

**HOOVER CITY COUNCIL  
MINUTES OF MEETING**

**DATE:** February 1, 2010  
**TIME:** 6:00 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

**ABSENT:** Mr. Jack Wright, Council President, Pro-Tempore

**ALSO PRESENT:** Mr. Mark Boardman, City Attorney  
Mr. Tommy Daniel, Director, Public Works  
Chief Nick Derzis, Police Chief  
Ms. Susan Fuqua, Director, Municipal Court  
Ms. Patricia Guarino, Library  
Mr. Bob House, House Consultants  
Mr. Richard Johnson, Director, Inspection Services  
Mr. Rod Long, City Engineer  
Mr. Frank Lopez, Director, Revenue and Taxation  
Mr. Craig Moss, Director, Parks and Recreation  
Mr. Allen Pate, Executive Director  
Mr. Ben Powell, Director Support 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**

Mayor Petelos recognized the **Birmingham United Soccer '01 Boys Team** consisting of a group of third graders. This team participated in the national competition held at the Wide World of Sports Complex at Walt Disney World in Orlando, Florida, and won the 2009 National Kick-It 3V3 Title.

The team and coach gathered at the front of the chambers while the City Attorney read a **Proclamation** congratulating them on winning the **2009 National Kick-It 3V3 Title**. They remained for a picture with the Mayor and City Council.

2. **APPROVAL OF MINUTES**

Mr. Ivey stated each member of the Council had previously received a copy of the minutes of the January 19, 2010 regular meeting and the January 28, 2010 work session.

Mr. Skelton made a motion that the minutes be approved as presented and to dispense with the reading. This motion was seconded by Dr. Lott. On voice vote the motion carried unanimously.

3. **RESOLUTION NO. 4368-10 – AUTHORIZE MAYOR TO EXECUTE AGREEMENT WITH ALDOT – PASS THROUGH OF FEDERAL FUNDS – ACQUISITION OF MODIFIED VAN (PARK & RECREATION)**

The City Attorney read Resolution No. 4368-10. This would authorize the Mayor to execute and agreement with the Alabama Department of Transportation relating to public transportation with partial funding by the Federal Transit Administration. (Acquisition of one modified van for elderly and persons with disabilities)

Mr. Skelton made a motion to approve **Resolution No. 4368-10**. This motion was seconded by Dr. Lott. Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

4. **RESOLUTION NO. 4369-10 – EXTEND BUDGET FYE 9/30/09 TO 2/15/10**

The City Attorney read Resolution No. 4369-10. This would extend the Budget for Fiscal Year Ending 9/30/09 to February 15, 2010 with regard to employee salaries, benefits and other essential expenditures.

Mr. Skelton made a motion to approve **Resolution No. 4369-10**. This motion was seconded by Dr. Lott. Mr. Ivey called for discussion.

Mr. Greene expressed concern that the Council had postponed voting on the budget several times this fiscal year. Although the Mayor gave the Council the proposed 2010 Budget over a month ago the Council has not yet voted on it. He stated there was no reason he was aware of that should prevent the Council from voting on the budget. He felt the citizens of Hoover deserved an accounting of how their money is going to be spent this year. He further stated that unless informed of some reason that would prevent a vote, he expected a vote on the budget at the next regular meeting to be held on February 15, 2010.

Mr. Ivey concurred with Mr. Greene's comments. He then called for other questions or comments. There being none, on voice vote the motion carried unanimously.

5. **1<sup>ST</sup> READING ORDINANCE NO. 10-2188 - CALL FOR SPECIAL ELECTION TO BE HELD APRIL 27, 2010 (BOARD OF EDUCATION)**

The City Attorney had the First Reading of Ordinance No. 10-2188. This ordinance calls for a special municipal election to be held on April 27, 2010, at the request of the Board of

Education, to determine whether or not the 24 mills of ad valorem tax levied for public school purposes, which become due and payable on October 1, 2027, should continue to be levied annually, commencing with October 1, 2028 and for 18 consecutive tax years next succeeding thereafter.

Mr. Ivey stated this ordinance will have its second reading and consideration for adoption on Monday, February 15, 2010.

6. **ABC APPLICATION – OFF PREMISE BEER - PREMJEES, LLC d/b/a HOOVER SHELL – 1639 MONTGOMERY HWY**

Mr. Ivey stated a motion was in order to approve the request of PREMJEES, LLC for approval of their ABC Application to allow the off premise sale of retail beer at the Hoover Shell located at 1639 Montgomery Highway.

