



Agenda

BOARD OF ADJUSTMENT
Tuesday, December 4, 2018 at 6:00 P.M
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSION:**
 - MINUTES: November 6, 2018**
 - FINDINGS/CONCLUSIONS: None**

- E. OLD BUSINESS**
- F. NEW BUSINESS**

- 1. Case #2018-78. 2350 Fox Road Special Use Permit.** Greg James Eichman, Owner, of About the Music, Inc. requests approval of a Special Use Permit to allow a Private Club or Lodge located within 200 feet of residential property. The property is approximately 1.09 acres and is zoned I-1, Light Industrial (Margaret Ambrosino, AICP, Case Manager).

- G. STAFF COMMUNICATIONS**
- H. MATTERS FROM THE COMMISSION**
- I. ADJOURNMENT**

NOTES:

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

RECEIVED AT THE CITY CLERK'S OFFICE

DATE: 11/13/2018

TIME: 2:23 PM

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CITY OF SANTA FÉ
BOARD OF ADJUSTMENT
December 4, 2018**

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**MINUTES OF THE MEETING
OF THE CITY OF SANTA FÉ
BOARD OF ADJUSTMENT
December 4, 2018**

A. CALL TO ORDER & ROLL CALL

A regular meeting of the City of Santa Fé Board of Adjustment was called to order by Gary Friedman, Chair, on December 4, 2018 at approximately 6:00 p.m. in the City Council Chambers, City Hall, Santa Fé, New Mexico. A quorum was established with roll call as follows:

MEMBERS PRESENT:

Gary Friedman, Chair
Rachel L. Winston, Vice-Chair
Coleen Dearing
Douglas Maahs
Donna Reynolds

MEMBERS ABSENT/EXCUSED:

Patricia Hawkins [excused]
Daniel H. Werwath [excused]

OTHERS PRESENT:

Noah Berke, Land Use Planner Manager
Greg Chakalian, Assistant City Attorney
Margaret Ambrosino, Land Use Case Manager
Carl Boaz, Stenographer

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

C. APPROVAL OF AGENDA

MOTION: Mr. Maahs moved, seconded by Ms. Reynolds, to approve the agenda as presented.

VOTE: The motion passed on a unanimous (4-0) voice vote with members Dearing, Maahs, Reynolds and Winston voting in the affirmative and none voting against.

D. APPROVAL OF MINUTES and FINDINGS OF FACT/CONCLUSIONS OF LAW

MINUTES: November 6, 2018

MOTION: Ms. Dearing moved, seconded by Ms. Reynolds to approve the minutes of November 6, 2018 as presented.

VOTE: The motion passed on a unanimous (4-0) voice vote with members Dearing, Maahs, Reynolds and Winston voting in the affirmative and none voting against.

FINDINGS OF FACT/CONCLUSIONS OF LAW: None

E. OLD BUSINESS

There was no Old Business.

F. NEW BUSINESS

1. **Case #2018-78. 2350 Fox Road Special Use Permit.** Greg James Eichman, Owner of About the Music, Inc., requests approval of a Special Use Permit to allow a Private Club or Lodge located within 200 feet of residential property. The property is approximately 1.09 acres and is zoned I-1, Light Industrial (Margaret Ambrosino, AICP, Case Manager).

Staff Report

Ms. Ambrosino presented the Staff Report for this case. She showed an aerial photo of the property and pointed out the mobile home park to the north and showed the city limits locations. The Special Use Permit is to allow the building to be used for a Private Club/Lodge for live evening musical performances; social gatherings during the weekends or evenings, and musical rehearsals on weekday evenings. The proposed special uses shall meet all applicable development standards of the Land Use Development Code, provided the Conditions of Approval are agreed to by the Applicant and met prior to the implementation of the special uses.

