and driving away. Broken glass from bottles is a constant.

While my job has me on the east coast half of each month, I am home enough to experience this all for myself, which leads me back to that walk I took the other night on the way back from a friend's house on Ingersoll Street. I was distracted in my own thoughts when I reached the corner of Brearly and Jenifer Streets and the Wil-Mar Neighborhood Center at 953 Jenifer. It was 11:53 p.m.



The 12-foot privacy fence does not extend beyond the stair area around the door and is ineffective against parking lot loitering.

Plan B is located at the bottom of the Third Lake Ridge, which runs from Blount Street east to the Yahara River. Jenifer, the next parallel street south of Willy, runs on the top of the ridge. In this mixed-use neighborhood the residents are no strangers to noise from bars, motorcycle clubs (the CC Riders had a clubhouse behind the Wisco in the 1970s and 80s), festivals and so on.

Plan B has brought the revelry of a neighborhood festival nightly to the residents within a block or so of the club. Additionally, the building Plan B occupies was built for an industrial purpose and does not contain the noise the club generates.

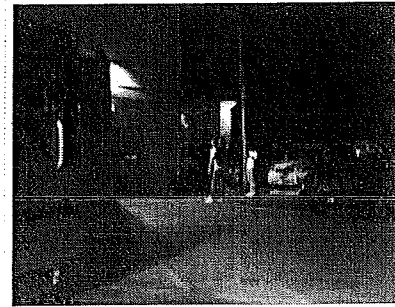
Plan B has done a lot to ameliorate these issues with more interior insulation, bass traps, a large privacy fence near a back door where smokers hang out, and more security to police the parking areas. But that isn't solving the problem, because Plan B's management still doesn't fully accept the problem and have done a poor job of managing their own noise mitigation plans.

I was not out to find noise at Plan B. I was just walking along, enjoying the evening air, when I heard loud talking and yelling while passing in front of Wil-Mar, which is on the south side of the street; Plan B is on the north side of Williamson, 550 feet (183 yards) straight line distance away.

I crossed Jenifer and walked past the next four houses to my parents' house and decided to follow the noise, which took me through our yard which connects with Willy Street adjacent to 933 Williamson. At this point, I was across from Plan B's parking lot, and I saw at least five or six people gathered in the rear of the building. These people were indeed the source of the noise I heard nearly a city block away (625 feet or 208 yards), with two rows of houses, trees and other structures in between.

Along the wall near the front of the building four women were talking loudly while having a smoke. I observed a black-shirted man with "security" emblazoned on his back walk from the front entrance to the back, disappear behind the building for 30 seconds and then return to the front with a woman in tow and enter the front of the club, which had no line.

The member of the security team made no effort to ask the women standing near the front or the gathering of smokers in the back to move on. The 12-foot-tall privacy fence that was touted by Plan B's owners as one of their improvements to reduce noise only encompasses the stairway around the rear door. None of the patrons were behind the fence; they were standing 10-15 feet away from the building in plain view.



The loud talkers were first heard from over six hundred feet away.

#### Is Plan B signaling submarines?

Noisy patrons coming and going from a club is the easy part of this problem. The bass noise is more abstract and hard to explain unless you have experienced it yourself. We hear music from a car as it drives by. Rarely do we hear the singing, rapping, or backing music first; it's most always the bass until the car is near. Bass operates in the lower end of the frequency range, the sound waves are longer and they travel farthest. All parties in this dispute agree that the roof of the building vibrates to the dance floor beat, sending the bass up hill to Jenifer Street.

An extreme example is the Navy, which uses Extremely Low Frequency radio waves, broadcast from northern Wisconsin, to communicate with submarines in the Atlantic Ocean. All other portions of most music is in the mid- and high-range frequencies, and that is why Plan B can say they are in compliance with noise ordinances. The ordinance measures sound in decibels on the "A" weighted scales so sound can be reported as a single number, according to this acoustics FAQ.

*Unfortunately, human perception of loudness vis-a-vis frequency changes with loudness. When sound is very loud – 100 dB or more, the perception of loudness is more consistent across the audible frequency band. "B" and "C" Weightings reflect this trend. "B" Weighting is now little used, but C-Weighting has achieved prominence in evaluating annoying community noises such as low frequency sound emitted by artillery fire and outdoor rock concerts.*

As you can see a "C" weighted measurement would give a better representation of the entire sound spectrum and better illuminate the crux of the problem of perception. By the time the bass reaches the houses on Jenifer, the mid- and high-range frequencies have dissipated. So it may not be illegal, but it is surely still a nuisance, and there are ordinances about that.