Ms. Morrison made a motion to approve the ABC Application. This motion was seconded by Dr. Lott.

Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

7. **ABC APPLICATION – OFF PREMISE BEER AND WINE- PREMJEES, LLC d/b/a GREYSTONE BP – 5423 HIGHWAY 280**

Mr. Ivey stated a motion was in order to approve the request of PREMJEES, LLC for approval of their ABC Application to allow the off premise sale of retail beer and retail table wine at the Greystone BP located at 5423 Highway 280.

Ms. Morrison made a motion to approve the ABC Application. This motion was seconded by Dr. Lott.

Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

8. **PUBLIC HEARING – CONDITIONAL USE – RESTAURANT RETAIL LIQUOR – EMBASSY SUITES – 2960 JOHN HAWKINS PKWY – VLADIMIR PIPA (Continued from 12/21/09 meeting)**

Mr. Ivey stated this is the public hearing to consider the request of Vladimir Pipa for **Conditional Use** approval to allow the sale of restaurant retail liquor at **Embassy Suites** located at **2960 John Hawkins Parkway**. This property is owned by Chiman Patel and is zoned PC Planned Commercial.

Ms. Morrison made a motion to approve the **conditional use**. This motion was seconded by Dr. Lott. Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

Ms. Morrison then made a motion to approve the **ABC Application** for **Shriji Group LLC**. This motion was seconded by Dr. Lott. Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

9. **PUBLIC HEARING – APPEAL NEGATIVE DECISION OF PLANNING COMMISSION – CONDITIONAL USE – LIVE ENTERTAINMENT – LASPADA BISTRO – 4524 SOUTHLAKE PKWY, STE. 7 – RICHIE VINES (Continued from 2/1/10 meeting at request of the applicant)**

Mr. Ivey stated this is the public hearing to consider the request of Mr. Richie Vines to appeal the negative decision of the Planning and Zoning Commission at their 12/14/09 meeting regarding his request for a Conditional Use to allow live entertainment consisting of a live band with no more than four (4) members, or an acoustic solo/duo, optional karaoke and D.J., on Tuesday – Saturday starting no earlier than 7:00 P.M. and ending no later than 1:00 A.M. at **LaSpada Bistro** located at **4524 Southlake Parkway, Suite #7**. This property is owned by Fairway Investments, LLC, and is zoned PC Planned Commercial.

Mr. Ivey called for questions and comments from the Council. There were none at this time. He then called for comments from the audience.

Mr. Richie Vines, 131 Emerald Lake Drive, Pelham, stated this public hearing was originally scheduled for January 19, 2010, and was postponed to this date at his request in order to do a sound check. Mr. Vines distributed handouts to the City Council and City Clerk prior to the meeting. (This handout was placed in the permanent file) He reviewed the contents of the handout starting with information regarding the results of the sound check performed on January 25, 2010 at 7:00 p.m. The sound check was conducted by sound professional, Mr. Steve Lan. The decibel level of the music was set at 90 plus inside the restaurant. Sound checks were done inside and outside the homes of Dorothy Oliver, 116 SouthLake Lane, and Helen Kittinger, 114 SouthLake Lane, located directly behind the restaurant. Mr. Vines remained inside the restaurant with one of the resident to ensure that the sound levels were not altered. A group of people which included two people from the neighborhood were with the restaurant manager during the sound tests at the two homes and none of them could hear the music. Mr. Vines stated the handout also included letters from Ms. Oliver and Dr. Kittinger, Ms. Kittinger's son, expressing no opposition to his request. Mr. Vines asked the Council for a fair judgment on his findings and to allow the live entertainment in order to build the business. He emphasized several times that it was not his intent to turn this restaurant into a bar. He explained the reason the request included a four piece band is to have that in place for private parties that may desire to hire a band. He noted the City's ordinance addresses noise that is heard at a distance of fifty feet. The handout contained the results of the sound checks and addressed the distance issue as well as sound levels.

