



Item #52

**Zoning Ordinances/Restrictive Covenants
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA DATE: 4/6/2006

Subject: C14-05-0137 - 1109 South Lamar - Approve second/third readings of an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1109 South Lamar (West Bouldin Creek Watershed) from general commercial services (CS) district zoning to commercial-liquor sales-conditional overlay (CS-1-CO) combining district zoning. First reading approved on February 9, 2006. Vote: 7-0. Applicant: Bobbie Lemmond. Agent: Hajar Sutherland P.L.L.C. (Kareem Hajar). City Staff: Robert Heil, 974-2330.

Requesting Department: NPZD

For More Information:

SECOND / THIRD READINGS SUMMARY SHEET

ZONING CASE NUMBER: C14-05-0137 (1109 South Lamar)

REQUEST:

Approve second and third reading of an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1109 South Lamar (West Bouldin Creek Watershed) from general commercial services (CS) to commercial liquor sales – conditional overlay (CS-1-CO) combining district zoning.

DEPARTMENT COMMENTS:

Staff recommends approval of Commercial Liquor Sales – Conditional Overlay (CS-1-CO). The conditional overlay would make liquor sales a prohibited use, and would limit trips generated by the site to no more than 2000 vehicle trips per day.

The applicant agrees with the conditional overlay. The neighborhood and applicant have agreed to define additional restrictions to be enforced via a private restrictive covenant. The RC addresses the objections raised by the neighborhood at the ZAP public hearing.

APPLICANT/AGENT: Hajjar Sutherland PLLC (Kareem Hajjar)

OWNER: Bobbie Lemmond

DATE OF FIRST READING: February 9, 2006 (7-0).

COMMISSION ACTION: ZAP recommended denial of CS-1 zoning (10/18/05) (vote 8-0).

CITY COUNCIL ACTION: Approved commercial liquor sales – conditional overlay (CS-1) combining district zoning on first reading (7-0 vote).

ORDINANCE NUMBER:

ASSIGNED STAFF: Robert Heil, e-mail: robert.heil@ci.austin.tx.us

ORDINANCE NO. _____

1 AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE
2 PROPERTY LOCATED AT 1109 SOUTH LAMAR BOULEVARD FROM
3 GENERAL COMMERCIAL SERVICES (CS) DISTRICT TO COMMERCIAL-
4 LIQUOR SALES-CONDITIONAL OVERLAY (CS-1-CO) COMBINING
5 DISTRICT.

6
7 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

8
9 PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to
10 change the base district from general commercial services (CS) district to commercial-
11 liquor sales-conditional overlay (CS-1-CO) combining district on the property described in
12 Zoning Case No. C14-05-0137; on file at the Neighborhood Planning and Zoning
13 Department, as follows:

14
15 Lots 19, 20, 21, and 22, Block 18, South Heights Addition, an addition in the City
16 of Austin, Travis County, Texas, according to the map or plat of record in Plat
17 Book 1, Page 112, of the Plat Records of Travis County, Texas, Save and Except a
18 portion of the lots conveyed to the City of Austin by deed recorded in Volume 529,
19 Pages 20-21, and by deed recorded in Volume 530, Pages 186-187, of the Deed
20 Records of Travis County, Texas, and being the same property conveyed to B.H.
21 Reissig, et al, by deed recorded in Volume 831, Page 247, of the Deed Records of
22 Travis County, Texas (the "Property"),

23
24 locally known as 1109 South Lamar Boulevard, in the City of Austin, Travis County,
25 Texas, and generally identified in the map attached as Exhibit "A".

26
27 PART 2. The Property within the boundaries of the conditional overlay combining district
28 established by this ordinance is subject to the following conditions:

- 29
30 1. A liquor sales use is a prohibited use of the Property.
31
32 2. A site plan or building permit for the Property may not be approved, released, or
33 issued, if the completed development or uses of the Property, considered cumulatively
34 with all existing or previously authorized development and uses, generate traffic that
35 exceeds 2,000 trips per day.
36

1 Except as specifically restricted under this ordinance, the Property may be developed and
2 used in accordance with the regulations established for the commercial-liquor sales (CS-1)
3 base district and other applicable requirements of the City Code.
4

5 **PART 3.** This ordinance takes effect on _____, 2006.
6

7
8 **PASSED AND APPROVED**
9

10 §
11 §
12 §
13 _____, 2006.

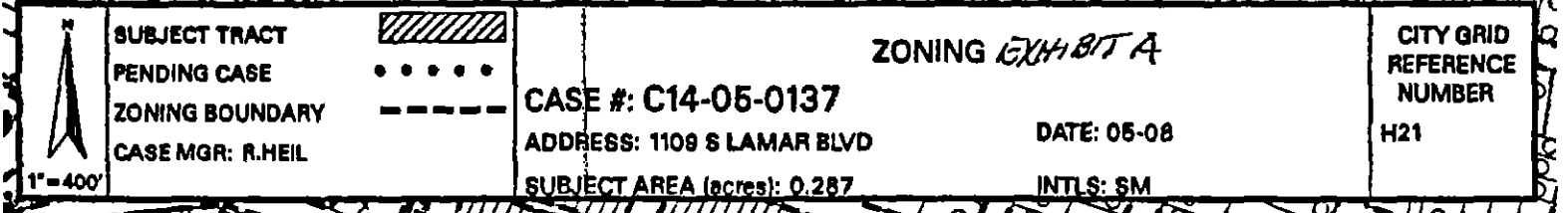
14 Will Wynn
15 Mayor

16
17 **APPROVED:** _____

18 David Allan Smith
19 City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk



ZONING CHANGE REVIEW SHEET

CASE: C14-05-0137

ZAP Date: October 18, 2005
October 4, 2005

ADDRESS: 1109 S. Lamar Blvd.

OWNER/APPLICANT: Bobbie Lemmond

AGENT: Hajjar Sutherland, PLLC
(Kareem Hajjar)

ZONING FROM: CS

TO: CS-1-CO

AREA: 0.287 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends approval of Commercial Liquor Sales – Conditional Overlay (CS-1-CO). The conditional overlay would make liquor sales a prohibited use, and would limit trips generated by the site to no more than 2000 vehicle trips per day.

The applicant agrees with the conditional overlay. The neighborhood and applicant have agreed to define additional restrictions to be enforced via a private restrictive covenant.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

October 4, 2005: Postponed to 10/18 by the neighborhood.

October 18, 2005: *DENIED STAFF'S REQUEST FOR CS-1-CO ZONING (8-0)*
(J.M; JD 2ND, TR LEFT EARLY)

DEPARTMENT COMMENTS:

Staff recommends approval Commercial Liquor Sales – Conditional Overlay (CS-1-CO). The conditional overlay would make liquor sales a prohibited use, and would limit trips generated by the site to no more than 2000 vehicle trips per day.

The stated intent of the applicant is renovate the existing building, formerly housing an automotive repair business, and open a live music venue, serving alcohol.

The property lies within the proposed Zilker Neighborhood Planning Area, began its plan in October.

The applicant is pursuing shared parking arrangements with surrounding property owners on the east side of Lamar. Parking will be fully addressed at the site plan review.

Since the December 15 City Council meeting the applicant and neighborhood have been working to reach an agreement via a private restrictive covenant.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS	Automotive Repair
<i>North</i>	CS	Salon, Bike Shop Auto Repair
<i>South</i>	CS-MU-CO	Undeveloped, Print Shop
<i>East</i>	CS	Sound Studio, Music Shop, Equipment Repair
<i>West</i>	GR & CS	Fast Food, Restaurant, Theater

AREA STUDY: The property lies within the proposed Zilker Neighborhood Planning Area, which will beginning its plan in October.

TIA: N/A

WATERSHED: West Bouldin Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

REGISTERED NEIGHBORHOOD AND COMMUNITY ORGANIZATIONS

- A Better Barton Creek
- Zilker Neighborhood Assn.
- Barton Springs/ Edwards Aquifer Conservation Dist.
- South Central Coalition
- Austin Neighborhoods Council
- Save Our Springs Alliance
- Bouldin Forward Thinking

SCHOOLS: (AISD)

Zilker Elementary School

O. Henry Middle School

Austin High School

ABUTTING STREETS:

NAME	ROW	PAVEMENT	CLASSIFICATION
South Lamar Boulevard	90'	60'	Arterial
Gibson Street	50'	36'	Collector

Capital Metro bus service is available along Lamar Boulevard.
There are existing sidewalks along Lamar Boulevard.

CITY COUNCIL DATE:**ACTION:**

11/17/05

Postponed to 12/01 at the request of the applicant.

12/01/05

Postponed to 12/15 at the request of the applicant.

C14-05-0137

12/15/05

Held and close the public hearing. Directed applicant and neighborhood to continue discussions with staff facilitation. Postponed action until 1/26.

01/26/06

Postponed to 2/9 at the request of the applicant.

02/09/06

Approved LI-CO on consent (7-0). 1st Reading

03/23/06

Postponed to 04/06 by Council

04/06/06

ORDINANCE READINGS:

1ST

2/9/06

2nd

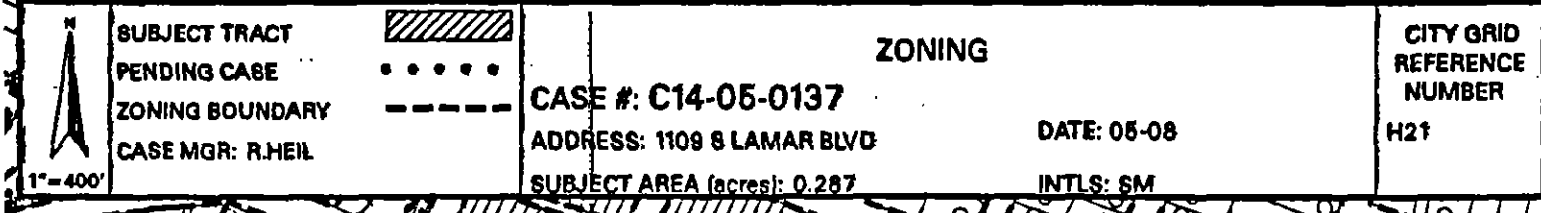
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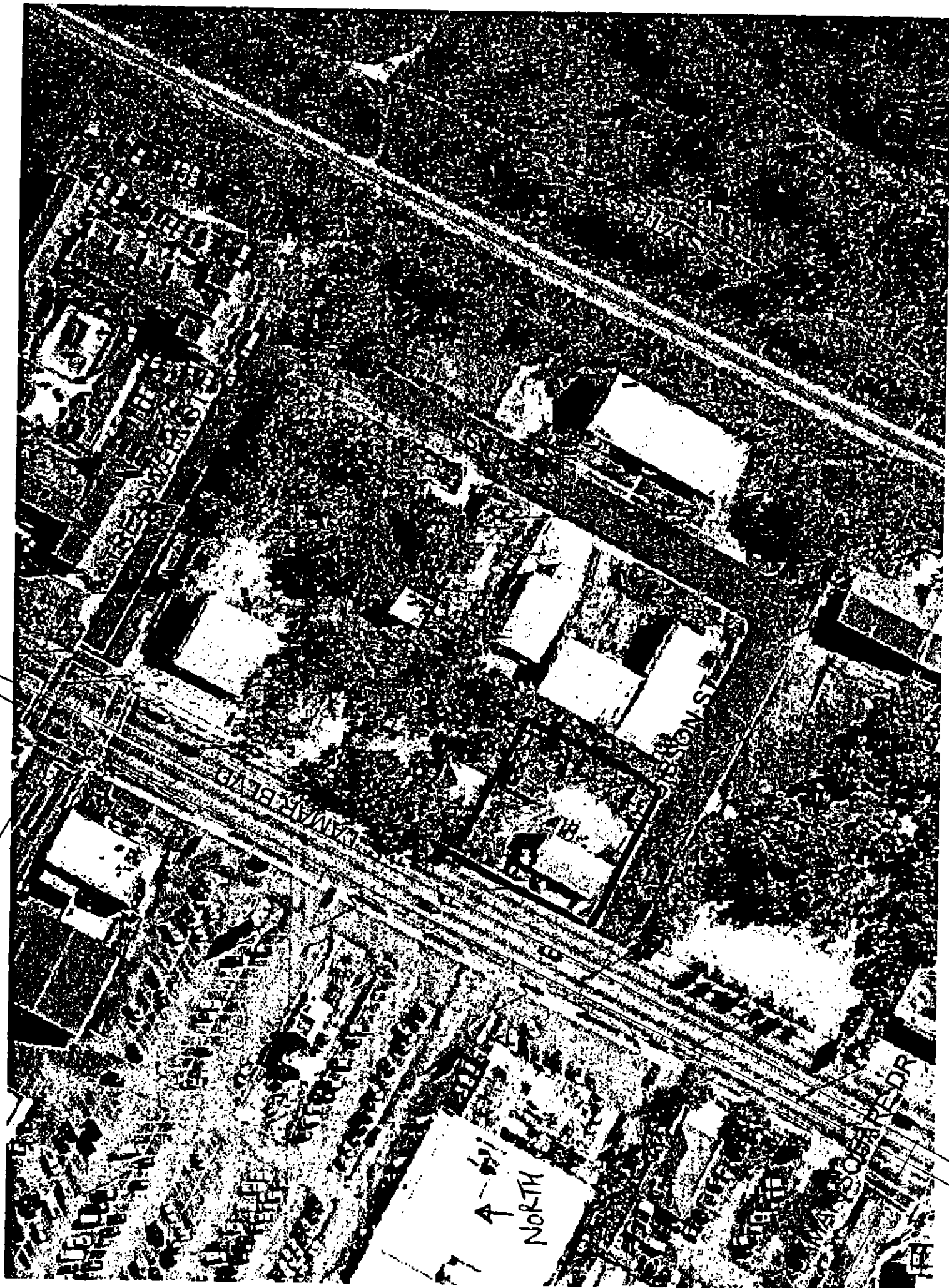
ORDINANCE NUMBER:

CASE MANAGER: Robert Heil

e-mail address: robert.heil@ci.austin.tx.us

PHONE: 974-2330





SUMMARY STAFF RECOMMENDATION

Staff recommends approval Commercial Liquor Sales – Conditional Overlay (CS-1-CO). The conditional overlay would make liquor sales a prohibited use, and would limit trips generated by the site to no more than 2000 vehicle trips per day.

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

1. *Zoning changes should promote compatibility with adjacent and nearby uses.*

The site is currently zoned for intense commercial use. The change to CS-1-CO would prohibit liquor sales as a use, but would allow a music venue serving alcohol. Such a use, classified as a cocktail lounge, is appropriate for the site.

2. *Granting of the request should result in an equal treatment of similarly situated properties.*

Similarly situated sites have been granted CS-1 zoning for similar uses. There are both music venues and other businesses which have liquor sales as a significant portion of their sales along South Lamar.

EXISTING CONDITIONS

The stated intent of the applicant is renovate the existing building, formerly housing an automotive repair business, and open a live music venue, serving alcohol.

The surrounding land is predominated by General Commercial Services (CS) zoning and intense commercial uses.

There are no significant site constraints which would prevent the property from being used as a cocktail lounge.

Transportation

No additional right-of-way is needed at this time.

The trip generation under the requested zoning is estimated to be 2,758 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification (without consideration of setbacks, environmental constraints, or other site characteristics).

A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

Capital Metro bus service is available along Lamar Boulevard.

There are existing sidewalks along Lamar Boulevard.

Existing Street Characteristics:

NAME	ROW	PAVEMENT	CLASSIFICATION
South Lamar Boulevard	90'	60'	Arterial
Gibson Street	50'	36'	Collector

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the West Bouldin Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Water and Wastewater

The landowner intends to serve the site with City water and wastewater utilities. If water or wastewater utility improvements, or offsite main extension, or system upgrades, or utility relocation, or adjustments are required, the landowner, at own expense, will be responsible for providing. Also, the water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. The plan must be in accordance with the City design criteria. The water and wastewater utility construction must be inspected by the City. The landowner must pay the associated and applicable City fees.

Site Plan

The site is subject to compatibility standards due to the SF-3 zoned property within 540 feet. Along the north and west property line, the following standards apply:

- For a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
- Additional design regulations will be enforced at the time a site plan is submitted.

DECLARATION OF RESTRICTIVE COVENANTS

OWNER: Bobbie Jack Lemmond ("Owner")

ADDRESS: 1109 South Lamar Blvd, Austin, Texas 78704

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Zilker Neighborhood Association (hereinafter referred to as the "Neighborhood Association"), the receipt and sufficiency of which is hereby acknowledged and confessed.

PROPERTY: Lot Numbers Nineteen (19) and Twenty (20), in Block No. Eighteen (18), in South Heights, an Addition in the City of Austin, Travis County, Texas, according to the map or plat recorded in Volume 1, Page 112, of the Plat Records of Travis County, Texas, less however, and save and except that portion of said lots conveyed to the City of Austin, by deed recorded in Volume 529, Pages 20-21 and by deed recorded in Volume 530, Pages 186-187 of the Deed Records of Travis County, Texas, and being the same property conveyed to B.H. Reissig, et al, by deed from Thomas A. Evans, et al, recorded in Volume 831, Page 247, of the Deed Records of Travis County, Texas. (the "Property").

RECITALS

- A. Bobbie Jack Lemmond is the owner of the Property; and
- B. The Property is zoned CS Commercial Services district zoning according to a City of Austin ordinance. Owner filed an application with the City of Austin (referenced in the City of Austin files as case no. C14-05-0137) to change the zoning on the Property to CS-1-CO Commercial Liquor Sales Conditional Overlay combining district zoning (the "Zoning Case"); and
- C. Owner now desires, in connection with the re-zoning of the Property pursuant to the Zoning Case, to impress the Property with this Declaration of Restrictive Covenants.

NOW, THEREFORE, for the consideration recited above, Owner and the Neighborhood Association agree that the Property shall be held, developed, used, sold and conveyed subject to the following covenants and restrictions impressed upon the Property by this Declaration of Restrictive Covenants for the benefit of the Neighborhood Association and its members. This Declaration shall run with the Property and shall be binding on Owner, his heirs, his successors and his assigns.

