

**HOOVER CITY COUNCIL
MINUTES OF MEETING**

DATE: May 4, 2009
TIME: 6 P.M.
PLACE: Hoover Municipal Center
PRESENT: Mayor Tony Petelos
Mr. Gary Ivey, Council President
Mr. John Greene, Council Member
Dr. Trey Lott, Council Member
Ms. Mari Morrison, Council Member
Mr. Brian Skelton, Council Member
Mr. Gene Smith, Council Member
Mr. Jack Wright, Council Member

ALSO PRESENT: Mr. Mark Boardman, City Attorney
Mr. Tommy Daniel, Director of Public Works
Chief Nick Derzis, Police Chief
Ms. Susan Fuqua, Director Municipal Court
Mr. Bob House, House Consultants
Mr. Rod Long, City Engineer
Mr. Frank Lopez, Director Revenue and Taxation
Mr. Craig Moss, Director of Park and Recreation
Mr. Allen Pate, Executive Director
Mr. Ben Powell, Director Support Services
Mr. Don Reilly, Inspection Services
Mr. Tim Westhoven, Asst. Executive Director
Chief Chuck Wingate, Fire Chief
Mr. Robert Yeager, Finance Director

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

The City Clerk then gave the invocation.

Mr. Greene led those present in the Pledge of Allegiance.

1. **REPORTS**

Mr. Ivey recognized Mayor Petelos for the presentation of two proclamations.

The City Attorney read a **proclamation** whereby the Mayor proclaimed the month of May, 2009, as **Older Americans Month** in the City of Hoover, honoring its older adults and the professionals, family members and citizens who care for them

The City Attorney read a **proclamation** whereby the Mayor recognized the ***Choose Water, Birmingham!*** Campaign launched by the Birmingham Water Works Board, the Jefferson County Department of Health, and members of the local medical community encouraging area citizens to drink more tap water for improved health.

Mayor Petelos presented this proclamation to Ms. Binnie Myles, Public Communications Manager, Birmingham Water Works. Ms. Myles was accompanied by Dr. James Sanderson, a

dentist in the Hoover area. Dr. Sanderson noted that we have one of the best water systems in the country and he was glad to be a part of this campaign which promotes something good in the City of Birmingham.

Mayor Petelos stated the City of Birmingham water is rated number five in the nation and we are fortunate in this community to have such clean tap water. He thanked Ms. Myles and Dr. Sanderson for coming.

Mayor Petelos stated he would like to appoint **Mr. Sammy Harris** to the **Planning and Zoning Commission**. Ms. Morrison made a motion to approve the Mayor's appointment. This motion was seconded by Mr. Smith. On voice vote the motion carried unanimously.

Ms. Morrison made a motion to reappoint **Mrs. LeAnna Huddleston, Mr. Mathew Lemak, and Mr. Joe Rives to the Board of Zoning Adjustments**. This motion was seconded by Mr. Skelton. On voice vote the motion carried unanimously.

2. **APPROVAL OF MINUTES**

Mr. Ivey stated each member of the Council had previously received a copy of the minutes of the April 20, 2009 Council meeting as well as the work session held on April 30, 2009.

Mr. Wright made a motion that the minutes be approved as presented and to dispense with the reading. 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.

3. **RESOLUTION NO. 4261-09 – REJECT BID #02-09 – FIRE SUPPRESSION SYSTEMS & EQUIPMENT INSPECTION AND MAINTENANCE SERVICES**

Mr. Ivey stated a motion to continue was in order.

Mr. Wright made a motion to **continue** Resolution No. 4261-09 to the May 18, 2009 City Council meeting. This motion was seconded by Mr. Smith. On voice vote the motion carried unanimously.

4. **RESOLUTION NO. 4262-09 – AWARD BID #07-09 – DUAL LAMP PROJECTOR AND LENS FOR POLICE DEPARTMENT**

The City Attorney read Resolution No. 4262-09, which would award Bid #07-09 for a dual lamp projector and lens for the Police Department to Tierney Brothers, Inc., theirs being the lowest responsible bid.

Mr. Wright made a motion to approve Resolution No. 4262-09. 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.

