

The Board of Mayor and Aldermen of the City of Waveland, Mississippi, met for a Workshop session at the City of Waveland Civic Center located at 335 Coleman Avenue, MS. at 6:30 p.m. to discuss the following: noise ordinance and culvert/drainage ordinance.

Present at the workshop were Mayor Garcia and Aldermen Stahler, Geoffrey, Lafontaine and Kidd.

Also present at the workshop were City Clerk Lisa Planchard and City Attorney Gary Yarborough

**Tape of workshop (in workshop folder) for listening available via records request.**

Mayor Garcia asked the Board members if they wished to comment on either of the two ordinances up for discussion. The Aldermen had no questions or comments, therefore the Mayor opened the floor to audience questions/comments.

**PUBLIC COMMENTS**

**NOISE ORDINANCE NO. 340 -**

**Steve Hand – (Planning and Zoning Commissioner)** – Mr. Hand said that he asked to speak first because he had a great deal to do with the development of Ordinance No. 340 back in April 2009. He said Ordinance 299 (the previous noise Ordinance) was deficient; it only applied to residential zones. Mr. Hand said he and Ms. Brenda McComb spent 2-3 months working with City Attorney Gary Yarborough and former City Attorney, Zach Butterworth on this Ordinance and eventually modeled the Ordinance after the City of Gulfport's Ordinance. He explained that when you are looking for noise measurements, they could either be objective or subjective. Objective would be sound audiometers, or sound meters. He said in the application of them, you must be very dutiful in how you proceed; they are subject to challenge. Subjective measures are a distance measurement, which is what was chosen for this ordinance. They made a choice not to use the objective decibel meter measurement due to audiometers having to be checked and calibrated before each reading for accuracy. He asked the City not to abandon the subjective standard of sound level if there is a great desire to go to an objective standard. Mr. Hand stated that under Section 5 of the Ordinance, there are 15 things that can contribute to loud and raucous noise, but most of them do not lend themselves to the sound measurement by an audiometer. That is where an objective measurement is needed... such as the level of a barking dog and asked the Board to be cautious in their consideration of another Noise Ordinance. Don't throw out the objective standard, but recommend rather to add the subjective standard to the noise measurement under consideration and then provide the money for police training and equipment of the objective standard used.

**Brian Mollere** – Mr. Mollere said that he came to the Board in 2009 to ask for help with the noise issues and was basically told that, "Because you live in a commercial area...tough luck". Mr. Mollere said that he has spent thousands of dollars to sound proof his bedroom and is working to make compromises. He said this is a 'mixed use' area and has a problem with Ms. (Nadine) Brown (owner of C&R's) who stated that she has lost thousands of dollars in business; however he has had to spend thousands to sound proof his home and if he has to soundproof, then she should have to also.

**Marion Frost – (109 N. Bourgeois Street)** – Ms. Frost said that she has been a Registered Nurse for 22 years, teaches healthcare sciences including physical anatomy and physiology and pathophysiology and would like to approach her argument from the research related to the health risks of excessive acoustic levels. The base sound is considered high intensity and low frequency sound, causing possible health complications if there are pre-existing heart or lung problems. She said this could also cause anxiety, depression, trauma and insomnia, which Ms. Frost stated that she could identify with a few of. Ms. Frost continued to read from the medical information and explanation of the aforementioned ailments. She said that she has called the Police and

when they have walked through the rooms of her home, which is raised, they could feel the vibration and hear the noise in the house. She stated that she has actually had to leave her home to do work. At this time, Ms. Frost presented a petition signed by 52 citizens of Waveland that support the current Noise Ordinance No. 340, and submitted the petition and information to Mayor Garcia.

**Martha Conrad – (1525 Margie Street)** – Ms. Conrad said that she was on the opposite spectrum of the noise argument because of a lawsuit brought against her brother because of barking dogs. Ms. Conrad says her brother's dogs are not the only dogs that bark and her brother is being harassed. She felt that Ordinance 340 had been used as a tool for harassment against her brother by his neighbor for three years. She said the reason the dogs barked at the neighbor so much was that they saw this neighbor come onto her carport and antagonize the dogs into barking madly, then call former Mayor Longo, hold the phone out for him to hear, and complain about the dogs. She said the neighbor would make up lies about when the dogs were barking because she knew and had records of at least one instance where she knew the dogs were inside all day. She said the way the ordinance is written regarding barking dogs has to be changed.

