

**HOOVER CITY COUNCIL
MINUTES OF MEETING**

DATE: January 7, 2008
TIME: 6 P.M.
PLACE: Hoover Municipal Center
PRESENT: Mayor Tony Petelos
Mr. Gary Ivey, Council President
Ms. Mari Morrison, Council Member
Mr. Mike Natter, Council Member
Mr. Brian Skelton, Council Member
Mr. Gene Smith, Council Member
Mr. Jack Wright, Council Member

ABSENT: Mr. Trey Lott, Council Member

ALSO PRESENT: Mr. Mark Boardman, City Attorney
Chief Tom Bradley, Fire Chief
Mr. Tommy Daniel, Director Public Works & Pk & Rec. Maint.
Chief Nick Derzis, Police Chief
Mrs. Karen Higgins, Director Human Resources
Mr. Bob House, House Consultants
Mr. Richard Johnson, Director, Inspection Services
Mr. Rod Long, City Engineer
Mr. Frank Lopez, Director Revenue & Taxation
Mr. Allen Pate, Executive Director
Mr. Ben Powell, Director of Support Services
Mr. Robert Yeager, Finance Director
Mr. Tim Westhoven, Asst., Executive Director

The meeting was called to order by the Council President, Mr. Ivey. The City Clerk had roll call and a quorum was present.

The City Clerk gave the invocation and Mr. Natter led those present in the Pledge of Allegiance.

1. **APPROVAL OF MINUTES**

Mr. Ivey stated each member of the Council had previously received a copy of the minutes of the December 17, 2007, meeting and the work session held on January 3, 2008.

Mr. Wright made a motion to dispense with the reading of these minutes and approve them as presented. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions; there were none. On voice vote the motion carried unanimously.

2. **REPORTS**

Mr. Ivey recognized Mayor Petelos.

Mayor Petelos stated the City is still under Stage II Drought conditions.

3. **RESOLUTION NO. 4011-08 – REJECT BID – FRONT CUT MOWER**

The City attorney read Resolution No. 4011-08 which would reject the only bid received for the purchase of a front cut mower and authorize the Mayor to negotiate for the purchase of said mower from **Jerry Pate Turf and Irrigation**, the only bidder, at a price not to exceed his quoted bid of \$45,095.23.

Mr. Wright made a motion to approve Resolution No. 4011-08. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions from the Council; there were none. On voice vote the motion carried unanimously.

4. **RESOLUTION NO. 4012-08 – REJECT BID – HOUSEHOLD HAZARDOUS WASTE COLLECTION**

The City attorney read Resolution No. 4012-08 which would reject the only bid received for services associated with the Household Hazardous Waste Collection. This would reject the only bid received from **Clean Harbors**, and authorize the Mayor to negotiate with Clean Harbors for these services at a price not to exceed their quoted bid.

Mr. Wright made a motion to approve Resolution No. 4012-08. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions from the Council; there were none. On voice vote the motion carried unanimously.

5. **RESOLUTION NO. 4013-08 – APPROVAL OF NEW POSITION FOR POLICE DEPARTMENT**

The City attorney read Resolution No. 4013-08 which would authorize the creation of a new position of police officer at a pay grade 14.

Mr. Wright made a motion to approve Resolution No. 4013-08. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions; there being none, on voice vote the motion carried unanimously.

6. **APPROVAL OF RE-ISSUANCE OF ABC APPLICATION – MARGARITO O. ALBARRAN**

Mr. Ivey stated the Council had received a request to approve the re-issuance of an ABC application for Margarito O. Albarran, doing business as Tienda La Mexicana which is located at 3065 Lorna Rd. This will allow for the sale of retail off premise beer only.

The City Clerk indicated the necessary information has been received and reviewed.

Mr. Natter made a motion to approve this request. This motion was seconded by Ms. Morrison.

Mr. Ivey called for any comments or questions; there being none, on voice vote the motion carried unanimously.

7. **PUBLIC HEARING – AMEND MUNICIPAL CODE – ZONING ORDINANCE – MINIMUM LOT WIDTH IN PRD & PR-1 DISTRICTS. 2ND READING ORDINANCE NO. 07-2155.**

Mr. Ivey stated a public hearing had been set for this date to consider an amendment to the Hoover Municipal Code - Zoning Ordinance with regard to minimum set back requirements in the PRD and PR-1 zoning districts.

The City attorney had the second reading of Ordinance No. 07-2155.

Mr. Wright made a motion to adopt Ordinance No. 07-2155. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments from the Council. Mr. Smith stated he would like for Chief Bradley to verify that the Fire Department does not have any issues with the adjustments of these setbacks. Chief Bradley stated he did not have a problem with them.

Mr. Ivey called for further comments; there were none. He then called for a vote. On roll call the votes of the Council were as follows: Mr. Ivey, "Yea", Ms. Morrison, "Yea", Mr. Natter, "Yea", Mr. Skelton, "Yea", Mr. Smith, "Yea" and Mr. Wright, "Yea". The motion carried unanimously.

8. **2nd READING ORDINANCE NO. 07-2156 – ANNEX PROPERTY LOCATED ON PATTON CHAPEL RD. – CITY OF HOOVER**

The City attorney had the second reading of Ordinance No. 07-2156 which would annex property recently purchased by the City located on Patton Chapel Rd.

Mr. Wright made a motion to adopt Ordinance No. 07-2156. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions; there being none, on voice vote the votes of the Council were as follows: Mr. Ivey, "Yea", Ms. Morrison, "Yea", Mr. Natter, "Yea", Mr. Skelton, "Yea", Mr. Smith, "Yea" and Mr. Wright, "Yea". The motion carried unanimously.

9. **PUBLIC HEARING – ANNEX WALD PROPERTY – 2ND READING ORDINANCE NO. 07-2157**

The City attorney had the second reading of Ordinance No. 07-2157 which would annex property located at the end of Wald Dr. This property is owned by Wald Estate.

Mr. Wright made a motion to adopt Ordinance No. 07-2157. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions; there being none, on voice vote the votes of the Council were as follows: Mr. Ivey, "Yea", Ms. Morrison, "Yea", Mr. Natter, "Yea", Mr. Skelton, "Yea", Mr. Smith, "Yea" and Mr. Wright, "Yea". The motion carried unanimously.

10. **PUBLIC HEARING – CONDITIONAL USE – LITTLE VALLEY LLC – LIVE ENTERTAINMENT**

Mr. Ivey stated a public hearing had been set for this date to consider the conditional use request of Chasity Smith, representing Little Valley, LLC to allow live music as scheduled by renters of Park Crest, an event facility which is located at 2030 Little Valley Rd. This property is owned by Little Valley, LLC and is zoned C-4.

Mr. Natter made a motion to approve this request. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions from the Council; there were none. Mr. Ivey then called for public comments and there were none.

On voice vote the motion to approve carried unanimously.

11. PUBLIC HEARING – CONDITIONAL USE TO ALLOW SALE OF RESTAURANT RETAIL LIQUOR – LAKE CREST BBO, LLC

Mr. Ivey stated a public hearing had been set for this date to consider the conditional use request of William Battle, representing Lake Crest BBQ, LLC to allow for the sale of restaurant retail liquor at Golden Rule Bar-B-Que & Grill, located at 2341 John Hawkins Parkway, Suite 117. This property is owned by Lake Crest BBQ, LLC and is zoned C-2 (Community Business District).