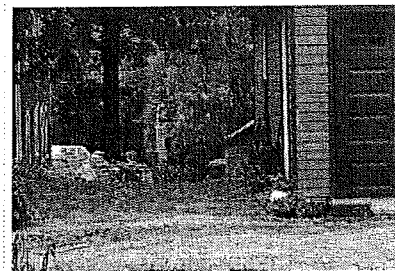
#### May I make a long-distance request and dedication?

I walked back to my parents' house. My room in their basement has an outdoor entrance that faces Willy Street, and standing outside that door I could clearly hear the bass beat starting and stopping with the music. Once inside and settled with the television on, watching old West Wing episodes with its chatty running dialog, I could still hear that same bass clearly. It was 12:18 a.m.

It makes more sense that my parents' bedroom two stories above catches more bass waves than me. However, there are two large two-flat homes between my room and the club, and on a normal night when exhaustion is not a factor, the bass would keep me from sleeping, too. Nobody appreciates a phat ass drop more than me but when it comes to sleeping, bass is not the same as white noise. The original sound study commissioned by Plan B noted that bass has an "annoyance factor".

Because hearing this bass is a "you had to be there" kind of situation, I tried to record the sound of the club from my back door that night. There was a breeze that can be heard, but about 7 seconds in you can distinctly hear music in the distance.

Hearing with my naked ear, the bass was even clearer, even above the traffic which can be heard on the recording but is rarely heard through the walls. The bass has a penetrating quality that is great for open-air concerts and crowded clubs, but it is annoying to the nearby neighborhood that wasn't interested in attending the show.



Even a basement bedroom can't really mitigate the bass on many nights. Plan B's parking lot can be seen in the distance.



(best with headphones)

Plan B's owners keep coming back to the fact that they are in compliance with the noise ordinance, have conducted multiple noise studies, and claim that only a few people are really complaining. At the April Marquette Neighborhood Association board meeting, Rico Sabatini reported that they hired more security to deal with the noise in the parking lots.

Sabatini said as much at last week's ALRC meeting as well, pledging to work with MNA on a fundraiser, suggested by one of the noise-affected neighbors, to fix the roof. But the neighborhood shouldn't have to raise money to fix a problem a business clearly brought upon itself as a direct result of its own operations.

Plan B should have their license renewed. But there still is some cognitive dissonance on the part of Plan B, which was apparent last week as they urged ALRC members to walk along Jenifer Street on any given night and see that Plan B was not negatively affecting the neighborhood. If the committee was walking with me the other night, they would have observed that despite all their impassioned pleas, Plan B still has a lot of work to do.


**Related: Plan B Alcohol License to Receive Special Hearing**

**Related: MNA Requests License Review of Plan B**

**Read the MNA letter to the ALRC here**

This entry was posted in [Madison](#), [Madison Commentary](#), [Willy Street](#), [Willy Street Commentary](#) and tagged [Chuck Chvala](#), [Cory Gresen](#), [Dick Guyot](#), [Jenifer Street](#), [License Separation Hearing](#), [Lisa Subeck](#), [Lynn Lee](#), [Madison](#), [Madison Commentary](#), [Mark Woulf](#), [Marquette Neighborhood Association](#), [Marsha Rummel](#), [Michael Jacob](#), [MNA Board](#), [nightclub](#), [Noise Ordinance](#), [Plan B](#), [Rico Sabatini](#), [Shiva Bidar-Silaf](#), [Steve Gallo](#), [Williamson street](#), [Willy Street](#), [Willy Street Commentary](#) and tagged [ALRC](#) by [TheEastSider](#). Bookmark the [permalink](#).

ONE THOUGHT ON "OPINION: PLAN B SHOULD TRY HARDER"

 **Bill Wilson**  
on [May 29, 2013](#) at 11:55 pm said:

Thank you for this honest, careful and data-rich review of this troubling situation.

