

Pre-Council Work Session of the Mayor and City Council of the City of Abilene, Texas, to be held in the Basement Conference Room of City Hall on Thursday, **December 17, 1987**, at 8:30 a.m. to consider the following:

1. Discuss consent and/or regular agenda items.
2. Presentation/Status Report on Abilene/Taylor County Law Enforcement Center.

Regular Meeting of the Mayor and City Council of the City of Abilene, Texas, to be held in the Council Chambers of the City Hall on Thursday, **December 17, 1987**, at 9:00 a.m.

CITY COUNCIL: Mayor Dale Ferguson; Council - Gary D. McCaleb, Betty Ray, Walter E. Wheat, Tom Ceniglis, Welton Robinson and Harold Nixon.

1. **Call to Order.**
2. **INVOCATION:** Councilman Harold Nixon.
3. **Approval of Minutes:** Pre-Council Work Session and Regular City Council Meeting held December 3, 1987.
4. **Employee Service Awards:**
35 Years George H. McGee, Jr. Police Captain
25 Years Oscar A. Hoppe Treatment Plant Operator II

CONSENT AGENDA

All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

5. **Ordinances and Resolutions:**
 - a. Oral resolution authorizing renewal of Interlocal contract with Taylor County for Election Services.
 - b. Resolution authorizing agreement between Abilene Senior Citizens Advisory Committee and the Community Foundation for an endowment fund agreement and major project account agreement.
 - c. Consider on first reading - an ordinance amending Section 23-306.5.C(12) of the Zoning Ordinance, concerning Adult Entertainment Enterprises, and set a public hearing for January 14, 1988 at 9:00 a.m.

- d. Consider on first reading - an ordinance changing zoning district boundaries - **Z-4487** - Request from City of Abilene to rezone from GC (General Commercial) to RS-6 (Residential Single Family) district, located at 7702 Buffalo Gap Road, and set a public hearing for January 14, 1988 at 9:00 a.m.
- e. Consider on first reading an ordinance changing zoning district boundaries - **Z-4587** - Request from Robert N. Martin; agent, Eddie Boykin, to rezone from O (Office) to LC (Limited Commercial) district, located at 4741 Buffalo Gap Road, and set a public hearing for January 14, 1988 at 9:00 a.m.
- f. Consider on first reading an ordinance changing zoning district boundaries - **Z-4687** - Request from George Stewart to rezone from RS-6 (Residential Single Family) to RM-3 (Residential Multi-Family) district, located at 536 S. Mockingbird, and set a public hearing for January 14, 1988 at 9:00 a.m.
- g. Consider on first reading an ordinance amending Chapter 18, Traffic, of the Abilene Municipal Code, Section 18-301, Through Trucks Prohibited, and set a public hearing for January 14, 1988, at 9:00 a.m.
- h. Consider on first reading an ordinance creating Chapter 14, Swimming Pools and Spas, of the Abilene Municipal Code, and set a public hearing for January 14, 1988, at 9:00 a.m.
- i. Oral resolution to consider amendment to CDBG contract with Abilene Mental Health-Mental Retardation, Inc.

6. Award of Bid:

- a. 20" Ductile Iron pipe for Water Utilities Department, **Bid #219**.
- b. Additions and Alterations to Traffic Signal Maintenance Shop, **Bid #220**.

REGULAR AGENDA

7. Ordinances & Resolutions:

- a. Consider and act upon requests for additional time extensions for Adult Entertainment Enterprises.
- b. Resolution to consider contract with Abilene Economic Development Company, Inc.

8. Other Business:

- a. Pending and Contemplated Litigation (see Notice for Executive Session, Litigation for listing subjects).
- b. Appointment and Evaluation of Public Officials (see Notice for Executive Session, Personnel for listing subjects).

ADJOURN

EXECUTIVE SESSION

(Personnel)

The City Council may consider the appointment, employment, reassignment, duties, discipline, or dismissal of the City Manager, City Attorney, Municipal Court Judge, City Secretary, and the City Board and Commission Members. A complete list of the City Boards and Commissions are on file in the City Secretary's Office.

After discussion of the appointment and evaluation of the Council Appointees and the Board and Commission members, in executive session, any final action or vote taken will be in public.

(Litigation)

The City Council may consider pending and contemplated litigation subjects. The following subjects may be discussed:

1. Stanley V. Taylor v. City
2. Velasquez v. City
3. Smithwick-Wheeler v. City
4. Maria Slaughter v. City
5. Leonard Glenn Taylor v. City
6. James Hudson & AB Airlines v. City
7. State of Texas v. City
8. Ramsey v. City
9. Michael Mellen v. City
10. Patricia Partin v. City
11. Williams & Chambers v. City
12. Video Vue & American Video
13. McNutt v. City
14. Welch v. City
15. J. C. Haines v. City
16. City of Abilene v. Northeastern Software
17. Abilene Zoological Society v. Pinkerton's
18. Guadalupe Diaz v. City
19. Alicia Garcia v. City
20. Virginia Martin v. City
21. Frieda Hintz v. City
22. WTU Rate Request
23. City v. Board of Adjustment

Litigation is, by its nature, an on-going process, and questions may arise as to trial tactics which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation subjects set out above. After discussion of the pending and contemplated litigation subjects, in executive session, any final action, or vote taken, will be in public.

HC 9/18/87

**PRE-COUNCIL WORK SESSION, THURSDAY
December 17, 1987, 8:30 A.M.**

**CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
BASEMENT CONFERENCE ROOM, CITY HALL**

The City Council of the City of Abilene, Texas, met in a Pre-Council Work Session on December 17, 1987, at 8:30 A.M. in the Basement Conference Room of City Hall. Mayor Dale E. Ferguson was present and presiding with Councilman Gary D. McCaleb, Councilwoman Betty Ray, Councilmen Walter E. Wheat, Tom Ceniglis, Melton Robinson, and Harold Nixon. Also present were City Manager Jim C. Blagg, Assistant City Managers Roy L. McDaniel and Rickey Childers, City Attorney Harvey Cargill, Jr., City Secretary Patricia Hancock and various members of the City staff.

The Council briefly discussed various consent and regular agenda items.

Dwain Pyburn, Chief of Police, gave a status report on the Abilene/Taylor County Law Enforcement Center. Construction work is currently fifty (50%) percent completed with a projected completion date of April, 1988.

Mayor Ferguson recessed the Council into executive session in accordance with State Law Article 5262-17, Section 2e, of the Open Meetings Act, to consider pending and contemplated litigation. The Council reconvened from executive session and reported no action taken.

Councilman Ceniglis requested that item 5a, resolution concerning agreements for the Senior Citizens Advisory Committee, be removed from the consent agenda so it may be fully discussed.

There being no further questions, the meeting was recessed until 9:00 a.m. for the regular Council Meeting.

**REGULAR CITY COUNCIL MEETING
December 17, 1987, 9:00 A.M.**

**CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
CITY COUNCIL CHAMBERS OF CITY HALL**

Mayor Ferguson reconvened the City Council of the City of Abilene, Texas, into Regular Session December 17, 1987, at 9:00 a.m. in the City Council Chambers of City Hall.

Invocation was given by Councilman Harold Nixon.