5. **RESOLUTION NO. 4263-09 – EXTEND CABLE FRANCHISE – BRIGHT HOUSE NETWORKS, LLC**

The City Attorney read Resolution No. 4263-09, which would authorize the extension of the cable franchise with Bright House Networks, LLC, to May 3, 2010.

Mr. Wright made a motion to approve Resolution No. 4263-09. 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. **RESOLUTION NO. 4264-09 – AUTHORIZE MAYOR TO EXECUTE AGREEMENT WITH ALDOT – HOOVER TOPICS VII – SHADES CREST @ INTERSECTION OF WEST OXMOOR AND TYLER ROAD**

The City Attorney read Resolution No. 4264-09, which would authorize the Mayor to execute a construction agreement with the Alabama Department of Transportation for Hoover Topics VII Project STMBH-7005(600) Improvements on Shades Crest Road at the intersection of West Oxmoor and Tyler Road.

Mr. Wright made a motion to approve Resolution No. 4264-09. 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.

7. **RESOLUTION NO. 4265-09 – AUTHORIZE SIGNATURE CARDS FOR CITY OF HOOVER RECORDING ACCOUNT – REGIONS BANK**

The City Attorney read Resolution No. 4265-09, which would authorize the signature cards for the City of Hoover Recording Account at Regions Bank for the City Clerk and Assistant City Clerk.

Mr. Wright made a motion to approve Resolution No. 4265-09. 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.

8. **RESOLUTION NO. 4266-09 – MUNICIPAL WATER POLLUTION PREVENTION (MWPP) – RIVERCHASE WASTEWATER SYSTEM**

The City Attorney read Resolution No. 4266-09, which would inform the Alabama Department of Environmental Management of the actions taken by the Hoover City Council regarding the Municipal Water Pollution Prevention (MWPP) Program for the Riverchase Wastewater System.

Mr. Wright made a motion to approve Resolution No. 4266-09. 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.

9. **RESOLUTION NO. 4267-09 – MUNICIPAL WATER POLLUTION PREVENTION (MWPP) – INVERNESS WASTEWATER SYSTEM**

The City Attorney read Resolution No. 4267-09, which would inform the Alabama Department of Environmental Management of the actions taken by the Hoover City Council regarding the Municipal Water Pollution Prevention (MWPP) Program for the Inverness Wastewater System.

Mr. Wright made a motion to approve Resolution No. 4267-09. 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.

10. **RESOLUTION NO. 4268-09 – AMENDMENT TO DEVELOPMENT AGREEMENT WITH APPLE DEVELOPMENT COMPANY, LLC – THE GROVE**

Mr. Ivey stated a motion to continue was in order.

Mr. Wright made a motion to **continue** Resolution No. 4268-09 to the May 18, 2009 City Council meeting. This motion was seconded by Mr. Smith. On voice vote the motion carried unanimously.

11. **RESOLUTION NO. 4269-09 – AUTHORIZE MAYOR TO EXECUTE AGREEMENT WITH NEEL SCHAFFER – STADIUM TRACE PKWY SIDEWALK PROJECT**

The City Attorney read Resolution No. 4269-09, which would authorize the Mayor to execute a Construction Engineering & Inspection Services Agreement with Neel Schaffer, Inc., regarding the Stadium Trace Parkway Sidewalk Project.

Mr. Wright made a motion to approve Resolution No. 4269-09. 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.

12. **CHANGE ORDER NO. 2 – GREEN VALLEY GYMNASIUM RENOVATION PROJECT**

Mr. Ivey stated a motion to approve is in order. Mr. Wright made a motion to approve Change Order No. 2 regarding the Green Valley Gymnasium Renovation Project. 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.

13. **PUBLIC HEARING – CONSIDER REVOCATION OF CONDITIONAL USE FOR LIVE ENTERTAINMENT – LASPADA BISTRO – 4524 SOUTHLAKE PARKWAY, SUITE #7**

Mr. Ivey stated a public hearing had been set for this date to consider the revocation of the conditional use previously approved on November 17, 2008 to Mr. Richie Vines regarding live entertainment at LaSpada Bistro, 4524 SouthLake Parkway, Suite #7. This property is owned by Fairway investments, LLC, and is zoned PC Planned Commercial.