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# 1

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Attorney at Law

512 South Paterson Street Madison, Wisconsin 53704 (608) 256-7180

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Alcohol License Review Committee

Meeting Date: June 3, 2013

Legislative File ID 30145

I wish to provide comments with respect to the separation of Gretisman Investments LLC's (dba Plan B) license renewal. The ALRC is again deciding whether to impose conditions on renewal of Plan B's licenses (Class B, 21+ Entertainment, and 18+ Center for Visual and Performing Arts).

**Is there a noise problem?**

Mark Woulf, the City's Alcohol Policy Coordinator, stated at the November 2012 ALRC meeting that the noise problem is a real issue, that it is just not a perceived problem. (City Channel meeting download, at minute 2:32.)

The bass issues first arose in September 2009, when the owner of 936 Williamson said his tenants have "bitterly complained of the offensive base music..."

<http://madison.legistar.com/View.ashx?M=F&ID=1763210&GUID=881D3035-671A-420F-8521-62E806812874>

The owners of three homes on Jenifer Street have consistently wrote comments and attended ALRC meetings to address the bass problems.

Additional Jenifer residents said they "... can hear bass waves thumping on our property coming from Plan B ..."

<http://madison.legistar.com/View.ashx?M=F&ID=2219701&GUID=D768003E-E2B7-4505-A174-C9155068860D>

The Madison Police Department recognized a problem on at least one occasion: On March 30, 2012, at 12:53 a.m., Officer Heimsness found Plan B's noise level to be unreasonable and issued Rico Sabatini a citation for violation of MGO 24.04(2).<sup>1</sup>

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<sup>1</sup> One may ask, if there really is a problem, why the police have not issued more citations. At the February meeting, Dick Guyot stated that the last time he called about a noise complaint, he received a return call from an officer who had been assigned to the complaint but was then pulled back since the City Attorney would not accept any more citations. Alder Verveer asked Attorney Zilavey about this, and she replied that she did not have the authority to direct police and she had not heard this before. Alder Verveer then asked Captain Bach, who replied that he could not speak to any particular plan regarding Plan B, but that it would be unusual. Attached (Attachment A) please find an email correspondence I had with an officer of the Central Madison Policing Team. In part, the officer says:

I cannot speak for how the police department overall will consider the test and whether it is presumptive proof yet. I was merely speaking as to where I believe the entire process is right now. I know there is more work to do. *But for police enforcement to take place (and worth it) in writing noise tickets, the City Attorney's office would have to agree to prosecute.* At this point, I'm not convinced this would take place because of the study. (emphasis added.)

## Plan B's opinion regarding noise

Plan B does not appear to believe that these households are experiencing any real problem.

- Rico Sabatini stated at the November ALRC meeting that Plan B needed “to focus on our business ... not continually worrying about a few people having problems which not everyone agrees that there is a problem.” (City Channel meeting download, at minute 2:10.)
- Plan B's comment letter of May 15, 2013, invited ALRC members to go to Jenifer Street to “... listen for the *allegedly intolerable bass noise* coming from Plan B ...” (emphasis added.) <http://madison.legistar.com/View.ashx?M=F&ID=2510719&GUID=A6E44B45-D886-4EE8-B493-2CDD0C40A31B>
- At the May ALRC meeting, Rico Sabatini said that Plan B was not “... opposed to going above and beyond what we need to do ...” (City Channel meeting download, at minute 2:20.)
- Chuck Chvala, one of the owners of the building does not believe noise is an issue: he went to hear the “terrible noise” and had to strain to hear any noise. (City Channel February meeting download, at approximately minute 1:35.)

## ALRC's role

Part of the ALRC's mission statement is to “enhance public safety & quality of life.”

At the November 2012 meeting, Alder Bidar-Sielaff commented that it was appropriate for the ALRC to address the noise issue, as did Mark Woulf. At the May ALRC meeting, one ALRC member expressed his view that ALRC involvement won't be useful in the future since there was real progress over the past year and Plan B was working with the neighborhood association.

But was real progress achieved prior to the May ALRC meeting? Plan B and the neighbors met twice during the year, on September 19, 2012 and on April 8, 2013.

At the September meeting, according to the Executive Committee report at the September MNA meeting, Plan B said it would put in insulation in the ceiling and cover it with drywall (above the dancing area) on “advice of its sound engineering consultant.” (Attachment B)

The April meeting minutes submitted to MNA state: “Mark Woulf led the discussion, to attempt to move from the apparent impasse.” (The impasse being the neighbors saying the wool batting and drywall did not fix the noise problem, Plan B saying it was reluctant to do more considering the expense and what it has done so far.) (Attachment B.)