RESTRICTIVE COVENANT

Owner agrees to hold, sell and convey the Property subject to the following restrictive covenants:

1. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, live outdoor music shall be prohibited on the Property.
2. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, all exterior lighting on the Property shall be hooded, diffused, or otherwise designed and arranged to:
 - a. avoid glare on adjacent properties and public streets;
 - b. prevent the light source from being directly visible from adjacent property and public streets; and
 - c. minimize glare and light trespass onto adjacent property and public streets.
3. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, all lighting used on the Property to illuminate any off-street parking or loading areas shall be designed and arranged so as to be confined within and directed onto that parking or loading area only.
4. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business and live indoor music is performed, then commercially reasonable efforts shall be taken to prevent the release of noise from the building including the closing of all doors and windows, as well as the installation of additional insulation, as necessary.
5. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, neither Owner nor any tenant of the Property shall seek a variance from the parking requirements as provided in the City Code of the City of Austin.
6. If the use of the property is a business engaged in the preparation and retail sale of alcoholic beverages for consumption on the Property that exceed forty-nine percent (49.00%) of the gross revenue of the business, then sound levels at the boundary lines of the Property shall not exceed the decibel levels as provided by the applicable City of Austin noise ordinance found in the City Code (the "Noise Ordinance"). Notwithstanding the foregoing, sound levels at the eastern boundary line of the Property shall not exceed the higher of the Noise Ordinance or the ambient background decibel levels as measured by a private consulting acoustical engineer.

SECURITY FOR PERFORMANCE

Owner agrees, in exchange for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Neighborhood Association, the receipt and sufficiency of which is hereby acknowledged and confessed by owner, to provide, within ninety (90) days following Council of Austin approval of the Zoning Case, a Letter of Credit ("LOC") from an FDIC insured financial institution with a branch office located in Travis County, Texas, issued to the Neighborhood Association, in the amount of \$10,000.00. The LOC shall have a term of 3 years from the earlier to occur of (a) June 1, 2006 and (b) the third anniversary date of the date of issuance by the City of Austin of the first Certificate of Occupancy after the approval of the Zoning Case (as the term "Certificate of Occupancy") is defined in the City Code of the City of Austin for the Property. The LOC shall provide that it may be presented to any branch of the issuing financial institution, including, but not limited to those in Travis County, Texas. The only documentation that may be required to be presented with the LOC to draw upon the LOC shall be an affidavit executed by an officer of the Neighborhood Association stating that (1) Owner is in default in performance of the restrictions, covenants and conditions set out in this Declaration and (2) Owner had been given notice of such default as required by this Declaration and the default continued after the cure period provided in this Declaration.

Within ten (10) days of receipt the monies received by the Neighborhood Association from drawing upon the LOC shall be delivered to a third party escrow agent selected by the Neighborhood Association ("Escrow Agent"). The Neighborhood Association may draw on such funds from time to time thereafter to pay invoices for actual out of pocket costs incurred directly or indirectly as a result of actions taken by the Neighborhood Association to enforce this Declaration, including all attorneys' and other consultants' fees and court costs by submitting a written request for payment to the Escrow Agent along with copies of such invoices for expenses.

Any funds remaining in the Escrow Agent's account on the third anniversary date of being deposited into such account shall be delivered by Escrow Agent to Owner.

MISCELLANEOUS PROVISIONS

1. **Enforcement.** The Neighborhood Association, or its successors, as authorized by a majority vote of the Executive Council at open meeting of the Executive Council of the Neighborhood Association whereby a quorum as defined by the bylaws or regulations or other document of the Neighborhood Association was present, and whereby Owner was given ten days Notice and an opportunity to present its case, shall have the right to enforce the restrictions, conditions, covenants and other terms imposed by this Declaration. Failure to enforce any right, provision, covenant or condition granted by this Declaration shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future. Enforcement may be by a proceeding at law or in equity. The Neighborhood Association shall be entitled to exercise all or any of the following remedies:

(a) **Specific Performance.** Neighborhood Association may enforce specific performance of the Owner's obligations hereunder and recover from the Owner all costs and expenses, including reasonable attorneys' fees, incurred in connection with enforcing specific performance.

(b) **Injunctive Relief.** Owner acknowledges that any violation of this Declaration may cause irreparable harm to Neighborhood Association and that monetary damages are not an adequate remedy. Therefore, Neighborhood Association shall be entitled to seek a restraining order, temporary injunction and a permanent injunction in the event there is any violation of this Declaration. In the event Neighborhood Association seeks injunctive relief, Neighborhood Association shall not be required to post a bond or bonds in excess of \$2,500.00 in the aggregate.

The foregoing recitation of potential remedies shall not be construed from prohibiting Neighborhood Association from pursuing any other remedy that may be available at law or in equity to enforce the provisions of this Declaration.

Notwithstanding the foregoing, before instituting any action as a result of a breach of this Declaration by Owner, the Neighborhood Association shall send Owner Notice of such breach and Owner shall have ten (10) days from the date of sending of such notice to cure such breach

2. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other person or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties hereto. Therefore, any previous written or oral agreements are replaced by this Agreement. This Agreement may be amended or modified at any time only if all of the parties hereto agree to such amendment or modification in writing.

4. **Notice.** Any notice required hereunder shall be sent by personal service and e-mail or by certified or registered mail, return receipt requested and e-mail, at the address set forth below or as subsequently provided to the other party in writing.

If to Owner, to:

Bobbie Jack Lemmond
1109 South Lamar Blvd.
Austin, Texas 78704

If to the Neighborhood Association, to:

Zilker Neighborhood Association
Attn. President
2008 Rabb Glen St.

Austin, Texas 78704

5. Rights of Successors. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration of Restrictive Covenants shall bind and inure to the benefit of the parties and their respective heirs, representatives, lessees, successors and assigns. References to "owner", "Owner", "owners", and "Owners" include the future owners of their respective interests portions of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.

6. Governing Law. This Agreement shall be subject to, and governed by, the laws of the State of Texas. Venue for any action brought under this Agreement shall be exclusively Travis County, Texas.

7. Headings. The headings to this Agreement are inserted for convenience only and shall not be considered in construing the terms of this Agreement.

EXECUTED this _____ day of _____, 2006.

OWNER:

Bobbie Jack Lemmond

AGREED AND ACCEPTED:

ZILKER NEIGHBORHOOD ASSOCIATION

By: _____
Name: _____
Title: _____

[ACKNOWLEDGEMENTS ON FOLLOWING PAGES]

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2006,
by Bobbie Jack Lemmond, for the purposes herein expressed.

Notary Public, State of Texas

ACKNOWLEDGEMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2006,
by _____, President of Zilker Neighborhood Association, on behalf of
said Association and for the purposes herein expressed.

Notary Public, State of Texas

After Recording, Return To:

Kareem Hajjar
Hajjar Sutherland, PLLC
1105 South Lamar Blvd
Austin, TX 78704

- 15. Rezoning:** C14-05-0135 - Highway 183 / Highway 71 / Ben White
Location: 1200-1324 Dalton Lane; 1301-1421 Bastrop Highway Service Road, Carson Creek Watershed
Owner/Applicant: JHX2 / Lampting Joint Venture (C.W Hetherly)
Agent: Graves, Dougherty, Hearon & Moody, P.C. (Peter J. Cesaro)
Request: CS; I-RR to CH
Staff Rec.: POSTPONEMENT REQUEST BY THE STAFF TO 11-1-05
Staff: Wendy Walsh, 974-7719, wendy.walsh@ci.austin.tx.us
Neighborhood Planning and Zoning Department

POSTPONED TO 11/1/05 (STAFF)

[J.M; J.G 2ND] (9-0)

- 16. Rezoning:** C14-05-0147 - Miravue
Location: 1704 S. Lamar Blvd., West Bouldin Creek Watershed
Owner/Applicant: Captitivity Investments One (Darin Davis)
Agent: QMET (Gordon Bohmfalk)
Request: CS to CS-MU-CO
Staff Rec.: RECOMMENDED
Staff: Robert Heil, 974-2330, robert.heil@ci.austin.tx.us
Neighborhood Planning and Zoning Department

APPROVED STAFF'S RECOMMENDATION FOR CS-MU-CO ZONING; BY CONSENT.

[J.M; J.G 2ND] (9-0)

- 17. Rezoning:** C14-05-0137 - 1109 S. Lamar
Location: 1107, 1109 South Lamar, West Bouldin Creek Watershed
Owner/Applicant: Bobbie Lemmond
Agent: Vincent Huebinger
Postponements: Postponed on 10/04/05 (Neighborhood)
Request: CS to CS-1-CO
Staff Rec.: RECOMMENDED
Staff: Robert Heil, 974-2330, robert.heil@ci.austin.tx.us
Neighborhood Planning and Zoning Department

DENIED STAFF'S RECOMMENDATION FOR CS-1-CO ZONING.

[J.M; J.D 2ND] (8-0) T.R - LEFT EARLY

- Z-17 C14-05-0180 - 2043 South Lamar - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 2043 South Lamar from (West Bouldin Creek Watershed) from family residence (SF-3) district zoning and general commercial services (CS) district zoning to general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning. Zoning and Platting Commission Recommendation: To grant general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning. Applicant and Agent: Scott Trainer. City Staff: Robert Heil, 974-2330.**

Ordinance No. 20051215-Z017 for general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district zoning was approved (consent). 7-0

- Z-18 C14-05-0182 - Cox Office Supply - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 10938 Research Boulevard (U.S. Highway 183) (Bull Creek and Walnut Creek Watersheds) from single-family residence-standard lot (SF-2) district zoning to general commercial services (CS) district zoning. Zoning and Platting Commission Recommendation: To grant general commercial services-conditional overlay (CS-CO) combining district zoning. Applicant: Cox Office Products (Benny R. Cox). Agent: Bennett Consulting (Jim Bennett). City Staff: Sherri Sirwaitis, 974-3057.**

Ordinance No. 20051215-Z018 for general commercial services-conditional overlay (CS-CO) combining district zoning was approved (consent). 7-0

- Z-19 C14-04-0206 - Parke Corners Section 1 and the Parke Recreation Area, Phase A - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 7400 R.M. 620 North and 11620 Bullick Hollow Road (Lake Travis Watershed) from interim-rural residence (I-RR) district zoning to community commercial-conditional overlay (GR-CO) combining district zoning with conditions. Zoning and Platting Commission Recommendation: To grant community commercial-conditional overlay (GR-CO) combining district zoning with conditions. Applicant: Parke Properties, L.L.P., (Fred Purcell), GDF REalty Investment, LTD. (R James George). Agent: Bennett Consulting (Jim Bennett). Agent: Bennett consulting (Jim Bennett). City Staff: Sherri Sirwaitis, 974-3057.**

The first reading of the ordinance for community commercial-conditional overlay (GR-CO) combining district zoning with conditions was approved (consent). 7-0

- Z-20 C14-04-0030 - Time Insurance, Inc. - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1405 & 1415 East Riverside Drive (Town Lake Watershed) from limited office (LO) district zoning and family residence (SF-3) district zoning to community commercial-mixed use (GR-MU) combining district zoning. Planning Commission Recommendation: To deny community commercial-mixed use (GR-MU) combining district zoning. Applicant and Property Owner: Schuler Family Trust 1998 (John Schuler) Agent: Thrower Design (Ron Thrower). City Staff: Robert Heil, 974-2330. A valid petition has been filed in opposition to this rezoning request.**

This item was postponed to January 26, 2006 at staff's request (consent). 7-0

- Z-21 C14-05-0137 - 1109 South Lamar - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1109 South Lamar (West Bouldin Creek Watershed) from general commercial services (CS) district zoning to commercial-liquor sales-conditional overlay (CS-1-CO) combining district zoning. Zoning and Platting Commission Recommendation: To deny commercial-liquor-sales-conditional overlay (CS-1-CO) combining district zoning. Applicant and Agent: Bobbie Lemmond. City Staff: Robert Heil, 974-2330.**

The motion was made by Council Member Leffingwell and seconded by Council Member Kim to close the public hearing and to deny commercial-liquor-sales-conditional overlay (CS-1-CO) combining district zoning.

A substitute motion to close the public hearing and postpone this item to January 26, 2006, with direction to staff to negotiate a restrictive covenant with the owners, was approved on Council Member Dunkerley's motion, Council Member Alvarez's second on a 7-0 vote.

- Z-22 C14-05-0108 - 5717 Balcones Drive - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 5717 Balcones Drive (Shoal Creek Watershed) from family residence (SF-3) district zoning to community commercial-conditional overlay (GR-CO) combining district zoning. Zoning and Platting Commission Recommendation: To grant community commercial (GR-CO) combining district zoning. Applicant: SWD Partners, Ltd. (Mark Banta). Agent: Armbrust & Brown, L.L.P. (Richard T. Suttle, Jr.). City Staff: Jorge E. Rousselin, 974-2975.

The public hearing was closed and the ordinance for community commercial (GR-CO) combining district zoning with the limitations outlined by the Zoning and Platting Commission and with a restrictive covenant limiting retail to no more than 2,500 square feet was approved on Council Member McCracken's motion, Mayor Pro Tem Thomas' second on 7-0 vote.

- Z-23 NPA-05-0016.01 - 7th & Gunter - Conduct a public hearing and approve an ordinance amending Ordinance 030327-11 (Govalle/Johnston Terrace Combined Neighborhood Plan) an element of the Austin Tomorrow Comprehensive Plan to change the future land use map from commercial land use designation to mixed use designation for the property located at 704 Gunter Street (Boggy Creek Watershed). Planning Commission Recommendation: To grant mixed use designation. Applicant and Agent: Teresa Saldana. City Staff: Scott Whiteman, 974-6054. (Related Item Z-24)

This item was postponed to January 26, 2006 at the neighborhood association's request (consent). 7-0

- Z-24 C14-05-0122 - 7th & Gunter St. - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 704 Gunter Street (Boggy Creek Watershed) from general commercial services-conditional overlay-neighborhood plan (CS-CO-NP) combining district zoning to general commercial services-mixed use-conditional overlay-neighborhood plan (CS-MU-CO-NP) combining district zoning. Planning Commission Recommendation: To grant commercial services-mixed use-conditional overlay-neighborhood plan (CS-MU-CO-NP) combining district zoning. Applicant and Agent: Teresa Saldana. City Staff: Robert Heil, 974-2330. A valid petition has been filed in opposition to this rezoning request. (Related Item Z-23)

This item was postponed to January 26, 2006 at the neighborhood association's request (consent). 7-0

- Z-25 C14-05-0179 - Spring Lake Subdivision - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 9009 Spring Lake Drive (Bull Creek Watershed) from rural residence (RR) district zoning to single-family residence-large lot (SF-1) district zoning. Zoning and Platting Commission Recommendation: To grant single-family residence-large lot-conditional overlay (SF-1-CO) combining district zoning. Applicant: Rahul Deshmukh and Mrudula Yadav. Agent: Land Answers: (Jim Witliff). City Staff: Sherri Sirwaitis, 974-3057.

This item was postponed to January 12, 2006 at staff's request (consent). 7-0

C14-05-0137 CC LOG

Mayor Wynn: SO IF YOU REMEMBER OUR FORMAT IS WE HAVE A FIVE-MINUTE PRESENTATION FROM APPLICANT-AGENT-OWNER, THEN WE HEAR FROM FOLKS WHO WANT TO SPEAK IN FAVOR OF THE ZONING CASE, FOLKS IN OPPOSITION AND THEN THE APPLICANT WILL HAVE A THREE-MINUTE REBUTTAL. SO WELCOME SOMEONE.

GOOD EVENING. I MIGHT ASK BEFORE I START, I CAN SPEAK FOR FIVE MINUTES AND THEN TURN RIGHT AROUND AND THEN SPEAK FOR
• ANOTHER 10 OR I CAN JUST GO --

Mayor Wynn: NO. ARE YOU -- I WOULD RECOMMEND -- MANY AGENTS ASK THIS QUESTION, BUT IF YOU HAVE ESSENTIALLY MORE TO SAY AND WANT TO BE A LENGTHIER SPOKESPERSON FOR THIS PROJECT, I WOULD RECOMMEND THAT YOU ALLOW ONE OF YOUR PARTNERS OR AGENT TO GIVE THE FIVE-MINUTE PRESENTATION AND THEN -- BECAUSE WE LIMIT THAT ORIGINAL SORT OF APPLICANT PRESENTATION AND THEN AS THE SECOND SPEAKER, THE FIRST PERSON SPEAKING IN FAVOR, YOU COULD HAVE AS MANY AS FOUR PEOPLE DONATE THREE MINUTES TIME TO YOU AND THEN YOU COULD HAVE 15 MINUTES. IT'S JUST A FORMAT WE TRY TO FOLLOW.

SURE. NO PROBLEM.

MAYOR, COUNCILMEMBERS, MY NAME IS CLAYTON LITTLE. I WITH AN ARCHITECT FIRM. I HAVE BEEN RETAINED BY THE OWNERS OF THIS PROJECT. DIRECTLY IN RESPONSE TO THE ZAPCO MEETING, THE NEIGHBORHOOD ASSOCIATIONS BROUGHT OUT A FEW DIFFERENT CONCERNS FOR THE PROJECT AND THEY ASKED ME TO COME ABOARD TO LOOK AT HOW THE CONCERNS CAN BE ADDRESSED ARCHITECTURALLY. THE PREDOMINANT ONE WAS NOISE CONTROL FOR THE PROJECT. THE ORIGINAL DESIGN AS YOU CAN SEE FROM YOUR PACKET HAD A DECK IN THE BACK. THE NEW PROPOSAL HAS A COMPLETELY CLOSED BUILDING WITH WALLS TO MITIGATE THE SOUND. MY PROFESSIONAL OPINION IS THAT THE NEW DESIGN ADDRESSES THAT PARTICULAR CONCERN. PARKING AND OTHER CONCERNS WILL BE ADDRESSED BY CA REAM AND THE FELLOWS. THANK YOU.