There being no corrections, additions, or deletions to the minutes of the Pre-Council Work Session and Regular City Council Meeting held December 3, 1987; the minutes stand approved as presented.

Mayor Ferguson presented Employee Service Awards to the following individuals for their tenure of service:

35 Years	George H. McGee, Jr.	Police Captain
25 Years	Oscar A. Hoppe	Treatment Plant Operator II

Councilman Robinson moved to approve the consent agenda items, being 5a through 5i, and 6a and 6b, as presented by the staff. Item 5b was removed from the consent agenda to be considered separately. The motion was seconded by Councilman Wheat and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon and Mayor Ferguson.
NAYS: None.

5. Ordinances and Resolutions:

a. Oral resolution authorizing renewal of Interlocal contract with Taylor County for Election Services.

b. Removed from consent Agenda to be considered separately.

c. Consider on first reading ~ an ordinance amending Section 23-306.5.C(12) of the Zoning Ordinance, concerning Adult Entertainment Enterprises, and set a public hearing for January 14, 1988 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

d. Consider on first reading ~ an appealed ordinance changing zoning district boundaries - **Z-4487** - Request from City of Abilene to rezone from GC (General Commercial) to RS-6 (Residential Single Family) district, located at 7702 Buffalo Gap Road, and set a public hearing for January 14, 1988 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

- e. Consider on first reading an appealed ordinance changing zoning district boundaries - **Z-4587** - Request from Robert N. Martin; agent, Eddie Boykin, to rezone from 0 (Office) to LC (Limited Commercial) district, located at 4741 Buffalo Gap Road, and set a public hearing for January 14, 1988 at 9:00 a.m.

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- f. Consider on first reading an ordinance changing zoning district boundaries - **Z-4687** - Request from George Stewart to rezone from RS-6 (Residential Single Family) to RM-3 (Residential Multi-Family) district, located at 536 S. Mockingbird, and set a public hearing for January 14, 1988 at 9:00 a.m.

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- g. Consider on first reading an ordinance amending Chapter 18, Traffic, of the Abilene Municipal Code, Section 18-301, Through Trucks Prohibited, and set a public hearing for January 14, 1988, at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 18, "MOTOR VEHICLES AND TRAFFIC", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY.

- h. Consider on first reading an ordinance creating Chapter 29.5, Swimming Pools and Spas, of the Abilene Municipal Code, and set a public hearing for January 14, 1988, at 9:00 a.m..

AN ORDINANCE CREATING CHAPTER 29.5, OF THE ABILENE MUNICIPAL CODE, SUCH ORDINANCE TO BE ENTITLED "SWIMMING POOLS AND SPAS", PROVIDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND NAMING AN EFFECTIVE DATE.

- i. Resolution to consider amendment to CDBG contract with Abilene Mental Health-Mental Retardation, Inc.

The Resolution is numbered 67-1987 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING A CONTRACT WITH THE ABILENE REGIONAL MENTAL HEALTH-MENTAL RETARDATION CENTER.

Award of Bid:

- a. 20" Ductile Iron pipe for Water Utilities Department, **Bid #219**. The bid was awarded to U. S. Pipe on a unit price basis.
- b. Additions and Alterations to Traffic Signal Maintenance Shop, **Bid #220**. The bid was awarded to Burl Nash Contractors of Abilene.

Mike Hall, Director of Community Services, briefed the Council on a Resolution authorizing agreement between Abilene Senior Citizens Advisory Committee and the Community Foundation for an endowment fund agreement and major project account agreement. The following individual was present and wished to speak in response to the request:

- Vida Wills, 1255 Matador Street, spoke in opposition to the item.

Councilman Ceniglis moved to table the request until a later date. The motion was seconded by Councilman Robinson and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

Harvey Cargill, City Attorney, briefed the Council on considering and acting upon six (6) requests from various Adult Entertainment Enterprises for additional amortization time or for locational exemptions. A copy of the information read by Mr. Cargill is titled "Exhibit A" which is attached and incorporated herewith as part of these minutes.

Roy McDaniel, Assistant City Manager, stated he has reviewed the information submitted by the applicants. In his opinion, none of the applicants have provided information showing a need for additional amortization. Written material provided to the Council by Mr. McDaniel documenting his analysis of each applicant's financial statement is titled "Exhibit B", attached and incorporated herewith as part of these minutes.

Lee Roy George, Director of Planning, stated he has reviewed the information submitted by the applicants. In his opinion, none of the applicants have provided sufficient information to convince him that there is no negative impact on surrounding property. Written material provided to the Council by Mr. George documenting his analysis of each applicant's request for additional time or locational exemption is titled "Exhibit C", attached and incorporated herewith as part of these minutes.

Additionally, a verbatim transcript of Mr. McDaniel's and Mr. George's verbal comments, as well as those of the applicants, is entitled "Exhibit D", attached and incorporated herewith as part of these minutes.

Mayor Ferguson asked if anyone was present from any of the clubs which would like to speak on their request, or provide any additional information to the Council concerning their request.

American Video: No one present.

Deja Vu: Ed Sartain, attorney representing Deja Vu Club, will not have financial statements until 12/31/87 from which to project a fair time frame in which the club will recoup its investment. He requested more time to submit additional financial data and tax returns to the City staff.

Mark Beebe, lessee of Deja Vu, requested a one year extension to allow him time to change the use of the building.

Silverado: David Nix, representing the Silverado Club. He is of the opinion that the club has clearly shown that it has not recouped its investment and will not for some time. If the club is forced to operate as a regular bar, it will take longer to recoup its investment. He asked for additional time of at least one year to recoup its investment.

Jack Bryant, representing The Chit Chat Club, Reflections, and The Chateau Club. He reported that the Chateau Club does not intend to proceed any further with the application for extension. His comments will pertain to only the Chit Chat and Reflections Clubs. In his opinion, neither of these clubs have recouped their investments. He specified at least a one year amortization period for the Reflections club to allow the landowners to make some other use of the property.

Turn The Page: Jimmy Shipp, owner of a legally-operated adult entertainment enterprise. He feels he would be cheated out of a living if the Council granted any locational exemptions or additional extensions of time.

Harvey Cargill, City Attorney, recommended, based on Mr. McDaniel's, Mr. George's, and comments made by the applicants, to approve Resolution A for each of the six (6) clubs which denies any additional amortization time or exemption from location.

Councilman Nixon moved to approve the Resolution which denies any additional amortization time or exemption from location for each of the six (6) clubs, as recommended by staff. The motion was seconded by Councilman Ceniglis and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.
NAYS: None.

The Resolutions are numbered and captioned as follows:

Resolution No. 68-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO AMERICAN VIDEO.

Resolution No. 69-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO DEJA VU CLUB.

Resolution No. 70-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO SILVERADO CLUB.

Resolution No. 71-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO CHIT CHAT CLUB.

Resolution No. 72-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO REFLECTIONS.

Resolution No. 73-1987

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DENYING ADDITIONAL TIME TO CHATEAU CLUB.

Mike Morrison, Housing and Community Development Administrator, briefed the Council on a Resolution to consider a contract with the Abilene Economic Development Company, Inc.