The net progress is that Plan B implemented a solution which did not work, for which it has submitted no evidence that a sound consultant recommended such an option,<sup>2</sup> and which (though Plan B

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<sup>2</sup> Plan B states in its May 15, 2013 letter to the ALRC it “... installed the recommended solution of one study by installing multiple layers of drywall and mineral wool inside the dance floor on the underside of the roof.” Plan B's letter discusses three noise evaluations: one by the City Attorney, one by Audio

apparently submitted photos of the work) there is not any evidence that the work was properly completed.

### Will progress be made without involvement of the ALRC?

Based on several factors, it is doubtful that any progress will be made.

(1) When a licensee does not recognize a problem, it is less likely the licensee will be willing to work to fix the problem.

(2) Plan B has said they have done what they are going to do, that doing more is going above and beyond what is required of them.

- At the November ALRC meeting, Rico Sabatini, when referring to that the mineral wool and drywall retrofit, said: “This is our last trial ...” and “...we voluntarily did this and this is kind of our last straw so to speak...” (City Channel download at minute 2:10.)
- At the February ALRC meeting, the comment was “... we’ve kind of done what we are going to do and still a problem ...” and that Plan B has explored every avenue. (City Channel download at approximately minute 1:43-1:48)
- At the May ALRC meeting, the issue was described as a “... problem that a few people have ...” and “...to have our livelihood threatened by 3-4 households doesn’t seem fair ...” (City Channel download at minute 2:18) Rico Sabatini said that Plan B was not “opposed to going above and beyond what we need to do, we just can’t bankroll the entire process.” (City Channel download at minute 2:20.) And that Plan B was “still continuing to try to appease” the affected neighbors. (City Channel download at minute 2:25.)

(3) Plan B has tried to sway the ALRC with inaccurate information.

- Plan B says in their May 15<sup>th</sup> letter to the ALRC:  
“In subsequent months, additional sound studies were completed. Both studies were conducted at Plan B’s expense. (See additional attached.) Both had similar findings, but offered different solutions. *The consensus was that the measureable bass coming from Plan B was typically not something that was perceived as noise disturbance, and fell well below the acceptable level as defined by the City of Madison and most other city codes.*”

This was not the consensus of the studies. Two professional studies were performed. One study, conducted by Acoustics by Design in May 2012, concluded that Plan B did not exceed Madison’s ordinance addressing decibel limits. The other study, conducted by Audio Design Specialists in July 2011, concluded there was a problem:

“While these levels are quite low, the problem arises due to the nature of the signal with its rhythmic bass. The human ear/brain combination easily distinguishes this signal from

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Design Specialists, and one by Acoustics by Design. The only evaluation that found a problem, and recommended a solution, was Audio Design Specialists. Installation of mineral wool and drywall was not a recommended solution.



that of sustained background noise such as produced by the nearby HVAC fan. The literature details extensive criteria for determining the irritation value of signals based upon such factors as SPL, waveform, repetition rate, time of day, etc., so it is these additional factors, not just the SPL, that result in the complaints.”

- At the November meeting Corey Gresen claimed their mineral wool and drywall combination was better than the Audio Design Specialists recommendation: “Where if we did the mass loaded vinyl, which was suggested by another guy, it would only lower it like 1 or 2 dBs, which is like not noticeable to the human ear, so we are doing it a better way ...” . (City Channel download at minute 2:08.)

The “other guy” recommending mass loaded vinyl was Audio Design Specialists. The Audio Design Specialists letter recommended a 1/4” layer of mass loaded vinyl (a 4 dB to 6 dB reduction) and a digital processor (a 6 dB to 8 dB reduction), for a total reduction of 10 dB to 14 dB “which would be enough to lower the value at Jennifer Street to insignificance.”