Mr. Natter made a motion to approve this conditional use request. This motion was seconded by Ms. Morrison.

Mr. Ivey called for any comments or questions from the Council or anyone present; there were none. On voice vote the motion carried unanimously.

Mr. Ivey stated the Council will now vote on the ABC application for **Lake Crest BBQ, LLC**, doing business as Golden Rule Bar-B-Que.

Mr. Natter made a motion to approve the ABC application as requested. This motion was seconded by Ms. Morrison.

Mr. Ivey called for any comments or questions from the Council and there were none. On voice vote the motion carried unanimously.

12. PUBLIC HEARING – REZONE PARCEL 31B – INVERNESS CENTER DR. FROM PO (PLANNED OFFICE) TO PR-1 DETACHED TO ALLOW INDEPENDENT LIVING COTTAGES FOR SENIORS. 2ND READING ORDINANCE NO. 07-2158

Mr. Ivey stated a public hearing had been set for this date to consider the request of Walter Schoel Engineering for approval of an amendment to the Inverness PUD to rezone Parcel 31B located on Inverness Center Drive from Planned Office to PR-1 Detached (Planned Single Family) to allow for the development of independent living cottages for seniors. This property is owned by Metropolitan Life Insurance Company.

The City attorney had the second reading of Ordinance No. 07-2158 which would rezone Lot 31B located on Inverness Center Dr. to PR-1 Detached.

Mr. Wright stated each member of the Council was sued individually this past week by the Daniel Corporation with some reference to this. He noted he has not had time to read their filing nor has he had time to discuss this with the attorney. He asked if this is something the Council should abstain on.

The attorney stated each of the Council has been sued in their representative capacity. He felt they do have the right to at least vote and make a decision on this request. Mr. Wright felt they are sued if they vote in favor of, in opposition to or do not vote at all on this matter. Mr. Wright felt this is an uncomfortable position to put the city government in.

Mr. Smith asked if the suit was still active with the Judge's opinion from Friday. The Attorney stated it was. That was a temporary restraining order request and the suit remains pending and is set for Wednesday at 4:30. Mr. Smith asked what the basis was for the remainder of the suit. The Attorney stated the remainder of the suit is actually what the

Council was served. He stated the motion referred to at the end of the complaint to prevent Item #18, the St. Vincent's items, from going forward on the agenda tonight.

Mr. Wright stated he would be abstaining from voting on this due to the lawsuit.

Mr. Natter inquired what the cost of defending a suit like this would be. The attorney stated he felt it would be tens of thousands of dollars.

Mr. Smith stated, based on the fact that he is also a defendant in this lawsuit that he would also abstain from discussion and voting.

Ms. Morrison, as did Mr. Skelton, stated she would join with the other Council members and also abstain.

Mr. Natter stated he would be the fifth member of the Council to abstain.

Mr. Ivey stated he did not think he would have a quorum. The Attorney stated there is a quorum but he would not have enough on this issue. He noted that this is a public hearing and they could entertain public comments.

Mr. John DeBuys addressed those present. He stated he is representing Daniel on Item # 18, the request of St. Vincent's. He stated a lawsuit was filed in that case. He stated the Council was not named individually. It is true they were named in their representative capacity as the law requires that to be done. He stated that case has nothing to do with this issue presently before the Council and felt the Council is aware of that. He requested that the Council consider this case even though he is not the spokesperson for the proponent in this case. He felt that with regard to procedures, he should say this. He addressed the issue of costs of the lawsuit. He noted that in the case that will be presented on behalf of STV and Seton Properties, a subsequent case, he is prepared to ask the Council, as well as the Court, for the Council to merely postpone the hearing until the legal issues concerning procedure are resolved as that would not cost a great deal of money. He felt this is a very simple issue. He again stated they wanted the City to do what they would do if there was a situation where a neighbor was upset or setbacks needed to be worked on, it could be put off for one month. He stated they have a motion for a status conference on Wednesday, (1-10-08) at 4:30 to have a preliminary injunction to determine the two fundamental issues. They are asking for a postponement of that case. He hopes this would not be expensive, that the court could set a hearing and they could present the evidence. He stated on behalf of Daniel they feel this case is completely different from the other and there is no malice intended. The law requires if they ask the Council to do something with regard to the Zoning Ordinance they have to bring the case against the Council in only their representative capacity. Mr. DeBuys stated he would be glad to answer any procedural questions the Council may have.

Ms. Morrison inquired of Mr. DeBuys, based on the comments, why he filed a motion to stay the Council from making a decision tonight. Mr. DeBuys stated he had requested that the court ask the Council to not hear the case until we address two issues they want to address in the preliminary injunction. They want to do this because they do not feel the case as presented (the request of St. Vincent) was properly postured because of the procedure that was followed. They feel they can prove this and the court felt the public should hear these issues. It is proper for the Council to hear this and the court was not going to require that a legislative body not take up the public hearing. The court did not say whether to vote either way. The court did say in its order that it recognized there were substantial issues in the matter. He stated Daniel has been accused of having a motive of trying to stop the other development because this

particular development is involved. He stated the court's specific ruling said that motive is not relevant. He wanted the Council to have the underlying issues decided rather than the Council sit as a legislator and judge. This would take the pressure off the Council of having to make a legal decision. He felt that Mr. Boardman, City attorney, agreed this was what the arguments were. Mr. Boardman stated he did not remember the order saying what Mr. DeBuys had just stated. Mr. DeBuys stated he had the order and he went to retrieve it at this time.

Mr. Ivey stated at this point no one has made a motion and he asked about continuing the public hearing. Mr. Boardman stated he had a right to take public comments as this is the public hearing. Mr. Ivey stated the entire Council has expressed their abstention.

Ms. Morrison asked if the Council abstained on this matter if it could come back at any time. Mr. Boardman stated there has been no action taken so it still has the recommendation of P&Z so he felt it could come back by (the applicant) asking to be placed on the agenda again.

Mr. DeBuys stated he would like to allow the public to speak.

Mr. Jay Flood, representing Metropolitan Life Insurance Co., owner of the property for both parcels of land involved in Items 15 & 16, addressed the Council. Metropolitan Life is located at 2400 Lake View Parkway, Alfreda, Ga. He stated he was somewhat blindsided by all of this. He stated they had made application to rezone the two Inverness properties and he knows only secondhand about the Greystone item being discussed. He stated he hopes the Council will again discuss the Inverness matter after the Greystone litigation discussion is completed.

Mr. Ivey stated there is no one to make a motion.

Mr. DeBuys stated he would request that the Council reconsider those who decided to re-cuse themselves because of a separate issue in a separate case. Mr. DeBuys read from the ruling on the Temporary Restraining Order which indicated that the question before the court at the preliminary stage was whether the court had jurisdiction to temporarily enjoin the Hoover City Council from considering the issues raised by the parties in the zoning dispute. The judge did not want to take jurisdiction to stop the legislature.