On November 19, 1987, the City's contract with the Abilene Economic Development Company, Inc. expired. City staff has subsequently negotiated a new contract with the AEDC Board which provides that the City administer the economic development programs on behalf of the AEDC. The contract also provides for an expansion of the programs offered by the AEDC. Existing City staff will maintain minimal operations until the Overall Economic Development Plan has been completed, which is anticipated in January, 1988. Final permanent staffing needs will be determined at that time. Funding is available through Community Development Block Grants. Staff recommends approval of the funding and the services contract.

Joe Lopez, President of AEDC, Inc., 2449 S. Willis, Suite 206, was present. He stated that a successful contract has been negotiated and approved by the AEDC Board. He is looking forward to a successful year working together with the staff.

Councilman Ceniglis moved approval of the resolution approving the contract with Abilene Economic Development Company, Inc. and the CDBG contract for funding, as recommended by staff. The motion was seconded by Councilman Robinson, and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.
NAYS: None.


The Resolution is numbered 74-1987 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING A CONTRACT FOR THE DISBURSEMENT OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND A CONTRACT FOR SERVICES, BOTH WITH THE ABILENE ECONOMIC DEVELOPMENT COMPANY, INC.

Mayor Ferguson recessed the Council into executive session in accordance with State law, Article 5262-17, Sections 2e and 2g of the Open Meetings Act, to consider pending and contemplated litigation and the appointment and evaluation of public officials.

The Council reconvened from executive session and reported no action taken.

There being no further business, the meeting was adjourned at 12:00 p.m.


Patricia Hancock
Patricia Hancock
City Secretary


Dale Ferguson
Date Ferguson
Mayor

HARVEY CARGILL, JR.:

Honorable Mayor and Council Members,

At this time six adult entertainment enterprises have requested additional amortization time. Mr. Roy McDaniel and Mr. Lee Roy George have reviewed the applications. After Mr. McDaniel and Mr. George have reported to the Council, I would suggest we allow the applicants a brief comment in regard to their applications, if the applicants wish to speak.

For applicants' information, the City Council has been furnished the following information:

1. Your original application and any additional information you supplied.
2. Copy of October 19 letter from Planning Department emphasizing you must fully describe your reason for additional time; must be filed by Friday, October 30, 1987.
3. Copy of November 6 letter stating that pasties coverage of female dancers fell within the definition of adult entertainment enterprise.
4. Copy of November 11 letter extending filing deadline till November 16 because some adult lounges believed that if the dancer wore pasties, they would not be considered adult entertainment enterprises. Some may not have filed, that would have been eligible to file, except for the interpretation confusion. We wanted all that were eligible to file.
5. Copy of November 25 letter asking for detailed information. Again reminding applicants to provide "all data he wishes considered in support of additional time."
6. Copy of December 9 letter notifying applicants that Council consider requests on December 17.
7. Additionally, the Council was given copies of adult entertainment ordinance in its entirety.

3-8

8. Council supplied resolutions setting out adult entertainment ordinance language specifically covering:

- (1) recoupment requirements
- (2) exemption requirements

As you can tell, the Mayor and Council have spent a great deal of time on your requests, and is prepared to thoughtfully evaluate your data.

This is not a public hearing. The only issue is the narrow question of whether the applicants are entitled to additional time to use their present locations as adult entertainment enterprises. The burden is on the applicants to show they are entitled to additional time.

The Council may allow additional time to amortize their investment if it finds the following:

1. The owner has made every effort to recoup his investment in his adult entertainment enterprise.
2. The owner will be unable to recoup his investment by January 1, 1988.
3. That all other applicable provisions of the ordinance will be observed.

In the cases of Deja Vu, Silverado, Chit Chat Club, Reflections, Chateau, adult lounges, if the Council does not grant additional amortization time, these clubs can still operate as bars and sell liquor at their present locations.

If these five clubs want female dancers, they can have them, but the dancers will have to have more coverage, as set out in the ordinance.

3-9

As to American Video, if they reduce their emphasis on sexual matters, they could continue to have video rental or sales at their location.

Additionally, the ordinance provides that an applicant can claim an exemption from the locational provision if the Council finds the following:

1. That the location of the adult entertainment enterprise will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare.
2. That the granting of the exemption will not violate the spirit or intent of the ordinance.
3. That the location will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight.
4. That the location of the adult entertainment enterprise will not be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration.
5. That all other applicable provisions of this ordinance will be observed.

If the Council finds these factors are satisfied, an exemption can be granted.

At this time, I would like for Mr. McDaniel to report to the Council on the six applicants.

ROY MCDANIEL - review

- (1) American Video
- (2) Deja Vu Club
- (3) Silverado
- (4) Chit Chat Club
- (5) Reflections
- (6) Chateau Club

3-10

00302

LEE ROY GEORGE - review

- (1) American Video
- (2) Deja Vu Club
- (3) Silverado
- (4) Chit Chat Club
- (5) Reflections
- (6) Chateau Club

The Council has before it Resolutions on each of these locations. Each Resolution sets out requirements to grant additional amortization time or to grant locational exemption.

Resolution A denies additional time because the applicant has not, in the Council's opinion, by a preponderance of the evidence, satisfied the ordinance so as to be given additional time.

Resolution B grants additional time to recoup their investment because, in the Council's opinion, the applicant has shown by preponderance of evidence that it has not recouped its investment.

Resolution C grants additional time to remain at their site, because, in the Council's opinion, the applicant has shown by preponderance of evidence that they should be exempt from the locational provisions.

Based on comments of Mr. George and Mr. McDaniel on:

- (1) American Video
- (2) Deja Vu Club
- (3) Silverado
- (4) Chit Chat Club
- (5) Reflections
- (6) Chateau Club

I recommend Resolution "A" be approved, and no additional amortization time be granted.

3-11

Now, Mr. Mayor, I suggest the applicants be allowed to comment briefly on their applications. After comments of applicants the Council can then ask any questions they may wish.

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3-12

00304

M E M O R A N D U M

December 10, 1987

TO: Harvey Cargill, Jr., City Attorney
FROM: Roy L. McDaniel, Assistant City Manager
SUBJECT: Adult Entertainment--Analysis of Financial Statements

As you requested, I have reviewed the submitted material in an effort to determine the monetary investment of each business, and secondly, to determine if the applicants have recovered their monetary investment. None of the applications specifically stated their investment. Specific comments are:

1. American Video, 1001 Pine--Applicant William L. Wilkins is requesting a ten (10) month extension. One document was submitted showing nine (9) months of the year ending September 30, 1987. The nine (9) months indicate sales of \$11,485.78, and cost of goods sold at \$3,568.24, leaving a gross profit of \$7,917.54, and operational expenses of \$10,220.30. Therefore, there is a net loss for the nine (9) months of \$2,302.76. There is no indication of what the investment might be.
2. Deja Vu Club, 3517 North 6th Street--Applicants are Evelyn L. Huskin and Sylvester Neal requesting a two (2) year extension to recover investment. This property is sub-leased from Mark L. and Charles L. Beebe. Applicant submitted three (3) separate lists of expenses totaling \$112,184.08 which I presume they are wanting to be considered collectively as "start-up investment". One expense item of particular note is described "dancers quadruplex," at a cost of \$45,362, which I presume is a local residence. Another line item listed is an \$8,500 loan. The documents indicate the business opened on October 1, 1987 with a one (1) year lease through September 30, 1988. No information was submitted showing any revenue.
3. Silverado Club, 4001 North 1st Street--The applicant is Claude Parker. The applicant is not acknowledging being an adult entertainment enterprise; however, if they are, they request an exemption. Applicant does not specify length of extension. Three (3) documents were submitted pertaining to start-up costs. These total \$168,000; however, \$108,000 is gross lease cost for three (3) years. Four (4) months profit and loss statements were submitted showing a loss of \$2,730 for four (4) months. It is not clear what the applicant is claiming as his investment and no information as to when it might be recovered.