- Plan B states in its May 15th letter to the ALRC it “... installed the recommended solution of one study by installing multiple layers of drywall and mineral wool inside the dance floor on the underside of the roof.” As discussed in footnote 2, this was not a recommendation of any of the studies.
- Plan B invited the ALRC “to go to Jenifer St and any of these households” in order to hear the “allegedly intolerable bass noise coming from Plan B.” This certainly implies that the noise is an outside problem. Yes, Plan B music can be heard from a long distance on some nights. But that is not the concern of the neighbors. Their concern is the noise within their homes – where they cannot sleep in their own beds due to the noise/thumping. Further, a 10:00 p.m. visit may reflect tolerable bass levels, while a later visit a 1:00 a.m. could reflect intolerable levels.

(4) Plan B remains reluctant to fix the noise problem.

Another meeting between Plan B and neighbors was held since the May ALRC May meeting. The result of this May 29<sup>th</sup> meeting was the attached (Attachment C) “Neighborhood Improvement Agreement.” (Plan B did subsequently back off requiring the Alder and MNA signatures.)

The draft agreement attempts to silence the neighbors: they could never again request separation and could not oppose a future remodel of the second floor. It is questionable whether this attempt to introduce extraneous issues into an already difficult negotiation reflects evidence of good faith.

Plan B has said they cannot “bankroll the entire process” (City Channel download of May ALRC meeting at minute 2:20) and Plan B is tapped out (City Channel February ALRC meeting download at approximately minute 1:44). The “Neighborhood Improvement Agreement” makes the neighbors and MNA responsible for approximately ½ of the cost to fix the noise emanating from Plan B. Presumably, the way this draft agreement is written, nothing will happen until the \$6,000 contribution is raised.

The neighbors have supported a fundraising effort for more than a year. But should the neighbors be *responsible* for raising \$6,000 to fix Plan B’s problem?

- Plan B's renovation from a photo shop to a bar cost (per City building permits in May and June 2009) \$234,000. Another \$7,500 was spent for a stair and landing addition with a privacy fence (City building permit issued 01/03/2011), and \$2,000 was spent late last year on the mineral wool/drywall materials (City building permit issued 10/1/8/2012). With investments of this scope, the significance of an additional \$12,000 investment pales.
- In its May 15<sup>th</sup> letter to the ALRC, Plan B says it has: "... made continuous efforts and spent substantial financial resources to not only make themselves a good fit for this mixed-use neighborhood, but to also try to solve what seems to be an isolated issue that a very specific group has personally interpreted as a problem." Plan B states it has installed bass traps, a limiter, and, most recently, the mineral wool/drywall combination. Should Plan B get credit for these attempts to fix the problem? At least two of these attempts to fix the problem came after Plan B received the recommendation from Audio Design Specialists: the limiter in August-September 2011 (Attachment D) and the mineral wool/drywall in November 2013. (Plan B also hired another consultant in May/June 2012 to provide a study that claimed no problem existed.) The fact that Plan B may have spent its money unwisely does not create a financial obligation on the part of the neighbors.
- It is not even clear whether Plan B is responsible for this cost or whether the building's owner is responsible for improvements to real property. Plan B's license application lists Lou Fortis and Chuck Chavala (*sic*) as the owners of the premises, but answers "no" in response to the question "Are you operating under a lease or franchise arrangement." Although the City's License Application Brochure says that applicants should submit a copy of their lease, Plan B did not submit a copy of the lease with its application (per the checkbox at the top of the application). Perhaps the lease will show that Chvala Ventures LLC is responsible for improvements to real property.

### **Potential options for ALRC action**

#### *Ordinance*

The ALRC could request the City Attorney to draft an ordinance addressing bass levels. Although bass levels are covered by MGO 24.04(2), which prohibits unreasonable noise, a more specific ordinance would provide a more consistent standard and lead to better enforcement.

The City has adopted ordinances to limit sound from vehicles, whether due to a defective or modified exhaust system or due to sound producing amplification devices. MGO 2409. In adopting this ordinance, the City declared:

The people have a right to and should be ensured an environment free from excessive noise that may jeopardize their health or welfare or safety or degrade the quality of life. Therefore, it is the policy of the City of Madison to prevent excessive noise which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life. MGO 24.09(1)

If it is worthwhile to protect citizens from transient noise from vehicles, it should be at least equally important to protect citizens from perpetual noise from an entertainment establishment.

Other cities with a vibrant nightlife have found ways to address this problem. For example, Seattle Ordinance 25.08.501, Nightlife Disturbance, states:

“It is unlawful for any person in possession of real property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit.” (The City Council directed the Administrator to promulgate rules, including defining “plainly audible to a person of normal hearing” and setting threshold dB(A) levels and threshold dB(C) levels.)