**Nadine Brown – (Owner of C&R's Bar & Grill)** – Ms. Brown said that she felt the reason the Ordinance was ever changed was because of C&R's; she said she can show in the minutes where this is all coming from a little problem on Coleman Avenue. Her first comment was that the City gave her a permit to build a building and operate as a bar in a commercial zone. She explained that that is what she is doing and the next thing she knows, she is being served about a noise ordinance at 9:00 pm at night in a commercial zone. She asked, "How am I supposed to operate my business as a bar with a 9:00 pm noise ordinance?" She said in the course of 6 months the Police had been called on her 45 times. Of the 45 times, only 50% warranted a possible complaint about the noise. Ms. Brown said that she then moved the jukebox to the opposite wall inside and quit having bands at night and, instead moved them to Saturday from 3:00 pm to 7:00 pm. with Karaoke on Wednesday evening. The Police would show up at 3 o'clock pm. in the afternoon when the band was unloading. Ms. Brown asked the officer why he was there. The Officer told Ms. Brown they received a complaint because she had people in her bar. She told the officer, "It's a bar; it's supposed to have people in it." Ms. Brown said that she has done everything that she could do to contain the noise, including re-insulating the walls. She said there are even calls coming in at night when there was no music playing at all. Ms. Brown said that she had a conversation with the former Police Chief who agreed with her thoughts that no matter what preventive action she has taken, the calls to the Police about her bar would not stop. Ms. Brown addressed her financial losses and health issues caused from the stress, depression and constant worry caused by the Police calls. She said had she known the extent of noise complaints and harassment she's endured for two years, she would have never rebuilt the bar. Ms. Brown noted the residents complaining are in a commercial zone. It does not matter what she does, the residents will not be satisfied. She said it would be sad if she had to tell her patrons that she has to close because she is in a commercial zone but cannot make any noise. She said, "I have not missed the point. I understand that there are probably times when he does feel a little vibration over there, but he lives in a commercial zone and that's not my problem. I didn't zone Coleman Avenue commercial, the City did that. So what am I supposed to do, just close my doors? How am I supposed to pay my bills if I can't do business?" She said, "I am a commercial business in a commercial zone and the City gave me a permit to operate as a bar in a resort area; I can be open 24 hours a day. So are you going to put a 9:00 pm ordinance on me if I'm in a commercial zone?"

**Lee Feugas – (321 Coleman Avenue)** – Mr. Feugas began by stating that he is not against anyone, and does not call the Police, but said sometimes it does get noisy, the noise is a problem at 2 or 3 o'clock in the morning. Mr. Feugas said his main concern is with the Ordinance regarding other parts of Waveland, not the commercial area. He said there should be some type of a noise ordinance but should neither ruin someone's business, nor have it to where someone can't sleep at night.

**George Coatney – (310 St. Joseph Street)** – Mr. Coatney said he feels the current Ordinance should stay the way it is. He said that he and his wife do not have too much of

a problem with the noise; but does hear it after 9 p.m. and has empathy for those living near the noise problem.

**Martha Conrad** – Ms. Conrad asked about whether there is a time limitation re: noise within the Ordinance. Alderman Kidd explained that there is no time limitation for some actions through the day, with one exception being construction. Mr. Yarborough said there is no time limitation, however on some items there is a limitation from 7:00 am to 9:00 pm on a item by item basis, but dog and fowl are addressed specifically within the ordinance.

**Nadine Brown** – Ms. Brown said that she is not against the noise Ordinance, and would not be opposed to limitations of an 11 p.m. noise restriction on weekdays and 1 a.m. noise restriction on weekends; she is opposed to a 9:00 pm limitation in a commercial zone. She said that because she is not “a Highway bar”, she has to bring in bands and various types of entertainment to draw them to Coleman Avenue. She is asking for some flexibility of a commercial zone to do business on the weekends.

**Roger Estopinal – (Chairman of Planning and Zoning)** – Mr. Estopinal said the Board has a hard time here (making this decision). Mr. Estopinal shared a story related to his former career as a deputy as it related to a noise issue. From this personal experience, Mr. Estopinal recommended a decibel meter to take the human element out of a noise issue.

**Alfred “Tiger” Harris – (4030 Indian Street)** – Mr. Harris said that he agrees with both sides, and agreed with taking the human element out of the issue and we should use some sort of sound measurement. He does agree that 9 p.m. is too early to control sound in a commercial area.

**Nadine Brown** – Ms. Brown asked, “What is the purpose of having a noise ordinance in effect from 9:00 pm to 7:00 am if the Police can come at 3:00 in the afternoon for disturbing the peace because they claim you’re making too much noise. She said the former Police Chief told her that anyone could be arrested anytime of the day or night for disturbing the peace.

**Steve Hand** – Mr. Hand said in Section 5, there are examples listed, but not exclusively, that describe items that can be considered loud and raucous, if they’re plainly audible within 100 ft. In this section, there is no 9:00 pm to 7:00 am relating to enforcement of the playing and operation of music, however there is on construction equipment. Mr. Hand said, “It is around the clock and as far as dogs barking, if a person sued the owner, that does not fall upon the City.”

**Marion Frost** – Ms. Frost said that she is not against music or commercial businesses, but is concerned with the invasive quality of going beyond the boundary of the commercial business to where her house is shaking and she can’t sleep or work in her home. Ms. Frost asked if there were some kind of objective instrument for measuring the high intensity low frequency vibration. She knows that a decimeter measures volume, but what is there to measure the low frequency vibration; and what materials are there to ebb the noise and make a barrier. Ms. Frost stressed that she is for a workable solution.

**Brian Mollere** – Mr. Mollere said it is about the vibration in their homes, and again is having to take steps to prevent the vibration in his home. He feels that Ms. Brown did not use the correct materials when adding to her sound prevention and said he would have donated money to assist Ms. Brown in her efforts to sound proof if she would have done it right. Mr. Mollere said he lived next to bars all of his life and never heard the sound coming from the buildings before this metal building was built. There has to be a peaceful resolution.