Mr. Ivey asked if this is not a discussion that should be taking place on the other issue (St. Vincent's). The issue at hand is not what the judge ruled in the TRO. Mr. DeBuys agreed this is a completely separate case. Mr. Ivey stated this is what is really being addressed at this time. Mr. DeBuys stated he did not want this to bleed over and he wants to make sure that they understand these are two completely separate things. He stated he had been asked why they had filed a lawsuit and he wanted to tell the Council what they were asking the Council to do is to continue the other case for a month until the underlying issues can be decided. He stated he would address the other case at the appropriate time. Mr. Ivey stated this is highly unusual and he was trying to get some guidance. Mr. DeBuys stated he is here because it appears that the other case has bled over and affects this because of the actions taken to try to protect rights. He stated he responded to questions being asked especially to do with cost and timing and what they were asking the Council to do.

The question was asked of Mr. Ivey if he was going to take public comments on Item #15.

Mr. William Sweet, 2040 Glen Eagle Lane, addressed those present. He stated he is representing the Inverness Master Homeowners Association. He stated if the Council goes ahead with this action they want to be sure that the site planning for both agenda items 15 & 16, (rezoning & conditional use approval to allow senior living facilities in Inverness) is

coordinated with Shelby County to include provision for the Inverness Greenway as proposed in the study. This tract is proposed to have the greenway on it. Mr. Ivey stated we will do this.

Mr. Gene Smith stated it would be highly unusual for the Council to do so, but he asked if there way any reason for the Council to go into Executive Session with the City attorney to allow him to explain to them their position as individual defendants of this lawsuit. The attorney stated under the Open Meetings Law they have the right to go into Executive Session to discuss litigation and as the City attorney he could certify this was actually what was discussed. This would be all that could be discussed. Mr. Smith stated he felt at best it would give him clarification as to his position as a defendant based on this item as well as the upcoming item.

Attorney Boardman stated the process would take a motion to go into Executive Session following a certification as to the business discussed in Executive Session and an estimate as to how long this session would last. He stated they would then adjourn into a private meeting room and try to stay on schedule as much as possible. Mr. Smith inquired of the City attorney as to an estimate in terms of time this session could take. Mr. Ivey stated the City attorney has clarified the Council has the right to vote on this item based on the lawsuit without creating additional exposure to the body (the City Council). Mr. Ivey stated he hoped this could be what they could accomplish as he did not want to start having to go into Executive Session. Mr. Smith stated he would like to have it privately explained to him what his personal exposures and liabilities would be whether he votes for or against or abstains from voting on any of these projects.

Mr. Natter stated this Council has not gone into Executive Session and he asked for clarification of the process again, which the attorney gave.

Mr. Wright asked if each Council member would need to have this information explained to them individually. Mr. Boardman stated that would not be necessary. Mr. Wright asked if the attorney was prepared to discuss this suit with them. Mr. Boardman stated he could do so.

Mr. Ivey stated he would assume from the comments of the City attorney there would be no additional liability for them to vote and the attorney agreed. Mr. Ivey stated we will continue with the public hearing but at this point he has no one to make a motion. Mr. Natter asked if any of the members of the Council should decide to not abstain and a motion was made, what would happen.

The attorney stated this motion would then die for the lack of a second.

Mr. Smith asked as a defendant if there was any information that he needs to have that he does not have but should have before he could cast a vote. The attorney stated there was not. He noted there may be questions he would like to ask. He did not feel there would be additional liability. Mr. Natter asked if this item should die for the lack of a second did this mean it was turned down. The Attorney stated that would not mean there was an affirmative vote to turn it down and it could come back before the Council. Ms. Morrison stated this issue has come up once before and she felt it could be brought up again. Mr. Ivey stated the previous case was that of a subdivision case and it died for the lack of a second and as President of the Council he made the decision to have the case reheard.

Mr. Smith stated, based on his faith in the City attorney and his information that there will be no further liability he stated he would withdraw his (intent to) abstain. Mr. Natter stated he

would withdraw his intent to abstain as well. Mr. Smith asked that the public hearing continue.

Mr. Ivey called for any further comments from any of the public.

Mr. Stephen Smith, 2104 Lake Heather Way, addressed those present. He asked that Items #15 & 16 be moved further on the agenda so that he could talk with Mr. Sweet on this matter. Mr. Ivey stated it would be more appropriate should he have any questions that he ask them and they would try to get these answered. He encouraged Mr. Sweet to keep up with these questions.

Mr. Stephen Smith stated they had been provided a draft agreement by the Homeowners Association. He asked if that agreement had been executed. Secondly, when the agreement was provided there were blank attachments that would affect the agreement and he has not seen these.

Mr. House stated there are two conditions that the Planning Commission recommended for approval of this project. The first being that the **agreement between the developer and the Lake Heather Homeowners Association concerning the subject property shall be recorded prior to the issuance of any development permits on the property.** Secondly, the **access to Lake Heather Estates Drive shall be a gated private road for use by emergency vehicles and residents of the subject property.** Mr. House stated if this proposal is approved with these conditions, Inspection Services will not issue any permits until that executed agreement is submitted to the City.

Mr. Stephen Smith stated there are buffer zones between these properties in the agreement. He understands that no permits will be issued for any building until the agreement is a matter of record with the City. Mr. House stated it must be a matter of record at Probate and submitted to the City. Mr. Smith had nor further questions and noted he is merely here to protect his property.

Mr. Steve Casey, 1034 Lake Heather Rd., addressed those present. He stated he is here as President of the Lake Heather Homeowners Association. He stated the two conditions in the agreement between their association and Daniel have not been signed at this time. He stated he had appeared at the zoning level to express to them as well as to the Council tonight that one of the conditions, the use of the second access road, is planned to exit the proposed retirement neighborhood onto Lake Heather Dr. They prefer that this second access road be onto Inverness Center Dr. He stated they understand as a practicable matter this is not feasible. Their fallback position on this while negotiating with Daniel was to ask them to agree with them that the secondary access onto Lake Heather Drive be gated and only be allowed for use by emergency vehicles. Daniel agreed to this while the City at that zoning level added that the residents of the retirement village be allowed to access in and out of the property via entry and exit way. They feel and asked the Zoning Board as well as asking the City Council to do the same, to remove this part of the condition. They have two accesses with the main one being off Inverness Center Dr. They desire to limit use of that access to emergency vehicles only on Lake Heather Dr. They feel that traffic in and out of there will affect their neighborhood. He stated one of the nice things about their 44 lot subdivision is when turning onto Lake Heather Drive off of Inverness Center Dr. it is a nice stretch of street, which is a public road up to their gatehouse. He noted they have worked hard to protect the visual picture from Inverness Center Dr. to their gatehouse which they feel sets a visual tone

for their neighborhood and is important to their residents and property values. If they are able to limit the use of that extra access, they would like it to be for emergency vehicles only, which Daniel has agreed to. The prospective owner of this property has agreed to this as well as Lake Heather and they feel the City should go along with the wishes of the affected property owners.

Mr. Casey stated they understand the City has the right to impose this condition but they respectfully request the Council to consider their wishes and agreement between the two affected landowners. They do not feel this would require a delay on this matter. Daniel has been very cooperative with them and worked very closely with them to have an arrangement that would be beneficial to their neighborhood and they very much appreciate this. They do not want this minor objection or preference to slow them down as they know they need to move ahead.

Mr. Gene Smith inquired of Mr. House if the items discussed by Mr. Casey were indeed a part of the agreement mentioned by Mr. House. Mr. House stated the agreement stated the neighborhood's preference that only emergency vehicles use the private street coming out to Lake Heather Estates Dr. The Planning Commission felt that because it is a senior community and a very low traffic generator and because if some blockage or problem should happen with the gate on Inverness Center Dr., the residents could not get out.