### *Police Enforcement*

The ALRC could request the police department to respond to noise complaints (as may be appropriate given the noise complaint’s priority status) and ask the City Attorney to prosecute any resulting citations. Enforcement of MGO 24.04(1) would, at a minimum, provide the ALRC a better sense of the scope of the problem.

If Plan B received enough citations, it may decide to voluntarily comply with the City’s noise ordinance.<sup>3</sup>

### *Ensure compliance with filed documents*

An application for a Center For Visual and Performing Arts license requires “A completed plan of operation which shall include: ... how applicant will maintain the orderly appearance and operation of the premises with respect to litter and noise ...” MGO Sec. 38.06(12)(d)1.g. The ALRC could go back and review the original plan of operation to ensure Plan B is in compliance.

### **The neighbors do not want to shut down Plan B**

Plan B’s neighbors have been patient and have tried to work cooperatively with Plan B for years. Some have alleged the neighbors want to shut down Plan B, perhaps because of anti-gay sentiment. This is far from the truth. The neighbors want Plan B to succeed, but also want to have relative peace and quiet inside of their homes. When the heavy snow of the past winter dampened the bass emanating from Plan B, several neighbors told this to the ALRC.

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<sup>3</sup> Plan B claims that its customers want louder music. At the February ALRC meeting, Mr. Landgraf asked Rico Sabatini whether Plan B has experimented with a sound level that works for the neighbors. Plan B responded yes, but then their customers complain the music is not loud enough. (City Channel download at minute 1:48.) Should the wants of customers (louder music) override the needs of neighbors (to get a full night’s sleep)? It is not as though Plan B must play loud music to retain customers: Plan B is a one of a kind venue in Madison.

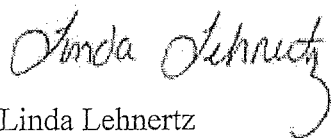
If the neighbors wanted to shut down Plan B, they would have taken the route offered by City ordinances (or brought a lawsuit). Pursuant to MGO 38.10(1)(a), which addresses revocation, suspension or nonrenewal of a license:

“ .. any resident of the City may file a sworn written complaint with the City Clerk alleging one or more of the following about any person or other entity licensed pursuant to this chapter:

...

12. The licensed premises has been operated in such a manner that it constitutes a public or *private nuisance* or that conduct on the licensed premises, including but not limited to raucous noise, has had a substantial adverse effect upon the health and safety of the immediate neighborhood. (emphasis added)<sup>4</sup>

Respectfully Submitted,



Linda Lehnertz

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<sup>4</sup> A recent Wisconsin Court of Appeals case succinctly defined a private nuisance:

Wisconsin has adopted the definition of private nuisance set forth in the Restatement (Second) of Torts (1979). “The Restatement defines nuisance as ‘a nontrespassory invasion of another’s interest in the private use and enjoyment of land.’” “The phrase ‘interest in the private use and enjoyment of land’ as used in sec. 821D is *broadly defined* to include *any* disturbance of the enjoyment of property.” The Restatement explains:

“Interest in use and enjoyment” also comprehends the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land. Freedom from discomfort and annoyance while using land is often as important to a person as freedom from physical interruption with his use or freedom from detrimental change in the physical condition of the land itself.

*Apple Hill Farms v. Price*, 2012 WI App 69, ¶13 (citations omitted)

A landowner's compliance with zoning laws does not automatically bar a private nuisance claim. *Prah v. Maretti*, 108 Wis. 2d 223, 234, 235 n.10, 321 N.W.2d 182 (1982)

RE: Plan B Neighbors Meeting Set - Wednesday, August 3<sup>rd</sup>

Mon, July 18, 2011 5:04:54 PM

**From:** "Magyera, Steven"  
**To:** Linda Lehnertz

Hello,

I am referring to Jennifer's memo. I cannot speak for how the police department overall will consider the test and whether it is presumptive proof yet. I was merely speaking as to where I believe the entire process is right now. I know there is more work to do. But for police enforcement to take place (and worth it) in writing noise tickets, the City Attorney's office would have to agree to prosecute. At this point, I'm not convinced this would take place because of the study. Again, I believe the issue has not been completely resolved and I continue to hope Plan B and the residents can find a happy medium.