Ms. Morrison asked Mr. Vines if he used a live band or a stereo for the sound checks. Mr. Vines stated a stereo was used to play extremely loud music that included drums, steel guitar, bass, etc. Mr. Vines stated there were six to eight people inside the restaurant with him. Some eventually moved outside because it was so loud. There was another group of six that were at the homes during the sound checks. Ms. Morrison asked the seating capacity of the restaurant. Mr. Vines stated about 65. He indicated that prior to the revocation of the conditional use the restaurant averaged fifty to sixty people on a good night. This was not just on karaoke nights. Ms. Morrison asked Mr. Vines if the music was much louder inside the restaurant prior to installing the sound baffling material. He said he had not done that

type of sound check. He just wanted people to be able to enjoy the food and ambiance and it was not his desire to exceed a certain sound level.

Mr. Smith asked whether the ordinance addressed tolerance for any noise beyond fifty feet. Chief Derzis commented that noise becomes an issue when it is bothersome to the neighborhood.

There was a brief discussion regarding the testing done inside the homes. Mr. Vines stated the handout shows the results of the testing done inside the homes at 37 decibels and 35 decibels. Mr. Vines showed Mr. Smith the location of the two homes where the sound checks were performed.

Dr. Lott noted the letters in the handout were from two people who were not in opposition previously. He asked Mr. Vines if he performed sound checks at any of the homes of the people who had complained previously. Mr. Vines stated they requested to be allowed to perform a sound check at the home of one of the complainants but were denied access by that individual.

**Mr. Tommy Williams, 252 Crestlake Drive, spoke in favor** of the request. He participated in the sound checks on January 25<sup>th</sup> along with previous President of The Crest Homeowners Association, Mr. David Johnstone, and the newly elected President, Mr. Michael Webb. He stated he could not hear the music. Mr. Williams then read a letter written by Mr. Webb, who was unavailable to attend the public hearing, describing the results of the testing performed on January 25<sup>th</sup> and stating that noise should not be a factor for Crest residents as long as La Spada adhered to keeping doors closed and staying below 90 decibels inside the restaurant.

Mr. Smith questioned whether the letter was written on behalf of The Crest Homeowners Board of Directors and the Association or on behalf of Mr. Webb personally. Mr. Williams stated he assumed it was on behalf of the Association. A copy of this letter was given to the City Clerk and placed in the permanent file.

**Mrs. Donna Mazur, 3553 Brookfield Road, spoke in favor** of the request. She reiterated the comments of Mr. Vines and Mr. Williams. She stated she is a patron of La Spada Bistro and has been present when karaoke was performed. She was also present during the sound checks at the two homes on January 25<sup>th</sup> and heard nothing. She believed it would be a disservice to Mr. Vines to not restore his conditional use given everything he had done to take care of the noise problem. She stated as a former council member she was distressed to see the January 27<sup>th</sup> newspaper article in which Gene Smith said that under no circumstances would he be swayed and he would be voting against this request. She was always under the impression that both sides should be heard before making a decision.

Mr. Smith stated he understood that the noise ordinance was passed during Mrs. Mazur's tenure on the city council. She stated that was correct. He asked her if she voted in favor of it. She answered yes. Mr. Smith stated the current noise ordinance does not give any latitude over fifty feet. Mrs. Mazur stated she felt that Mr. Smith had made a decision before hearing about the work that Mr. Vines had done on his restaurant as well as the results of the sound checks. Mr. Smith stated he was looking for the legislative intent when the ordinance was

passed. He asked Mrs. Mazur why she thought the Council that voted to adopt the noise ordinance did not address noise levels beyond the point of origin past fifty feet. Mrs. Mazur emphasized that her problem was that Mr. Smith made a predetermined decision before hearing all of the facts. Mr. Smith stated the information provided in the handout shows that the decibel levels went as high as fifty at a distance beyond fifty feet. He asked Mrs. Mazur would that not be in violation of the noise ordinance. Mrs. Mazur stated she understood that Mr. Smith was indicating there is no gray area, only black and white. However, she believed Mr. Vines had met the requirements to have his conditional use license restored as long as it does not hurt anyone else.

Ms. Morrison referred to Mr. Michael Webb's letter presented earlier in the meeting which stated that in the backyards of the homes the decibels were higher but this was obviously automobile noise from Valleydale Road and I-65. She understood there was little anyone could do about this noise but wanted to clarify that there was no music noise and that the other noise contributed to the decibels. Mrs. Mazur stated that was correct there was no music noise.