Mayor Wynn: COUNCIL, QUESTIONS FOR THE AGENT, ARCHITECT? HEARING NONE, NOW WE'LL GO TO THE FOLKS WHO SIGNED UP WISHING TO SPEAK IN FAIF OF THE ZONING CASE. OUR FIRST SPEAKER IS KAREEM HAJAR. AND MR. HAJAR, A NUMBER OF FOLKS WANTED TO DONATE TIME TO YOU, BUT THE RULES ARE THEY HAVE TO BE PRESENT IN THE CHAMBERS. IS KIM MAY HERE? HOW ABOUT BRANDON EASTERLING? OR WILLIAM DAVIS? OR JUDDSON SOUTHERLAND?

CAN HE DONATE HIS TIME?

Mayor Wynn: ANYBODY WHO IS HERE WHO WANTS TO SPEAK -- SO STEVEN, YOU WOULD LIKE TO DONATE YOUR THREE MINUTES TO KAREEM. THEN YOU WILL HAVE UP TO SIX MINUTES. WELCOME.

THANK YOU VERY MUCH, MAYOR, COUNCILMEMBERS, AND AIDES, I APPRECIATE YOUR TIME THIS EVENING, AND ALSO YOUR TIME IN THE PREVIOUS WEEKS. WE'RE HERE TODAY ON A ZONING CHANGE FROM CS TO CS-1. IF YOU WILL LOOK ON THE MAP SHOWING THE PROJECT PROPERTY, THIS PROJECT IS AT 1109 SOUTH LAMAR. NOTABLY THE ESTABLISHMENTS NEARBY ARE CASA GARCIA'S, THUNDER CLOUD SUBS. YOU HAVE SUZIE'S CHINESE KITCHEN. YOU ALSO HAVE ALAMO DRAFT HOUSE SOUTH. MADDIE'S, AND PAP PA JOHN'S PIZZA. THE REASON I BRING THOSE UP IS TO FAMILIARIZE YOURSELF WITH THAT AREA AND ALSO TO SHOW WE HAVE SIX RESTAURANTS WITHIN 600 FEET, MOST WITHIN 300 FEET OF THE PROJECT WE ARE UNDERTAKING. I BRING THIS UP SO AS TO FURTHER EXPLAIN WHY WE ARE GOING FROM CS TO CS-1. WE WISH TO NOT COMPETE WITH THESE WELL ESTABLISHED RESTAURANTS, BUT RATHER BECOME AN ALLY OF THEM. WHAT MY CLIENTS PROPOSE TO DO IS TO CATER FOOD FROM THOSE ESTABLISHMENTS AND HAVE A PREP KITCHEN RATHER THAN A FULL KITCHEN THAT'S REQUIRED BY CS. THIS WILL ALLOW THOSE COMPETITORS TO THEN BECOME ALLIES, THUS CREATING A HARMONY BOTH COMMERCIALLY AS WELL AS WITHIN THE SURROUNDING NEIGHBORHOOD. IF WE TAKE A LOOK AT THE SURROUNDING NEIGHBORHOOD, THE SITE IN QUESTION IS IN THE BOLD SQUARE RIGHT BELOW THE MIDDLE OF THE SCREEN. TO THE NORTH AND SOUTH WE HAVE CS ALL THE WAY ACROSS. BEHIND US WE HAVE CS, SO WE HAVE CS IN ALL FOUR DIRECTIONS. THE NEAREST MF OR SF PROPERTY IS LOCATED TWO BLOCKS AWAY DOWN GIBSON AND HANG A LEFT ON TREADWELL. YOU HAVE AN SF-3 BLOCK ON THE WEST SIDE OF TREADWELL THAT IS CURRENTLY VACANT. AND BY VACANT I MEAN NON-DEVELOPED. ON THE -- I'M SORRY, ON THE EAST SIDE. ON THE WEST SIDE OF TREADWELL YOU HAVE ONE SINGLE-FAMILY RESIDENCE HAS BEEN USED AS AN UPHOLSTERY SHOP AND YOU ALSO HAVE A DUPLEX THAT IS OWNED BY A CHURCH THAT'S USED FOR SHORT TIME -- IT'S USED FOR SHORT RESIDENCY PERIODS. IT'S NOT A LONG-TERM RESIDENCY AS WE ARE UNDERSTANDING. WE ARE HERE TODAY WITH CITY STAFF APPROVAL; HOWEVER, WE ARE NOT HERE TODAY WITH ZAPCO APPROVAL. NOR DO WE HAVE NEIGHBORHOOD APPROVAL THAT WE'LL TOUCH ON IN A MOMENT. WITH REGARDS TO THE ZAPCO MEETING, THE ISSUES THAT CAME FORTH FROM ZAPCO WERE FOUR FOLD. ONE OF THEM WAS DIRECTIONAL TRAFFIC FLOW, WHICH IS A MINOR ISSUE AND WE'LL ADDRESS IT. THE SECOND ISSUE WAS PARKING. THE THIRD ISSUE WAS LIGHTING AND THE FOURTH BEING LAST BUT NOT LEAST, AND THAT WAS

NOISE. AFTER THE ZAPCO HEARING I WAS BROUGHT IN, AS WAS THE ARCHITECTS TO REVAMP THIS PROJECT IN ORDER TO GARNISH NEIGHBORHOOD SUPPORT. WE HAVE MADE A NUMBER OF DIFFERENT CHANGES IN THE PROJECT THAT WAS PRESENTED BEFORE ZAPCO IS NOT THE PROJECT THAT IS BEING PRESENTED BEFORE YOU TONIGHT. THE DIRECTIONAL TRAFFIC CONCERN, IF YOU WILL NOTICE ON THE OVERHEAD, OF COMING WITH ENTRANCE ON GIBSON AND EXITING ON LAMAR. THE NEIGHBORHOODS EXPRESSED CONCERN ON THAT AND THEY WOULD PREFER TRAFFIC FLOW GOING THE OTHER WAY. WE DON'T HAVE A PROBLEM WITH THAT AND THAT ISSUE WAS SETTLED. WHAT WE TOLD THE NEIGHBORHOODS AND STAND FIRM ON IS WE WOULD LIKE THE CITY OF AUSTIN TO LET US KNOW WHAT THEY WOULD LIKE. NOBODY HERE WANTS INEFFICIENT TRAFFIC FLOW, SO WE CONSIDER THAT TO BE A DEAD ISSUE. IF THE CITY WANTS IT A CERTAIN WAY, WE WILL BE HAPPY TO PROVIDE IT. THE SECOND ISSUE WAS LIGHTING. THE LIGHTING CONCERN FROM THE NEIGHBORHOOD RELATED TO THE RACE TRACK RACEWAY, WHICH IS FURTHER SOUTH. LARGE HALOGEN BUBS. IT'S A GAS STATION. THIS ISN'T REMOTELY CLOSE TO THE CONCEPT WE'RE PROPOSING. THIS IS A ICE HOUSE AND A NEIGHBORHOOD ICE HOUSE AT THAT. THE LIGHTING WILL BE MUCH LOWER LEVEL. WE WILL NOT BE USING ANY SPOTLIGHTS. WE PLEDGED TO THE NEIGHBORHOOD TO USE DIRECTIONAL LIGHTING, WHICH INCLUDES EXTERNALLY HAVE CONE SHAPE LIGHTING AS OUR ARCHITECT HAS SUGGESTED, WHICH WILL PROVIDE A RADIUS OF LIGHT AND NO MORE. WE DON'T WANT TO CONTRIBUTE TO THE LIGHT POLLUTION IN THE AREA AND WE STAND FIRM ON THAT. THAT WILL ALLOW OUR PATRONS TO FIND THEIR CARS AND GO HOME SAFELY WITHOUT HAVING LIGHTS INTO THE SURROUNDING NEIGHBORHOODS AND ACROSS. I'LL SHOW YOU INTO BOULDIN WHO IS HERE TO SPEAK AGAINST. THE LAST ISSUE AND CERTAINLY NOT LEAST -- I'M SORRY, THE PARKING ISSUE, THE NEIGHBORHOOD EXPRESSED CONCERN THAT WE DID NOT HAVE ADEQUATE PARKING. THE FACILITY IS 6400 SQUARE FEET, WHICH REQUIRES 103 MOTOR VEHICLE PARKING SPACES. WE HAVE THAT WITHIN 300 FEET OF THE ESTABLISHMENT. AND IF YOU'LL GO BACK TO THE ORIGINAL OVERHEAD SHOWING THE DISTANCES, THEN WE CAN GO THROUGH IT. WE HAVE PARKING IMMEDIATELY TO THE SOUTH ON A VACANT PIECE OF LAND, WHICH IS A PROPOSED CONDOMINIUM COMPLEX. THAT CONDOMINIUM COMPLEX HAS 28 SPACES. WE HAVE 16 SPACES ON SITE, 16 FURTHER TO THE NORTH AND 50 FURTHER TO THE NORTH. OF THAT OF THAT AT RISING SUN AUTOMOTIVE AND A VACANT LOT IT ALSO LEASES. YOU WILL HEAR FROM THE NEIGHBORHOODS TONIGHT THAT WE DON'T ACTUALLY HAVE THAT PARKING BECAUSE WE HAVE LETTERS OF INTENT AND NOT LEASES. THAT CANNOT BE FURTHER FROM THE TRUTH. THE LETTERS OF INTENT ARE EXACTLY WHAT THEY SOUND LIKE, LETTERS OF INTENT. WHAT WE PLAN TO DO WITH THE PROPERTY IS WE HAVE RETAINED A PROFESSIONAL PARKING PLANNER TO ASSURE

THAT WE WILL HAVE THAT PARKING IN PLACE. WITH REGARDS TO RISING SUN AND THE LOT NEXT DOOR AS WELL AS THE LOT NEXT DOOR TO THAT, WE WILL BE RESTRIPIING AND REPAVING IN ORDER TO ENSURE THAT WE HAVE THE RIGHT NUMBER OF SPOTS. WITH REGARDS TO THE CONDOMINIUM PROPOSED COMPLEX THAT IS TO THE SOUTH OF US, AFTER COMPLETION, WE HAVE 84 SPACES AVAILABLE TO US. THAT GIVES US 166 SPACES WHERE ONLY 103 WERE REQUIRED. WE THOUGHT THAT WAS MORE THAN ADEQUATE. WHAT MAKES IT MOST NOTABLE IS IT'S ALL ON THE EASTERN SIDE OF LAMAR, MEANING PATRONS DON'T HAVE TO CROSS LAMAR IN ORDER TO GET TO THE ESTABLISHMENT. THAT MAKES IT EASY TO ACCESS THE SIDEWALKS GETTING IN AND OUT OF THE ESTABLISHMENT. THE FINAL ISSUE IS NOISE. THE NOISE ISSUE THAT CAME UP IN ZAPCO CAME FROM BOTH BOULDIN AND ZILKER. AT ZILKER -- WITH BOULDIN --

Mayor Wynn: PLEASE CONCLUDE. YOUR TIME IS UP.

[INAUDIBLE - NO MIC].

Mayor Wynn: YOU MAY. YOU HAVE THREE MORE MINUTES.

BOULDIN IS 680 FEET AWAY FROM THE PROJECT PROPERTY. THERE ARE FIVE NATURAL SOUND BARRIERS OF VEGETATION. THERE'S ALSO A TRAIN TRACK THAT RUNS 32 TIMES A DAY AT A DECIBEL LEVEL OF 87-DECIBELS. WITH OUR IMPROVED DESIGN, HAVING EVERYTHING INDOORS, HAVING RETAINED A NEW ARCHITECT, WE FEEL THAT THE SOUND HAS BEEN ADEQUATELY BUFFERED FROM BOULDIN. WITH REGARDS TO ZILKER, WE HAVE, IF YOU WILL GO TO THE NEXT SLIDE, WE'LL GO THROUGH WHAT WE HAVE DONE TO AMEND THE PROPERTY. THE FIRST FLOOR HAS BEEN ENLARGED. THE OTHER SLIDE. WE HAVE ENLARGED THE FIRST FLOOR AND MADE IT A MASONRY WALL. THIS WALL WILL BE ON THE EASTERN SIDE WITH THE SOUND TRAVELLING TO THE WEST. WHAT'S NOTABLE ABOUT THIS IS THE FIRST FLOOR ON THE WESTERN SIDE IS SUBTERRAINIAN, MEANING THE SOUND WILL GO INTO THE EARTH. THAT WILL PREVENT MOST OF THE SOUND FROM EVEN LEAVING THE FIRST FLOOR LEVEL. WE HAVE MADE THE PASS THROUGH TO THE SECOND FLOOR MUCH SMALLER AND WE HAVE PLEDGED TO THE NEIGHBORHOODS TO KEEP ALL DOORS AND WINDOWS CLOSED DURING ANY MUSICAL PERFORMANCES. IN NO WAY, SHAPE OR FORM WILL WE HAVE ANY MUSIC OUTSIDE EVER. WITH REGARDS TO THE NEIGHBORHOOD, WE HAVE WORKED EXTENSIVELY WITH THEM, STARTING IN SEPTEMBER -- ACTUALLY, STARTING EARLIER THAN THAT, BUT MOST NOTABLY IN SEPTEMBER WHEN WE RECEIVED E-MAILS AND STARTED SCHEDULING OUR MEETINGS. WE ORIGINALLY RECEIVED AN E-MAIL FROM LORRAINE ATHERTON, WHICH WAS A VERY POSITIVE E-MAIL EXPRESSING WHAT WE NEEDED TO ACCOMPLISH IN ORDER TO GARNISH

THEIR SUPPORT. THOSE WERE MET AND THOSE ISSUES WERE THE OUTDOOR MUSIC, THE OFF SITE PARKING WITH LEASES AND THE TRAFFIC FLOW, AND WE HAVE MET THOSE. AFTER THE ZAPCO HEARING, AFTER HEARING THE ADDITIONAL CONCERNS, WE WENT BACK, REVISED ALL OF OUR PLANS AND WERE VERY EXCITED ON OUR NOVEMBER FOURTH MEETING WHEN WE MET WITH BOTH ZILKER AND BOULDIN. WE PRESENTED OUR PLANS AND EXPECTED SUPPORT. THE END OF THE MEETING CONCLUDED WITH ZILKER ASKING US TO HAVE SMALL ITEMS LIKE MAKING SURE SOME WINDOWS WERE INOPERABLE, BUT THE LARGEST ISSUE WAS A RESTRICTIVE COVENANT TO BE PLACED ON THE PROPERTY AND THE PLACEMENT OF A PERFORMANCE BOND TO BE USED BY THE NEIGHBORHOOD FOR LITIGATION SHOULD THEY DEEM THAT WE ARE NOT COMPLYING WITH THAT RESTRICTIVE COVENANT. THE OWNER, WHO IS ADAMANTLY AGAINST A RESTRICTIVE COVENANT, AND WE APPROACHED THE NEIGHBORHOOD A NUMBER OF TIMES WITH ALTERNATIVES THAT WE THOUGHT WOULD ADEQUATELY PROTECT THEIR CONCERNS, ALL OF THE CONCERNS ARE VALID AND WE ACKNOWLEDGE THOSE AND HAVE PLEDGED TO ABIDE BY THE PROMISES THAT WE HAVE KEPT FORTH. MOST NOTABLY WE PROPOSE PUTTING IT INTO THE LEASE, WHICH WOULD THEN GIVE THE LANDLORD AN INCENTIVE TO EVICT US, THUS ALLOWING HIM TO RELEASE THE PROPERTY FOR A SUBSTANTIALLY HIGHER AMOUNT SHOULD WE DEFAULT. THIS MAKES IT IN OUR BEST INTEREST TO NOT DEFAULT ON THE LEASE. ZILKER DID NOT AGREE WITH THAT PROPOSAL. WE ARE AMEANABLE TO ANY AND ALL DISCUSSIONS WITH THE NEIGHBORHOOD WITH REGARDS TO ANY OTHER FUTURE PROPOSALS THAT THEY MAY HAVE. WE HAVE BEEN MORE THAN REASONABLE. IN CONCLUSION, I SEEK TO GO FROM CS TO CS-1 ON THIS PIECE OF PROPERTY. MY CLIENTS HAVE DONE ANYTHING AND EVERYTHING THAT THEY'VE BEEN ASKED TO DO. THIS PARTICULAR USE IS A HIGHER AND BETTER USE, WHICH WILL EMPLOY MORE EMPLOYEES AND GARNER HIGHER TAXES FOR THE CITY OF AUSTIN. I PERSONALLY BELIEVE THAT THIS WOULD BE A WOORNDFUL EDITION TO THE NEIGHBORHOOD AND A SYNERGY WITH BOTH THE RESIDENTS AND THE ESTABLISHMENTS NEARBY. THANK YOU VERY MUCH.

Mayor Wynn: THANK YOU, MR. HAJAR. SO IF THE RECORD WE'LL SHOW KIM MAY, BRYAN EASTERRING AND KEVIN SOUTHERLAND NOT SPEAKING IN FAVOR OF THE ZONING CASE. AND STEVEN ALEXANDER HAD JUST DONATED HIS TIME AND SO THEN LIKEWISE IS ELIZABETH GOSS, SHAUN STANLEY, NICOLE HARRIS OR KAYLA BRAY SON WHO SIGNED UP IN FAVOR AND DONATING THEIR TIME TO MR. ALEXANDER, IF ANY OF THOSE FOLKS WOULD LIKE TO SPEAK, THEY HAVE THAT OPPORTUNITY. WE'LL SHOW THEM IN FAVOR. LET SEE. BOB WOODY DONATED HIS TIME, WISHING TO SPEAK, IN FAVOR. AND I GUESS OUR LAST POTENTIAL SPEAKER, CHARLOTTE TREPTON. IS SHE HERE? CHARLOTTE SIGNED UP

WISHING TO SPEAK, IN FAVOR OF THE ZONING CASE. SO WE'LL NOW GO TO FOLKS WHO SIGNED UP WISHING TO SPEAK IN OPPOSITION. I'M GOING TO START WITH GAIL GIBB BONES. WELCOME. AND WHILE YOU'RE APPROACHING IS MOLLY WHITE HERE? NO, I JUST NEED TO CONFIRM YOU'RE HERE. THANK YOU. HOW ABOUT WILLIAM DAVIS? WELCOME, WILLIAM. SO GAIL, YOU WILL HAVE UP TO NINE MINUTES IF YOU NEED IT. WELCOME.