Officer Steve Magyera #3795  
Madison Police Department  
Central Community Policing Team  
211 S. Carroll St.  
Madison, WI 53703  
(608)209-8480 cell  
(608)266-4248 office

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**From:** Linda Lehnertz  
**Sent:** Monday, July 18, 2011 4:27 PM  
**To:** Magyera, Steven  
**Subject:** Re: Plan B Neighbors Meeting Set - Wednesday, August 3rd

Officer Magyera,

You state that you are relying on the completed decibel test. I believe you are referring to the memorandum dated May 11, 2011 from Jennifer Zilavy of the Office of the City Attorney. In this memorandum, Ms. Zilavy concludes that the sound level of the music and bass "is not unreasonable and is certainly not excessive." This was Ms. Zilavy's conclusion even when the music was 'red-lined.'

I am not sure what you mean when you say that you are relying on this memorandum. My interpretation is that the police department will consider this test presumptive proof that Plan B is not in violation of the noise ordinance. Is that an accurate interpretation? If not, could you please clarify?

Thanks,  
Linda Lehnertz

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**From:** "Magyera, Steven"  
**To:** <>  
**Cc:** "mnaboard@marquette-neighborhood.org" <mnaboard@marquette-neighborhood.org>  
**Sent:** Sun, July 17, 2011 4:39:01 PM  
**Subject:** RE: Plan B Neighbors Meeting Set - Wednesday, August 3rd

I'm sorry I can't make the meeting. I believe I indicated this was not a good day for me. I know there were many people's schedules to account for. I have received some e-mails about continued problems from residents. Patrol has not indicated to me whether they continue to get dispatched to noise complaints on a regular basis. Please let me know if you have any questions. As of now, I am relying on the completed decibel test.

Officer Steve Magyera #3795  
Madison Police Department  
Central Community Policing Team  
211 S. Carroll St.  
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**From:** Scott Thornton  
**Sent:** Tuesday, July 12, 2011 10:39 PM  
**To:** <>  
**Cc:** mnaboard@marquette-neighborhood.org  
**Subject:** Plan B Neighbors Meeting Set - Wednesday, August 3rd

The next meeting of the Plan B Neighbors group is scheduled for:

...

Marquette Neighborhood Association Board  
Meeting Minutes

*July 19, 2012*

**Executive Committee**

The Executive Committee made a recommendation on the neighborhood role in the Alcohol Licensing Review Committee requirements for Plan B: formation of a committee of three board members, three representatives of families and representatives of Plan B. The members of the committee besides the families and neighborhood association representatives: Rico Sabatini, Corey Gresen, Chuck Chvala, Marsha Rummel, and Mark Woulf. Plan B is responsible for scheduling meetings. The MNA representatives will report back to the MNA board.

*September 20, 2012*

Executive Committee Report

Plan B Meeting. Several residents, three MNA executive board members, and Plan B representatives met on September 19. Residents said that the noise this past summer has been less of a problem than in the past. However, there were several nights with loud noise, including a recent night. On advice of its sound engineering consultant, Plan B will put in insulation in the ceiling and cover it with drywall (above the dancing area). On the whole it was a positive meeting. Notes on the meeting will be sent to the MNA Board, meeting attendees, and Mark Woulf and Jenifer Zilavy.

*April 18, 2013*

**Follow-up Plan B Meeting Held This Month and Letter to Be Sent to ALRC** Plan B met with neighbors, board members, and Mark Woulf on April 8. Nicole Craig, Joan Frost, and Mike Soref, who attended, reported on the meeting. Notes are attached. The board passed a resolution to recommend to the ALRC to separate Plan B's next license renewal. The letter communicating the resolution to the ALRC is attached. Michael Jacob moved adoption of the text of the letter as it was circulated. Nicole seconded.

Neighbors who had attended the April 8 meeting argued for sending the letter. Corey Gresen and Rico Sabatini opposed sending the letter. A message from Corey Gresen defending Plan B is attached. Several other neighborhood residents spoke in favor of sending the letter to the ALRC. The board approved the motion: 9 ayes, 1 abstention.

Marsha Rummel is proposing a change to the noise ordinance so that it would apply to situations such as this one. Carl left the meeting.