Ms. Ambrosino provided two handouts: the first was a list of potential conditions the Board could require, the list of necessary finding, and the definition of Special Use Permits. *A copy of the Code section is attached to these minutes as Exhibit 1.*

The second handout was a letter of support emailed from Michael Koster, received yesterday. *A copy of the letter of support is attached to these minutes as Exhibit 2.*

The applicant owns the property, zoned I-1 (light industrial). The 8,000 square foot building includes a warehouse portion of approximately 3,000 square feet. It is within 200' of residential property.

An ENN meeting was held on in early August at which 2 members of the public, two members of the applicant's team and one City staff attended. , owners and two public members. 500 residents within 300' of the warehouse were notified prior to the ENN, and concerns were received and discussed in four letters of concern. The concerns were primarily about traffic, and parking during special events, especially at the evening close of business hours, and alcohol consumption. One requested the applicant's staff to direct traffic; others requested noise abatement during events.

This case was postponed twice to address traffic impacts. Traffic, parking, building emergency exits, and alcohol consumption were addressed in the six conditions of approval. They were most reasonable to make it as adaptable and practical as possible and compatible with the Code.

Based on the proposal, the Applicant has agreed to the conditions and with that, she recommended approval and stood for questions.

Questions to Staff

Chair Friedman asked her to explain the overlapping uses.

Ms. Ambrosino said that I-1 uses are typically office and light industrial uses that operate during regular work hours. But they are proposing musical events after 6 pm. So the special events will not really overlap.

Chair Friedman asked if there are any regulations regarding live music and alcohol use.

Mr. Berke agreed and said that all the conditions have to be met. The facility is operating legally right now but it needs to come into compliance. The Fire Marshal requires a fire suppression system and no license or permit will be issued until that is brought up to code. State Alcohol and Gaming is aware of this application regarding alcohol use. The Applicant doesn't have a liquor license, so caterers would have to use their own license if alcohol is served as a special event. They also have to comply with the local noise ordinance. If that is violated, The City would come out with code enforcement.

Chair Friedman asked if the events are all inside or also outside.

Mr. Berke said they are all to be inside the walls.

Ms. Ambrosino said these are all inside.

Ms. Winston asked, regarding parking requirements, what the maximum occupancy is for them.

Ms. Ambrosino explained that the parking calculation is based on all uses combined, including the warehouse uses. There are approximately 18 existing parking spaces and 29 are required for the special use within the warehouse so 31 total is required.

Ms. Winston asked how many people could be present at events.

Ms. Ambrosino said the parking must be contained on site. The maximum occupancy of people is set by the Fire Marshal.

Mr. Berke said the Fire Marshal will determine that capacity. Sometimes they are less restrictive, but he didn't know what it is now. Once determine, it will be posted visibly in the facility.

Chair Friedman asked how much of the building will it be used for music related activities.

Ms. Ambrosino said 3000 sq. ft. it the portion for this requested use.

Applicant's Presentation

Mr. Greg James Eichman, (ordinarily called Greg James) was sworn. He thanked the Staff for a well-done report. In response to comments about operating illegally, we did have a couple of events, based on what we needed to satisfy code. He saw the place as a coop for musicians and becoming a venue for musicians to play. "So we had a few get togethers and when it came up that we needed a hearing, we ceased that.

"Every time the Fire Marshal came out was when I asked him to come out. I would respectfully ask that the conditions on soundproofing be removed. It is ambiguous what that would entail. It could amount to hundreds of thousands of dollars. When we have played, we got no objections with the band playing. I've done a fair amount of sound attenuating on the north wall and put an acoustic drape them over garage doors to the east and west. All the rest is in the packet that Staff provided you. That whole area is up and coming and art and music adds to it. So people can come and listen. We are exploring educational opportunity for kids to play music after we do workshops. We will eventually employ people and already do on the film side. That is it. I hope we can put it together."

Questions to the Applicant

Ms. Dearing said she read the letters that expressed concerns with BYOB and asked him to clarify that.

Mr. Eichman said that was before he heard from Alcohol and Gaming and he felt BYOB at a private event would be okay. He understood that was allowed if it was just by invitation and had us check everyone's invitations.