Mr. Smith asked if the issue of the citizens making use of this access had been removed or was it a part of the other agreement (condition No. 1). Mr. House stated the other agreement is still a draft agreement, which he assumes would be amended to reflect the disposition of (agreement) Item #2. Mr. Smith questioned that Item #2 satisfied the concerns of Mr. Casey. Mr. House explained they would like it amended so the residents of the retirement facility could not use the second access and it be limited only to emergency vehicles. Mr. Smith asked what the comments of the staff were. Mr. House stated that both Planning Commission and staff felt that because it was a low traffic generating neighborhood limited to people of minimum age of 55, there would not be a lot of traffic and for the convenience of the neighborhood to be able to go in and out, should the other access not be open for some reason. Mr. House stated these access roads would be gated at both ends and would be private roads in the gated area.

Mr. Natter stated the question arose at Planning Commission and was so noted that Lake Heather Estates Drive is a public city street to the gatehouse.

Mr. Smith inquired of Mr. Casey if the recommendation of the staff and Planning Commission stand that he would not want their opposition to this issue to hold up this request. Mr. Casey stated he did not but only ask that the City consider their request.

Mr. Ivey called for any further public comments; there were none. He then called for any other comments from the Council. Ms. Morrison asked the attorney if he had verified that they are not being sued in their individual capacity. Mr. Boardman stated the way this complaint is written the Council is being sued in their representative capacity rather than personal. He noted this is more commonly referred to as in "official" capacity.

Mr. Smith stated he felt prior to being sued that this was a good project no matter what other issues occur within the community. He stated that whatever issues should come up, of supply and demand of which is not a part of the concern of the legislative body.

Mr. Smith at this time made a motion to adopt Ordinance No. 07-2158. This motion was seconded by Mr. Skelton. Mr. Smith stated his motion for approval is to include the comments of conditions as earlier stated by Mr. House.

Mr. Ivey then called for a vote on the motion to adopt. On roll call the votes of the Council were as follows: Mr. Ivey, "Yea", Ms. Morrison, "Yea", Mr. Natter, "Yea", Mr. Skelton, "Yea", Mr. Smith, "Yea", and Mr. Wright, "Yea". The motion carried.

Mr. Smith stated he would like to thank the Council as well as those present for enduring his concerns.

13. PUBLIC HEARING – CONDITIONAL USE TO ALLOW A SENIOR LIVING RETIREMENT COMMUNITY AT INVERNESS CENTER DR.

Mr. Ivey stated a public hearing had been set for this date to consider the conditional use request of Walter Schoel Engineering to allow a senior living retirement community to be located on Inverness Center Drive. This property is owned by Metropolitan Life Insurance Company and is zoned PO Planned Office.

Mr. Natter made a motion to approve this conditional use request. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments or questions; there being none on voice vote the motion carried unanimously.

14. PUBLIC HEARING – AMEND CONDITIONAL USE SITE PLAN FOR TENNIS & RACQUET CLUB - #1 COUNTRY CLUB DRIVE. – BILL OCHSENHIRT

Mr. Ivey stated a public hearing had been set for this date to consider the conditional use request of Mr. Bill Ochsenhirt to amend a previously approved site plan for the tennis and racquet club located at #1 Country Club Drive to relocate the additional tennis courts previously approved by the Hoover Zoning Board on October 8, 2007. This property is owned by Inverness Holdings, LLC and is zoned PC (Planned Commercial).

Mr. House stated this item had been discussed at work session and four conditions were required by the Board. He stated the wording of Item #1 had been changed to reflect it as listed below as shown in the conditions listed:

1. The rate of storm water discharge from the subject property after completion of this project shall not exceed the current rate of storm water discharge, as required by City of Hoover Subdivision Regulations.
2. All exterior light fixtures shall be designed to cast light down upon the premises and minimize the amount of light and glare that spills onto nearby residential properties. The maximum height of exterior light fixtures shall be 22 feet. The design and location of exterior light fixtures shall be as shown on the conditional use site plan.
3. The applicant shall post notices on the six new tennis courts adjacent to the residential lots and at the clubhouse, stating that said courts shall not be used between the hours of 10:00 p.m. and 8:00 a.m., and the lights for those courts shall be automatically switched off during those hours.

4. Maintenance on the six new tennis courts adjacent to the residential lots that requires motorized tools or equipment shall only be conducted between the hours of 8:00 a.m. and 10:00 p.m.

Mr. Natter made a motion to approve this conditional use request subject to the comments of the staff. This motion was seconded by Ms. Morrison.

Mr. Ivey called for any comments from the Council and there were none. He then called for any comments from anyone present that would like to speak during this public hearing.

Mr. William Sweet, 2040 Glen Eagle Lane, addressed those present representing Country Club Homeowners Association. He stated he had submitted a letter earlier today which he would like to read. (A copy of this letter is a part of the permanent conditional use file). This letter shows support of this development. It shows that it provides a location for the proposed Inverness Greenway. It follows the original development plans for additional courts to be constructed behind and to the east side of the tennis clubhouse. The courts will not be located adjacent to the Parkway and Cobblestone Subdivision. This will reduce the impact from traffic noise to tennis players and impact from lighting to the Parkway and Cobblestone residents. He stated they are very appreciative of the support for the Greenway.

Mr. Sweet noted that he would request that should the Council have future zoning requests along the Parkway or Inverness Center Drive that they include the Greenway in any decision they make. He stated they are also proposing a 10 ft Greenway to be constructed along Valleydale Rd. from Caldwell Mill Rd. to Highway 280. He stated he had been working with the Mayor on this matter. He hoped the Council would support this greenway from Caldwell Mill to Hwy 280 as it would good for local business. It would provide access to Veterans Park for other than a vehicle, families can ride bicycles and joggers can jog back and forth.

Mr. Smith asked Mr. House if the concerns expressed by Mr. Sweet were addressed by the applicant. Mr. House stated they have been. He noted the Greenway is shown on the plan for the Racquet Club. Mr. Ivey questioned if Mr. House was comfortable with Item one of the above conditions being enforceable. Mr. House stated he was.

Mr. Ivey called for any further comments or questions; there being none on voice vote the motion carried unanimously.

15. **PUBLIC HEARING – STV ONE NINETEEN SENIOR LIVING LLC – REZONE LOT 1 GREYSTONE 3RD SECTOR FROM SHELBY COUNTY SPECIAL DISTRICT TO HOOVER C-2 – 2ND READING ORDINANCE NO. 07-2159 AND APPROVAL OF CONDITIONAL USE REQUEST TO ALLOW CONSTRUCTION OF SENIOR RESIDENTIAL COMMUNITY ON LOT 1 GREYSTONE 3RD SECTOR**

Mr. Ivey stated a public hearing had been set for this date to consider the following requests of Jeri Evans, representing STV One Nineteen Senior living LLC for the property owned by Seton Property Corporation of North America which is located at 7191 Cahaba Valley Road:

1. Rezone Lot 1 Greystone 3rd Sector (approximately 35 acres) from Shelby County Special District to Hoover C-2 (Community Business District).
2. Conditional use to allow the construction of a 55 plus age-restricted senior residential community which will include 136 independent living, 48 assisted living and 24 memory care units to be located on 9.08 acres of Lot 1 Greystone 3rd Sector.