4. The Chit-Chat Club, 901 Pine--Applicants are Mr. E.E. Whitworth and wife Elsa Whitworth requesting a one (1) year extension. Documents indicate they have been in business since 1974. The property was purchased in September, 1978, and paid off in December, 1986. Documents indicate a cost of \$43,000 and improvements of \$15,000. Summary statements prepared by Abilene Bookkeeping Service for calendar years 1985-1986 were provided. These statements indicate net income for 1985 of \$38,437.64 and \$49,950.66 for 1986. Portions of tax records going back to 1982 were provided. The 1986 Internal Revenue Statement 1040 indicates a business income of \$15,985.43. The IRS Form 1040 for 1985 reflects \$4,194.21 as business income. The total business income as shown on Form 1040 the the past five (5) years is \$59,889. It appears that the applicants could have recovered their investment.

5. Reflections, 4109 South Danville--The applicant is Mr. Ronald J. Spears. This is a corporation doing business as Reflections. The documents indicate that the business opened on March 14, 1985. There is a Sellers Statement showing a cost of \$200,000 and improvements of \$141,291.49, for a total of \$341,291.49. The 1985 corporate tax return indicated a loss of \$3,102.20. Corporate officers listed were Ronald J. Spears, 100% owner; and Christine Wagner, officer but no ownership. A portion of the expenses for 1985 were compensation to Mr. Spears of \$9,700 and compensation to Ms. Wagner of \$22,662. The year 1986 indicates taxable income on a corporate return of \$26,467.94. Corporate officers for 1986 show Ronald J. Spears, 60% owner, Darryl Propp as 33 1/3% owner, and Jim Davis as 6 2/3% owner. Compensation to officers in 1986 was \$4,516.58 to Mr. Spears. Documents also show the business finished 1986 with retained earnings of \$26,124.96. Applicant did not state specifically what his investment is or when he expects to recover it.

6. The Chateau Club, 2034 Pine Street--Applicants are Mr. E.E. Whitworth and wife Elsa Whitworth requesting a one (1) year extension. Documents indicate the business has been in existence more than fifteen (15) years; however, a fire destroyed their building in September, 1984, and they rebuilt and reopened in March of 1985 at an indicated cost of \$15,000. No revenue and expense statements were submitted.

None of the applicants have submitted information required in Ordinance 23-306.5(c) to satisfy the requirements for additional amortization time.



RLMCD/dp
Admin.adult.doc

cc: Jim C. Blagg, City Manager

Exhibit "C"
to the City Council Minutes
December 17, 1987

M E M O R A N D U M

December 11, 1987

TO: Jim C. Blagg, City Manager

FROM: Lee Roy George, Director of Planning and Development

SUBJECT: Adult Entertainment Enterprises

In reviewing Harvey's memorandum of December 9, 1987, to the City Council concerning requests for additional amortization time for adult entertainment facilities, it appears that six (6) such businesses have requested additional time. Please consider the following comments.

The City Council may grant additional time for adult entertainment enterprises to amortize their uses if it finds the following:

- (1) The owner has made every effort to recoup his investment in an adult entertainment enterprise.
- (2) The owner will be unable to recoup his investment in an adult entertainment enterprise by the end of the amortization period (January 1, 1988).
- (3) That all other applicable provisions of the ordinance will be observed.

The City Council may grant additional time for a period not to exceed one (1) year.

The City Council may also grant exemption from the locational requirements if it makes the following findings:

- (1) That the location of the adult entertainment enterprise will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- (2) That the granting of the exemption will not violate the spirit and intent of the ordinance;
- (3) That the location of the adult entertainment enterprise will not downgrade property values or quality of life in the adjacent areas or encourage the development of urban blight;
- (4) That the location of an adult entertainment enterprise will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and,
- (5) That all other applicable provisions of the ordinance will be observed.

Jim C. Blagg, City Manager
Adult Entertainment Enterprises
December 11, 1987
Page 2

I would like to offer the following comments with regard to the applications for extension of time:

American Video

The applicant has requested an extension of time and Roy McDaniel will address this particular issue. However, if the application is also for an exemption from locational requirements, then enough information has not been submitted by the applicant for me to evaluate the exemption and in my opinion they have not satisfied the ordinance requirements.

In preparing for adoption of the adult entertainment ordinance, staff reviewed a number of studies done in other cities with regard to negative impacts on surrounding properties. In every case, negative impact was shown on surrounding properties being adjacent to adult entertainment facilities. At any rate, sufficient information has not been submitted to convince me that there is no negative impact on surrounding property.

American Video and the Chit Chat Club are within 300 feet of one another which also makes them questionable regarding the ordinance spacing requirement.

Deja Vu Club

The applicant is requesting an additional two (2) year amortization period and Roy McDaniel will address this question. However, if the application is also for an exemption from locational requirements, then enough information has not been submitted by the applicant for me to evaluate the exemption and in my opinion they have not satisfied the ordinance requirements.

Silverado Club

The applicant has requested that the City Council grant him a locational exemption from the requirements of Section 23-306.4 and 23-306.5 C 12 (A). The applicant has also requested a one (1) year extension of time from Section 23-306.5 C-10 (F) 1, 2 A, B, C, and D. The applicant has not submitted sufficient information to show no negative impact on surrounding property and therefore has not met the ordinance requirements in my opinion. I have reviewed numerous studies done in other cities showing negative impacts on surrounding residential and commercial properties within certain distances of adult entertainment facilities. As to the additional amortization time, Roy McDaniel will address this question.

Jim C. Blagg, City Manager
Adult Entertainment Enterprises
December 11, 1987
Page 3

Chateau Club

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Chit Chat Club

The applicant is requesting an additional two (2) year amortization period and Roy McDaniel will address this question. However, if the application is also for an exemption from locational requirements, then enough information has not been submitted by the applicant for me to evaluate the exemption and in my opinion they have not satisfied the ordinance requirements.

The Chit Chat Club and American Video are within 300 feet of one another which also makes them questionable regarding the ordinance spacing requirement.

Reflections

The applicant is requesting an additional two (2) year amortization period and Roy McDaniel will address this question. However, if the application is also for an exemption from locational requirements, then enough information has not been submitted by the applicant for me to evaluate the exemption and in my opinion they have not satisfied the ordinance requirements.

If you have questions or require additional information, please let me know.


DRG:js

cc: Rickey Childers, Assistant City Manager
Harvey Cargill, Assistant City Manager

TRANSCRIPT OF DISCUSSION
REGARDING ADULT ENTERTAINMENT ENTERPRISES

December 17, 1988

Roy McDaniel: Thank you, Mr. Mayor. I am Roy McDaniel. I have reviewed the information submitted to us pertaining to the applicants' financial investment and their recovery period. In my opinion, none of the applicants submitted enough documentation or in its proper form for me to say they have not recovered their investment. I'll be glad to try to answer any questions you might have.