The City Attorney, Mark Boardman, presented to the Council Members, City Clerk, and Mr. Vines, copies of documented evidence regarding this hearing. He stated this proposal was being presented for the first time so as to allow the Council to act as true judges of this matter. (A copy of this proposal is made part of the permanent record maintained in the City Clerk's Office.)

Mr. Boardman called his first witness, Mr. Scott Sharpton, City of Hoover Geographic Information Systems Manager. Mr. Boardman pointed to a map on display at the front of the Council Chambers and asked Mr. Sharpton to explain the map. Mr. Sharpton stated this was a map showing the property and location of the LaSpada Bistro in relation to the surrounding area, which included the SouthLake residential subdivision located behind the restaurant as well as the SouthLake commercial area off Valleydale Road.

Mr. Boardman stated the map showed a distance of 183.65 feet from the residential property line to the business. Mr. Sharpton concurred. Mr. Boardman asked Mr. Sharpton if this map was maintained in the course of the City's records. Mr. Sharpton answered yes.

Mr. Boardman called his second witness, Police Chief Nick Derzis. He asked Chief Derzis to review with the Council the log of phone calls from residents surrounding LaSpada Bistro complaining of disturbing the peace. (A copy of this log is included in Mr. Boardman's proposal). Chief Derzis reviewed the list of 13 different calls for disturbing the peace beginning on November 22, 2008 and ending April 10, 2009.

Mr. Boardman asked Chief Derzis to describe the nature of the calls, the meaning of "disturbing the peace", and how the police officers came to respond. Chief Derzis stated that on these particular evenings the Police Department responded to calls from residents living near the LaSpada Bistro who said they could hear music at their residences. Chief Derzis read from the Municipal Code language regarding the Noise Ordinance. He stated that during these complaints the only citation issued was on April 10, 2009. The officer responded to the complaint and upon entering the parking lot could hear the music half way to the parking lot. The officer then went to the back yard of the residence and could hear the music. The officer returned to LaSpada Bistro and issued a citation to the manager. Mr. Boardman noted that a copy of the citation was included in the proposal.

Mr. Boardman asked Chief Derzis to describe the reaction of the Police Department in enforcing the curfew, the cut-off time for playing music. Chief Derzis stated part of the problem is the 10:00 p.m. curfew on Thursday nights when karaoke is played. Thursday nights have become very popular nights at this location. He stated that while he understood 10 p.m. is very early to end this type of entertainment, it is the time frame that was issued to the establishment. When the police would arrive at 10 p.m. the music would continue. There was an incident where an officer arrived at 10:15 p.m. and found no music playing, and then received a call at 10:40 p.m. that music was playing. The officer responded and went into the establishment to tell the manager that the music should have stopped at 10 p.m. The officer went back to his vehicle and at 10:57 p.m. went back inside and the music stopped when he came back in. On Thursday, April 9²⁰⁰⁹, a police officer found music still playing at 10 p.m. The officer went inside and waited for the last song to finish which put them compliant at 10:20 p.m. Again, he understood that when the establishment is very crowded it is probably difficult to stop the karaoke on time, but the bottom line is that the Council approved 10 p.m. on Thursdays and 11 p.m. on Fridays.

Mr. Boardman reminded the Council that they approved the live entertainment limited to being conducted indoors and limited to a small dance floor with a four piece live band or an acoustic solo/duo, and the live entertainment was to be conducted from 8:00 p.m. until 10:00 p.m. on Tuesday through Thursday, and 8:00 p.m. until 11:00 p.m. on Friday and Saturday.

Mr. Boardman stated the proposal he submitted includes advertisements from the business which specifies karaoke. This is not what was presented to the City Council or the Planning Commission when the conditional use was approved.

Mr. Ivey asked if the Council had any questions for Chief Derzis.