Ms. Reynolds asked if there would be no alcohol at jam sessions.

Mr. Eichman agreed there would be no alcohol.

Ms. Winston said there is also some concern about the limited number of parking spaces for anticipated private events and how to make sure there is access along Fox Road. "If all the parking spaces were full, where would people park for an event there?"

Mr. Eichman said there is a large dirt lot to the north. "We are willing to provide the required paved parking. People do park in the dirt lot and it seems to work fine."

Mr. Maahs asked if the dirt area is usable and meets requirements.

Mr. Eichman said they need to pave about ten more spaces to meet the condition.

Ms. Ambrosino showed the parking layout and pointed out the area needing paving.

Mr. Maahs asked if the soundproofing, if there was any commercial product they could use.

Mr. Berke explained that condition came out of neighborhood concerns with noise. So Staff put in the provision. Staff is not saying it is violating sound regulations, but we want to make sure since it is right next to residential on two sides. And possibly noise could come from jam sessions or events. There is not an exact regulation on sound mitigation. He would decide how to do that. But in a 2,000 sq. ft warehouse environment, Staff was not sure how to handle that. So the condition should be there.

Mr. Eichman said he don't not get any letters about that and this is the first time he had heard that. But if you could remove that from the list, we would address the issue. However, nobody has said their music is too loud.

Ms. Dearing understood this would be used mostly for evening events but asked if they might have some daytime events planned. People need to respect the boundaries of your property.

Mr. Eichman said the overall goal is that by day, it is a musician's coop for exchange of songs, socializing and planning events. That would not be traffic intensive. The concerns about conflict would be Saturdays because a business down the street has trucks coming in on Saturdays. He repeated that they will put up no parking signs on Fox Road.

Chair Friedman recalled in the Applicant's letter, you talked about abiding by certain hours. He asked if Mr. Eichman was still okay with those restrictions.

Mr. Eichman agreed to those hours.

Public Comment

Mr. John Costa, 3272 Far West Circle was sworn and stated he is in favor of the project. There is a need for such a facility here in the City. He said he is a lifelong educator and musician, He has been Executive Director of a nonprofit called Santa Fe Music Collective and for the last five years, they have put on jazz concerts at Sonder Café. He created a jazz program at the Santa Fe School for the Arts. He explained that he has outgrown the facility where they presented concerts. It is limited to older people who could afford price of a ticket , alcohol and food. That has limited him in giving his students an opportunity to hear live jazz and is his mission to give them that opportunity. He is limited to 70 people now and barely able to pay his bills. Of course there are sponsors. So he could rent from Mr. James and have space for his students to come free for first-hand jazz education. Many of you might know there was in years past and articles in the paper about how we keep kids in our town with no entertainment in the evening. There is now Meow Wolf. I went to Food and Lodgers Committee and walked away without them understanding that musicians need to make a living in order to stay here and have a place to play with a venue for other people to come in.

This is a perfect venue in many ways. It is about addressing the need, and this is a need in this town. "This could be a threshold whereby we are able to keep young adults in our community. I would like you to consider than in your decision making."

Mr. Ray Mountain, 450 Candelario Street, was sworn and said he has been attending music events and started a Face page on music in Santa Fe . I wish I had a film of this man playing keyboards. I would be amazed and glad if he was able to cover expenses."

A recent event attracted the best of the best musicians. Such events could certainly use another venue , not to mention the educational opportunity to collaborate and have it as a living place with 3-4 musicians. With this space, the equipment can stay there and not have to be moved in and out.

Mr. Dave Aubrey, 1434 Miracerros Loop South, was sworn and said he is a tenant in the other half of the building. It has been a great place to work in Santa Fe and it is wonderful to be there. This represents a great opportunity. I have a film production company there. Lots of times trucks come and go with equipment. There was a great flow a couple years ago in a mixed event.

The parking is shared a little and never seems to be a problem and the dirt area provides for overflow. This is a beautiful opportunity and I support it.