The City attorney then had the second reading of **Ordinance No. 07-2159** which would rezone Lot 1 Greystone 3rd Sector.

Mr. Natter made a motion to adopt Ordinance No. 07-2159. This motion was seconded by Mr. Skelton.

Mr. Ivey called for comments from City Council and there were none. He then called for comments from those present that wished to speak on this matter.

Mr. Curtis James, 4035 St. Charles Dr., Hoover, AL addressed those present. He stated he has additional information they would like to present tonight. He stated he is President and CEO St. Vincent's Health System. This system consists of four non-profit hospitals in the city. He stated they also have a very large Health and Wellness Center at 119 in Hoover. He discussed their holdings and services to the community, noting that St. Vincent's Hospital has served the area for 109 years. He noted they are also a part of Ascension Health which is the largest non-profit system in the country, consisting of 70 hospitals around the country in over 20 states. He stated that St. Vincent's has experienced phenomenal growth. They have grown downtown and well as other areas of the city. They listen to the community and build based on the needs of the community. He stated when Wellness 119 was built in Hoover it was built after listening to the community. They met with focus groups in the community and prepared the building based on the needs of the community at that time. He stated the project tonight they feel meets the needs of the community. He stated he has been with St. Vincent for 31 years. When this parcel was purchased he was the Chief Financial Officer. He was directly involved at that time. He stated they purchased this property from Church of Brook Hills. He stated they did master planning in the 1990's for this project. He noted their plan at that time called for a senior living facility. He stated they have developed 14 of their 35 acres of property at this time. He stated the master plan has resulted in a \$36,000,000 investment in Hoover at 119. The proposed project consists of an additional \$35,000,000 investment which will also be in Hoover. He stated they feel there is great interest in a senior living facility at 119. He noted there is an aging population and this project brings synergy to the community, especially to the 119 community. He stated there are over 4,300 fitness members at 119. Of these 4300 members there are 1,082 members that are over age 55, roughly 25% of their membership. He stated they felt this project done together with Dominion Partners will provide wellness services and optimal health for their members. He stated there will be shared services with 119 and the senior living facility they plan to construct. They also believe there will be medical facilities and medical services across the street from their senior living facilities. They stated they have a joint venture with Dominion Partners which began with discussions over a year ago. He noted they are nationally recognized as a developer of senior living facilities and they have over 15 years experience in the senior community development. He stated they own and operate facilities throughout the southeast. He stated they are very excited to bring their senior living facility, Somerby at St. Vincent's 119 for consideration of the City.

Mr. John Gorecki, representing Dominion Partners and St. Vincent 119 Senior Living addressed those present. He noted his address is 134 Shiraz Street, Birmingham, AL. He stated they are very pleased to be a Joint Venture partner with St. Vincent in the proposed Somerby at St. Vincent's 119 Senior Living Community. He stated those present tonight as a part of their professional team are Jerri Evans, Vice President for Offsite Development and the Executive Director of the 119 Health and Wellness Center, Bob Easley with Alabama

Engineering and William McNally with Ross Land Design, their landscape architect. Mr. Earl Swenson and Associates is the architect as well as having been the architect for the 119 Health and Wellness Center. He stated Mary Sue Ludwig, Ray Fitzpatrick, and Suevaughn Hicks will also be speaking on their behalf tonight. He stated they would be making one presentation for both of their requests.

Mr. Gorecki stated, on advice of the City of Hoover, Seton Property Corporation of North Alabama is requesting to rezone to C2 its 35 acre campus and St. Vincent's 119 Senior Living is requesting conditional use approval of a nine acre parcel that will later be subdivided if these applications are approved tonight. He stated St. Vincent's 119 Senior Living is proposing a 208 unit senior residential community consisting of 136 independent living, 48 assisted living and 24 memory care apartment home residences. This community will be age restricted under the Fair Housing Act to residents 55 years of age and older. It will build upon St. Vincent's already established 119 campus. Their community will feature such amenities as a chapel, library, movie theatre, billiard and game room, beauty salon and barber shop, country store, private banking office, meeting rooms and fine dining. The residents will also enjoy planned activities, arts and crafts programs, scheduled transportation and individually tailored health, exercise and wellness opportunities, all of which are in addition to the synergy and the shared services created between their proposed senior living community and the existing St. Vincent's 119 Health and Wellness Center. He stated their senior living communities normally included an indoor aerobics exercise pool and a pool exercise and therapy facility. Due to the tremendous facility that already exists at the 119 Center, their residents will have use of all the programs, services, exercise and wellness opportunities as well as medical care being one step away.

Mr. Gorecki felt the marriage of senior living to the St. Vincent's Health Care system and the 119 Health & Wellness Center will allow America's greatest generation to enjoy comfortable living in a unique setting. He noted again that of the 4300 members at 119 Wellness Center almost 1,100 are over the age of 55. Accordingly the vast majority of the future residents already come to the campus on a regular basis.

Mr. Gorecki stated this community will consist of three wings interconnected by common areas and resident support space. He felt their three story design would compliment the existing St. Vincent's campus and a system of walking paths will intertwine with the Center's existing paths. He noted that his engineer and landscape architect are here and available to answer any questions from the Council.

Mr. Gorecki at this time called on three Greystone residents to speak on their behalf and why as Hoover residents they support this development. He stated they are also present 33 letters of support of the residential association of Greystone as well as many of its individual residents.

Mr. Gene Smith stated in the document provided there is an affidavit provided from Mr. Gorecki. Mr. Smith asked if this information is true and accurate. Mr. Gorecki stated it was so.

Mary Sue Ludwig, 3500 Shandwick Place, addressed those present. She stated she has lived there for almost 16 years. She noted that during this time she has been very active in civic and governmental affairs that affect her community. She stated she is currently President of the Greystone Residential Association. She stated when she and her husband moved to Greystone they were very impressed with the planned community concept. She stated there were homes

of various sizes and prices as well as plans for a commercial mix as well. They felt the planned concept was in consideration of the convenience and comfort of the residents and also protected their property values. They were aware that St. Vincent's owned the property to the rear of this development. When the plans for the Wellness & Fitness Center were presented to the community it was felt that the proposed development blended well with the surrounding area and provided a service that was beneficial to the residents. Since the center has been completed, it appears the staff is constantly evaluating and changing their services to benefit the needs of the residents. When they (St. Vincent's) felt that a senior facility would benefit the citizens; they contacted the leadership of the different homeowners associations within greater Greystone to see how they felt about the project. She stated there are approximately 10 different associations representing approximately 2800 home sites. The consensus was that this plan was a fit to the area. They have not heard anything negative from the community at large. This development provides a convenient retirement and medical alternative for the area and an alternative to traveling Hwy 280 to receive the services they need and desire. She stated quite a few of the residents in Greystone have aged parents they would like to keep near. This facility would provide this convenience as well as medical care if so needed. She felt that St. Vincent's appears to be sensitive to the aesthetics of the community and they care about the feelings of the residents. They feel the proposed plan is attractive and well thought out. They feel this project will be an asset to the existing community.