Councilman Smith stated the Council at their regular meeting on April 6, 2009 voted to proceed with the public hearing being held tonight. The Police Department wrote a citation four days later. Chief Derzis stated that was correct. Mr. Smith inquired as to when the licensee became aware that the hearing would be conducted.

Mr. Boardman stated this was handled through the City Clerk's Office by following the regular notice procedure used for City Council public hearings including notification by mail and publication in the newspaper. He also noted that notification of the hearing was evident by the presence of the individuals in the audience.

Mr. Smith stated it appeared that the licensee was likely aware of the issue prior to the April 10, 2009 citation. Mr. Boardman stated that was a valid assumption.

At this time, Mr. Boardman stated some of the residents in the area would like to speak.

Ms. Linda Sully, 112 SouthLake Lane, spoke on behalf of the neighbors in her subdivision which backs up to the shopping center where the LaSpada Bistro is located. She asked these neighbors to stand and be recognized. A dozen or so people stood at this time. Ms. Sully stated she had spoken at the October 13, 2008 meeting of the Planning and Zoning Commission asking them to deny the request of Richie Vines to allow live entertainment. At that time she presented a petition containing signatures from 96 of the 146 homes in The Crest subdivision. She presented copies of the petition to the Council at this time. She also attended the November 17, 2008 City Council meeting when the conditional use was approved for live entertainment. At that meeting Mr. Ivey addressed the noise ordinance with Mr. Vines and placed him on notice that the noise ordinance would be enforced and if violated he could lose his conditional use. She stated the neighbors have had to call the police repeatedly since that time because the music could be heard from their patios and bedrooms, most of which back up to the shopping center, and because the music has continued beyond the designated ending time. Many times they would stop playing when the police came by only to resume after the police left. Since they have repeatedly violated and abused the noise ordinance and the hours of allowing music, she asked the City Council to revoke the conditional use to allow live music. She felt it was time to take action and let the police do their job and not be a baby sitter.

Mr. Ivey asked if there were questions from the Council.

Ms. Morrison referred to Ms. Sully's letter to the Council dated November 24, 2008 in which she stated that on Saturday evening, November 22, 2008, she arrived home around 10:30 p.m. and received a phone call from a neighbor asking if she could hear the music. In the letter Ms. Sully stated that she opened the door to her screened patio and could hear the music. Ms. Morrison asked Ms. Sully if she could hear the music within her house. Ms. Sully stated that at that time she could not. Ms. Morrison asked Ms. Sully if her home was directly behind LaSpada. Ms. Sully showed Ms. Morrison the location of her house on the map. She stated they never had a problem hearing music from the front of the houses or from the street, but it can be heard from the back of the houses where the patios are located as well most bedrooms and living rooms. Ms. Morrison asked if the noise was distinguishable. Ms. Sully stated when the band plays it is more of a "boom, boom, boom" noise, but the karaoke is more distinguishable. She stated she can hear the karaoke from her bedroom on Thursday nights and has to get up early for work on Friday.

Mr. Ivey asked Ms. Sully if all of the people with her were SouthLake residents. Ms. Sully answered all but one.

Mr. Boardman stated the proposal includes a copy of Ms. Sully's letter and a letter from another neighbor, as well as a photograph of the pine trees located between LaSpada and the residents of SouthLake. Ms. Sully concurred that this was in fact the picture of the pine trees. Mr. Boardman noted there would be some noise dampening due to the trees and in fairness it had not been said that the music could be heard all of the time. It was intermittent, but enough to interrupt the residents' quite enjoyment of their property. Ms. Sully agreed.

Mr. Boardman reminded the Council that the minutes of the Planning and Zoning Commission and City Council included in the proposal reflect the applicant's assurance that there would not be a noise problem.

Mr. David Broderick, 224 Crest Lake Drive, spoke in support of Ms. Sully and her neighbors. Ms. Morrison asked Mr. Broderick if he personally heard the noise from his home. Mr. Broderick answered no.

Mr. Smith asked what distance is considered a violation from the source of origin. Chief Derzis said the ordinance states fifty (50) feet.

Mr. Boardman added that during the hearings regarding the conditional use, the applicant knew there were concerns about noise because of a problem with previous owner. The applicant indicated he would add Styrofoam materials to buffer the sound and reduce the noise and that he had a plan to ensure that noise would not affect anyone in their homes.