I DON'T NEED NINE. OKAY. ALL RIGHT. I'M ONLY GOING TO USE THREE MINUTES.

Mayor Wynn: HOW MUCH TIME DO YOU THINK YOU NEED?

THREE. THREE MINUTES.

Mayor Wynn: THEN YOU SHOULDN'T HAVE MOLLY AND WILLIAM DONATING THEIR TIME AND THEIR ABILITY TO SPEAK OR TO DONATE TIME TO SOMEBODY ELSE. SO YOU WILL HAVE THREE MINUTES. WELCOME.

OKAY. I MOVED TO BOULDIN CREEK NEIGHBORHOOD IN 1983 AND I MOVED FOR ITS UNIQUE QUALITIES, IN PARTICULARLY WEST BOULDIN CREEK. THE OPPORTUNITY TO LIVE NEXT TO THE WOODED CREEK AREA IS A VALUABLE ASSET TO OUR NEIGHBORHOOD. YET IT ALSO POSES SOME CHAL CHALLENGES, AND MOST PARTICULARLY SOUND AND NOISE TRANSMISSION. THE UNIQUE TOPOGRAPHY OF BOULDIN CREEK SOUND CHANNELS DIRECTLY INTO OUR HOMES, AND FOR THOSE OF US WHO LIVE IN THE NEIGHBORHOOD WE WILL BE SPEAKING TO THAT BECAUSE WE'VE EXPERIENCED THAT FOR MANY YEARS. WE'RE VULNERABLE TO NOISES FROM SOUTH LAMAR, BARTON SPRINGS ROAD, AUDITORIUM SHORES, AND WE HEAR MUSIC FROM CONCERTS FROM THESE AREAS, MUSIC FROM VENUES SUCH AS GREEN MESQUITE. WE'VE EVEN ON OCCASION CAN HEAR MUSIC FROM THE FOUR SEASONS. AS FAR AS SOUTH LAMAR GOES, TRAFFIC NOISE AS WELL IS CHANNELLED INTO OUR HOMES AND BACKYARD. ANY BUSINESSES WITH OUTDOOR SPEAKERS, WE HAVE HEARD THOSE OVER THE YEARS. THE PROSPECT OF A LIVE OUTDOOR MUSIC VENUE IS VERY DISTRESSING TO ALL OF US. I KNOW THE APPLICANT HAS SAID THAT THEY WILL BE MAKING CONCESSIONS TO THIS. THE CONCERN THAT WE HAVE IN BOULDIN CREEK NEIGHBORHOOD IS THAT WE HAVE NO RECOURSE FOR ENFORCEMENT OF THAT. WE HAVE NO GUARANTEES, NO SIGNED AGREEMENTS THAT THAT IN FACT WILL HAPPEN. WE HAVE THEIR GOOD FAITH OR THEIR WORD, BUT WE HAVE NO WAY TO ENFORCE THAT, WE HAVE NO PROTECTION IN TERMS OF POLICING NOISE, IF IT DOES CHANNEL INTO OUR NEIGHBORHOOD. AND THAT IS OUR BIGGEST CONCERN. THE AGREEMENTS THAT WERE MADE, THE DISCUSSIONS THAT OCCURRED ASKING FOR THESE CONCESSIONS, WE

WERE PLEASED TO HEAR THEM, BUT THEN WE HEARD LATER OF COURSE THAT THE OWNER WAS OPPOSED TO THOSE. WE ARE LEFT WITH WONDERING WHAT CAN HAPPEN ONCE THE BUILDING IS THERE, ONCE THE ZONING IS APPROVED, AND THAT WE ARE LEFT VULNERABLE, MOST IMPORTANTLY WITH NO WAY TO ENFORCE ANY OF THOSE SOUND BARRIERS AND NO WAY TO PROTECT PEACE AND QUALITY OF OUR NEIGHBORHOODS. WE'RE ASKING YOU AS THE CITY COUNCIL TO STAND WITH THE ZAP ZONING COMMISSION AND THE RECOMMENDATIONS OF ZILKER AND BARTON CREEK NEIGHBORHOOD ASSOCIATIONS. THERE ARE PLENTY OF VENUES IN AUSTIN FOR OUTDOOR MUSIC. THIS CLOSE TO A NEIGHBORHOOD IS A DISTRESSING THOUGHT. ALTHOUGH WHEN YOU LOOK PHYSICALLY AND YOU SEE THAT THERE IS DISTANCE BETWEEN SOUTH LAMAR AND OUR NEIGHBORHOODS, FOR MANY OF US OUR PROPERTY IS DIRECTLY EAST OF THAT PARTICULAR VENUE, AND WE CAN HEAR ALL THE NOISES COMING FROM THAT AREA, SO WE ASK YOU TO CONSIDER WHAT PROTECTION DO WE HAVE ONCE THIS ZONING IS MADE? WHAT'S GOING TO HAPPEN IF AGREEMENTS ARE NOT KEPT? WE ARE LEFT VULNERABLE IN THE NEIGHBORHOOD AND WE'RE ASKING YOU TO PLEASE PROTECT THE PEACE THAT WE'RE SEEKING IN OUR YARDS AND OUR HOMES. THANK YOU. BUZZ.

Mayor Wynn: THANK YOU. NEXT SPEAKER IS BILL JEFERS. WELCOME. YOU WILL BE FOLLOWED BY MICHAEL WOLSON. WELCOME. YOU WILL HAVE THREE MINUTES.

EVENING, COUNCIL. I THINK THAT WHAT GAIL JUST SAID SPEAKS VERY WELL FOR MY CONCERNS HERE. WE LIVE IN A PEACEFUL NEIGHBORHOOD. WE HEAR LAMAR BOULEVARD PRETTY CONTINUOUSLY. IT SOUNDS KIND OF LIKE THE OCEAN IN A WAY ON A GOOD DAY. AS THE APPLICANT SAID, TRAINS COME THROUGH THERE NUMEROUS TIMES A DAY, BUT I HAVE NO IDEA IT WAS THAT MANY TIMES A DAY. THERE IS A LARGE CONTINGENT OF US WHO LIVE ON SOUTH FIFTH STREET WHO ARE ELEVATED ABOVE SOUTH LAMAR AND ABOVE THE RAILROAD TRACKS, AND I THINK FOR US THE APPLICANT MENTIONED THE SCREENING OF TREES AND THE RAILROAD TRACKS THEMSELVES ACTUALLY AS POSSIBLE NOISE ABATEMENT FEATURES. TOP ROG TOPOGRAPHY, BUT I THINK FOR THOSE OF US ON SOUTH FIFTH STREET, WE ARE JUST STICKING UP ABOVE ALL THOSE THINGS AND NOISE ABSOLUTELY TRAVELS A LONG DISTANCE WITH GREAT CLARITY. THIS WILL INTENSELY IMPACT OUR LIVES. I'M ASKING YOU TO HELP US IN THIS POSITION THAT WE FIND OURSELVES IN. THANK YOU.

Mayor Wynn: THANK YOU, SIR. MICHAEL WOLSON. IS JULIE SIGH SACK SON HERE?

-- ISAACSON HERE?

NO, SHE'S MY WIFE. SHE HAD TO GO HOME AND TAKE CARE OF THE KIDS.

Mayor Wynn: YOU WILL HAVE THREE MINUTES AND BE FOLLOWED BY COREY WALTON.

THANK YOU. I'M HERE TO ASK YOU TO FOLLOW THE RECOMMENDATION OF THE SAP COMMISSION, WHO UNANIMOUSLY REJECTED THIS ZONING. I'M NOT SURE WHAT HAPPENED, BUT AS OF TWO DAYS AGO IT WAS DOWN ON THE CITY WEBSITE SAYING THAT STAFF REJECTED THIS RECOMMENDATION AS WELL. THE POINT THAT I NEED TO MAKE HERE TODAY IS THAT THERE'S NOTHING THAT THIS GENTLEMAN SAID AND THERE'S NOTHING THAT HIS ARCHITECT SAID THAT MATTER ONE IOTA. THEY ARE NOT THE OWNERS OF THE PROPERTY. THE OWNER OF THE PROPERTY HAS FLAT OUT REJECTED ANYTHING TO CONTROL THE USES OF THIS PROPERTY. I CAN MAKE PROMISES NOT TO PAINT YOUR HOUSE PINK. IF YOU DECIDE TO PAINT YOUR HOUSE PINK, I HAVE NOTHING TO SAY ABOUT IT. THE NEIGHBORS CAN'T HOLD ME RESPONSIBLE FOR THAT. THE FACT THAT THESE PEOPLE ARE BENDING OVER BACKWARDS AND SAYING YES, WE'RE GOING TO SEAL THIS BUILDING MEANS NOTHING. THERE IS NOTHING ON THE ZONING OF THIS PROPERTY. IF YOU PASS THE ZONING OF THIS PROPERTY, THESE PEOPLE CAN BE GONE TOMORROW. HOW LONG -- WHAT IS THE TURNOVER FOR NIGHTCLUBS AND BARS IN THIS TOWN? WHO IS GOING TO BE NEXT? THERE'S NOTHING IN THIS ZONING THAT PROTECTS THIS NEIGHBORHOOD. AND I CAN TELL YOU THAT NEVER IN AUSTIN IN MY EXPERIENCE HAS LIVE OUTDOOR MUSIC AND NEIGHBORHOODS MIX. YOU ALL KNOW THE CASES. YOU'VE SEEN IT HAPPY AT SHADY GROVE, GREEN MESQUITE, YOU'VE SEEN IT HAPPEN AT JOVITA'S. I TOLD ZAP THAT I WAS SURPRISED THAT NOBODY FIRE BOMBED JOVITA'S BEFORE THEY CLOSE IT HAD IN. IT DOESN'T WORK. IT DOESN'T EVEN WORK DOWNTOWN. THE EMPANEDA GOT THEIRS SHUT DOWN BY A LARGE HOTEL, A BIG LARGE HOTEL SHUT DOWN THEIR MUSIC BECAUSE THEY WERE BEING DISTURBED. NOW, I'VE LIVED IN THIS HOUSE FOR 20 YEARS. I'M ALMOST DIRECTLY TO THE EAST OF THIS PROPERTY, AND AT THE TIME WHEN WE HAD A GROCERY STORE IN THERE WHERE THE THEATER IS NOW, YOU COULD HEAR THE LITTLE CONTINUE SPEAKER SAYING WE NEED A CART PICKUP OVER HERE, AND I COULD TELL YOU WHAT THEY WERE SAYING. SO TODAY I CAN TELL YOU WHEN A VOLKSWAGEN BEETLE DRIVES UP AND TOWN LAMAR. THIS IS THE NATURE OF THE WAY THE SOUND CREARZ AND THESE CREEKS CHANNEL THAT SOUND UP INTO THE NEIGHBORHOOD. THE SAME THING THAT ALLOWS YOU TO GO LIKE THIS ON ONE END OF A TRUMPET AND GET DIZZY GILLESPIE OUT OF THE OTHER WEDNESDAY END, THOSE CHANNELS WILL GO UP THERE AND THEY HAVE PUT HUGE SOUND INTO THESE NEIGHBORHOODS. AS GAIL SAID, WE CAN HEAR THE FOUR SEASONS, AND THEY'RE EAST OF US. AND IT'S JUST GOING RIGHT UP THAT CREEK BED.

ULTIMATELY THE NEIGHBORHOODS HAVE ALWAYS PREVAILED, BUT I DON'T HAVE TO HAVE TO SUE THESE PEOPLE. I DON'T WANT TO HAVE TO GO THROUGH WHAT IT'S GOING TO TAKE TO DOCUMENT ALL THE CALLS AND ALL THE COMPLAINTS TO HAVE THEM DECLARED TO BE A PUBLIC NUISANCE. AND I'M ASKING YOU TO PROTECT US IN OUR HOMES. THIS IS THE SANCTITY OF OUR HOME. AND THERE'S NO REASON WHY IT NEEDS TO BE DISTURBED WITHOUT PROTECTION. I GUESS THAT'S MY DEAL. [BUZZER SOUNDS] THESE PEOPLE, I TRUST THEM, THEY PROMISE THEIR THEY'RE GOING TO SEAL IT ALL UP. THERE'S NOTHING THEY CAN DO ABOUT THE NEXT TENANT OR WE DON'T EVEN KNOW THEY'LL BE THE TENANT. THERE'S NO NEIGHBORHOOD PROTECTION, AND THAT'S WHAT I'M ASKING YOU, PLEASE PROTECT THE NEIGHBORHOOD. THANK YOU.

Mayor Wynn: IS CATHERINE STILL HERE? AND LINDA PATTON. HELLO. SO COREY, YOU WILL HAVE UP TO NINE MINUTES.

WOW.

Mayor Wynn: ONLY IF YOU NEED THEM.

MAYOR, MAYOR PRO TEM, COUNCILMEMBERS, MY NAME IS COREY WALTON. I'M VICE-PRESIDENT OF THE BOULDIN CREEK NEIGHBORHOOD ASSOCIATION. THIS PROPERTY, AS YOU MAY KNOW, DOES NOT FALL WITHIN OUR NEIGHBORHOOD'S BOUNDARIES, BUT IT IS OUR RESIDENTS WHO ARE THE ONES WHO ARE GOING TO BE MOST DIRECTLY IMPACTED, AND THAT'S WHY SO MANY OF OUR PEOPLE ARE HERE. AFTER NUMEROUS DISCUSSIONS WITH THE APPLICANT'S AGENTS AND ATTORNEY, WE REALLY HAD HOPED THAT WE WERE GOING TO COME TO YOU TONIGHT WITH A JOYOUS EXAMPLE OF RESIDENT AND BUSINESS WORKING TOGETHER TO FORGE A MUTUALLY BENEFICIAL SOLUTION TO A TROUBLESOME PROPOSAL. AND AS IT TURNS OUT, UNFORTUNATELY THE AGREEMENT THAT THE ZILKER NEIGHBORHOOD MADE WITH THE APPLICANTS AND TO WHICH THE BOULDIN RESIDENTS WERE THERE AS AFFECTED PARTIES, CANNOT OR WILL NOT BE HONORED BY THE APPLICANTS AND APPARENTLY THE ROADBLOCK HERE IS NEITHER BETWEEN RESIDENTS NOR WITH THE APPLICANTS, BUT WITH THE LANDOWNER. WHO IS UNWILLING TO ENTERTAIN THE CONDITIONS THAT BOTH PARTIES AGREED UPON. A BIT OF HISTORY, IN SEPTEMBER AFTER PRESENTING THEIR PLANS, FOR AN OUTDOOR LIVE MUSIC BAR TO THE ZILKER NEIGHBORHOOD ASSOCIATION, THE APPLICANTS ALSO PRESENTED THEIR PLAN TO BOULDIN CREEK'S ZONING COMMITTEE. BOTH NEIGHBORHOODS THEN REALLY EXPRESSED CONCERN WITH THE PLAN. ZILKER'S MAIN CONCERN BEING PARKING, BOULDIN'S OF COURSE BEING THE NOISE AND THE LIGHTING POLLUTION THAT WOULD CARRY ACROSS THE GREENBELT INTO RESIDENTS' HOMES. HUNDREDS OF BOULDINNITES,

AND I'M SURE YOU'RE HERE TONIGHT, ALREADY ACCEPT OR TOLERATE 26 LIVE AMPLIFIED MUSIC EVENTS PER YEAR ON AUDITORIUM SHORES. THEY'RE NOT PREPARED TO HAVE THEIR HOME LIFE VIOLATED BY NOISE FROM A PRIVATE ENTERPRISE THREE OR FOUR TIMES A WEEK FOR UP TO 50 WEEKS PER YEAR OR A TOTAL OF UP TO 200 EVENINGS PER YEAR. ON OCTOBER 4TH, THE ZONING AND PLATTING COMMISSION, THEIR HEARING WAS POSTPONED SO THE NEIGHBORHOODS AND THE APPLICANTS COULD WORK OUT AN AGREEABLE SOLUTION. WHEN NO SOLUTION WAS REACHED ON OCTOBER 18th, THE ZONING AND PLATTING COMMISSION UNANIMOUSLY RECOMMENDED AGAINST THIS REZONING. ON NOVEMBER 4TH, THE APPLICANTS PRESENTED NEIGHBORHOOD OFFICERS THE REVISED PLAN THAT YOU SEE TONIGHT, WHICH WOULD KEEP THE MUSIC ENCLOSED. THEY AGREED TO A NECESSITY NO OUTDOOR MUSIC RESTRICTIVE COVENANT, AND FOR COMPLIANCE THEY AGREED TO SIGN A PERFORMANCE BOND. WE UNFORTUNATELY LEARNED THIS EVENING THAT THEY ARE UNABLE TO MEET THOSE CONDITIONS, AGAIN, THROUGH NO FAULT OF THEIR OWN OR OUR OWN. AS YOU KNOW, GRANTING A ZONING CHANGE WITH THESE RESTRICTIONS AND NO MECHANISM TO ENFORCE THEM WOULD LEAVE DOZENS, PERHAPS HUNDREDS OF AFFECTED RESIDENTS WITH NO ASSURANCE OF COMPLIANCE, NO ENFORCEMENT AND NO RECOURSE SHOULD THE APPLICANTS REVERT TO THEIR ORIGINAL PLAN OR CHANGE MANAGEMENT OR SELL THE PROPERTY OR WHATNOT. THE PROPOSED CS-1 IS REALLY THE ONLY ZONING CLASSIFICATION THAT DOES CREATE THESE TROUBLESOME CONDITIONS. THE EXISTING CS ZONING LEAVES THE PROPERTY OWNER. COUNTLESS OTHER REDEVELOPMENT OPTIONS, INCLUDING RESTAURANT AND BAR WHERE IN 51% OF SALES WOULD HAVE TO BE FOOD. SO THERE ARE ENDLESS OTHER REDEVELOPMENT OPTIONS THAT WOULD BE MORE APPROPRIATE TO SURROUNDING RESIDENTS AND BUSINESSES, AND WE THEREFORE URGE YOU TO DENY THIS UNNECESSARILY INTRUSIVE ZONING CHANGE FOR A USE THAT IS INAPPROPRIATE FOR THIS PROPERTY AND FOR THIS LOCATION. THANK YOU FOR YOUR CONSIDERATION.