**Nadine Brown** – Ms. Brown agreed that she wants a viable solution as well, but is now losing too much money to afford soundproofing for the building. She says that she must be able to bring in bands in the afternoon and do business at certain times of the day to make a living with C&R’s which is her livelihood. Ms. Brown said she tries to keep the bands and music as quiet as she can and is willing to meet in the middle.

**Chief Kenny Hurt- (Waveland Police Chief)** – The Chief noted that he had not heard from any of the complainants until earlier today. Chief Hurt said that he has personally experienced and listened for the noise, but again stated that he had never been personally contacted about the problem. Mr. Mollere offered an invitation to the Chief to come into his home and listen. Chief Hurt said that he had spoken with the Ms. Frost (this morning) about the cussing in the back yard and was here to help both parties work this out.

**Alderman Shane Lafontaine – (Ward 3)** – Alderman Lafontaine said that he understands both sides and we need to meet somewhere in the middle to work this out.

#### **CULVERTS ORDINANCE NO. 343 -**

**Mayor David A. Garcia** – The Mayor spoke to the audience telling them that the current ordinance is limited to what length of culverts can be closed in and the City is willing to consider allowing people to close in across the front of their property with culverts if due diligence proves to warrant this action. He said the people that do this would have to have a catch basin to take the runoff and have access to jet out and clean those culverts.

**Alderman Kidd** asked what was the amount of length of culvert laid and closed in before a catch basin has to be installed. **Mr. Brent Anderson – (Public Works Director)** said that usually the standard rule is every two sections of culvert (a standard 20 feet), you put a catch basin. He emphasized you're not only controlling your yard and closing the ditch in, but you have to remember if it gets blocked up, all the water is going to go into the road. You may then have to pull out the roads if you don't have the proper drainage where it falls out into the ditch.

He said there are yards with fully closed culverts across the property. He said if the Board chooses to go in this direction, he could get the data (Storm Water Management regulations) about the amount of catch basins that have to be installed for the culvert run length.

The Board and Mr. Anderson debated the issue of citizen responsibility to clean out their culverts. Mr. Anderson explained that his department does not have the equipment or work force to maintain all the culverts that may be required. They also discussed whether the cost of additional culverts will be at the homeowners' expense, but agreed that the City would handle the survey/fall at which the culvert should be set, and possibly the installation. Also discussed was the possibility of the City using a contractor (i.e. rotation to install culvert work, the same as the towing services) to install the culverts at the property owner's expense.

**Alderman Stahler** added that if properly installed, the City would not have all the ditches to cut and property owners would be maintaining the front of their house, noting that she does not have ditches in front of her house and she maintains all the way to the street. Alderman Stahler said she felt that having the closed in culverts are much nicer looking than ditches across the fronts of property. Mr. Anderson said he had this in his neighborhood and said it was very nice.

Mr. Anderson said this now brings up the point that this is expensive to do, not everyone can afford to do this, and where will the cost fall to install these culverts. The City could handle the install like a water or sewer tap; he will be able to establish a cost per linear foot of culvert and catch basin to install. He said right now with the install of a culvert (property owner buys the culvert) he probably loses money: by the time he calculates the cost of the backhoe, the dump truck, goes and gets the dirt, time for 2 men for 1 hour, it's averaging \$300 or more per job.

Alderman Lafontaine mentioned that if the homeowner wanted to close off the entire front of the property, they could pull a permit, a City inspector go out to inspect, and let the homeowner put in the culverts and catch basins at their cost. The City would install the one, but more than that would be the responsibility of the homeowner. Mr. Anderson's concern is the need to install the culverts properly because in Ward 1 and 2, sometimes over a ¼-mile distance, the fall may only be ½ inch. He said the City needs to be careful because if the homeowner/contractor alters the ditch by 2 or 3 inches, everyone on the street will be holding water. Alderman Lafontaine said that if the City Inspector

goes out before the ditch is covered, this problem should be prevented. Mr. Anderson said the City has the laser level to make sure they can be set properly, but again said he believes culverts should fall under having to pull a permit, same criteria as other property improvement issues.

**Alderman Geoffrey** said he thinks that if this is approved, the added cost should fall to the property owner, with the City having the building inspector (permit to be pulled) check the work before it's closed in.

**PUBLIC COMMENTS:**

**Roger Estopinal** – Mr. Estopinal recommended the City should use a licensed contractor with the City writing the specifications on how the culvert must be installed, with the idea of uniformity throughout the City.

**Alfred “Tiger” Harris** – Mr. Harris said that he was against all of this. He said that anyone should be able to hire whoever they want to install the culverts and the property owner should not have to pay a permit fee to install the culverts.

The foregoing record was presented to Mayor Garcia on August 10, 2012.

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Lisa B. Planchard  
City Clerk

The workshop record of July 10, 2012 has been read and approved by me on this, the 10<sup>th</sup> day of August 2012.

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David A. Garcia, Mayor

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