Mr. Smith asked could the conditional use approved by the Council be more broadly interpreted to include karaoke rather than just the three piece band.

Mr. Boardman stated that point could be argued in court, but in his opinion the approval was specific, and karaoke was not mentioned. It is a very prominent issue now and one that goes beyond curfew time. Regardless of whether it applies under live entertainment or not, violation of the curfew itself is enough to revoke the conditional use even if the individuals who live in SouthLake can not hear this noise every night in their bedroom. If they can hear it a few times, as evidenced by the thirteen complaints, or if there is a violation of curfew, either one is enough. They are clearly in violation of curfew.

Mr. Ivey stated he did not believe the issue is whether or not karaoke is live entertainment, but the violations to the noise ordinance and curfew. Mr. Boardman stated that was correct.

Dr. Ron Kittinger, 3206 Mountain Ridge Circle, Meadow Brook, spoke against revoking the conditional use. He spoke at the April 6th Council meeting stating that he visits his mother's home at 114 SouthLake Lane, next door to Ms. Sully, regularly from 7 p.m. to 10:30 p.m. He has only heard noise a couple of times and that was after going to the back of the house with his ear over the fence straining to hear at about 100 feet. He felt the issue must be the violation of curfew because noise did not seem to be problem. He and his mother frequent LaSpada Bistro and have not found the noise to be excessive even inside the facility. He was concerned that the applicant would be forced out of business due to limited complaints. He wondered what percentage of complaints were from one household and how often did the police actually hear noise when responding to a call.

Mr. R. W. Canan, 201 Beaver Crest Circle, Pelham, spoke against revoking the conditional use. He visited the neighborhood and walked to the back of the houses and could only hear a fan from the kitchen. This was on Thursday nights (karaoke nights). He spoke highly of the establishment and was concerned that revoking this conditional use would run this man out of business. He felt the issue was the curfew, not the noise. He agreed there were times when the songs went over but he felt the curfew was unreasonable.

Mr. Smith stated Mr. Vines negotiated the curfew at the time of the conditional use approval. Mr. Canan felt that Mr. Vines did not fully understand what he was agreeing to at the time.

Mr. Ivey stated the Council merely approved what was presented to them.

Mr. Brice Etheridge, 2416 1st Ave. North, Birmingham, addressed the Council. Mr. Etheridge is the manager who received the citation from the Hoover Police Department on April 10, 2009. He stated they are taking precautions to install foam padding, although it is not in their budget to do so. They are waiting on the decision of the Council to determine whether or not they can keep

the restaurant because 70% of their profit is through entertainment. He noted that revoking the conditional use will cost nine people their jobs during this difficult economy. He noted he books the entertainment and has changed significantly to eliminate all percussions. The restaurant is a great place for local people to come and eat and enjoy themselves. He expressed concerns about the presence of the police cars in the parking lot causing people to leave the restaurant early. He stated he visited Ms. Sully and offered anything they could to make it better and more pleasant for her, but with no response. He noted that police officers walk in now even when he is playing his radio. It has become very difficult for them to run their business. Their profits are down because people do not want to come only to be herded out at 10:00 p.m.

Dr. Lott noted that Chief Derzis had spoken to the times the establishment went beyond the 10:00 p.m. curfew and that the owner was notified of the violations.

Chief Derzis asked Mr. Etheridge to clarify what he meant by people being herded out of the restaurant. Mr. Etheridge stated he did not mean it literally, but felt that when three units are parked outside an establishment that serves alcohol no one is going to stay. Chief Derzis asked Mr. Etheridge if he was familiar with any of his patrons going to jail for driving under the influence. Mr. Etheridge answered no.

Mr. Ivey stated it was his understanding that the police have been dispatched to stop music, not to throw anyone out of the restaurant. Chief Derzis agreed. Mr. Etheridge stated it was the presence of the units in the parking lot that was the problem. Chief Derzis asked whether the three units hang around in the parking lot after the karaoke is over. Mr. Etheridge stated the restaurant closes at 11:00 p.m. and the police do not leave until everyone is out of the restaurant and the place is closed. He said there were three units every week except this past week.