Mr. Ray Fitzpatrick, 8034 Castle Hill Rd., addressed those present. He stated he has lived in Greystone for the past 11 years. He is an elected member of the Board with Mrs. Ludwig that serves the 800 homes in the Greystone Founders Subdivision. He stated they have as a Board voted unanimously to support this project as they felt it is a good compliment to their community. He stated in the past they have not gotten involved in zoning issues except on very limited occasions. They feel it is important to speak tonight. He stated there have been questions raised as to whether or not the community supports this. They feel it is a low impact fit. It will have a low impact on the schools, roads and other infrastructure. They also welcome the Inverness development as well and wish them much success. They feel they will do well at their site and they also wish St. Vincent's well in Greystone.

Suevaughn Hicks, 2005 Shandwick Terrace, Hoover, AL., addressed those present. She discussed the many traits of St. Vincent's. She stated she and her husband are members of the fitness center and have been very impressed with their professionalism and standard of excellence in the way they run this facility. She also discussed a facility which St. Vincent's has partnered with, Hannah Home in Shelby County, where homeless and abused women can come and reside. She stated St. Vincent's has provided many of the things needed at this facility. She felt that St. Vincent's looks for ways to give back to the community. As a member of the sandwich generation, three of their four parents have need of this type of facility. She stated they appreciate so much this type of facility being built in this area; one that will have the comforts of home, the competence of a professional staff and the compassion of someone that really cares about people. Lastly, they want this facility to be close to them. She salutes the idea of this type facility being built at this location.

Mr. Gorecki stated this completes their presentation.

Mr. Gene Smith asked if his Mr. Allen Worthington was present. Mr. Worthington was present. Mr. Smith inquired of him if the affidavit he presented to the Council is true and correct. Mr. Worthington stated it was so.

Mr. John De Buys addressed those present and stated he agrees with the excellence of St. Vincent and he supports what they do, noting that his wife would be having surgery there in the immediate future. He stated there are some disagreements and this case was not brought against anyone individually. Rather he had to do what the law required. He reiterated what he had stated earlier in the meeting; he is going to make one request. He stated the underlying legal issues encompassed in this request be decided by a court of law before the Council is asked to vote on the legislative aspect. He felt the presentation just made addressed the issue of land use and whether this is a good proposal or not in this area. He felt the underlying issues are very simple. They feel there is a procedural issue, there is an annexation agreement he would like to discuss with the City that is very important to developer rights.

Mr. De Buys stated the court felt it was very important for the public to hear their issues. He stated he was here to answer any questions. He presented a copy of the lawsuit to become a part of the record.

Mr. Smith inquired of the City attorney if they should be mindful of the lawsuit when asking questions of Mr. DeBuys. Mr. Boardman stated they are in their legislative function and require additional information as appropriate as such. Mr. Smith again asked about any additional personal liability and was he correct that there would be no additional liability to come forward from this issue, the same as the other. Mr. Boardman stated they had been sued in their representative capacity and official capacity. Mr. Smith asked if he was correct to state there were no additional issues that he should be concerned about as raised on the previous item. Mr. Boardman stated he would hope not. Mr. DeBuys stated that Daniel would publicly waive any thing they may say would not be brought subject to any complaint brought against the (the Council) regardless what you may say. Mr. Smith asked if the minutes of this meeting would not be discoverable. Mr. DeBuys stated the minutes are always discoverable but as far as any claim made against anyone and any liability, Daniel would waive those claims as he stated he would do also.

Ms. Morrison asked the City attorney if anything done on this request tonight, favorable or not would not really make a difference as a court of law will ultimately make that decision.

Mr. Boardman stated a court could stop the decision made by the Council but it can't force it to go forward. The judge stated in his order if any party was aggrieved with the decision reached by this Council they had legal remedies they could follow. Ms. Morrison asked if any argument made by Mr. DeBuys would be moot as it would go to a court of law.

Mr. Boardman stated that was not necessarily correct. He stated if the Council chose not to approve this project, there would not be an opportunity to go forward as the Council is the one to make that legislative decision. Should the Council in your legislative capacity choose to go forward with the project, Mr. DeBuys would, and through his lawsuit he is seeking to stop you from making that decision.

Ms. Morrison stated since the lawsuit seeks to prevent the Council from voting on this and the judge denied their request for a TRO, they are authorized to proceed with a decision without any further liability. Mr. Boardman stated the lawsuit seeks to impost liability on the City. Mr. Boardman stated his goal in defending the City is to do so without liability.

Mr. Natter stated Mr. DeBuys says they can't vote, the judge as well as our City attorney say the City Council can vote on this matter. The attorney stated that was correct. This is a public hearing and they can make a decision.

Mr. DeBuys stated he would like to clarify that he is not saying they cannot vote, rather is requesting they consider postponing this so the underlying legal issues are satisfied first. He noted they do not want to fight with the City but they feel the underlying issues are very important. He stated the Council has three options, to vote yes, vote no, or postpone the decision. The Council could do nothing. He stated the only one alternative with no further liability, and possibly no liability, is to let the court decide the underlying legal issues, one being a breach of contract. He is asking that the judge guide the Council as well as them. He feels the legal issues should be decided prior to the Council addressing a legislative issue on zoning.

Mr. DeBuys stated the court says the public has a right to hear the issues. He wanted to make one point clear. Much has been made of the fact that Daniel is also developing a senior housing project in Inverness. He felt many allegations have been made that the only reason Daniel is objecting to this project is that it will compete with the Inverness project. They have been accused of having "unclean hands" and have been threatened with claims of intentional interference with the business relationship. He felt that Daniel has been portrayed as the bad guy in all of this.

Mr. DeBuys stated there are two sides to every story. He gave history on this project. In the late 1980's they obtained property to develop Greystone, a mixed use community which ultimately contained two championship golf courses, over 2700 home sites, 115 acres of commercial/office site. The property was not in Hoover but Hoover wanted it. He stated it took a long time to put this project together. The annexation agreement was negotiated and approved long before the process was completed thus resulting in the annexation agreement not being signed until some of the parcels of property had been sold by Daniel, including a sale of property to Brook Hills church which occurred in 1990. He stated this fact was known by the City and the City attorney, City Council and Mayor at that time. He stated Seton purchased this property from the church in September, 1991. Hoover wanted the Greystone development to be "top notch" master plan development with controls in place with regard to such things as use, density, and architectural standards. He noted that Hoover suggested a PUD. He noted that Daniel wanted these things as well. These documents make it clear that Daniel reserved for itself important developer rights which are in the annexation agreement with the PUD attached. He noted the Greystone PUD zoning application and development plan expressly states that the planning objective would be achieved by giving the developer control of a diverse mixed use development for all the property by doing things such as preparing restrictive covenants for each land use that cannot be changed without the developers consent. The covenants cannot be ignored. The PUD objectives were further stated to "promote an overall plan which minimizes adverse consequences on Lake Purdy and the Cahaba River and to promote an overall plan which emphasized the retention of the natural environment. Finally, to establish separate setbacks, building sizes, including very importantly density requirements. He stated he mentioned the density because the density of the proposal is three times what is allowed in the PUD. He stated this is not in any of their notes. He stated the rule for density is 10,000 SF per acre and this request is development 29,000 S.F. per acre, over three times what is allowed.