**Ms. Linda Sully, 112 SouthLake Lane (The Crest subdivision), spoke in opposition.** Her home backs up to the shopping center where the La Spada Bistro is located. She stated the Southlake neighbors received a letter in December, 2009, from Mr. Louie Elliott, the new general manager. Mr. Ivey stated the Council received a copy of this letter as part of the handout presented by Mr. Vines. Ms. Sully noted the letter states he wanted to have appropriate, relaxing dinner music. She did not consider karaoke or any other music at 1:00 a.m. to be relaxing dinner music. She stated The Crest Subdivision had their annual meeting on Monday, January 18, 2010, at which time 28 of the 48 people present signed a petition requesting to stop this request to change the conditional use of La Spada Bistro. She presented a copy of this petition to the City Council and City Clerk. (A copy of this petition has been placed in the permanent file) Ms. Sully discussed past problems with this establishment regarding noise and the continuation of music after the designated ending time. On several occasions the police were called to enforce the noise ordinance only to have the music start again once the police left the area. Ms. Sully admitted she received a call on Monday night, January 25<sup>th</sup>, at 8:15 p.m. and asked if a sound test could be done at her home. She told them that she was not interested as she did not know ahead of time that they were coming. The information she was given when she was told a sound test was going to be done was that they needed to contact all five of the people who continually heard the music before. As far as she knew the other four were not contacted for any type of sound test. Being as the applicant continually violated and abused the noise ordinance and hours of allowing entertainment she asked the City Council to not allow the change of conditional use to allow live music as she felt it detracts from the quality of their lives and affects the value of their homes.

Mr. Smith questioned why the President of the Homeowners Association sent a letter of permission when over half of those attending the subdivision meeting signed a petition against it. Ms. Sully stated she was not on the board and did not know whether a board meeting was ever called where this matter was discussed.

Mr. Skelton asked Ms. Sully to show him which residence was hers in relation to the restaurant. He asked Ms. Sully if she heard any problems on January 25<sup>th</sup> during the sound test. She stated she was not aware they were doing the sound test at the time.

Ms. Morrison asked Ms. Sully to clarify that she was at home on Monday night, January 25<sup>th</sup>. She answered yes. Ms. Morrison then asked did she hear any noise before the telephone call at 8:15 p.m. She answered no, but her television was on and she was cooking dinner.

Mr. Smith noted that Michael Webb wrote the letter presented by Mr. Williams but he also signed the petition opposing it. He was uncertain as to Mr. Webb's true opinion.

It was determined that the petition was signed on January 18, 2010, as previously stated by Ms. Sully and that Michael Webb's letter was dated January 27, 2010.

Mr. Vines further clarified that Mr. Webb did in fact sign the petition before the sound check. He wrote the letter after participating in the sound check.

Mr. Vines further clarified that they did not contact Ms. Sully before the sound check as it was determined it would be best to perform the test on the two homes directly behind the restaurant first. After the test was done and everyone returned to the restaurant around 8:15 p.m. they called Ms. Sully and asked if they could come to her home to do a sound test and she denied their request.

Mrs. Mazur was concerned that the petition may have been signed before Mr. Vines completed the work inside the restaurant to make sure there was no sound heard. She felt this should be taken into consideration.

**Mr. Gary Stevens, 312 Willow Crest Lane, spoke in opposition.** He is a resident of The Crest as well as a Board Member. He stated there had been no board meeting to his knowledge where LaSpada had been discussed. The recent sound test aside, he believed the residents originally heard the music and were bothered by it. He noted it is a quiet and peaceful neighborhood and is not the right location for this type of business. He had no problem with a restaurant at that location, but the type of business being requested does not need to back up within yards of a residential area. He noted that people can promise anything but actions speak louder than words. He asked that the Council consider the history of La Spada. He felt that the residents as well as the police were disrespected. He asked that the Council not allow this to happen again.

Mr. Ivey asked Mr. Stevens would it be his statement that Mr. Webb's letter representing the President and the Board is not indicative of his opinion. Mr. Stevens stated he was speaking on his own behalf not on behalf of the Board. He just wanted the Council to know that he was a Board Member and had not attended any meeting where La Spada was discussed.

Ms. Morrison asked how long Mr. Stevens had been a Board Member. Mr. Stevens answered just over one year. She asked Mr. Stevens if he would oppose the request for live entertainment at the restaurant even if there is no noise. Mr. Stevens answered yes because of its history.