Ms. Morrison inquired about the incident when the officer came in while Mr. Etheridge was playing his radio. She asked did the officer inform him that a complaint had been received. Mr. Etheridge said no the officer just told him the radio was too loud.

Ms. Morrison asked Mr. Etheridge if he was aware that Mr. Vines stated at the Planning and Zoning meeting on October 13, 2008 that he was adding Styrofoam panels to reduce the noise. She asked had this not been done. Mr. Etheridge stated this is in the process of being done should they be able to keep the restaurant open. Ms. Morrison asked was it not done like Mr. Vines said it was in the process of being done. Mr. Etheridge answered they have not been added yet.

Ms. Morrison stated that could be where part of the problem lies in that the City was assured at that time that there would be the Styrofoam panels to reduce the noise as well as the upgrading of the air conditions so that the back door would not have to be opened.

Mr. Etheridge pointed to the map and discussed the elevation of Ms. Sully's residence in relation to the bistro. He said he had walked out the back door and half way up the hill he could not hear the music.

Dr. Lott asked Chief Derzis was there an episode where the bistro stopped the music and then the officer came back only to find that the music had started again after 10:00 p.m. Chief Derzis answered yes and gave the details of that incident. Chief Derzis stated that while the curfew may be early, the bottom line is that is what was approved and that is the obligation of the Police Department when a complaint is received.

Mr. Etheridge stated there have been no violations since he received the citation from the Police Department. They cut off everything early now just to make sure. They have made efforts to

correct those situations. He books all the bands and now allows only duos and acoustic versions. He assured the Council there would never be an issue again of noise.

Mr. Smith asked Mr. Etheridge whether the radio he talked about earlier was a table top radio or a sound system. Mr. Etheridge stated the speakers were not the same as those used for the live entertainment.

Mr. Smith referred to the minutes of the November 17, 2008 meeting where Mr. Click stated they had a machine that would let them know about the noise level. Mr. Smith asked who maintains that machine. Mr. Etheridge stated there is a decibel meter available on site but they were told it was not required by the ordinance to be on a decibel meter and that if the noise could be heard from 50 feet then they were in violation. They try to review the decibel meter once a week just to check

Mr. Smith asked what then was the decibel meter going to provide by Mr. Click's statement. Mr. Etheridge stated he was not sure. He noted that Mr. Click is no longer employed there. Mr. Click had a five piece band that included percussions and was too loud and too big for the establishment.

Ms. Morrison inquired as to the cost of installing the Styrofoam. Mr. Etheridge stated he understood the cost to be approximately \$2,000. She asked were they ready to install it.....have the money, have it ordered, have the plans.....just waiting on the Council's decision. Mr. Etheridge answered yes, if the Council will allow them to keep their hours.

Mr. Smith stated that based on Mr. Etheridge's comments earlier the establishment needs to stay open past 10:00 p.m. in order to be successful. Mr. Etheridge stated that was correct. Mr. Smith noted that is not what the applicant negotiated and asked the Council to vote on. The Council did not make that request to him....he brought that to the Council.

Mr. Etheridge felt that he could move karaoke to another night.

Mr. Smith stated the Council was told that the Styrofoam panels would be in place prior to the implementation of entertainment. Being as it has not been done in four and a half months, he questioned whether it would be done now.

Mr. Etheridge stated he was not the expert on the foam paneling. He then expressed that closing this bistro would not be in the best interest of this shopping center.

Ms. Morrison asked the number of customers at night during the week. Mr. Etheridge stated they could do 20 to 100 for dinner but this month had been their worst month. He was not sure if it was due to the economy or if people just think they are going out of business because of the article in the newspaper. He felt that the weekend business was the only thing keeping them alive right now. The restaurant is closed on Sunday and Monday.

Mr. Greene asked Mr. Etheridge how long he had been the manager at this establishment. Mr. Etheridge answered four months but has been working there about five and a half months.