Mayor: Mr. McDaniel, have any of these adult lounges shown you that they have not recouped their investments.

McDaniel: No, sir.

Mayor: In other words, none of them presented information to you that would make you feel that they have not recouped their investment.

McDaniel: That's correct, Mayor.

Mayor: Does anyone have any further questions of Mr. Cargill or Mr. McDaniel, any of the Council. If not, thank you Mr. McDaniel.

Lee Roy George: Thank you, Mr. Mayor and members of the Council. I am Lee Roy George, Director of Planning. Mr. Cargill has articulated in his opening remarks that the Council may grant an exemption from the locational requirements for adult entertainment facilities if they find those five items. I have reviewed all of the information that has been submitted. In my opinion, there has been no information submitted that would negate a study that I have already alluded to in adoption of the ordinance that there is a negative impact on surrounding land uses. I have submitted this memorandum to Mr. Blagg; I think each of you have a copy of that. Basically what I am saying is that I have a number of studies that were alluded to when we actually adopted the ordinance, I think there were like 10 from such cities as Detroit, Austin, Minneapolis, studies that were done scientifically by real estate appraisers, by other sociologists and things like that, that there definitely is an impact on surrounding land uses being nearby these kind of facilities. No information in my opinion has been submitted to make me change my mind with regard to that. I'll be happy to answer any questions.

Mayor: May I ask you a question, please, Lee Roy? Have you received any information that would lead you to believe that any of these lounges have not, or any of these entertainment centers have not recouped their investments; have any of them submitted anything to you?

Lee Roy: Mr. Mayor, I did not look at the submittals with that in mind. My responsibility I think under the provisions of the ordinance, particularly the zoning ordinance, is to look at the locational criteria and implications with regard to negative impact on surrounding land uses. Mr. McDaniel addressed that and I did not look at the submittals with that in mind.

Mayor: Thank you Mr. George. At this time, is there anyone here from American Video who would like to speak on this? No one from American Video. Is there anyone representing Deja Vu Club who wishes to speak?

Ed Sartain: Mayor and members of the Council, I'm Ed Sartain, a lawyer in Abilene representing the Deja Vu Club. The Deja Vu Club has applied for an extension of time in which to amortize and recoup its investments, as it fell within the ordinance, which has not been determined. When the Deja Vu Club was applying or considering establishing a business, it consulted the members of the City Staff among others. It went through the State licensing procedure for an alcoholic beverage license. At no time was it led to believe by any of the City staff members that it would fall into the Adult Entertainment Enterprises ordinance. In fact, it was led to believe otherwise. The fact is, it opened October 23, we've submitted the affidavit of Sylvester Neal, and within two weeks, it was receiving correspondence indicating that it did come within the ordinance. At this time, the Deja Vu Club has submitted every account to the City for every dollar it spent in opening its business, \$111,000 something dollars, and it does not have financial statements and will not have until December 31, its own initial financial statements from which it could project a fair time frame in which to recoup its investments. With the understanding that when a club opens of this kind, traditionally it does real well at first and then it falls off and either it seeks its own level where it will be in business or it will go out of business. We don't have the information the City staff would require in order to project the exact time. In addition, the Deja Vu club's location is one which has a history of adult entertainment and in the affidavit of Sylvester Neal, the co-owner, he sets out that we've had no complaints from any neighbors that there is no indication that there will be any complaints. We're getting along well, now what this has to do with urban blight and its studies and so on, we're going to have to have more time in which to gather evidence in an urgent basis. The City gave us a little bit of an extension, the staff gave us until November 16 to get the data in. We've submitted an affidavit and we have submitted the financial statements. There were no tax returns because there were none applicable because the business hadn't been established except since October 23 of this year. We're asking for this extension of time of at least a year in which to determine what the ordinance is going to be, how, if at all, the Deja Vu Club falls within it, and we're asking for at least some time to submit more financial data and supporting tax returns to the City staff. Does anyone have any questions?

Mayor: Anyone have any questions?

McCauleb: Should we ask questions at this time or after they've all spoken?

Mayor: I think we ought to ask him at this time any questions pertaining to his club, don't you?

Cargill: I think that would be fine, go ahead and ask Mr. Sartain any questions you have about Deja Vu.

McCauleb: It seems you got into two or three issues, Mr. Sartain. As I understand it, there is one only issue at the present time that we're looking at, and that is, as our City Attorney stated, the narrow question of whether the applicants are entitled to additional time based upon the question of the ability to recoup the investment. What I hear you saying is, are you saying that it is not possible for you to present the kind of documentation that would show where you stand in the process of being able to recoup your investment or not?

Sartain: It is not possible, we don't have it at this time, and it will be possible when we get the accounting as of December 31st. We didn't have financial statements and a history going back to 1986 because the business didn't exist back then. Since October 23rd, it is possible to determine what the business did in the first 30 days of business, but to get any kind of a valid projection, we'd have to go through December 31st, because we're going to have to do it anyway for tax purposes. Then we'll submit the tax return that the City requires. To determine the profitability of a business, it is not possible to determine in a very short time what the business is going to do. We can show what we did the first week, what the client did, but that doesn't give us any realistic or valid idea of what it's going to take to recoup the investment over a period of time.

Mayor: I believe you stated \$111,000 in improvements to that building?

Sartain: Money spent to start the building, not any improvements to the real estate. We submitted every dollar that was spent in opening the business. \$111,000 has been submitted to the City.

Mayor: To open the business. Well what would that encounter. You rent the building, right? So, what would you spend \$111,000 for to open a business.

Sartain: The client has itemized that he has spent in opening the business. It was submitted to the City Council. We submitted everything we had from the check stubs and itemized every dollar spent on improvements to real estate and other costs of opening a business.

Mayor: What improvement was done to the real estate?

Sartain: I don't know that we've broken it down by strictly real estate improvements or any other single category. Just given the time we had, I got this almost like a Friday before a Monday in November and I just said, let's just given them everything we have. We don't have an accounting that is a legitimate, valid accounting prepared in accordance with generally accepting accounting principles yet. We do have just like a check register submitted to the City staff.

Mayor: Don't you think that any financial statement should be itemized as for expenditures of remodeling?

Sartain: Yes, when financial statements are pulled, they should categorize and generally reflect the management categories of what..

Mayor: I understand you didn't submit that.

Sartain: That's correct. They don't exist. The accounting has not been done.

Mayor: Well, they have to exist where you spent money for remodeling. You're open.

Sartain: The checks, every dollar that has been spent has been submitted to the City, but hasn't been itemized, well it's been itemized in a sense of each expenditure is before the City.

Mayor: But for remodeling you can't tell us how many dollars and what was remodeled.

Sartain: Well, we know what was remodeled, it was an old fast food franchise building that was remodeled and we know what was done, but we haven't presented an analysis to the City, we just presented what was spent. It was \$112,000 total.

Mayor: Any further questions? Thank you. Is there anyone who wishes to speak for the Silverado Club?

