

## *Council denies noise variance request*

The Aurora City Council made a loud statement in regard to granting variances to the city's 15-month-old noise control ordinance.

It denied a request at its July 13 meeting to OverTime Bar & Grill owner Stan Valasek, who requested the exception for an outdoor karaoke music event he was planning Saturday as part of the summer Saturday geared toward bringing Fagen employees into the community.

When the item was brought up by Mayor Marlin Seeman, councilor Bruce Ramsour immediately made a motion to deny the request. After a lengthy discussion, five council members voted in favor of the denial, while council president Dick Phillips abstained.

"I have received several different complaints about the noise during A'ROR'N Days," Ramsour said, "and I asked Chief (Godfrey) Brokenrope about the complaints."

Ramsour then read from an Aurora Police Department incident report dated June 25, the Friday of A'ROR'N Days. Brokenrope said the department received three calls, two from the same individual, who complained that the noise was too loud.

"The officer (Sgt. Ryan Dummer) went to the scene, and upon arrival talked to the owner and informed him that there had been a complaint," Ramsour read from the report. "Stan (Valasek) advised that his music was not as loud as previous years."

Ramsour noted the fact that Valasek said he would not turn down the music.

"I think what we are seeing here is a lack of cooperation," Ramsour stated. "And that's one thing with the council we're looking into."

Valasek took issue with the fact that only part of the incident report was read.

"The officer did not ask me to turn the music down and that he was just there advising about the complaint," Valasek stated. "I have been more than cooperative in all situations, but I was not asked to turn the music down."

Ramsour said that an event like what Valasek was planning could be accomplished while still meeting the noise stipulation.

"I think Stan can do a nice celebration with dancing and music, and I think it can be done without breaking the noise ordinance," he said.

"During A'ROR'N Days, people expect noise with that celebration... We've got an ordinance, and exceptions should be really limited," said council member Chris Helzer. "I think the nature of the beast is that sound travels so fast up there (north of OverTime) and people did complain that it was not over-excessive, but when you're in the house trying to sleep, it's impossible to do."

Valasek disputed the claim about the music being too loud.

"The officer and I, we were inside the building and on the south side, you couldn't hear the music," he said.

Council member Paul Shaneyfelt said Valasek should always remain conscientious of noise levels.

"Variances, they are contingent on public opinion... We're not going to say you can do this without consequence to neighbors, just because we grant a variance," Shaneyfelt said.

Ron Thompson, a citizen in the subdivision north of OverTime Bar & Grill, spoke out in support of Valasek.

"I live in the neighborhood, and we couldn't hear the music at all," Thompson noted. "Some things I am concerned about, a business is struggling and people are helping the economy, and it's an opportunity for them to come together. I'm also concerned that a business is following the rules, doing the things they need to do to limit the criticisms. And in Stan's case, he's put a lot of expense into building out back on the outside."

Citizen Phil Hupf also spoke in favor of passing the request.

"I have concerns about oversensitivity with the noise ordinance," he said. "I was up in that area with my convertible, top down, and I couldn't hear it until I stopped and turned the music off. But the moment the train came, I couldn't hear anything (but that). If you can't hear music over the train, I think there's some oversensitivity."

Valasek: Vote impacting business

Stan Valasek, owner of OverTime Bar & Grill, said his most recent request for a variance around the city's noise control ordinance was simply about finding another time of year to provide an entertainment option.

"It makes it hard for my business to survive because from what I'm hearing, I'm only going to get a variance if it's A'ROR'N Days," he said. "In A'ROR'N Days, the pie is only so big, and there's three other venues for live music during A'ROR'N Days. There's not enough people to really make it good for all four venues.

So having a variance for a time of year other than A'ROR'N Days could have a huge impact on his business, Valasek noted.

"If I can bring a whole pie to my business and I get to eat half of it, that's way better than getting a fourth of a pie everyone else is sharing."

Valasek noted that the city council's denial has already affected both short- and long-term planning.

"It also affects the fact that I wanted to ask for a variance for the Hamilton County Fair for July 31 and wanted to have a band out of Marquette called Whiskey Bend come in and play," he said. "(A band member) texted me and says, 'Hey are we still on for the 31st?' and I said, 'I don't think so.'