Mr. Richie Vines, 131 Emerald Lake Drive, Pelham, addressed the Council as owner of the establishment. He stated Mr. Etheridge became employed after Mr. Vines had already lined all of the metal duct work. He clarified that Johnny Click had a three piece band, not a five piece band. Mr. Vines told Mr. Click after two weeks of playing that it was not going to work out because it was too loud. Mr. Vines presented a document to the Council consisting of a proposal to install 2,000 square feet of ceiling baffles at a cost of \$18,000. With regard to the decibel reading, he stated he had personally witnessed the decibel reader register at 50 to 60 decibels outside of the

restaurant on the hillside. This level is average street noise or normal conversation. Mr. Vines apologized to Chief Derzis and the police officers at this time. He stated that when he went before the Planning and Zoning Commission he was asking for an 11:00 p.m. curfew and was asked by one of the members if he would make it 10:00 p.m. He felt that because of the petition with 96 signatures he had to go with 10:00 p.m. not really having a set plan at that time for the entertainment. He noted that many of the people who signed that petition have told him they would not sign it now because they like the establishment. Mr. Vines stated he made a major investment in renovating the restaurant and has installed sound installation up in the duct work, inside the units and on the outside of the units so it would not reverberate through the air conditioning units.

Dr. Lott stated that if was the neighbor the noise would bother him but not nearly as much as disregarding the 10:00 p.m. curfew and disrespect for the police. He asked Mr. Vines how he could convince him that he would keep his word this time to comply with the curfew.

Mr. Smith reiterated how he was lead to believe that the sound baffling on the walls was to take place prior to the entertainment starting. Mr. Vines stated they put curtains behind the stage and Styrofoam panels behind the curtain. The stage backs up to the right hand corner as you enter the door. The music goes toward the front of the restaurant.

Mr. Smith asked Mr. Vines what were the decibels levels in the parking lot. Mr. Vines stated he never saw it go above 60 decibels measured outside the building about 25 feet in the parking lot. The music is louder from the parking lot than the back door.

Ms. Morrison stated that even if the Council allowed Mr. Vines the chance to go back and install the baffles as proposed that still would not stop the residents from coming back if they hear the noise and by that time he would have spent even more money.

After further discussion, Mr. Vines stated that if the 10:00 p.m. curfew remained they would not be able to continue with live entertainment on Tuesdays through Thursdays.

Mr. Smith noted that Mr. Vines has indicated by his statement that he can not be successful with the 10:00 p.m. curfew. This fact in itself would cause Mr. Vines to have to close the business based on comments made earlier that Friday and Saturday is not enough to maintain the business. He stated he would hate to see Mr. Vines spend an additional \$18,000.

Mr. Ivey addressed Mr. Allen Pate. Mr. Ivey stated it is his understanding that there is a request pending with the Planning and Zoning Commission to extend these hours. The request has been continued by the Planning Commission pending the results of this hearing tonight. Mr. Pate stated that was correct.

Dr. Lott stated he was disturbed by a comment made earlier by the manager that police officers were hanging out at this establishment after closing time to harass Mr. Vines or his business. Mr. Vines stated he had never seen the police harass anyone. He felt the police had been very kind and were doing their job. Dr. Lott clarified that the police were at the establishment because they received a complaint.

Mr. George Anselmo, 4528 Lake Valley Drive, spoke against revoking the conditional use. He lives within 100 yards of the establishment. He clarified to Dr. Lott that he frequents the bistro and has observed times when two and three patrol cars remained in the parking lot after the music stopped and until closing. He stated the list of complaints submitted by the Police Department reflect the names of only seven or eight people. He recalled that when Food World was in the shopping center there were forty compressors that could be heard all night long. He wondered if

there was a personal vendetta against Mr. Vines because he ran a business at that same location in 2000 and never received one complaint. He stated the City needs the revenue and Mr. Vines has invested probably \$250,000 in this establishment. He felt the curfew was a mistake and should be reconsidered. He was not convinced there had been a violation to the noise ordinance.

Mr. Smith stated that Mr. Vines made a statement during the Planning and Zoning hearing that if even one of the neighbors should have a problem they should call the police and they would let him know and he would take care of it.