David Mix: Mr. Mayor, members of the Council, my name is David Nix, I'm a lawyer here in Abilene, Texas and I represent the Silverado Club. The Silverado Club has filed an application for an extension of time to amortize and recoup its investment in its present location. Mr. Claude Parker is the sole owner of the Silverado Club. He began his operation on August 6 of this year and prior to that time the club had been operated under the name of Sugars. Mr. Parker and the Silverado Club has a total capital investment in its property of \$168,000, and that investment includes \$108,000 three-year lease for which Mr. Parker has become obligated. The additional capital funds that have been expended include a \$50,000 promissory note for leased equipment and a \$10,000 initial capital expense of cash outlay of \$10,000 for other equipment. The Silverado has not at this point recouped its investment and I believe the documents have been submitted to accurately show that. Every effort has been made to do so, it will take some time and I believe there is a profit and loss statement that has been attached to the application from which I would submit it shows that the investment has not been recouped at this point and will not be for some time. I would like to point out to the Council that if the extension for time is not granted and the Silverado has to operate as a normal bar, it will take much longer to recoup its investment than as an operation as it presently exists. There is a large difference in the amount of money that can be made, as the club is presently being operated and one of the examples is that the cost of drinks. The Silverado is able to charge more for drinks given the entertainment that it provides than it would normally be able to charge if this bar were being operated as a normal bar. Without the entertainment the Silverado would be able to charge \$2.00 to \$2.50 a drink. As it is, they are able to charge \$5.00 per drink and \$3.75 per drink for other people than dancers and the money-making ability of a bar would be greatly reduced. I believe that the documents that have been submitted do show that the investments have not been recouped at this point and we would

ask for additional time to recoup that investment, at least a period of one year.

Mayor: Does anyone have any questions of Mr. Nix?

Geniglis: Don't your expenses go up as, you have to pay the dancers and stuff so, if your drinks cost more it's because you've got entertainment there so your expenses also go up, right?

Nix: There are increased expenses, yes sir.

Geniglis: So if you don't have as many expenses, you could sell drinks for less, right?

Nix: The problem is, you're not getting clientele into the club without the entertainment, and therefore there is less gross receipts.

Mayor: That \$5.00 drink, what does that cost you to make?

Nix: I'm not really familiar with that, I have no idea what the markup is on the drinks.

Mayor: I have a pretty good idea, the drink contains a 1 ounce shot or two ounces?

Nix: A one ounce shot.

Mayor: So, how many of those shots have you got to a bottle, 27-28 shots to a bottle if you bought it a fifth at a time, so that 28 X \$5.00 is \$140.00 for that bottle of liquor would be about what you receive from it, correct? \$140.00. That bottle of liquor wouldn't cost over \$6, 7, 8, would it? \$10.00 at the most. So you're taking a \$10.00 bottle and you're getting \$140.00 for it, right?

Nix: Yes, sir, roughly.

Mayor: Any further questions?

Nix: I might point out that it would not be possible to get that price for the drinks without the entertainment.

Mayor: Well, at \$140.00 a bottle, it doesn't take long to recoup a lot of money.

Nix: There has been approximately \$160,000 in investment in this property.

Mayor: So that's 1100 bottles of liquor or thereabouts.

Nix: Probably, I haven't set down and figured it out.

Mayor: I didn't either, I just took your figure here. Any further questions or comments from the Council? If not, we thank you Mr. Nix. Is there anyone who wishes to speak for the Chit Chat Club?

Jack Bryant: Yes, Mr. Mayor. My name is Jack Bryant and I represent the other three applicants that are on the agenda. At this time, I will tell you that the Chateau Club does not desire to proceed any further. Some happenings in connection with the facility where the Chateau Club operated, the club out on N. Pine have made the owner determine that he does not intend to proceed any further with the application in connection with the Chateau Club. I represent Mr. and Mrs. Whitworth who own the Chit Chat Club and I also represent the Reflections Club, both of which have representatives here, and in the beginning I would like for my remarks to be considered by the Council in connection with both of those clubs, because they generally apply to both of them. Both of these entities are what now under the zoning ordinance appear to be adult entertainment businesses. In case the Council is not familiar with them, the Chit Chat Club is a small building located at North 9th and Pine Streets and has been either a private club or a mixed beverage club for approximately 15 years. Reflections is a very good sized building located on Winters Freeway just off of the northbound service road just west of the Crossroads Shopping Center at Buffalo Gap Road. To nail it down a little more, it is immediately adjacent to a bar operation that is a larger dancing type club that is where it does not generally provide entertainment but provides a dance floor known as Butterfield Junction. The other side of Reflections is an industrial use. It is located on a service road that is one way, either north or west bound, whichever way you want to look at it. It has access only from that road. The question comes up, and incidentally both of these organizations meet the requirements of the ordinance in that they were in existence at the time the ordinance was passed as was required by the Ordinance and both of them have had continuous operation without a lapse of as much as 30 days since the ordinance was adopted. As I read the ordinance, that is one of the requirements for amortization is that the business has been in continued operation for that period of time. Neither of the organizations that I represent are here today asking for relief under the exemption provision of the ordinance. As I read the ordinance, there are two areas, and I believe this was mentioned by Mr. Cargill, that there are two areas in the ordinance that offer relief for such organizations as these. One is the amortization provision. The other is the locational exemption. At this time, neither of my clients have filed an application for locational exemptions. The purpose of this hearing, as I understand, and the basis of the applications that I filed on behalf of these organizations is purely on the amortization portion of the ordinance.

Mayor: I believe that's true. Isn't that so, Mr. Cargill?

Cargill: That's right, yes sir.

Bryant: That is the only matter that we seek to bring before the Council at this time. In getting to the amortization of necessity, we get economics, and I'm glad to see the Mayor look at the economics question a few moments ago as to markup and cost and things of that nature. We all know that anytime you buy something and resell it, you try to make a profit on it, and naturally you