Mayor Wynn: THANK YOU, MR. WALTON. THE NEXT SPEAKER IS LORRAINE ATHERTON. WELCOME BACK. YOU WILL BE FOLLOWED BY ISIDRO RODRIGUEZ, WHO WILL BE FOLLOWED BY JULIE ISAACSON.

HELLO, I'M LORRAINE ATHERTON. I WAS PRESIDENT OF ZILKER NEIGHBORHOOD ASSOCIATION WHEN WE STARTED NEGOTIATIONS ON THIS CASE THIS SUMMER. I'D LIKE TO EMPHASIZE THAT THIS HEARING IS ABOUT THE ZONING, NOT ABOUT APPROVING SITE PLANS. STAFF APPROVES SITE PLANS. WE DON'T HAVE ANY SAY OVERSIGHT PLANS. FROM THE BEGINNING OF OUR NEGOTIATIONS, SNA ZONING COMMITTEE EXPLAINED TO THE INVESTORS THAT PARKING AND OUTDOOR ENTERTAINMENT WOULD BE A PROBLEM ON THIS SITE, AND THAT WE

WOULD NEED TO SEE BINDING PARKING LEASES IN EITHER A CONDITIONAL OVERLAY OR RESTRICTIVE COVENANT PROHIBITING OUTDOOR AGREEMENT BEFORE WE COULD SUPPORT CS-1 ZONING. THE INVESTORS, AND I CALL THEM INVESTORS NOW BECAUSE WE HAVE SINCE STOFERD THAT THEY AREN'T THE ACTUAL OWNERS OF THE PROPERTY. THEY DON'T INTEND TO BUY THE PROPERTY. THE INVESTORS KEPT PRODUCING SITE PLANS, BUT THEY COULD NOT PRODUCE ANYTHING THAT WOULD PREVENT THE ACTUAL OWNER FROM LEASING THE PROTO SOMEBODY ELSE AS -- THE PROPERTY TO SOMEONE ELSE. AT OUR LAST MEETING, THE INVESTORS MADE IT CLEAR THAT THE ACTUAL OWNER WANTS TO HAVE THE OPTION OF OUTDOOR ENTERTAINMENT OPEN AS A FUTURE USE. ZILKER NEIGHBORHOOD ALREADY HAS A REGIONAL ENTERTAINMENT DISTRICT ON BARTON SPRINGS ROAD. WE DON'T NEED ANOTHER ONE ON SOUTH LAMAR. THE SMALL NEIGHBORHOOD ICE HOUSE PROJECT THAT WAS ORIGINALLY PRESENTED TO ZNA COULD BE ACCOMMODATED UNDER THE CURRENT CS ZONING. THAT'S THE SORT OF THING THAT WE HAVE AT FLIP DELETE NOTICES ON BARTON SPRINGS ROAD AND AT BOULDIN COFFEE HOUSE ON SOUTH FIRST. WE SEE NO NEED TO APPROVE CS-1 ZONING ON THIS SITE. THANK YOU.

Mayor Wynn: THANK YOU. MR. RODRIGUEZ. WELCOME. YOU WILL HAVE THREE MINUTES AND BE FOLLOWED BY JULIE ISAACSON, WHO WILL BE FOLLOWED BY JEFF JACK.

GOOD EVENING, MAYOR AND COUNCILMEMBERS. I'M A CONCERNED CITIZEN, WHICH WE HAVE PROPERTY AT 1008 SOUTH EIGHTH STREET, WHICH IS DIRECTLY BEHIND THIS AREA OF PROPOSED ZONING. THEY WERE TALKING ABOUT THE PARKING ISSUES HERE. IF YOU LOOK AT THIS MAP, STRAIGHT DOWN WEST GIBSON HERE IS A HILL THAT SLOPES DIRECTLY DOWN. WHERE THIS TREE IS IT'S A DEAD END. IF YOU TRAVEL SOUTH ON LAMAR, AND IF YOU LOOK OVER HERE TO THE WEST, THERE IS TREAD WELL RIGHT HERE. I DON'T KNOW IF YOU CAN SEE IT. IT'S RIGHT HERE. THE SAME THING IS THERE. IT'S A HILL, A STEEP HILL THAT TURNS INTO A DEAD END. SOUTH LAMAR IS RIGHT HERE. AND THAT'S WHERE OUR FAMILY OWNED PROPERTY IS. WE HAD MENTIONED THAT IT'S A RESIDENTIAL PROPERTY THAT'S BEEN USED AS AN UPHOLSTERY SHOP. MY FATHER HAS OWNED IT SINCE 1950. THE ISSUE THAT WE HAVE IS HE'S SAYING THAT THERE'S PARKING THAT THEY'RE GUARANTEEING. THIS PARKING THAT THEY'RE LOOKING AT IS RIGHT ABOVE HERE. ALL OF THIS LAND HERE, YOU'RE TALKING ABOUT TRYING TO GET IN AND OUT OF TRAFFIC RIGHT HERE, WHICH IS A VACANT LOT, WHICH IS NEXT TO THE RISING SUN, WHICH IS RIGHT HERE. THAT VACANT LOT IS RIGHT HERE. THAT VACANT LOT IS WHERE OUR PROPERTY WATER LINE, MAIN LINE IS LOCATED. WE WILL NEED ACCESS TO THIS PROPERTY LINE THAT'S RIGHT HERE TO GET TO IT. THEY'RE PROPOSING TO HAVE THIS AREA REPAVED AND USED FOR PARKING. WE WILL NOT BE ABLE TO HAVE ACCESS TO

THAT IF THEY DO THIS. THERE IS AN EASEMENT RIGHT HERE, RIGHT BEHIND HERE. THIS IS FERRELL ELECTRIC COMPANY RIGHT HERE, THIS IS A MEDIA PLACE -- ACTUALLY, I'M SORRY, THE MEDIA PLACE IS RIGHT HERE. THERE'S ANOTHER LOCATION RIGHT HERE. RIGHT HERE IS TOMMY'S DRUM SHOP. OUR FAMILY-OWNED PROPERTY IS RIGHT HERE. THERE IS A RESIDENTIAL HOUSE HERE THAT THEY SAY IS USED FOR CHURCH ACTIVITIES. THERE IS A LOT OF ACTIVITIES THAT'S GOING ON THERE AND THEN THE VACANT LOT HERE. THAT EASEMENT RIGHT BACK HERE IS THE ONE WE'RE CONCERNED ABOUT. IT HAS NOT BEEN ADDRESSED AT ALL. IT HAS EROSION ISSUES FOR THE PROPERTIES DIRECTLY BEHIND THIS SITE THAT I HAD JUST MENTIONED. WHICH MEANS DEVELOPMENT ON SOUTH LAMAR WOULD REQUIRE ACCESS TO ALL MAIN, WATER MAIN AND WASTEWATER LIFT STATIONS. THE EASEMENT HAS 30-FOOT DROPS WHICH CONTINUE TO ERODE AS WE REQUEST THE CITY STAFF -- AND WE REQUEST THE CITY STAFF TO DO AN ENVIRONMENTAL IMPACT STUDY BEFORE THIS ZONING CASE CAN BE APPROVED. [BUZZER SOUNDS] AGAIN, THE NOISE IS AN ISSUE. I DON'T UNDERSTAND HOW THEY'RE SAYING THAT THEY CAN AVOID THIS ISSUE. AND AGAIN, THERE'S NO RESTRICTION AGAIN HOLDING THEM ACCOUNTABLE BECAUSE THEY ARE NOT THE PROPERTY OWNERS. THANK YOU.

Mayor Wynn: THANK YOU. JULIE ISAACSON? SIGNED UP WISHING TO SPEAK, AGAINST. JEFF JACK, WELCOME BACK, JEFF. LET'S SEE, IS DANETTE (INDISCERNIBLE) HERE? HOW ABOUT MICHAEL MEYER? HELLO, MICHAEL. SO JEFF, YOU WILL HAVE UP TO SIX MINUTES IF YOU NEED IT.

[INAUDIBLE - NO MIC].

Mayor Wynn: I CAN'T HEAR YOUR NAME. THANK YOU, DAVID. I CAN'T SEE YOU BACK THERE. THANKS.

MAYOR AND COUNCILMEMBERS, I'M JEFF JACK AND PRESIDENT OF THE ZILKER NEIGHBORHOOD ASSOCIATION THIS YEAR. EARLIER THIS THE EVENING YOU APPROVED ON ALL THREE READINGS A COUPLE OF ITEMS. Z-17 AND ITEM NUMBER 84. BOTH OF THOSE PROJECTS ARE ON THE ZILKER NEIGHBORHOOD AND WE HAVE WORKED WITH THOSE DEVELOPERS AND CAME TO AGREEMENTS WITH THEM. THEY'RE UPZONINGS AND WE APPROVED THEM. BECAUSE WE GOT IN EXCHANGE FOR OUR NEIGHBORHOOD CONCERNS, ACTUAL CONCESSIONS AND UNDERSTANDINGS WITH THOSE DEVELOPERS. THAT'S NOT THE CASE WITH THE SITUATION WE HAVE WITH THIS ZONING. THE NEIGHBORHOOD CONCERNS AS YOU'VE HEARD ARE ABOUT NOISE, ABOUT TRAFFIC, ABOUT PARKING. WE'RE CONCERNED ABOUT THE IMPACT TO OUR NEIGHBORS TO THE EAST, TO THE BOULDIN CREEK FOLKS, BUT WE'RE ALSO CONCERNED ABOUT THE PEOPLE THAT LIVE IN THE MARY LEE FOUNDATION THAT IS DIRECTLY ACROSS THE STREET. THAT IS A COMPLEX OF HOUSING FOR

PEOPLE WITH MENTAL DISABILITIES AND A VERY CONCERN TO US THAT THIS NOISE IS GOING TO BE IMPACTING THOSE FOLKS. WE'RE ALSO CONCERNED THAT ON THAT BACK STREET BEHIND THIS PROPERTY IS A RECORDING STUDIO AND THE OWNER OF THAT STUDIO IS VERY CONCERNED THAT HAVING A MUSIC VENUE IS GOING TO DISRUPT HIS RECORDING BUSINESS. WE'RE ALSO CONCERNED ABOUT PARKING. THE APPLICANT HAS INDICATED THAT WE NEED 103 SPACES. THEY ONLY HAVE 16 ON SITE. HE SAID THAT THEY HAVE GOTTEN LEASES THAT ARE PROOF THAT THEY'RE GOING TO HAVE THAT, BUT I WANT TO READ TO YOU OUT OF THE LETTERS OF UNDERSTANDING THIS SENTENCE. THIS LETTER DOES NOT CONSTITUTE EITHER AN OFFER OR ACCEPTANCE BY EITHER PARTY. THE TERMS AND PROVISIONS OF THIS LETTER ARE IN NO WAY BINDING ON ANY PARTY AND ON SUBJECT TO APPROVAL AND ACCEPTANCE BY ALL PARTIES UNLESS AND UNTIL THE CONTRACT IS EXECUTED BY ALL PARTIES. WHICH MEANS THAT EVEN THOUGH THEY SAY THEY HAVE THE LEASES, THEY DON'T HAVE THE LEASES. NOT ONLY THAT, ON THE SCREEN YOU'RE GOING TO SEE ONE OF THE SITES THAT THEY PROPOSE TO HAVE 50 PARKING SPACES. THIS IS THE RISING SUN PARKING, AN AUTOMOTIVE REPAIR SHOP. I TALKED TO THE OWNER AND I ASKED HIM IF HE HAD 50 PARKING SPACES, AND HE SAID NO. I ASKED HIM HOW MANY HE THOUGHT HE COULD GET ON HIS SITE. AND HE SAID MAYBE ABOUT 20. AND THEN I ASKED HIM HOW MANY OF THOSE COULD BE AVAILABLE. AND HE SAID, WELL, ALL THE PARKING SPACES BEHIND THE FENCE IS WHERE HE PARKS HIS CAR AT NIGHT AND THAT'S LOCKED UP. SO I'M NOT SURE THAT THE NUMBERS ADD UP. EVEN IF THEY WERE TO GET BINDING LEASES. THEY'RE PROPOSING MONTH MONTH TO MONTH LEASES, SO AT WHICH TIME THEY WOULD BE ABLE TO TERMINATE THOSE LEASES AND WE WOULD HAVE NO RECOURSE TO DO ANYTHING ABOUT IT. I'M GOING TO SKIP QUICKLY TO AN ISSUE WITH REGARD TO THE FACT THAT WE HAVE WORKED WITH THEM SINCERELY, WE HAVE OFFERED A SOLUTION AND THE INVESTORS, AS LORRAINE HAS SAID, AGREED WITH WHAT WE WERE ASKING FOR. AND IT'S UNFORTUNATE THAT THE PROPERTY OWNER WOULD NOT. BUT HE VERY CLEARLY IS LOOKING TO DO SOMETHING ELSE IN THE FUTURE WITH THIS PROPERTY. BUT THEY'VE PROPOSED CERTAIN THINGS THAT WOULD SUGGEST THAT YOU APPROVE IT. ONE IS THAT THEY'RE NOT GOING TO COMPETE WITH EXISTING RESTAURANTS. WELL, MAYBE, MAYBE NOT. I MEAN, WE HAVE RESTAURANT ROW IN OUR NEIGHBORHOOD AND WE DOWNTOWN FIND THAT HAVING CHEW CHUY'S AND POCO LOVMENT OCO IS A BIG DETRIMENT TO ANY OF THEM. THEY SAY THIS IS A DIFFERENT PROJECT, BUT AS STATED BEFORE, THIS IS ZONING. THERE'S NO GUARANTEE THAT THE BUILDING THAT THEY'VE SHOWN IS THE ONE THAT'S GOING TO GET BUILT. THEY MADE PLEDGES TO THE NEIGHBORHOOD ABOUT OUTDOOR MUSIC AND WE'VE TRIED TO FIND A WAY TO GET AN OVERLAY INTO THE ORDINANCE THAT WOULD PROHIBIT OUTDOOR MUSIC. WE CAN'T DO THAT BY ORDINANCE. SO IT HAS TO BE A RESTRICTIVE COVENANT. AND WE CAN'T GET THE RESTRICTIVE

COVENANT. THEY TALK ABOUT THE STANCE TO THE BOULDIN CREEK HOUSES AND THE VEGETATION THAT MIGHT BE A SOUND BUFFER. I WILL TELL YOU AS AN ARCHITECT, THAT'S NOT GOING TO HAVE MUCH WEIGH. AND TONIGHT YOU WERE VERY CONCERNED ABOUT THE CASE DOWN SOUTH, THE HOUSING NEXT TO THE INDUSTRIAL. YOU REALIZE THAT THE INDUSTRIAL BUILDING WAS ALMOST A THOUSAND FEET AWAY FROM THE CORNER OF THE OTHER END OF THAT RESIDENTIAL AREA AND Y'ALL WERE VERY CONCERNED ABOUT GETTING A NOISE REDUCTION INTO THE ORDINANCE? AND YET WE'RE ONLY 640 FEET AWAY TO THE BOULDIN FOLKS. THE LAST THING THEY SAID, WE TRIED TO GET IT IN THE LEASE AGREEMENT. A LEASE AGREEMENT BETWEEN THE INVESTOR AND THE PROPERTY OWNER GIVES THE NEIGHBORHOODS NO CAPACITY TO ENFORCE IT. WE'RE TOTALLY AT THE DISCRETION OF WHETHER THE OWNER WOULD EVER WANT TO DO ANYTHING. I'M GOING TO GIVE YOU A LITTLE HISTORY. DOWN IN SOUTHEAST AUSTIN ABOUT SIX YEARS AGO, THE BLUFF SPRINGS NEIGHBORHOOD WAS ASKED BY THE FOLKS PROPOSING TO DO THE REGENT VILLAGE SUBDIVISION IF THEY WOULD SUPPORT THAT CASE. AND THEY SAID WE WILL BUILD YOU A PRIVACY FENCE AND HAVE DUMPSTERS. THE NOIBD SUPPORTED THE ZONING CHANGE. SIX YEARS LATER THEY'RE STILL TRYING TO GET THE G.O.P.ER TO DO WHAT HE SAID. DEVELOPER TO DO WHAT HE SAID. TWO YEARS AGO WE HAD A CASE ON SOUTH LAMAR. THE DEVELOPER SAID THAT HE NEEDED NEIGHBORHOOD SUPPORT TO DO A LITTLE INFILL SUBDIVISION, AND PART OF THE AGREEMENT WAS THAT HE WOULDN'T BUILD TWO STORY HOUSES ON PARTICULAR LOTS THAT BACKED UP TO EXISTING HOUSES. HE GOT THE NEIGHBORHOOD SUPPORT, THE ZONING WENT THROUGH, HE BUILT THE SUBDIVISION AND THEN HE TURNED AROUND AND BUILT TWO STORY HOUSES ON THE LOTS THAT HE SAID HE WOULDN'T DO IT. IN ZILKER TWO YEARS AGO WE HAD A DEVELOPER COME AND SAY WE'D LIKE TO YOU HELP US REZONE A BIG TRACT INTO FLAG LOTS TO BUILD DUPLEXES. THE ONE THING THAT WE ASKED IS THAT YOU PUT THE FRONT DOOR OF THE DUPLEXES THAT FACE THE STREET TOWARD THE STREET. HE BUILT THE DUPLEXES WITH THE FRONT DOOR TO THE SIDE. IF WE WOULD HAVE HAD A RESTRICTIVE COVENANT AND A BOND, THOSE SITUATIONS WOULD NOT HAVE BEEN NEARLY AS EGREGIOUS AS THEY ARE. BUT WITHOUT ANY TYPE OF GUARANTEE THAT THE PROMISES MADE TO YOU TONIGHT WERE GOING TO BE HONORED, WHAT DO YOU HAVE IN THE WAY OF ENFORCING IF THEY CHOOSE NOT TO? THIS PROPERTY IS CS. IT ALLOWS A LOT OF DIFFERENT USES. IT CAN BE DEVELOPED IN LOTS OF DIFFERENT WAYS. AND WE SUPPORT THE IDEA OF USING THIS PROPERTY TO SOME OTHER USE BESIDES AN AUTOMOTIVE REPAIR PLACE, BUT CS-1 IS INAPPROPRIATE. WE HAVE NO WAYS THAT OUTDOOR MUSIC WILL NOT OCCUR THERE. AND WE FEEL LIKE IT'S TOO BIG A RISK FOR US TO TAKE FOR OUR COMMUNITY. SO WE URGE YOU PLEASE TO DENY THIS ZONING. THANK YOU.