Mr. Smith asked Chief Derzis if the police verified whether the 13 complaints were in violation or did they just visit the establishment in reaction to the complaint. Chief Derzis stated there were some occasions when the police visited the residence as well as the bistro. It happened on the night the citation was written. On that the night the back door to the bistro was open.

Ms. Morrison asked Chief Derzis to clarify the words "delta unfounded" on the police log. Chief Derzis stated that means that the police responded to a complaint but did not find anything.

Ms. Nelda Sparks 106 SouthLake Lane, spoke in support of revoking the conditional use. She noted that she herself had called the police on four occasions because she could hear the noise, and she lives further away from the bistro than Ms. Sully. She assured the Council there was no vendetta against anyone. She stated she had no problem with a restaurant at this location, but the neighbors were told they would not hear the music and that if they did hear it they should call the police. She would love to see a nice family restaurant succeed there.

Mr. Lynn Clowers, 5538 Lake Crest Drive, Trace Crossings, spoke against revoking the conditional use. He stated this restaurant is a respectable and enjoyable place. He had personally gone out into the parking lot as well as driven to the front of the residences and did not hear the music.

Mr. Boardman, City Attorney, stated this is a zoning issue and zoning is used by the City so the property owner knows what their neighborhood will be like. This business came in after all of the residences had investment in their homes. This is not an attempt of the City Attorney to put a business out of business. It is simply to comply with the zoning laws. The request is to revoke the conditional use, not the business license.

Mr. Ivey called for further questions or comments. There being none, he called for a motion.

Mr. Smith stated that at the time the applicant made application specific obligations were made both to the Planning and Zoning Commission and the City Council. The applicant negotiated the hours of entertainment. Included in the negotiations was the soundproofing. Both have been violated on multiple occasions including the disrespect towards the enforcement officials that by their responsibility had to react to the complaints. By his own statements Mr. Vines admits he can not succeed without continuous violations of the current agreement. He could have asked for a continuance at that particular Planning and Zoning meeting and tried to work out maybe an 11:00 p.m. curfew with the people instead of having a 10:00 p.m. sprung on them at the time. He could have done the same before it came to the Council and he did not. Mr. Smith stated he had concerns that even if the 11:00 p.m. curfew were to be passed by Planning and Zoning and then by the Council that it would not be observed.

That being said, Mr. Smith made a motion to revoke the conditional use permit for this applicant. This motion was seconded by Mr. Skelton.

Mr. Ivey called for comments from the Council.

Dr. Lott stated there are not a lot of winners in this situation. This Council has always been pro business and would love for the applicant to succeed at this location. It bothered him that the rules were not followed and the Council has had to come back and actually have to vote on this matter.

There being no further discussion, Mr. Ivey called for a roll call vote. On roll call vote of the Council the votes were as follows: Mr. Ivey, "Yea"; Mr. Greene, "Yea"; Dr. Lott, "Yea"; Ms. Morrison, "Yea"; Mr. Skelton, "Yea"; Mr. Smith, "Yea"; Mr. Wright, "Yea". The motion carried unanimously.

14. **PAYMENT OF BILLS**

Mr. Ivey stated each member of the Council had been presented with a copy of the bills as submitted for payment.

Mr. Wright stated the bills had been reviewed and he made a motion they be paid as presented. This motion was seconded by Mr. Skelton. On voice vote the motion carried unanimously.

Mr. Ivey called for any comments or questions from the Council.

Ms. Morrison expressed to Mayor Petelos her disappointment that Hoover Celebration Day on Sunday was cut short due to severe weather but she was thankful there were no personal injuries. She asked the name of the family that sang the National Anthem. Mayor Petelos stated it was the Ritchey family. Ms. Morrison stated it was probably the most beautiful she had ever heard and sent a chill up her spine. She said it was her hope that the Mayor would be able to bring them forward again so more people would have the opportunity to hear them sing.

Mr. Smith stated he wished to echo Mr. Morrison's thoughts.

Mr. Ivey called for any further comments from the Council or the audience. There being none, the meeting was adjourned.

Margie Handley
City Clerk