try to package it in such a manner that it will be desirable to your customers, that the customers will pay for it at a rate or an amount that would give you a profit. Some of you people are and have been merchants, and I'm sure that you all understand markup. I bought an awful lot of suits and clothes that I know the vendor that sold it to me paid less than 50% of what he sold it to me for. I can read price codes in some dry good stores. The question comes then, why, on a pricing thing, why do these people really want to go through the hassle that is involved in what is classified now as adult entertainment, or as I like to speak of them, a descriptive term that will fit, is the topless dancing bars. We have several types of liquor purveyors, bars in this town. We can start off with the restaurants that serve food and liquor. That is one type, and we have a bunch of those in town. We have the drinks only lounge, we have a good many of those where people go and there's really nothing to do but sit and drink. There is not any other reason to go to that establishment but to sit and drink. There, of course, are a number of places where people go to sit and drink and to get a little bit of excuse to be there, there is also a pool table, and there's lots of people who like to shoot pool, and this probably is the type of mixed beverage purveyor that we have the most of in this city. That is those where drinks are available and where there are pool tables. Then we get down to the place where there happens to be alcoholic beverages and there is what I refer to as customer dancing. This is your dance hall type thing where couples come, they have their drinks, and they dance, there may be a band, there may be a juke box. I think it tends to go toward the juke box more than the bands now, particularly on a cost factor. These types of businesses I think with some regularity charge an admission. The place that is adjacent to Reflections is of this type, it has a dance floor large enough for couples to dance. The other type, and the one we're getting to now, is the type of business organization or entertainment that my clients seek to continue to operate. And that is where first, there is a place to drink and there is entertainment, and in the instance of both of these organizations, the entertainment has been for about 15 years at the Chit Chat Club and throughout the entire period of time of its existence at Reflections, where the entertainment is dancers. The question then is what is the real economic benefit of that? As the Mayor raised the question, wouldn't it be cheaper to not have the dancers? The problem comes if you do not have the prices, if you do not have the entertainment, you probably do not get the customers. People will not come to a bar to be entertained if you do not have entertainment. Now, people will go to bars to drink, and one of the things I believe you will find is a variance of solid fact, that you do not in the entertainment bars, get what I would classify as the hard core drinkers, and the reason for that is very simple. A person who is going to a bar simply to drink, is going to the bar where his liquor costs him less. He is not going to a place where the price of drinks is at least 50% higher than he can get the same drink at some other place. Insofar as the Chit Chat, located just up the street, I think there is a bar in the Abilene Inn, which is only 4 blocks away, and I believe you will find that the cost of drinks between the hotel club and the Chit Chat is roughly that the Chit Chat drinks are approximately 150% of the cost of drinks in a lounge and a nice lounge that doesn't have entertainment. There's an additional thing that brings people into the bars with entertainment, and I guess it is perhaps the way people look at themselves. You notice that many a person that goes into a bar and sits and drinks and wonders why he went there, is probably not proud

that he went there to drink if he went there solely to drink, and one of the reasons I think you'll find that people go to the entertainment bars is perhaps in their mind to justify to themselves the reason for going. There is a reason to go. I think you will find the same thing with pool shooters, that there is a reason for them to go. In any event, it is unquestionable that there is a market and has always I think through the time of mankind, a market for entertainment by dancing girls.

Mayor: Well, I agree with you, Mr. Bryant, there is a market. But I believe what we're trying to find out is if the Chit Chat Club and Reflections have recouped their investments. I think we all know there's a market for it. We could probably support 100 of them out there if we just opened the doors.

Bryant: I doubt if we could support that, in fact I doubt that there is a market for a whole lot more of them in this City. The financial information that has been presented, and I must take issue with Mr. McDaniel in his allegation that it does not reflect that there has been no recoupment of investment. And with that, and what I was leading up to, is to try to explain to this Council the reason that these applicants feel it is desirable to have this one year amortization period is that money can be made in this type of business and it is separate and apart from the straight bar business as was indicated by the Mayor a while ago. As to amortization, the information that has been furnished to be set in connection with the Chit Chat Club reflects that Mr. and Mrs. Whitworth have operated this entity for about 15 years, that it has taken, I believe they operated it for some 3 years when it was leased property. It was originally a used car lot building I believe many years ago, I believe it was a donut shop and I believe at one time a pizza place. It has been a bar with dancing girls for approximately 15 years. The information provided to the City reflects that Mr. and Mrs. Whitworth entered into a transaction to buy the property for some 10-11 years, that they have gone that long in paying for the property and that they have just now finally got to the stage that the property is paid for, so that is their investment in it. To reduce that in earning capacity of the property at the present time deprives them of the opportunity to recoup the 10 years of paying for a piece of property to ultimately use it where they can use it in a profitable manner.

Mayor: Did you say that property was paid for now?

Bryant: It is paid for now.

Mayor: Doesn't it have a value?

Bryant: At the present time, I doubt that it has any real value.

Mayor: That land and that property does not have any real value.

Bryant: I do not think, I would put it like this, your honor, that the present use of the property is the highest and best use for it. If you do a survey up and down Pine Street, and depending on how far north you go, but if you start up at North 7th and go to North 18th, you will find approximately 25% of the commercial buildings vacant. You will find that the buildings up and down that street are heavy commercial or industrial uses. They are

primarily used car lots, directly across the street from this property is I believe a flooring store, I believe there is an auto parts place in the area at the end of the block, there is a transmission shop, immediately behind the property is an electric shop, but there is in my opinion right now, nothing about this property that makes it desirable to do anything with it other than what is being done.

Mayor: Well, I was trying to figure out on the recouping of the investment if the property is completely paid for at this time, it would look like the investment has been recouped.

Bryant: I would take issue with that, it does not look like the investment has been recouped, it would look like the investment has finally been made. They have just now got the building paid for.

Mayor: So it is paid for and it has a value of some sort, and could be sold, the contents and so forth. The liquor must be paid for inside, so it does have a net worth.

Bryant: Of some figure. I'm sure it is, the State law requires that liquor be paid for. It has some value, of course. Everything has some value, even a left-handed monkey wrench to a left-handed man. But as to recovering an investment that has been made over a period of 15 years of operation, in times like our current economic market in the City of Abilene, there is simply no market at the present time that would allow a recoupment of an investment, whereas hopefully in a year, we all live as optimists, maybe Abilene will be better a year from now than it is now. We all hope so. I'm sure the Mayor and the Councilmen are aware of the amount of vacant commercial properties in this city and the absolute zilch market for commercial properties, and we simply see that, and I think the purpose of zoning in a situation like this is to balance, and I think that's the purpose of the amortization is to balance the equities, the private rights and benefits as opposed to the public rights and benefits. That's what zoning really is.

Mayor: But we're discussing whether this business has recouped its investments.

Bryant: Yes sir, and we submit that it has not. In fact it has taken 15 years to pay for it, and there is no way other than operating and hoping for better times, that this property can be amortized out.

Mayor: Does anyone have any questions of Mr. Bryant on this? Thank you.

Bryant: All right, then I would to turn to the Reflections business, which is a little bit different type of situation.

Mayor: I'd like, Mr. Bryant, to stick to the matter of recouping investments, OK?

Bryant: OK, that's what I'm talking about. On that, I believe the information furnished to Mr. McDaniel, which consisted of the tax returns for the first year of operation of the corporate organization that operates