"For long-term planning, I can try to put it together, but you usually have to put half of the money down to hold a band for next year. If I don't know I can get a variance, I can't lose that money."

Valasek, who began operating OverTime Sept. 1, 2006, built a fenced-in outdoor patio area with sand volleyball, horseshoe pits, and a large amount of outdoor seating. He says it wasn't for entertainment, however.

"It was installed to create a venue for people to be able to take a drink outside and smoke a cigarette while drinking," Valasek noted. "I went non-smoking more than a year before legislation came out that said you had to be non-smoking."

Valasek added that he's experimented in trying to cut down on the outside noise, but he can't control how nature carries the sound.

"I've tried different positions for the band," he explained. "The thing that's the biggest deal is Mother Nature. You never know which way the wind's going to blow. ... And it doesn't matter what way we put the band to try to make it better, it still carries."

Valasek added that he believes he shouldn't be receiving complaints if he already has a variance.

"Once I go and get a variance, I would think I have the ability to have some noise without one complaint making it so that I'm not in compliance or I'm not willing to do what I'm supposed to do, because I do everything I'm supposed to do," he said.

### **Neighborhood complaints**

Valasek recalled the story of how he was told he would get shut down for having music too loud.

"The story was two years ago, on July 3, Julie Shively called me, four times, when I was having a dance out here," he said. "And we tried to turn the music down and she kept saying the music was not turned down enough. I said I could only turn the music down so low.

"I could hear someone on the other end of her phone saying, 'We can't hear our music. Their's is too loud.'"

He later said she issued a threat, but has been the only one to do so.

"That is the only person who's ever called my bar and told me to shut my music down, and then threatened with 'I'll get you shut down,'" he recalled.

The complaints about OverTime addressed the event Valasek held on Friday during A'ROR'N Days, when the Cowboy Up band was performing.

"I think the officer (Sgt. Ryan Dummer) did exactly what he was supposed to do that night," Valasek said. "He came down and informed me that there was a complaint."

Valasek said the entire incident report was not read at the Aurora City Council meeting July 13.

"The thing that wasn't read in there was that I asked if he wanted me to turn it down and he said, well, it was just his job to inform me that there was a complaint. None of that part was put in there. I don't know if that was even in the report.

When the item regarding a variance for last weekend's outdoor karaoke event was brought up, it was immediately moved and seconded to deny the request.

“That did surprise me, because that took discussion to the negative immediately, and it surprised me that they would read a piece of the police report that was only negative,” he said. “Because the other part was, I asked Sgt. Dummer to travel to wherever the source of complaint was, to travel there and give me a call back and tell me if it was too loud and we could adjust or something, but that didn’t get read.”

Valasek had a request for the community in having some tolerance with noise, but understands that kinks need to be worked out in the noise ordinance.

“There’s a certain amount of tolerance that people should be asked to tolerate. It’s a difference if you’re trying to build a fence on my property; there’s a clean line there,” he said. “The council doesn’t have an easy job. I don’t have an easy job trying to keep peace.”

Valasek added a question he had for those who have an interest in the matter.

“My biggest question for city council members and for anybody else who has an interest in this, is that I’m asked to adhere to a noise ordinance and so is everyone else now that it’s in place, but I’ve gone through the trouble to get a variance to the noise ordinance and once I had obtained a variance to the noise ordinance, I think if the police take complaints or the city council takes some complaints, they should be able to tell somebody that’s concerned, ‘you know, he’s done this (variance), this is okay. We need to let him do this.’ So my next concern is, what’s next. What’s the next thing we can’t do?”

#### Bands not music to Shivley’s ears

When Philip and Julie Shively moved into their home at 2210 Woodland drive in 2001, the only noise they heard was an occasional airplane landing or taking off at Aurora Municipal Airport.

That was expected, they said. They knew the airport was just a short distance north of their subdivision when they purchased their home.

There also were a few instances with kids playing basketball late at night or playing their CDs a little too loudly -- but nothing offensive, just normal neighborhood noise.

That all changed when the Aurora City Council approved permits allowing OverTime Bar and Grill to host outdoor bands and karaoke, they said. That, they said, was when their neighborhood tranquility was shattered.

They’ve been dealing with noise issues from OverTime the past three or four years, but Philip Shively said it came to a head in 2008 when the music was so loud they couldn’t carry on a conversation outside or go to sleep.