Ms. Carolyn Padgett, James living on the west side very close to Greg's facility, was sworn. She supports it because this is a place he remodeled on his own dime. It is an up and coming neighborhood on Rufina supporting many attractions. Greg has done a beautiful job. It is not a warehouse any longer. She didn't think sound will be a problem. He is providing a clean industry for the last 20 years, first as a film company and now as this venue. His passion in retirement is music. It can do far more than just get musicians together. It is a clean space in this growing neighborhood and already built. Greg had been willing to work with the City ever since s78178he first heard about it. It is a positive place and we need to support it. He is willing to meet more requirements. And there is really a need for it.

Mr. Mark Robbin, 78A West Borrego, was sworn. He said, this is a neat opportunity that doesn't serve alcohol so young people can come. I think that is what makes it unique. Greg is a force for it. He urged the Board to approve it.

A young man who spoke only Spanish came forward. He had the printed copy of the notice of public hearing. Several Staff members agreed to try to help him provide his comments but after a short time, decided not to try to make any comment.

Mr. Ryan Kaufman, 235 - 75 Road, was sworn and said his wife couldn't be here. He asked for more time, since his wife was not present. His main concern was on no compatibility with uses if it goes forward. He said he had talked with several neighbors and parking there is limited, and Fox Road is narrow and if parking happens on Fox Road, it will be a disaster.

Regarding Occupancy, he noted there are 181 people eligible to be in that building. With potentially 181 people in 2,000 square feet and parking at 31, it seems totally inadequate. Parking is limited there and a commodity not in abundance and what is taken from other businesses. So the overflow dirt could be paved to provide more parking. What we don't want is parking in the residential area.

The neighbor's concern is that ATM is a nightclub under another name. It is subject to underage drinking. He asked what assurance we have this would not be a problem. And if they allow food and drinks to be brought in by the members, what are those?

For special events, it is a whole new category. If they have a big wedding, they could get a special permit. Would he hire traffic control onto Rufina? There is lots of traffic on Rufina. He was also concerned with trash and not parking in designated areas.

He pointed out that there were several letters in Exhibit E. He wondered if the Board members had a chance to look at them. One man said sometimes cars are parked in front of his loading dock overnight.

He summarized that Staff did a good job on this, but a lot of major areas need to be addressed.

There were no other speakers from the public regarding this case and the public hearing portion was closed.

Mr. Eichman responded that he heard the main concern was parking. Again, we have addressed the code on the number of spaces required and are willing to put up signs for no parking on Fox Road.

Regarding alcohol, we know what the rules are and will abide them. We would get a special use permit for any event with alcohol being served.

Mr. Eichman explained that the parking space is based on the occupancy and he believed it is about 181. That is what he was going by.

Mr. Berke said this is a one-acre parcel and a parking space has to be 6' by 19'. The city's parking requirements will provide that. He understood the concern of this gentleman. If it was on Rufina, they might need a variance. He understood the concern. But off-street parking is required everywhere. And people park on the street all the time. He didn't know if any of the industrial uses actually operate at night in that area. But when a business closes at 5 pm, the parking space opens up.

Alcohol consumption is a concern. Our local rules require people to come here for an event where alcohol will be served. Staff does verification on the permits. All alcohol enforcement is done by State Police. The City recognizes that is beyond the City's authority. The State takes responsibility.

Chair Friedman asked about trash.

Mr. Eichman said he did not anticipate any sprawling mess. There are trash cans within the building now and they would have some outside too .

Chair Friedman declared the public hearing closed.

Ms. Reynolds pointed out that the conditions speak to the concerns - compliance may eliminate the problems.

Mr. Berke said that condition regarding occupancy will be determined by Fire Marshal Rey Gonzales. He had previously indicated that his main concern was fire suppression. Apparently, right now, their fire suppression is not sufficient, so it is a condition of approval and is required, not optional.