Reflections, and if the Councilmen examine the material furnished, you will see that the real estate, or that the application was filed jointly by the partnership that owns the real estate, and in turn leases it to the operating company that actually holds the liquor license. The information that was furnished shows the amount of investment by both the partnership and by the corporate organization that is in that place at the present time. The return that is before you reflects, and incidentally there is present both Mr. Speers who is the chief executive officer and one of the partners in the ownership of the corporation, shows both the tax return for both the partnership and the corporation. Both Mr. Speers and the Certified Public Accountant, Mr. Rick Row that prepared the return is present today with the full account executives of the both entities. The two returns will reflect that there is a total unrecovered investment in this piece of property. The operation is in at the present time of approximately \$380,000. That is broken down by approximately \$240,000 in the real estate, and approximately \$141,000 in the organization that is actually operated. The \$240,000 is the purchase price of the real estate. The \$141,000 is reflected in the tax return as the cost of lease-hold improvements. The tax return reflects that for the calendar year of the corporation that ended August 31, 1987, which is the end of the most current taxable year, the business had a net taxable profit, and this a corporate entity, of \$26,000. This is a return on the investment that is here plus of course included out of that is the payment of the lease to the only corporation. If you take the two of them together, even with the benefit at the present time of the type of entertainment they have, these people are looking at perhaps a 10-year pay-out at best. It is interesting to note also in the examination of the tax return as to the necessity of this type of entertainment that entrance fees, that is, the gate fees, the charge that is made for customers to come into the club, amounted to slightly over 10% of the total income of the business and amounted to the figure that is about \$7,000 in excess of net profit of the business. The bottom line is that for that calendar year as reflected by the income tax returns had this business not been able to provide the entertainment that would have allowed it to make a charge at the door for patrons who come in to be entertained, it would show an operating loss of some \$7,000 and for that reason we believe, and we don't think that they can amortize it out completely in a year. At best, it is a long term payout. We do believe that a one year period will assist in hopefully getting to times where there might be a better climate to make some other use of the property than there is at the present time. It will not serve as a restaurant, it's had an unsuccessful restaurant in it; it will not serve as a club with customer dancing because of the shape of the building and the size of it. It will not lend itself to going into competition with the place next door to it. It does not do any, it's too big a place to try to operate as a straight come-in-and-drink type bar and that frankly is not the type of business that these gentlemen want to operate. In order for them to have any possibility of this thing paying out, they need at least a year to try to do something else with it. I am aware that, really we're talking about a small amount of skin in these, because I'm satisfied that we could change the dressing on the girls slightly and come completely within ordinance. But I believe that you will find that that type of thing has never been successful as dancing because the customers would really prefer and will only pay for coming to be entertained and I simply do not believe that they will pay the price of the drinks and the admission fees necessary unless there is some

entertainment involved that is not the same thing you can see in anybody's backyard swimming pool or on any beach, and that is basically what the ordinance as it is written now would basically require. So we believe that the amortization period will help; that to deny it will put this business in a condition that it will not be profitable and will in all probability not continue to operate, and very frankly, in not operating a piece of property of this magnitude in the City of Abilene right now is a great loss to the proponents. Thank you.

Mayor: Anyone have any questions for Mr. Bryant, any Councilmember?

Bryant: I do have both of these people and I have a CPA for Reflections here with complete computerized accounting up until the first of this month.

Mayor: Thank you Mr. Bryant. At this time, I believe we are in line for a motion, is that correct, Mr. Cargill?

Cargill: Yes sir, Mr. Mayor

Mark Beebe: Mayor? I'm Mark Beebe, I'm the landlord for the Deja Vu Club. I didn't get a chance to talk earlier, the next club came right up, I was wondering if I could make a statement right now.

Mayor: Go right ahead.

Beebe: All right sir. I've submitted an application to the City for an extension. I've leased that building, I guess for the past few years from Ward Food Company, and in turn I've subleased it out to other people operating clubs out there. Sylvester Neal and Evelyn Huskin are the current tenants out there. In my December 10 letter to the City I submitted financial information indicating that I, as of yet, have not recouped my investment out there. In response to Paragraph 6 from the letter which Harvey Cargill sent, I showed that as of to date, \$40,617 as yet has not been recouped, and I would like for the Council members to consider that given our soft real estate market that we have today, that I would be unable to meet my lease obligations if suddenly we had a vacancy out there. There's plenty of vacant retail space, restaurants, other clubs have been going out of business in recent years here, and I would just like to have a one year extension in which I can have some time to change the use of the building. At present time, given the monthly expenses that I have right now, I'm afraid that it would put me in a position of default suddenly if I didn't have any tenants out there. There's a provision in the lease agreement that I have with Mr. Neal and Ms. Huskin that states in the, there is an addendum to our lease agreement which gives our tenants the right to terminate the sublease in the event that tenant's female entertainers should be prohibited from wearing only pasties and G-strings, and given that, it looks like they would be in a position to vacate the premises without any recourse from me.

Mayor: Are you familiar with the Alcoholic Beverage license that is on that property and what it is for?

Beebe: It's a mixed beverage permit, from my understanding.

Mayor: For country-western dancing.

Beebe: No sir.

Mayor: What is it for then, it was open, the permit was given for a country western bar is what I've been informed.

Beebe: No sir, that's another club. I'm talking in reference to Deja Vu.

Mayor: And that permit is for what, then, female dancing.

Beebe: There is another club on north first I think you're pertaining to, but this is not the club that you have reference to, sir.

Mayor: Then what is this permit for? This alcoholic beverage permit for the Deja Vu club.

Beebe: Well, my tenants applied to the Alcoholic Beverage Commission for a mixed beverage permit which would enable them to sell mixed beverages on premises.

Mayor: I understand. Any comments or questions from the Council? Thank you. I understand from Mr. Cargill that there is the operator of another club who is not on this list who would like to speak against this. Is there anyone here who wishes to do so? Yes sir.

Jimmy Shipp: Mr. Mayor, City Council, my name is Jimmy Shipp. I operate, or am intending to operate again, it is shut down at this time, a club which is on a legal site here in Abilene. Approximately 6 months ago, along with the Planning & Zoning Commission, picked a legal site and built from the ground floor up concrete floors, tin walls, no electricity, no air conditioning, no plumbing, and put a club together that is a very nice club. I spent approximately \$45,000 to get the club in operation and open and running, including a license. So, where these other figures of large sums come in I don't know, because I'm amazed at these. At this time, I feel that if the City does allow these extensions to stay open, that I, doing the proper thing, have been cheated out of a living because my money will be wasted. I am in a zone that is, I opened for one month and during that month I made money. The money can be made each month, there is a high profit margin in this but due to the fact that two of these clubs that are now asking for extension opened during the last 6 months, my business went downhill. They are in locations that have been used as topless clubs for many years, they are now. I, doing the right thing out in the middle of nowhere cannot make a living if these clubs are allowed to stay open. Some of the things that have been said here today, I cannot recall each and every one, but I do say that if these clubs are allowed to stay open, I, doing the proper thing in the middle of nowhere, following what the City has set out as a legal site, will lose everything that I have invested, and as far as recouping money from these, like I said, I built one from the ground floor, basic concrete, no plumbing, no electricity, no heating, and I spent approximately \$45,000. That is my investment.

Mayor: So your investment in a club is \$45,000, that's a stage and lights and mirrors and whatever goes in it.

Shipp: Opening the door, including the buying of the beverages, etc.

Mayor: The alcohol and everything.

Ceniglis: The land and everything?

Shipp: I lease the building, but it was a building with just tin walls and concrete floors, no lights, no plumbing, no air conditioning, no heating. All of this has been installed at my expense, approximately \$45,000.

Mayor: So how long, if you were in a good location, so to speak, how long would it take you to recoup your investment?

Shipp: In a good location, you could gross approximately \$1,000 per day in this type of club with an overhead of approximately \$20, it would take probably 4 months to recoup your money.

Nixon: Sir, would you say that these other clubs have recouped their investment?

Shipp: I would think that they have either recouped their investment or one other thing, I mean, as the landlord of Deja Vu stated, that he left in his lease, a statement saying that they could get out of that lease. In other words, they went into that club knowing they were in an illegal zone and would want to be out as soon as this came about. I would state that if they have not recouped their investment I would be amazed at it.

Mayor: Any further questions from the Council? Thank you very much Mr. Shipp. Mr. Cargill, shall we proceed?

(restatement of staff recommendation, vote)