Mr. DeBuys stated in exchange for these development rights Daniel donated to the City approximately 18 acres which is the Greystone Elementary School and approximately four acres for the fire station in Greystone. Daniel also procured the land and put the deal together which resulted ultimately in the site for Spain Park High School and Heardmont Park. They

also donated over 50 acres for parks and open spaces. He noted that Daniel, in exchange for these development rights, took a tremendous financial gamble developing Greystone. He noted there is no doubt that Greystone has been a successful development and the benefits to the City of Hoover have been substantial. Greystone has hosted a Senior PGA Golf championship for 14 years, which has resulted in millions of dollars of revenue for the City. He noted that in exchange for the developer rights it may have been overlooked, Daniel also annexed the Meadowbrook Corp. Park development in the City as part of this overall deal. He stated this is a 70 acre project and has a half billion dollar value. Mr. DeBuys stated there is no doubt that for almost 20 years Daniel and the City have both conformed to the agreements of the annexation agreement and have followed the procedure of the Greystone PUD. He noted that St. Vincent's has also done this when they developed their health and wellness facility and requested a parking variance.

Mr. Smith stated he appreciated this information and felt Mr. DeBuys has addressed the great partnership that the City and Daniel has enjoyed to date but he has not heard anything yet that goes to this question.

Mr. DeBuys asked if he referred to the underlying question or the land use. He stated He would try to finish as quickly as possible. He noted he would like to point out something important. He noted the other side of this story from Daniel's standpoint is that months ago St. Vincent's approached Daniel and wanted to discuss the development of their campus. He stated a facility such as this was not mentioned. Five months later a conceptual plan was presented which did mention this. At that particular point and time Daniel said they would like to look at this as they had 40 years of experience and know how to do this and would like to do it. It was also considered adding the almost seven and one-half acres adjoining this property so that the density ratios would be greatly improved and it would be feasible.

Mr. DeBuys stated it was suggested and Daniel talked with St. Vincent about being the developer there. When they brought this up and said this would be an assisted facility, Daniel told them they had a similar development planned for property in Inverness and said "why don't we co-ordinate it so they could take and put the senior living facility part more out in Inverness and put more of the medical aspect of it down to where their facility is". He felt that Daniel has been portrayed as the "bad guy" for objecting to a project that is needed for the area. He stated they do not object to the fact that the project would be good for the area, but they do object for the density and for the manner it is proposed.

Ms. Morrison asked if this is more of an argument between Daniel and St. Vincent's and not a question of the land use. She asked if this is not a question more appropriate for him and Daniel to take to court as opposed to this Council to decide whether that land is proper to be used as conditional use. He stated he certainly felt this is something the court should decide, the fundamental two issues for two very important reasons.

Mr. DeBuys stated there is an Annexation Agreement that is in place. The City is not in breach of any agreement. The Annexation Agreement gives Daniel developer rights and the City has followed that right forever. He stated they merely want the court to say: whether that Annexation Agreement needs to be followed and continue on, or it needs to be followed and there is some exposure if you do not, or they could say the Annexation Agreement is not any good. He felt this is a legal issue based on the legal history and the things that happened back then.

DeBuys stated the second problem is, and he noted he is trying to keep the City out of trouble rather than being involved in it, the procedure matter. He noted the PUD was properly zoned and acted on. He stated he has an affidavit from the City Attorney that goes into this. He noted he would leave this affidavit here. He stated if the PUD in 91-996 was properly acted upon, how can it be changed without going through our rules and regulations.

Mr. Smith asked what City attorney gave this documentation. Mr. DeBuys stated this was Mr. Jack Harrison. Mr. Smith stated this was a former City attorney and Mr. DeBuys agreed. He stated this was the City attorney, who at that particular time negotiated the deal with Mayor Skinner, who also represented Brook Hills Church as far as advising them that they would be required and their property would come into the PUD. He gave the instructions and told them how the process should be followed and advised the City to do that and shepherded the process all the way through. Mr. Smith asked when the letter from Mr. Harrison was dated. Mr. DeBuys stated when this first came up he called him and asked him about it and they talked at length about it. He stated he thought he had mentioned this to the representatives of the City. Mr. DeBuys presented the Council with a copy of his affidavit (from Jack Harrison) with exhibits and had been notarized today (January 7, 2008). He wanted to be sure the Council was given a copy of his affidavit without the exhibits. He stated the exhibits are the annexation agreement and the ordinances.

Mr. Wright stated he is looking at an affidavit of Mr. Bob House, who is a consultant of the City, dated January 4, 2008. This affidavit states that Mr. House says while at a meeting he attended in Mr. Tickle's office he was told that "he said to me that Daniel would not allow the Greystone Architectural Review Committee to approve the proposed St. Vincent's housing project because it would compete with the proposed Daniel Senior Housing Project in Inverness", which is also set for a public hearing. Mr. DeBuys stated he felt there is certainly a reason there and he would not back up from that at all.

Mr. Wright stated if Baptist Montclair should want to put one of these developments out there and tried and University Hospital and Cooper Green wanted to put one out there and they are quality and the Greystone people are happy with them, he would not be opposed. He stated there are 42,000 prospects for one of these (developments) in Hoover. He felt that sooner or later we would all need this service. He stated he like hospitals and nursing homes as long as they are quality and the people there get great patient care. He felt the only issue here is can they build a nursing home and assisted living facility. He stated he would vote for every one that comes through that is of high class and quality and a substantial owner no matter who it is. He stated if there is more density needed in Inverness, they should get it.

Mr. Smith stated that St. Vincent's has brought two people that have signed affidavits that were long time employees with Daniel. He noted that Mr. DeBuys has provided an affidavit that is not yet to occur as it is dated January 10th and today is the 7th. He stated he must assume that this information does not yet exist. He asked why Mr. Harrison or the former Mayor was not at this meeting to supplement his side. Mr. DeBuys stated Mr. Harrison had a meeting tonight with some attorneys and that is why he brought the affidavit. He noted that if it is dated January 10th, he was sitting across the table from him and he felt the Notary Public may have dated it then but it was dated this afternoon in front of him. Mr. Smith stated it is the document itself. Mr. DeBuys stated he should check the Notary more thoroughly. Mr. Smith stated the Notary dated it today, January 7th, for a document that does not occur until the 10th.

Ms. Morrison stated she would like to add something. She questioned if there are not some legal documents that have differing statements on them and have some questions regarding legalities of property law and asked if this is not what this is all about. Mr. DeBuys stated that was correct and why he has asked that they not vote until a court can decide these legal issues. Ms. Morrison asked how it is going to hurt if they go ahead and vote. If the Court decides in their favor anything done adversely to Daniel would be moot. If the Council approves this and the Court says they cannot do so, then it so. Mr. DeBuys stated they very much believe, and this is why he is asking the Council not to vote, that if you vote in favor of this, because 91-996 has not been changed according to due process of law he felt that would put the City subject to exposure. Mr. Wright asked what this exposure would be. Mr. DeBuys stated if the Council votes on this, then obviously they are taking away the right of Daniel to approve or disapprove. Mr. Wright stated we have not taken away any of Daniel's rights, he felt that was between them and St. Vincent's and it was either in the PUD or it wasn't. He stated the issue before the Council is whether this is a good facility and a good plan and felt it looked outstanding. Mr. Wright asked if there were any additional things that are not included in the lawsuit that he would like to share with them.

Mr. Ivey stated he was hearing that, short of Mr. James requesting a continuance of this project, they are going to vote it tonight. He stated it does not sound like there is anyone to make a motion to continue.