“The first time, in 2008, I called OverTime and asked for the music to be turned down,” he said. “Whoever I talked to the first time was polite, but we heard no change in the music. I called back, and still no change. I finally talked to the police and they said they shared our frustration and knew it was annoying, but there was little they could do because we didn’t have a noise ordinance.”

That one incident was enough to motivate the Shivelys to request just such an ordinance. “I never would have sought an ordinance if (OverTime) would have cooperated and turned down the music,” he said.

Since Aurora’s noise ordinance was passed by the city council, the Shivelys said it appears every time OverTime owner Stan Valasek gets a variance he thinks he has a license to be as loud as he likes and they and their neighbors have had enough.

“There’s an attitude of arrogance,” said Julie Shively. “It’s as though he has the variance and it gives him free-reign to do whatever he wants and play his music as loud as he wants. But it doesn’t give him the right to disturb the peace.

“I’ve talked to about eight people in the neighborhood who have had complaints and calculated how far away they were from the noise,” Philip said.

While their own home is only three-tenths of a mile away from OverTime (according to Google), others are much closer.

“Some are not bothered by the noise because they go away those weekends. But others are bothered and have told us so. One family said the music was so loud their windows were shaking,” he said. “Our own guests could hear the music in the front bedroom that night. We could hear the beat and the melody -- we could name that tune. And sometimes we could hear the lyrics. We couldn’t sit outside on our deck and carry on a conversation.”

The music was so bothersome, Philip said his wife slept in the basement and they had to wear earplugs and noise-canceling earphones in order to go to sleep.

That same year the music was so loud their friends out in the country could hear the music 1-1/2 miles away and talked about it in church the next day.

“We don’t feel like we should hear the music in our own home, especially when we’re going to bed. We’d like to be able to enjoy our home 365 days of the year,” he said.

Although they didn’t attend the last city council meeting where Valasek’s request for a noise ordinance variance for July 17 was denied, they said they were pleased to learn of it.

From what they’ve heard, city council members are also amazed at his attitude of noncooperation, figuring if Valasek ever wanted another variance he would have bent over backwards to cooperate with the neighborhood the first time.

“He hasn’t demonstrated any effort to be cooperative,” Julie said.

While the Shivelys were bothered by the noise volume again this year during A’ROR’N Days, this time they did not phone in their complaints despite the fact Julie slept three nights in a different bedroom.

That’s the last time they’ll refrain from complaining, though.

“We hate to complain, but if you’re not going to stand up for what you believe in then you really shouldn’t be complaining -- do something or be quiet,” Philip said. “On this issue, we’re choosing to do something. We’re a little uncomfortable, but that’s okay.”

Julie, too, said she and her husband are not the kind of people who like to cause problems, but Valasek’s rights shouldn’t supersede their’s.

“His comment to the council was he’s made an investment in his fence,” she said. “Well we’ve made an investment, too. We’ve made an investment in our home, our deck, our backyard. We’re all entitled to enjoy our home.”

The Shivelys said the noise ordinance was put into effect for a reason and an exception should be granted very rarely. They can understand a variance for a community event like A’ROR’N Days, but not every weekend.

They expect OverTime, Grandview and other establishments to be granted a noise variance come next A’ROR’N Days and that’s okay.

“It’s nice for people in town who want to go and have a beer and listen to someone perform,” Philip said. “We all need to bend and accommodate, because we’re a community.”

Beyond that, they believe variances should be issued on a few-and-far-between basis.

While they note they are pro-business and want people to make a buck during this recessionary time, they also want to be able to go to sleep at night.

“What right does he have to make a profit at our entire neighborhood’s expense?” Julie asked. “It’s like holding the neighborhood hostage so he can make a buck for his music events. If he’s really interested in holding things like that, why doesn’t he invest in an indoor venue?”

The Shivelys believe the entire noise issue could have been avoided with a little cooperation from OverTime.

“It’s common courtesy -- if I’m doing something to bug you and you let me know, I’ll try and work with you,” he said.

“We don’t want to be known as the community curmudgeons,” Julie added. “We’ve tried to ask him politely to turn the music down and he hasn’t. You hate to be nasty about it, but enough is enough.”