Mayor Wynn: THANK YOU, MR. JACK. KATHY TOVO SIGNED UP WISHING TO SPEAK IN OPPOSITION. WELCOME, KATHY. YOU WILL HAVE THREE MINUTES AND BE FOLLOWED BY JACK MOORE, WHO WILL BE FOLLOWED BY ERIC ANDERSON.

GOOD EVENING, MAYOR, COUNCILMEMBERS. I'M KATHY TOVO, PRESIDENT OF THE BOULDIN CREEK NEIGHBORHOOD ASSOCIATION, AND I WON'T TAKE MUCH OF YOUR TIME THIS EVEN. WE'RE REALLY FORTUNATE TO HAVE HAD SEVERAL OF THE BOULDIN RESIDENTS WHO ARE REALLY CONCERNED ABOUT THIS PROJECT EITHER COME DOWN TONIGHT TO SHARE THEIR COMMENTS WITH YOU OR TO GET MESSAGES TO YOUR OFFICES. THE BOULDIN CREEK NEIGHBORHOOD ASSOCIATION STRONGLY ENCOURAGES YOU TO VOTE AGAINST THIS AND TO DENY THIS ZONING CHANGE. WE WOULD LIKE TO SEE YOU AFFIRM THE ZONING AND PLATTING COMMISSION'S RECOMMENDATION TO DENY. THE RESIDENTS I THINK HAVE REALLY COVERED WHAT ABOUT THIS PARTICULAR SITE POSES SUCH LIGHT AND NOISE CONCERNS TO THE FOLKS WHO ARE WITHIN SEVERAL BLOCKS OF THIS PROPOSED MUSIC AND BAR -- MUSIC VENUE AND BAR. GIVEN THE PROPERTY OWNER'S LACK OF WILLINGNESS TO PUT INTO PLACE ASSURANCES IN THE FORM OF A RESTRICTIVE COVENANT, WE URGE YOU TO DENY THIS REQUEST. THANK YOU.

Mayor Wynn: THANK YOU, KATHY. JACK MOORE? TO SPEED THINGS ALONG, IF YOU COULD COME UP. WE HAVE A BUNCH OF PUBLIC HEARINGS STILL TO DO TONIGHT. AS I CALL THE NEXT PERSON, THEY COULD BE COMING FORWARD AND BE AT THE OTHER PODIUM, IT WOULD MAKE US MOVE A LITTLE FASTER. JACK MOORE, WELCOME, YOU WILL BE FOLLOWED BY TERRY ANDERSON, WHO WILL BE FOLLOWED BY KERRY LEE.

MY NAME IS JACK MOORE, I LIVE ON 1200 SOUTH FIFTH. I HAVE A DIRECT LINE OF SIGHT FROM MY BACKYARD ACROSS THE CREEK TO 1109. AND IT'S -- I CAN SEE THEM AND I CAN HEAR THEM. AND EVERYBODY ELSE HAS COVERED ALL OF THE ISSUES, I JUST HOPE THAT YOU WILL FOLLOW THEIR RECOMMENDATIONS AND YOUR STAFF'S RECOMMENDATIONS AND NOT APPROVE THIS CHANGE. THANK YOU.

Mayor Wynn: THANK YOU. WELCOME MR. ANDERSON. YOU WILL BE FOLLOWED BY CAREY LEE. YOU WILL HAVE THREE MINUTES. WELCOME.

THANK YOU, COUNCIL , MEMBERS. MY NAME IS ERIC ANDERSON. I'M A RESIDENT OF BOULDIN CREEK. I'VE LIVED THERE FOR ALMOST 20 YEARS. I REALLY CAN'T SAY ANYTHING THAT THE OTHER SPEAKERS HAVEN'T ALREADY COVERED MUCH BETTER PROBABLY THAN I COULD SAY IT, BUT WHAT I WANT -- I GUESS THE POINT I WANT TO MAKE IS THAT THE CENTER PART OF AUSTIN IS BECOMING MUCH MORE DENSELY POPULATED. YOU WILL ALL AWARE OF THAT. AND WITH THAT DENSITY

COMES A LOT OF OPPORTUNITIES FOR ALL OF US TO ENRICH OUR CITIES AND TO ENRICH OUR LIVES. BUT LIKEWISE THERE ARE SOME RESPONSIBILITIES WITH THAT DENSITY, AND WE HAVE TO RESPECT EACH OTHER'S PRIVACY. AND I HAVE A FAMILY AND I HAVE CHILDREN, AND THEY DO THEIR HOMEWORK IN THE EVENINGS AND WE SIT AT OUR DINNER TABLE, JUST LIKE PROBABLY EVERYBODY IN THIS ROOM, AND WE DO NOT WANT THIS INVASIVE DEVELOPMENT, THIS MUSIC, THIS LIVE MUSIC COMING INTO OUR HOUSE NIGHT AFTER NIGHT AND DISTURBING US. SO PLEASE, PROTECT US BECAUSE THAT'S -- YOU'RE ALL WE'VE GOT. THANK YOU.

Mayor Wynn: THANK YOU. WELCOME KERRY LEE. YOU WILL HAVE THREE MINUTES. YOU WILL BE FOLLOWED BY BOBBY RIGBY, WHO WILL BE FOLLOWED BY GAIL ARMSTRONG.

I'M SPEAKING TO YOU BOTH AS A BUSINESS OWNER IN THE ZILKER NEIGHBORHOOD AND AS A RESIDENT IN THE BOULDIN NEIGHBORHOOD. AS A RESIDENT I SHARE ALL OF THE FEARS AND CONCERNS THAT HAVE BEEN EXPRESSED TONIGHT, SO I WON'T GO INTO THAT. AS A BUSINESS OWNER, I CAN ADDRESS FIRST THE PARKING. I OWN THE ALAMO DRAFT HOUSE CINEMA. AND BEFORE WE OPENED, WE DID A PRETTY COMPREHENSIVE PARKING REVIEW AND CAME TO THE CONCLUSION THAT WE WERE GOING TO HAVE ADEQUATE PARKING FOR THE NEIGHBORHOOD. WHAT WE DIDN'T TAKE INTO ACCOUNT WAS THAT VERY SOON AFTER WE OPENED, THE INCREASED TRAFFIC BENEFITTED THE OTHER RESTAURANTS NEAR US, AND THEIR BUSINESS INCREASES, WHICH THREW OFF THE CALCULATIONS THAT WE HAD. AND WE FIND THAT NOW ON FRIDAY AND SATURDAY NIGHTS OUR PARKING DOES ACTUALLY IMPACT THE NEIGHBORHOOD. SO EVEN THOUGH WE HAD FAR MORE THAN THE NUMBER OF PARKING SPACES THAN IS REQUIRED ACCORDING TO THE CITY CALCULATIONS, WE'RE STILL HAVING PROBLEMS THAT WE NEED TO ADDRESS. ALSO SPEAKING AS A BUSINESS OWNER, I CAN TELL YOU THAT AN INVESTOR WHO PLANS TO PUT HUNDREDS OF THOUSANDS, POSSIBLY MILLIONS OF DOLLARS INTO THE BUSINESS THAT BELONGS TO A PROPERTY OWNER HAS A GREAT DEAL OF WEIGHT WITH THE PROPERTY OWNER TO GET THEM TO AGREE TO CERTAIN THINGS SUCH AS RESTRICTIVE COVENANTS AND AGREEMENTS WITH THE NEIGHBORHOOD. AND IF THE INVESTOR DOES NOT CARRY THAT WEIGHT, IT EITHER MEANS THAT THE LANDLORD HAS ALTERNATE PLANS OR THAT THEY JUST DON'T EXPECT THAT PARTICULAR BUSINESS TO BE IN THEIR PROPERTY FOR VERY LONG. AT THE ZONING COMMISSION MEETING, THE INVESTORS FAIRLY OMINOUSLY TOLD US THAT BEING ZONED CS MEANS THAT THEY ALREADY CAN DO LIVE OUTDOOR MUSIC, AND THE CHANGE OF ZONING DOESN'T AFFECT WHAT THEY'RE ABLE TO DO TO AFFECT THE EFFECT THE NEIGHBORHOOD AND THE ZONING CHANGE WOULD ONLY MAKE IT EASIER FOR THEM TO BE IN BUSINESS IN THE FIRST PLACE. THE RESPONSE

TO THIS IMPLICIT THREAT WAS THAT ONE OF THE COMMISSIONERS ACTUALLY MADE A MOTION THAT THE PROPERTY SHOULD BE REZONED TO RETAIL. THAT DIDN'T CARRY, BUT I FELT THAT THAT WAS AN EXTREMELY PROACTIVE RESPONSE TO THIS THREAT -- [BUZZER SOUNDS] -- WHICH DOES SEEM TO BE A VERY REAL THREAT WITH PLANS THAT THE LANDLORD OR THAT THE PROPERTY OWNER HAS THAT THE NEIGHBORHOOD HAS NO CONTROL OVER. SO I WOULD LIKE TO ENCOURAGE YOU NOT ONLY TO FOLLOW THE ZONING COMMISSION'S RECOMMENDATIONS, BUT ALSO TO THINK ABOUT A VERY, VERY PROACTIVE MOTION TO REMOVE THE DANGER ALTOGETHER. [APPLAUSE]

Mayor Wynn: THANK YOU, MS. LEAGUE. AND MY DAUGHTERS LOVE THE WARDROBE IN NARNIA ON SUNDAY. BOBBY RIGBY, WELCOME. YOU WILL HAVE THREE MINUTE AND BE FOLLOWED BY LEE ARMSTRONG.

THANK YOU. I'M BOBBY RIGBY. I'M WITH THE ZILKER NEIGHBORHOOD ASSOCIATIONS DEVELOPMENT SUBCOMMITTEE. I WANTED TO SHOW THE - - HERE IT IS, NOT EXACTLY STRAIGHT. THIS IS LOOKING EAST OVER LAMAR BOULEVARD TO THE MIDDLE FLOOR, THE SECOND FLOOR THAT YOU COULD CALL IT, OF THE DOWNTOWN AUTO AUTOMOTIVE. AND I WANT TO NOTICE THAT THERE'S A STEEP DOWNHILL OVER HERE ON GIBSON, AND I WANTED TO POINT OUT THAT THERE'S CITY BENCHMARKS, CIVIL BENCHMARKS THAT INDICATE THAT THERE'S THE ELEVATION THAT YOU CAN SUBTRACT AND GET A 35-FOOT DROP. AND TO INDICATE HOW FAST IT DROPS IS THAT IF YOU GO DOWN THE STEEP DOWNHILL ON GIBSON, IF YOU GO 50 FEET OR SO AND YOU TURN INTO THE DRIVEWAY BEHIND THIS, YOU'RE ALREADY BELOW AND YOU PULL INTO THE FLOOR BELOW THIS. THE ORIGINAL PLAN PRESENTED HAD A LARGE OUTDOOR DECK, WHICH ALSO UTILIZES THE ROOFTOP SQUARE FOOTAGE FOR THE SMALL LOT, AND THIS RESULTED IN THE NEEDED OFF SITE PARKING OF 5254 PARKING SPACES. THE IMMEDIATE OBVIOUS ISSUE IS NOISE, AND, THAT'S BECAUSE IF THESE ARE WIDE OPEN, GARAGE DOORS OR WINDOWS, HOWEVER THEY RENOVATE AND THEY PLAN TO HAVE THESE OPEN, THEY STATED, THEN THE SOUND IN THE OPPOSITE DIRECTION WOULD HIT TZ A GOES UPHILL INTO THE BOULDIN NEIGHBORHOOD. SOIPTED TO INDICATE THAT THERE'S A LARGE UPHILL AREA OF HOMES THAT THIS WILL THIS HIT. SO NOW WHAT THEY'VE DONE IS THEY CAME BACK, SAID THEY WANTED TO ENCLOSE THAT DECK, GIVING THEM MORE SQUARE FOOTAGE, WHICH THEN MAKES THEM HAVE TO HAVE OVER 150 PARKING SPACES, AS THEY'VE POINTED OUT. SO IF COUNCIL BELIEVES THE OWNER HAS AGREED TO NO OUTDOOR MUSIC, PLEASE CONSIDER THAT NO OUTDOOR ENTERTAINMENT DOES NOT EQUAL NO OUTDOOR MUSIC. WHEN THE OPEN DOORS AND WINDOWS ACCOMPLISH THE STATED GOAL. I'LL JUST READ THE STATED INTENT IS TO OPEN A LIVE MUSIC VENUE, SO TO EXPECT THIS OPEN CONCEPT THAT ALLOWS PATRONS TO

ALLOW VISITING, SMOKING AND ANY OTHER ACTIVITIES OUTDOORS, WHILE ENJOYING LOUD MUSIC IS ALSO TO EXPECT NEIGHBORS TO BE IMPACTED BY LOUD MUSIC. BUT NOT JUST WHEN THEY GO TO THE BAR, BUT EVERYDAY, EVERY WEEKEND, IN THE NO CARRIERING CONNECT 57600 --

HERE'S THE SITE. THESE ARE NOT ZONED RESIDENTIAL, BUT THEY ARE RESIDENTIAL. AND THEN OF COURSE ALL THIS IS RESIDENTIAL. SO RIGHT IN THE MIDDLE OF ALL THIS, AND LIKE I SAY, THIS IS UPHILL, SO I JUST WANTED TO INDICATE THAT THIS IS GOING TO BE A TREMENDOUS IMPACT WITH AN AMP PA THEATER EFFECT TO THOSE RESIDENTS. THANK YOU. MARY MAYOR THANK .

Mayor Wynn: MAYOR THANK YOU. GAIL ARMSTRONG.

EVENING, MAYOR, MAYOR PRO TEM, COUNCILMEMBERS, MY NAME IS GALE ARMSTRONG. I ALSO LIVE IN THE BOULDIN CREEK NEIGHBORHOOD. FIRST I'D LIKE TO COMMEND YOU FOR YOUR IRON SKIRTS AND IRON PANTS, BEING ABLE TO SIT THROUGH THESE INTERMINABLE HOURS OF CONVERSATION.

Mayor Wynn: WE'VE GOT A GOOD ONE COMING UP AFTER THIS ACTUALLY.

I'LL TRY TO BE AS QUICK AS WE CAN. LET ME SPEAK FIRST TO THE IDEA OF FOR-PROFIT OUTDOOR AMPLIFIED SOUND, AND WHETHER THIS PARTICULAR PROJECT HAS THAT OR NOT. AND IT DEFINITELY HAS THAT POTENTIAL. THAT NEEDS TO BE REIGNED IN. I LISTENED TO LITTLE RICHARD LAYING IN MY BED WITH ALL THE WINDOWS CLOSED 10 YEARS AGO COMING OFF OF AUDITORIUM SHORES. I'VE LISTENED TO REZ EYE FLY DOWNTOWN. I HEAR THE STUBS. I HEAR THREADGILLS, ALL PLACES -- NOT ALL PLACES I'VE BEEN TO, BUT SOME OF THEM I ACTUALLY ATTEND, I'VE GONE TO THESE PLACES, HAD DINNER, WHATEVER. BUT I ALSO LISTEN TO ABOUT SIX HOURS OF MUSIC EVERYDAY IN MY BUSINESS, AND WHEN I GO HOME AT NIGHT, THAT'S NOT WHAT I WANT TO HEAR, ESPECIALLY NOT SOME SOUND COMING FROM SOMEBODY ELSE WHOSE MAKING A LIVING DOING IT. IT'S BEEN PRETTY HARD FOR ME TO PEEL OFF A LITTLE PIECE OF THE SOUTH BANK OF THE COLORADO RIVER IN AUSTIN, TEXAS AND MAKE IT MINE, AND I DEFINITELY INTEND TO ENJOY BEING THERE. AND FOR SOMEONE TO THINK THAT THEY HAVE THE RIGHT TO INVADE MY PRIVACY ON A REGULAR, WEEKLY BASIS, IT'S NOT RIGHT. IT'S NOT RIGHT AT ALL. I'LL CLOSE BY SAYING PERHAPS THE COUNCIL COULD MEET TWICE A WEEK AND WE WOULDN'T HAVE TO STAY SO LATE. THANK YOU. [LAUGHTER]

Mayor Wynn: I'M START TO GO ENTERTAIN THE SAME MOTION, GALE. THANK YOU, MR. ARMSTRONG. THAT'S ALL THE FOLKS WHO HAVE

SIGNED UP WISH TO GO SPEAK IN OPPOSITION. A NUMBER OF FOLKS SIGNED UP NOT WISHING TO SPEAK, BLESS THEIR HEARTS, IN OPPOSITION. THEY INCLUDE WILLIAM GREENHALL, HELEN FLEMING, SCOTT TRAINER, LINDA LAND, CAROL GIBBS, JEAN MATHER AND OSCAR GATETON. SO THAT'S ALL THE FOLKS SIGNED UP IN FAVOR AND IN OPPOSITION. NOW WE'LL HAVE A THREE-MINUTE REBUTTAL FROM EITHER MR. LITTLE OR MR. HAJAR OR SOUTHERLAND. WELCOME BACK, GENTLEMAN.