Mr. Wright asked if there was anything the Council is missing that he would like to add. Mr. Ivey stated if Mr. James would like this matter continued he would do so.

Mr. DeBuys stated he is trying to point out the rights that Daniel has and he has tried to point out the legal issues. He felt this was all he could do. He stated he has tried to point out the procedures. He stated he could give information where our ordinance requires a procedure for doing something with these ordinances, but those are legal arguments and he did not feel the Council wanted to hear it.

Mr. Ivey asked if there was any argument they can put before the Council that was not of legal nature that needs to be heard by a judge.

Mr. DeBuys stated out of all the commercial property that is in the Greystone PUD there has never been a variance granted to the density. He again noted that this density is three times as much for the same use there. Because of this, and there are other problems with it, but because of this primarily they feel this is too dense a development. This is a non legal argument they just feel it is too dense for the area.

Mr. Wright stated he would be glad to give the density on every senior project that they have come before them. Mr. Ivey stated on the issues of density, the Council tries to please the residents and he felt the associations have spoken to this. He again stated they get into density issues to please the citizens.

Mr. DeBuys stated just for the record, the closest neighbor is Daniel who has seven acres that is located immediately adjacent and south thereto and within 50 ft. of a three story dense project.

Mr. Wright inquired if this was not a piece of property they had offered to the City who did not accept it because it is several ponds and a hill. Mr. DeBuys stated he did not feel it was several ponds and a hill, he felt it is the wetlands and it has a stream involved in it and there are some topol problems. Mr. Wright stated it was certainly an un-buildable piece of property.

Mr. DeBuys stated that was not correct and he could prove that was not so. Mr. Ivey stated he did know that at one time the City declined to take it. Mr. DeBuys agreed. Mr. Ivey stated the City saw no value to it. Mr. DeBuys stated from the City's standpoint he would agree that the City would see no value to it.

Mr. Ivey called for any further questions for Mr. DeBuys from the Council.

Mr. Smith stated in reviewing all the affidavits that have been thrown before the Council, he sees a common theme to those provided by St. Vincent's and that they also claim that they would receive substantial and irreparable damage as well. He felt that as a body, they have Daniel and St. Vincent's both claiming damage. He stated St. Vincent's is the applicant. He felt the question in his mind should go to their damage first and foremost. Obviously as Ms. Morrison indicated, legal action is going to determine whether or not if an affirmative vote is given as to whether or not that vote will stand.

Mr. Ivey asked that the record show that Mr. James has indicated to him that he does not want this matter continued.

Mr. DeBuys stated he was aware and he is finished with his presentation.

Mr. Wright at this time called for the question.

Mr. Ivey stated we are still in a public hearing format and asked for anyone else. There were no other comments.

For clarification it was noted that a motion to adopt Ordinance No.07-2159 was made by Mr. Natter and seconded by Mr. Skelton.

Mr. Wright has called for the question. He made a motion to that effect, which motion was seconded by Mr. Smith. Mr. Ivey called for a vote. On voice vote the motion carried unanimously.

Mr. Ivey called for the vote for adoption of Ordinance No. 07-2159. On roll call the votes of the Council were as follows: Mr. Ivey, "Yea", Ms. Morrison, "Yea", Mr. Natter, "Yea", Mr. Skelton, "Yea", Mr. Smith, "Yea", and Mr. Wright, "Yea". The motion carried unanimously.

Mr. Ivey stated under this same item the applicant is asking for conditional use to allow the construction of a 55 plus age restricted senior residential community which will include 136 independent living, 48 assisted living and 243 memory care units to be located on 9.08 acres of Lot 1 Greystone 3rd Sector.

Mr. Natter made a motion to approve this conditional use request. This motion was seconded by Ms. Morrison.

Mr. Ivey called for any discussion from the Council; there was none. He then called for comments from anyone present that wished to speak on this matter and there were none.

There being no further comments Mr. Ivey called for a vote. On voice vote the motion carried unanimously.

Mr. Smith stated he would like to congratulate this body for dealing with such public information, especially involving litigation without having to go into Executive Session.

16. **PUBLIC HEARING – APPROVAL OF AMENDED CONDITIONAL USE SITE PLAN FOR GREEN VALLEY ELEMENTARY SCHOOL TO ALLOW CONSTRUCTION OF A FIVE CLASS ROOM BUILDING**

Mr. Ivey stated a public hearing had been set for this date to consider approval of an amended site plan for Green Valley Elementary School located at 3200 Old Columbiana Rd. to allow the construction of a five classroom building. This property is owned by the Hoover City Schools and is zoned R-1 (Single family residential district).

Mr. Natter made a motion to approve this request. This motion was seconded by Ms. Morrison.

Mr. Wright asked if the discussion held at work session concerning the use of the gym by Parks and Recreation had been worked out. It was noted this matter seemingly had been resolved.

Mr. Ivey called for any comments or questions; there were none.

Mr. Ivey called for a vote on the motion to approve.

17. PUBLIC HEARING – CONDITIONAL USE REQUEST OF NATHAN BURDETTE TO ALLOW PET GROOMING FACILITY AT 3145 LORNA RD.

Mr. Ivey stated the conditional use request of Nathan Burdette to allow a pet grooming facility at 3145 Lorna Rd. came to the Council without a recommendation from the Planning Board due to a tie vote. He stated the City attorney had not been at the work session and there was some question as to whether it is appropriate for this to be on the agenda.

Mr. Ivey stated it was his understanding that the City attorney is recommending that this be continued so that he can further research this matter.

Mr. Wright made a motion to continue this case to the first meeting in February which would be February 4th. This motion was seconded by Mr. Skelton.

Mr. Ivey called for a vote. On voice vote the motion carried. Mr. Smith noted that he had abstained from this vote.

18. SET PUBLIC HEARING FOR TUESDAY, JANUARY 22, 2008 – 6 P.M. TO CONSIDER REQUEST TO BE HEARD AT HOOVER ZONING BOARD JANUARY 10, 2008 MEETING – 1ST READING ORDINANCE NO. 08-2161

Mr. Ivey stated a public hearing is hereby set for Tuesday, January 22, 2008 at 6:00 p.m. to consider the request of Mr. Jonathan Belcher to rezone recently annexed property known as Chace Lake Country Club from Jefferson County C-2 (Outdoor Amusement) Jefferson County CC-1 (Country Club), Shelby County A-1 (Agriculture), Hoover PO (Planned Office) and Hoover PR-2 (Planned Multi-family) to Hoover PUD (Planned Unit Development). This property is owned by Chace Lake Country Club, Inc.

The City attorney had the first reading of Ordinance No. 08-2161.

19. PAYMENT OF BILLS

Mr. Ivey stated the Council had been presented with a listing of the bills submitted for payment.

Mr. Wright stated the bills had been reviewed and he made a motion to approve. This motion was seconded by Mr. Skelton.

Mr. Ivey called for any comments. A question was asked about the public hearing for the pet grooming facility, the request of Nathan Burdette. Mr. Ivey explained that this had been continued to the first meeting in February, February 4, 2008.

Mr. Ivey noted a motion and second had been made to approve the payment of bills. He then called for any comments or questions; there being none, on voice vote the motion carried unanimously.

Mr. Ivey called for any further comments or questions; there being none, the meeting was adjourned.

Linda Crump
City Clerk