**Mr. Reggie Spires, 139 Riverhaven Circle, spoke in favor** of the request. He is a musician and plays the type of music that fits the ambiance of La Spada. He said music could be

played there in a very tasteful manner and he would love the opportunity to show that it could be done. He asked the Council not to judge the establishment on its past. He pleaded with them from a musician's perspective to allow them to try not only for their sake and the sake of the patrons, but for the job force as well.

**Mr. Hollis Hayes, 111 SouthLake Lane, spoke in opposition.** He lives across the street from the residents who hear the music. While he and his wife do not hear the music, he fully supported his neighbors who do hear it.

Mr. Smith asked for a comparison of the previous request with the current request. Mr. Bob House, Hoover Planning Consultant, stated the previous permit that was revoked allowed music to be played until 10 p.m. during the week and 11 p.m. on weekends. The current request is to allow music until 1 a.m. Tuesday through Saturday.

**Ms. Elizabeth Brugge, 110 SouthLake Lane, spoke in opposition.** She lives next door to Linda Sully. She stated there were times when she heard the music and other times she did not. Her point was that the applicant was not trustworthy the first time and there was no guarantee anything would change.

Mrs. Mazur was curious as to why Ms. Sully did not call to complain about the loud music on the night of the sound test. The music was very loud during that test and she believed that Ms. Sully did not call because she did not hear it. She also could not understand why this neighborhood is so opposed to karaoke. The patrons of La Spada are not the undesirables that the neighborhood seems to think.

In his closing remarks, Mr. Vines said he believed he had made right the wrongs of the past and deserved another chance.

Ms. Morrison addressed the matter of extending the hours of a restaurant to 1 a.m. She questioned whether patrons would be eating at 1 a.m. Mr. Vines stated they have a late night menu for people who arrive later in the evening. They serve food until the patrons leave.

Ms. Morrison asked Mr. Vines had he considered having a decibel meter set up in the restaurant at all times and having it monitored by a responsible party. Mr. Vines stated it could be purchased and indicated that his new manager, Louie Elliott, is very responsible and is there during business hours.

Mr. Smith commented that he would abstain from voting on this matter due to the article in the newspaper, but later withdrew that comment stating that he decided that he would vote.

Mr. Ivey called for further comments from the audience or the Council. There being none, he called for a motion.

Mr. Greene made a motion to **deny** the request. This motion was seconded by Mr. Skelton. On voice vote the votes of the Council were as follows: Mr. Ivey, Mr. Greene, Dr. Lott, Mr. Skelton, Mr. Smith, "Yea"; Ms. Morrison, "Nay". The motion carried.

10. **SET PUBLIC HEARING FOR MONDAY, FEBRUARY 15, 2010 – FOURTH AMENDMENT TO ROSS BRIDGE PUD – DANIEL REALTY COMPANY, LLC**

Mr. Ivey stated a public hearing is hereby set for Monday, February 15, 2010, at 6 p.m. to consider the following request, which will be considered by the Planning and Zoning Commission at their 2/8/10 meeting:

John Gunderson, Daniel Realty Company, LLC, on behalf of United States Steel Corporation, is requesting approval of the **Fourth Amendment to the Ross Bridge Planned Unit Development** to allow mass grading operations in certain areas within the Shades Creek Floodplain located in the James Hill Phase 3 area of Ross Bridge.

The City Attorney read at length the proposed Fourth Amendment to the Ross Bridge Planned Unit Development.

11. **PAYMENT OF BILLS**

Mr. Skelton stated the bills had been reviewed. He made a motion to pay the bills in full as submitted. This motion was seconded by Dr. Lott.

Mr. Ivey called for discussion. There being none, on voice vote the motion carried unanimously.

Mr. Ivey called for additional comments or questions.

Ms. Morrison commented on the first reading of the ordinance calling for a special election for the school tax. She emphasized that this is not a new tax but rather a continuation of a property tax that is already in existence. It is for the purpose of being able to refinance some debt and guarantee that the income would be there for the payment of that debt.

Mr. Smith added that such a vote would allow the school system to drop their annual debt service from \$16 million to \$6 million. Therefore, it would have an immediate impact.

There being no further comments, the meeting was adjourned.

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Margie Handley  
City Clerk