THANK YOU VERY MUCH. I'LL KEEP IT VERY BRIEF. FIRST I'D LIKE TO POINT OUT THAT THE CURRENT ZONING IS CS AS IT STANDS. WHAT WE ARE ASKING FOR AND THE POSSIBILITIES OF WHAT WE COULD DO WITH THE PROPERTY WITH REGARDS TO THE NOISE, WHICH IS A HUGE CONCERN AS WE HAVE HEARD, AREN'T PREVENTED WITH OUR CURRENT ZONING. THE FACT THAT WE'RE HERE TONIGHT ISN'T TO TRY TO GET A ZONING CHANGE TO ALLOW FOR THESE PROPOSED OUTDOOR VENUES. WE COULD DO IT NOW. WE DON'T WANT TO DO IT AND WE HAVE PLEDGED NOT DO IT. WHAT WE'RE ASKING FOR IS A ZONING CHANGE TO CS-1 FOR THE SOLE PURPOSE OF NOT COMPETING WITH THE SIX RESTAURANTS THAT ARE WITHIN 600 FEET OF US. WE HAVE MADE A NUMBER OF DIFFERENT CONCESSIONS. MR. JACK SAID THAT WE HAD NOT. WE REMOVED THE DECK, WE ENCLOSED THE SPACE. WE BROUGHT LETTERS OF INTENT. THE VERBIAGE THAT IS FOUND IN THE LETTERS OF INTENT IS THE NORMAL REAL ESTATE VERBIAGE. OF COURSE IT'S NOT DWRING IT BE BEYONDING. WHY WOULD WE SIGN A LEASE IF WE DON'T GET THE SEEING THAT WE'RE LOOKING FOR. NOW WE HAVE 166 POTENTIAL PARKING SPACE WHZ WE MAY ONLY NEED 56 IF WE HAVE CS. THERE'S NO REASON TO INCUR THOSE COSTS AS OF NOW. THE LETTERS OF INTENT DO AS THEY'RE STATED TO DO, GET A PRELIMINARY AGREEMENT BETWEEN TWO PARTIES WITH WHICH TO FURTHER ON AFTER THE -- WHEN THE TIME IS NECESSARY TO FORMALIZE THAT AGREEMENT. WITH REGARDS TO THE NUMBER OF SPACES, THE OWNER OF RISING SUN HAS BEEN VERY HELPFUL WITH US. HE IS NOT A PARKING SPECIALIST. THE GENTLEMAN WE'VE HIRED FROM PARKING PLANNERS IS A PARKING SPECIALIST. OUR REPAVING AND OUR MAINTENANCE OF THE PARKING WILL ALLOW FOR THE PARKING THAT WE HAVE ASKED FOR. WE HAVE NEVER EVER STATED THAT WE WOULD LIKE -- THAT WE WOULD GRANT A RESTRICTIVE COVENANT. WHAT WE STARTED THAT WAS THAT WE WERENT OPPOSED TO THE CONDITIONS THE NEIGHBORHOOD SET FORTH. FURTHER, WITH REGARDS TO ANY MUSIC, WHICH HAS BEEN BLOWN WAY OUT OF PROPORTION, THE ORIGINAL INTENT BY THE PRINCIPALS IN THIS PROJECT WAS TO HAVE A VERY CALM, LOW KEY ICE HOUSE FOR THE NEIGHBORHOOD TO ENJOY. AND IF THERE WAS A BAND, GREAT. THIS WAS A LOCALLY GROWN, HOMEGROWN AUSTIN PRODUCT. IT WAS NOT MEANT TO BE MALICIOUS, IT WAS NOT MEANT TO TAKE NEARLY AS MUCH TIME BEFORE THE COUNCIL AS IT HAS DONE. THIS WAS MEANT TO BE A VERY SMALL PART OF THE PRESENTATION AND AT ZAPCO IT WAS

MISREPRESENTED. WE STAND BY THAT. IT WAS NOT INTENDED TO BE THAT WAY. AND FURTHER, WE WOULD NEVER EVER HAVE OUR DOORS AND WINDOWS OPEN TO TRY TO ENCOURAGE -- TO ALLOW THE POLLUTION OF NOISE INTO THE BOULDIN OR ZILKER NEIGHBORHOODS. I'M APPALLED THAT WE WOULD HAVE THAT PRESENTED BEFORE US TODAY. I'LL LET BOBBY FINISH UP. THANK YOU.

COULD I HAVE THE OVERHEAD, PLEASE? THERE TO THE LEFT OR WHERE THE ARROW IS POINTED THERE, WE OWN THAT LAND AND WE'RE DOING A 30-MILLION-DOLLAR DEVELOPMENT OF CONDOS THERE. SO WE ARE RESIDENTS IN THE NEIGHBORHOOD. [BUZZER SOUNDS] OUR REQUEST IS REASONABLE. WE'VE MET THE NEIGHBORHOOD ASSOCIATION ON NUMEROUS OCCASIONS. WE ARE BECOMING PART OF THE NEIGHBORHOOD. WE'RE LEASING THIS PROPERTY BECAUSE WE ARE BECOMING PART OF THE NEIGHBORHOOD. WE CLOSED IN OUR LIVE MUSIC AREA COMPLETELY BECAUSE OF THE REQUEST OF THE NEIGHBORHOOD ASSOCIATION AND WE ARE REALLY NOT A LIVE MUSIC VENUE. WE WANT TO AVOID INSTALL AGRICULTURE KITCHEN AND COMPETE WITH THE EXISTING KITCHENS THERE. I'LL CLOSE WITH THE FACT THAT THE NEIGHBORHOOD AND OUR USE OF THE PROPERTY ALONG WITH IT WILL -- MY COLLEAGUE HAS JUST SAID WE'D OFFER A CONDITIONAL OVERLAY THAT DID AWAY WITH ANY FORM OF LIVE MUSIC OUTSIDE. SO WE REQUEST YOUR SUPPORT IN THIS ISSUE.

Mayor Wynn: THANK YOU. [ONE MOMENT, PLEASE, FOR CHANGE IN CAPTIONERS] >>

Mayor Wynn: ALL RIGHT. AND THEN MS. GLASGO, HELP ME, ONE OF THE ISSUES OR A COMMON THEME OF SOME OF THE CONCERNS OF NEIGHBORS IS ESSENTIALLY CHARACTERIZED AS PROTECTIONS AFTER ZONING. THAT IS, YOU KNOW, THE NUMBER OF THINGS THAT -- THAT COULD OCCUR, EITHER, YOU KNOW, WITH THIS OPERATOR OR WITH A FUTURE OPERATOR, WITH A DIFFERENT OWNER, WITH A DIFFERENT BUSINESS EVEN. CAN YOU ADDRESS THAT IN SUMMARY FASHION?

Glasgo: WELL, IF YOU GRANT THE ZONING TONIGHT, FIRST OF ALL THE ZONING ITSELF OBVIOUSLY ALLOWS THIS USE. BUT BECAUSE IT'S CONSIDERED A COCKTAIL LOUNGE OR A BAR BECAUSE IT WILL BE SERVING ALCOHOL, THE SITE PLAN WILL BE REQUIRED TO GO TO THE PLANNING COMMISSION FOR APPROVAL AND THAT CAN BE APPEALED TO THE CITY COUNCIL BY ANY PARTY. SO IF COMMISSION DENIES IT, THE AGGRIEVED PARTY CAN APPEAL TO COUNCIL. IT'S NOT LIKE ANY OTHER PROJECT, A COCKTAIL LOUNGE REQUIRES A CUP AFTER YOU GRANT THE ZONING. TYPICALLY FOR CONDITIONAL USE PERMITS, SITE PLAN WHAT THE COMMISSION LOOKS AT, THEY HAVE SOME CRITERIA THAT REQUIRE THE ISSUES REGARDING NOISE, PARKING, ALL OF THE ISSUES THAT THE

RESIDENTS HAVE RAISED, THE APPLICANT WOULD HAVE TO DEMONSTRATE HOW ARE THEY GOING TO MITIGATE ALL OF THOSE CONCERNS THROUGH THE CONDITIONAL USE PERM. IT'S A DISCRETIONARY APPROVAL OF THE USE, SO THIS IS REALLY STEP 1 OF THIS ZONING CHANGE, OF THIS PARTICULAR USE, GRANTING IT DOES NOT GUARANTEE THAT THEY CAN -- THEY CANNOT GO TOMORROW AND OPEN UP OUR -- THEY STILL HAVE TO OPEN UP ANOTHER HOOP OF HAVING TO GO BACK TO THE PLANNING COMMISSION FOR THE SITE PLAN TO BE APPROVED WHICH CAN BE APPEALED TO YOU.

Mayor Wynn: THANK YOU, MS. GLASGO. FURTHER QUESTIONS OF STAFF? OR OF THE -- OF THE OWNER, APPLICANT, AGENT OR NEIGHBORS? COUNCILMEMBER KIM?

I HAVE A QUESTION FOR STAFF. THE APPLICANT SUGGESTED A CONDITIONAL OVERLAY BUT MY UNDERSTANDING IS THAT WE COULD EXPAND LIVE OUTDOOR MUSIC WITH A CONDITIONAL OVERLAY, THAT WOULD HAVE TO BE A RESTRICTIVE COVENANT WITH THE APPROVAL OF THE OWNER, SRK IS THAT.

THAT IS CORRECT. THE CONDITIONAL OVERLAY, I THINK THE APPLICANT DOES NOT UNDERSTAND THAT, FOR HIS BENEFIT I WILL SAY FOR THE RECORD A CONDITIONAL OVERLAY LOOKS AT THOSE ELEMENTS THAT ARE ALREADY IN THE CODE, YOU ARE RESTRICTING THEM. FOR EXAMPLE IF YOUR HEIGHT IS 60 FEET, THEN YOUR CONDITIONAL OVERLAY CAN REDUCE THAT TO 40 FEET. IF YOU HAVE A SETBACK ALREADY IN THE CODE, YOU CAN REDUCE THAT SETBACK. A CLAY SERVES AS A TOOL -- A CONDITIONAL OVERLAY SERVES AS A TOOL TO RESTRICT WHAT IS ALREADY CALLED OUT IN THE CODE. ELEMENTS LIKE THE COLOR OF A HOUSE OR PROHIBITING CERTAIN ASPECTS LIKE LIVE MUSIC. THAT WOULD HAVE TO OCCUR IN THE RESTRICTIVE COVENANT. BECAUSE IT'S NOT A -- NOT AN ITEM THAT IS REGULATED IN THE CODE.

Kim: SO THE AGENT HERE TODAY IS REPRESENTING A TENANT NOT THE OWNER; IS THAT CORRECT?

[INDISCERNIBLE] ZONING CHALLENGE, THE AGENT IS THE ACTUAL OWNER OF THE PROPERTY. I'M HERE ON BEHALF OF THE TENANTS AS WELL AS THE OWNER ONLY BECAUSE THE OWNER OWNS THE PROPERTY. HAD IT NOT BEEN FOR THE RELATIONSHIP OF THE OWNER AND THE TENANT, THIS ISSUE WOULD NOT HAVE COME UP. IN FACT I -- ETHICALLY I ACTUALLY WILL HAVE A DUAL REPRESENTATION IN THIS PARTICULAR MATTER THOUGH IN -- IN THIS PARTICULAR MATTER I REPRESENT BOTH OF THEM BECAUSE WE ARE HERE ON THE OWNER'S BEHALF.

Kim: OKAY. SO FOR STAFF THEN, IF THE CURRENT OWNER, IF LET'S SAY THE PROPOSED TENANT DECIDES TO HAVE LIVE MUSIC INDOORS LIKE THEY ARE SAYING, THAT CURRENT -- THE OWN OWNER COULD CHANGE THE TENANT AND ALLOW -- WITHOUT THE RESTRICTIVE COVENANT ALLOW MUSIC OUTDOORS IF WE GRANT CS 1 ZONING OR IF WE DON'T THEY CAN HAVE MUSIC OUTDOORS, RIGHT?

Glasgo: WELL, THIS IS JUST STEP ONE OF THE ZONING. THIS ZONING CHANGE IN ITSELF, IF IT WERE GRANTED, WOULD NOT ALLOW THIS PARTICULAR USE TO OCCUR UNTIL STEP 2 WHICH REQUIRES A CONDITIONAL USE PERMIT TO BE APPROVED BY THE COMMISSION. THE COMMISSION WOULD LOOK AT ALL OF THOSE ASPECTS, IF THEY CHOOSE TO APPROVE THOSE SITE PLAN, THEY CAN PUT THAT RESTRICTIONS ON THE PLAN WITH REGARD TO OUTDOOR SEATING. STEP 1 IS TO OBTAIN THE ZONING. AFTER THEY GET THE ZONING, THEY HAVE TO GO BACK, FILE A SITE PLAN THAT HAS TO GO TO THE COMMISSION THAT DEMONSTRATE THE BUILDING LOCATION, PARKING, ADDRESS NOISE, OUTDOOR SEATING, OBVIOUSLY THAT'S AN ISSUE THAT'S GOING TO OCCUR. SO THINK OF STEP 2 BEING A SIMILAR DISCUSSION OF WHAT YOU ARE HAVING TODAY SHOULD THAT MOVE FORWARD. GET TO DISCUSS IN MORE DETAIL HOW THEY ARE GOING TO MAYBE GET AT THOSE ISSUES.

ALL RIGHT.

Kim: THANKS, ALTHOUGH I WOULD NOT LIKE TO SEE ANY OUTDOOR LIVE MUSIC AT THIS PROPERTY. BUT I GUESS THEY COULD DO IT WITH THE CURRENT ZONING ANYWAY. BUT MY UNDERSTANDING IS BECAUSE ALCOHOL IS IMPORTANT FOR SALES AND ANY KIND OF I GUESS LIVE MUSIC VENUE LIKE A BAR, THAT'S WHY THEY ARE ASKING FOR THE CS 1 ZONING FIRST, THEN THEY WILL GO FORWARD WITH THE SITE PLAN I GUESS THE REQUEST TO ALLOW THE MUSIC.

CORRECT.

INDOORS OR OUTDOORS.

Glasgo: CORRECT. I WOULD LIKE TO ADD UNDER THE EXISTING ZONING, THEY COULD HAVE A RESTAURANTS AND THE RESTAURANT COULD HAVE OUTDOOR SEATING, YOU KNOW, A RESTAURANT THAT'S -- THAT CAN SERVE ALCOHOL WITH FOOD, BUT DOES NOT REQUIRE A CONDITIONAL USE PERMIT. TODAY IF THEY WERE TO HAVE A RESTAURANT WITH OUTDOOR SEATING THAT COULD OCCUR WITHOUT THE ZONING.

MY UNDERSTANDING IS THAT THEY DON'T HAVE ENOUGH SPACE TO HAVE A FULL SERVICE KITCHEN THAT'S WHY THEY ARE USING IT AS A PREP SERVICE IN THE AREA TO PROVIDE THE FOOD.

THAT'S NOT ENTIRELY CORRECT. THE SPACE IS THERE. THE DESIRE TO NOT HAVE A FULL KITCHEN IS FROM A COST BASIS WITH REGARDS TO THE COMPETITORS IN THE IMMEDIATE AREA AS OPPOSED TO A SQUARE FOOTAGE BASIS. THE SIX RESTAURANTS WITHIN 600 FEET, FIVE OF THEM WITHIN 300 FEET ARE THE MAIN CONCERN AS TO WHY WE ARE SEEKING ZONING CHANGE. THE DIFFERENCE BETWEEN A PREP KITCHEN AND A FULL KITCHEN IS HUNDREDS OF THOUSANDS OF DOLLARS, REALISTICALLY, IT'S \$200,000 TO HAVE A FULL KITCHEN THAT WOULD COMPLY WITH CITY STANDARDS. WHEREAS A PREP KITCHEN IS MUCH LESS EXPENSIVE, ALLOWS THE ESTABLISHMENT TO SUCCEED IN HAVING MUCH LONGER LIFE EXPECTANCY IF THEY DON'T HAVE SUCH A LARGE ECONOMIC HURDLE TO OVERCOME ON THE FRONT END. ONE TANGENT REGARDLESS OF REGARDLESS OF THE NEIGHBORHOOD'S OBJECTION OF OUR PROPOSAL FOR THE LEASE, WE WILL NOT BE -- IN THE LEASE THERE WILL BE A PROVISION THAT WILL PROHIBIT LIVE OUTDOOR MUSIC REGARDLESS OF THE OUTCOME OF THIS EVENING. IT IS NOT PART OF OUR PLAN AND THAT NEEDS TO BE STATED AGAIN AND AGAIN.

Mayor Wynn: FURTHER QUESTIONS, COMMENTS? COUNCILMEMBER LEFFINGWELL?

Leffingwell: COULD I ASK MR. JACK TO COMMENT ON STEPS BEYOND ZONING SINCE IT'S CONDITIONAL USE PERMIT. FROM THE NEIGHBORHOOD'S PERSPECTIVE.

THANK YOU, COUNCILMEMBER. IT'S OUR UNDERSTANDING IF YOU GRANT THE CS 1 ZONING TONIGHT, THEN THERE IS A STEP THAT YOU HAVE TO PRESENT A SITE PLAN. BUT THAT SITE PLAN DOESN'T HAVE TO REPRESENT ANYTHING THAT THE APPLICANT HAS SHOWN TONIGHT. ALL THAT SITE PLAN HAS TO DO IS MEET THE ZONING REQUIREMENTS OF THE CS 1, AND ALL OF THE REGULATIONS OF THE CODE WITH REGARD TO PARKING AND SO FORTH. IT HAS NOTHING TO DO WITH THE SUBMITTING A SITE PLAN FOR A BAR THAT HAS OUTDOOR MUSIC. SO THE CUP PROCESS DOESN'T AFFORD US ANY ADDITIONAL PROTECTION FROM THIS ISSUE OF THE OUTDOOR MUSIC.

YES?

Leffingwell: SUBSEQUENT LESSEE OF THIS PROPERTY WITHOUT THE RESTRICTIVE COVENANT, WITH JUST THE CS 1 ZONING, COULD CHOOSE TO ESTABLISH AN OUTDOOR MUSIC VENUE AT ANY TIME; IS THAT CORRECT?

Glasgo: I'M SORRY, COULD YOU REPEAT THAT AGAIN.

Leffingwell: A SUBSEQUENT LESSEE AFTER THIS, WE KNOW THAT THE CURRENT LESSEE HAS -- OR LESSEE TO BE HAS PROMISED THAT THERE WILL BE NO OUTDOOR MUSIC. ASSUMING THAT'S CORRECT, SUPPOSE LATER ANOTHER LESSEE DECIDED TO DO IT. CAN HE DO IT.

Glasgo: IF YOU DO NOT HAVE A RESTRICTIVE COVENANT, YES. THE RESTRICTIVE COVENANT NEEDS TO BE REALLY SIGNED BY THE OWNER OF THE PROPERTY, NOT THE LESSEE. SO I NEED TO MAKE THAT CLEAR. THE LESSEE DOES NOT HAVE -- BECAUSE THE RESTRICTIVE COVENANT RUNS WITH THE LAND, SO REGARDLESS OF WHO OWNS IT, THAT RESTRICTION STAYS UNTIL IT IS REMOVED. BUT THE LESSEE IS NOT THE PERSON THAT GETS TO SIGN THAT COVENANT. IT NEED TO BE THE RECORD OWNER OF THE PROPERTY.

Mayor Wynn: COUNCILMEMBER DUNKERLY?

Dunkerly: MS. GLASGO, WITH THE CURRENT ZONING, THE CURRENT CS ZONING, YOU COULD HAVE A RESTAURANT WITH ALCOHOL SERVED AND OUTDOOR MUSIC UNDER THE CURRENT ZONING.

CORRECT. THERE'S NO -- CORRECT, YOU CAN DO THAT, PROVIDED OBVIOUSLY THEY COMPLY WITH ALL OF THE PARKING REQUIREMENTS OR THE OTHER REQUIREMENTS THAT WOULD BE REQUIRED FOR THAT TYPE OF LEASE.

IT'S JUST THE ELEMENT THAT WITHOUT FULL KITCHEN THAT THEY WOULD WANT THE CS 1 TO HAVE THE --

THE CS 1 --

AND THAT'S WHERE THE ZONING CHANGE IS REQUIRED.

YES, MA'AM, THAT'S CORRECT.

COUNCIL, ALSO JUST TO CLARIFY, REALLY THE MAIN DIFFERENCE BETWEEN A RESTAURANT THAT SERVES ALCOHOL WITH YOUR FOOD, VERSUS A BAR THAT REALLY YOUR PRIMARY REVENUE IS FROM THE ALCOHOL MAYBE, A FEW SNACKS HERE AND THERE, WHAT DETERMINES FOR US WHAT A PRINCIPAL USE IS, IS THE REVENUE THAT IS DERIVED FROM THE PRINTS PAL PRINCIPAL USE. OBVIOUSLY A RESTAURANT SELLS MORE FOOD, THEREFORE [INDISCERNIBLE] [MULTIPLE VOICES] THAT WOULD BE A DISTINCTION.

Dunkerly: THAT'S WHAT I WAS [INDISCERNIBLE] I HAVE NOT BEEN ABLE TO THINK OF ANY CO TYPE OF LANGUAGE THAT WE COULD PUT IN BECAUSE

SETBACKS WOULDN'T HELP US AND SO -- SO I WAS TRYING TO COME UP WITH SOMETHING THAT WOULD ENCOURAGE THEM TO KEEP THOSE RESTRICTIONS ON AS THEY GO THROUGH THE PROCESS, BUT --

Glasgo: ALL OF THE CONCERNS THAT THEY ARE OFFERING TO ADDRESS REQUIRE A RESTRICTIVE COVENANT WHICH AGAIN AS INDICATED WOULD HAVE TO BE SIGNED BY THE OPENER OF THE PROPERTY, NOT THE LESSEE.

Mayor Wynn: COUNCILMEMBER MCCRACKEN?

McCracken: THIS MAY HAVE BEEN ASKED ALREADY, BUT IT'S THAT TIME OF NIGHT WHERE -- I'LL ASK IT AGAIN. I HEARD A QUESTION EARLIER, A STATEMENT THAT UNDER THE EXISTING CS ZONING THAT IT COULD ACCOMMODATE AN ICE HOUSE, IN OTHER WORDS A -- A PLACE THAT I GUESS SERVES BEER BY THE BOTTLE. IS THAT ACCURATE?

Glasgo: BEER BY THE BOTTLE FOR ON SITE CONSUMPTION? YES.

Glasgo: NO. FOR ON SITE CONSUMPTION YOU NEED TO HAVE CS 1 ZONING BECAUSE TABC, TEXAS ALCOHOLIC BEVERAGE COMMISSION HAS TO GRANT YOU FOR ANY ON SITE CON ASSUMPTION, YOU HAVE GOT TO HAVE CS 1 ZONING. FOR OFF-SITE CONSUMPTION WHEN YOU BUY ALCOHOL OR BEER FROM A -- FROM A PLACE THAT SELLS -- A STORE THAT SELLS IT FROM A GROCERY STORE, IT'S FOR OFF-SITE, NO ON SITE. SO YOU NEED CS 1 ZONING FOR ON SITE CONSUMPTION. WHAT EXACTLY ARE YOU THINKING OF? WHAT PLACE SERVES --

McCracken: I DON'T KNOW. ONE OF THE SPEAKERS TONIGHT SAID THAT. I WROTE THAT DOWN. IT SOUNDED NOVEL TO ME --

Glasgo: OUR CODE REQUIRES FOR ANY ON-SITE CONSUMPTION YOU HAVE GOT TO HAVE CS 1 ZONING.

Alvarez: ISN'T THAT FOR RESTAURANT USE? FOR A RESTAURANT THEY CAN SELL ALCOHOL FOR ON SITE CONSUMPTION.

Glasgo: YES, A RESTAURANT, BUT I'M SPEAKING TO AN ICE HOUSE. YEAH, FOR A RESTAURANT OF COURSE YOU CAN SERVE, THE SAME QUESTION COUNCILMEMBER DUNKERLY ASKED, FOR A SIT-DOWN RESTAURANT CAN YOU SERVE BEER OR WINE WITH YOUR FOOD, YES, YOU CAN DO THAT.

McCracken: WITH CS.

WITH CS ZONING A RESTAURANT THAT SERVES FOOD AND BEER OR WINE.

McCracken: OKAY. WHATEVER WAS STATED EARLIER WAS INACCURATE.

JUST LIKE WHEN YOU GO TO WATERLOO ICE HOUSE, YOU CAN GET FOOD WITH BEER OR WINE, THAT'S ALLOWED UNDER CS ZONING. THE ONLY TIME OBVIOUSLY IF THEY SELL MORE ALCOHOL THAN THE FOOD, THEN WE WOULD REQUIRE THAT THEY HAVE CS 1 ZONING WHEN WE DO -- WE WOULD HAVE TO DO AN AUDIT TO DETERMINE THAT THEY WERE EXCEEDING THE SALE OF THE FOOD VERSUS ALCOHOLIC BEVERAGES, THEN CS 1 ZONING WOULD BE REQUIRED. I HOPE THAT HELPS.

McCracken: YES. THAT'S WHY YOU CAN'T LEAVE. YOU CAN'T LEAVE. YOU KEEP GIVING US NEW INFORMATION ALL OF THE TIME.

MR. GUERNSEY IS HERE TO DO THAT.

McCracken: GREG HAS A FEW THINGS, TOO.

Mayor Wynn: FURTHER QUESTIONS, COMMENTS? IF NOT I'LL ENTERTAIN A MOTION ON ITEM Z-21. COUNCILMEMBER LEFFINGWELL?

Leffingwell: I'M GOING TO MOVE THE ZONING AND PLATTING COMMISSION RECOMMENDATION TO DENY THE CS 1 ZONING. AND CLOSE THE PUBLIC HEARING.

Mayor Wynn: MOTION MADE BY COUNCILMEMBER LEFFINGWELL TO CLOSE THE PUBLIC HEARING ON ITEM Z-21 AND TO APPROVE THE ZONING AND PLATTING COMMISSION RECOMMENDATION, WHICH IS TO DENY CS 1 ZONING. SECONDED BY COUNCILMEMBER KIM. FURTHER COMMENTS? COUNCILMEMBER ALVAREZ?

Alvarez: THANK, MAYOR. I THINK I'M GOING TO SUPPORT THE -- THE MOTION. OBVIOUSLY I THINK THAT -- THAT THERE'S A BETTER COMMERCIAL USES FOR THAT PROPERTY THAN MAYBE AUTO REPAIR. BUT I THINK THAT I WOULD LIKE TO HAVE SOME ASSURANCE ON THE -- ON THE OUTDOOR ENTERTAINMENT ISSUE. AND I DON'T KNOW IF -- I DON'T KNOW IF THERE'S AN ABILITY OF MAKING HEAD WAY ON THAT ISSUE. BECAUSE I DON'T THINK THERE WILL BE A SECOND READING IF -- OF -- IF THIS MOTION PASSES. BUT IT SEEMS LIKE THAT WOULD BE A WAY THAT -- TO ARRIVE AT A SOLUTION HERE. BUT I THINK BARRING THAT I WOULDN'T FEEL COMFORTABLE SUPPORTING THIS.

Mayor Wynn: COUNCILMEMBER KIM?

Kim: I HAVE A QUESTION FOR MS. GLASGO. IF WE PASS THE MOTION TO DENY THE REQUEST FOR CHANGE OF ZONING, THEY CAN'T COME BACK FOR A CHANGE FOR 18 MONTHS?

Glasgo: THAT'S CORRECT, FOR 18 MONTHS SIMPLY BECAUSE THE PLANNING COMMISSION RECOMMENDED DENIAL AND YOU RECOMMENDED DENIAL. THEY CANNOT SEEK THE SAME ZONING OR HIGHER FOR 18 MONTHS.

Kim: WHAT IF THEY WERE TO COME BACK WITH CS 1 WITH A RESTRICTIVE COVENANT TO BAN LIVE MUSIC.

THEY STILL CAN'T. THAT'S THE SAME ZONING, CS 1. A COVENANT IS JUST A TOOL FOR RESTRICTIONS. THE PENALTY IS JUST TO LET PEOPLE --

Kim: CAN YOU SEEK DIRECTION FROM THE COUNCIL THEY COULD BRING IT BACK BEFORE THEN IF THEY --

YOU WOULD HAVE TO DIRECT STAFF TO INITIATE THE ZONING AS OPPOSED TO THE APPLICANT. IF WE ARE THE APPLICANT, IF YOU THE CITY IS THE APPLICANT, AS OPPOSED TO THEM BEING THE APPLICANT, THEN YOU ARE BASICALLY MOVING -- EXCUSING YOURSELF ON HAVING TO WAIT.

Kim: OKAY.

Mayor Wynn: COUNCILMEMBER DUNKERLY?

Dunkerly: I HAVE A SUGGESTION. IF I COULD PROPOSE A SUBSTITUTE MOTION TO DELAY THIS OR TO POSTPONE THIS ACTION UNTIL JANUARY. AND HAVE THE LESSORS GO BACK TO THE OWNER AND SEE IF THEY CAN'T ONE MORE TIME GET A RESTRICTIVE COVENANT. SO THAT YOU ARE NOT WAITING FOR 18 MONTHS TO DO SOMETHING. IF YOU ALL WOULD CONSIDER A POSTPONEMENT WITH THAT DIRECTION, WE WOULD CONSIDER IT IN JANUARY. IF YOU ARE ABLE TO DO THAT, IT BRINGS ANOTHER SET OF CIRCUMSTANCES AND WE COULD CONSIDER IT ON ITS MERITS AT THAT TIME. BUT WITHOUT THAT RESTRICTIVE COVENANT, I THINK THE NEIGHBORHOOD REALLY DOESN'T HAVE ANY PROTECTION. SO I WOULD MAKE HOPEFULLY EITHER A SUBSTITUTE MOTION FOR US TO POSTPONE THIS FOR -- UNTIL JANUARY, EITHER 12th OR 26th.

Mayor Wynn: SUBSTITUTE MOTION PROPOSED BY COUNCILMEMBER DUNKERLY TO POSTPONE CASE Z-21 UNTIL JANUARY 26th. 26th --

I'LL SECOND THAT, MAYOR. [INAUDIBLE - NO MIC]

Mayor Wynn: SUBSTITUTE MOTION SECONDED BY COUNCILMEMBER ALVAREZ. FURTHER COMMENTS? COUNCILMEMBER LEFFINGWELL?

Leffingwell: I WILL SAY THAT IT WAS DESCRIBED TO ME THAT GETTING A RESTRICTIVE COVENANT FROM THIS PARTICULAR OWNER WOULD BE OFF THE TABLE TASK. SO PERHAPS THE APPLICANT WOULD LIKE TO COMMENT ON THAT, WHETHER ONE MONTH DELAY WOULD BE OF ANY USE TO HIM.

THANK YOU. YES, WE WOULD APPRECIATE THE DELAY. THE -- THE IDEA THAT WE BROUGHT A LIVE MUSIC VENUE TO COUNCIL TO TALK ABOUT, CERTAINLY WE COULD HAVE DONE THIS WITHOUT SAYING LIVE MUSIC VENUE, COULD HAVE JUST BEEN A BAR OR A PUB WHICH IS MORE LIKELY WHAT IT WILL BECOME. BUT THE \$30 MILLION INVESTMENT NEXT DOOR, MAYBE WE WILL COME BACK AND LOOK AT DOING A RESTAURANT, TOO AND GOING AHEAD AND GETTING THAT DONE. BUT WE CERTAINLY APPRECIATE THE OFFER AND WITHOUT IT BEING SAID, WE WOULD -- WE MIGHT HAVE SOME CHANGE IN THERE. AND I KNOW WE APPRECIATE IT, SO THANK YOU.

JUST TO CONFIRM AGAIN, MS. GLASGO, IF THE -- IF THE APPLICANTS WERE TO ULTIMATELY DECIDE TO DO A RESTAURANT ON THAT PROPERTY, THEY LIKELY WOULDN'T NEED TO BE A ZONING CASE AT ALL, CORRECT? IT'S ALREADY ZONED CS, THEY COULD ADJUST THEIR PLANS IF THEY CAN'T PURSUE A RESTRICTIVE COVENANT WITH THE CURRENT PROPERTY OWNER.

THAT'S CORRECT.

SUBSTITUTE MOTION AND SECOND ON THE TABLE. COUNCILMEMBER MCCracken?

McCracken: I WILL SAY THAT WHEN IT COMES BACK, I THINK IT WOULD BE IMPORTANT THAT IT BE A LITTLE MORE PRETHOUGHT THAN SIMPLY THAT AS WELL. BECAUSE LIKE I DON'T HAVE ANY PROBLEM WITH THE ALCOHOL AND ACTUALLY KNOWING THE CALIBER OF BOB I'M VERY ENCOURAGED BY WHAT YOU ALL DO. I'M REAL TROUBLED BY THE ATTITUDE OF THE OWNER WHO IS NOT EVEN HERE THIS EVENING. AND ALSO WHEN WE WENT THROUGH THE TWO YEAR PROCESS OF COMMERCIAL DESIGN STANDARDS, ONE OF THE THINGS THAT WE IDENTIFIED WAS THAT SOUTH LAMAR WAS A, YOU KNOW, CORE REDEVELOPMENT CORRIDOR, SHOULD BE A FANTASTIC PLACE AND SO IT NEEDS TO BE DEVELOPING IN A MORE PEDESTRIAN FRIENDLY AREA INTO THE WIDER SIDEWALKS AND MORE OF THE VERTICAL MIXED USE. WHICH IS WHY IT WAS SPECIFICALLY IDENTIFIED IN THAT FASHION. SO IT'S -- AS WE PROCEED WITH THESE REDEVELOPMENT OPPORTUNITIES, IT'S GOING TO BE IMPORTANT THAT THE OWNER STEPS UP AND BECOMES A BETTER PARTNER. I'M NOT VERY PLEASED WITH HIS WILLINGNESS TO DATE TO -- TO BE A GOOD NEIGHBOR. I KNOW YOU ALL, WITH LEVERAGE YOU CAN

MAKE THAT HAPPEN. BUT BECAUSE OF THAT ATTITUDE I THINK HE'S GOING TO NEED TO GO ABOVE AND BEYOND WHERE WE ARE LOOKING FOR BECAUSE HE'S GOT SOME EXPLAINING TO DO TO THE COUNCIL BASED ON HIS ATTITUDE TODAY. BUT I'M -- THAT'S NOT A COMMENT ON YOU ALL, I KNOW THE CALIBER OF WORK THAT YOU DO AND I APPRECIATE IT.

FURTHER COMMENTS ON THE SUBSTITUTE MOTION? COUNCILMEMBER LEFFINGWELL?

Leffingwell: DOES THE SUBSTITUTE MOTION ALSO CLOSE THE PUBLIC HEARING?

Mayor Wynn: YES, IT DOES. [LAUGHTER]

Dunkerly: WHAT WAS THAT?

Mayor Wynn: SUBSTITUTE MOTION TO CLOSE THE PUBLIC HEARING, TO POSTPONE CASE Z-21 TO JANUARY 26th, 2006. FURTHER COMMENTS? HEARING NONE, ALL THOSE IN FAVOR PLEASE SAY AYE.

AYE.

Wynn: OPPOSED? MOTION PASSES ON A VOTE OF 7-0. THANK YOU ALL FOR YOUR PATIENCE. MS. GLASGO, YOUR LAST PUBLIC HEARING ZONING CASE.