Action of the Board

MOTION: Mr. Maahs moved, seconded by Ms. Winston, in Case #2018-78 at 2350 Fox Road, to grant the Special Use Permit, subject to all conditions of approval and amending item #6 to add, "as necessary to meet the city noise ordinance upon obtaining a certificate of occupancy.

Ms. Winston requested a friendly amendment to add one other condition to add a music curfew at 11:00 p.m. on Fridays and Saturdays and 10 p.m. on other days.

Mr. Maahs accepted the amendment as friendly to the maker.

VOTE: The motion passed by unanimous voice vote with Members Dearing, Maahs, Reynolds and Winston voting in favor and none voting against.

Mr. Eichman asked for clarification on the certificate of occupancy.

Chair Friedman explained that Mr. Eichman would provide soundproofing as necessary to comply with the noise ordinance, just as Mr. Berke was talking about. If the noise is too high, you would need to figure out how to reduce it.

Mr. Berke said the restriction would be continuous. That is a regulation that has come up before. It is basically just asking him to do something if there are any complaints about noise. He explained the three levels of enforcement for Mr. Eichman, who agreed to the condition.

G. STAFF COMMUNICATIONS

Mr. Berke voiced his appreciation for the letters from members to the Mayor to continue serving on the Board.

Mr. Berke announced that Mayor Webber made two appointments to the Planning Commission. The Board of Adjustment appointments will likely be made soon. He agreed to keep the members informed. The Land Use Director is now working on HDRB appointments.

Chair Friedman said he sent an email 5-6 months ago to the Mayor and asked if he should also submit a letter.

Mr. Berke suggested he do that.

Mr. Maahs asked about getting his letter to the right place.

Mr. Berke asked him to email it to him and he would pass it on to the Mayor.

H. MATTERS FROM THE BOARD

Chair Friedman asked Ms. Ambrosino to introduce herself to the Board, since she had not appeared before the Board previously.

Ms. Ambrosino provided her background and work experiences prior to becoming a Planner with the City. She has been with the Land Use Department since June 2017.

Mr. Greg Chakalian introduced himself and shared his background and work experiences prior to coming to the City.

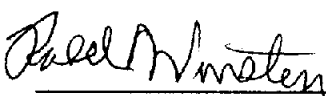
Mr. Berke announced Sandra Kassen's departure next month.

Ms. Kassen said she will be leaving on December 21, going back to Idaho where her mother lives and look for a job up there.

I. ADJOURNMENT

The Board of Adjustment meeting was adjourned at 7:20 p.m.

Approved by:

 FOR GARY FRIEDMAN

Gary Friedman, Chair

Submitted by:



Carl G. Boaz for Linda Vigil, Stenographer

14-3.6 - SPECIAL USE PERMITS

(D)

Approval Criteria and Conditions

(1) Necessary Findings

To grant a special use permit, a land use board shall make the following findings:

- (a) that the land use board has the authority under the section of Chapter 14 described in the application to grant a special use permit;
- (b) that granting the special use permit does not adversely affect the public interest, and
- (c) that the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.

(2) Conditions

The land use board may specify conditions of approval that are necessary to accomplish the proper development of the area and to implement the policies of the general plan, including:

- (a) special yards or open spaces;
- (b) fences, walls or landscape screening;
- (c) provision for and arrangement of parking and vehicular and pedestrian circulation;
- (d) on-site or off-site street, sidewalk or utility improvements and maintenance agreements;
- (e) noise generation or attenuation;
- (f) dedication of rights of way or easements or access rights;
- (g) arrangement of buildings and use areas on the site;
- (h) special hazard reduction measures, such as slope planting;
- (i) minimum site area;
- (j) other conditions necessary to address unusual site conditions;
- (k) limitations on the type, extent and intensity of uses and development allowed;
- (l) maximum numbers of employees or occupants permitted;
- (m) hours of operation;
- (n) establishment of an expiration date, after which the use must cease at that site;
- (o) establishment of a date for annual or other periodic review at a public hearing;
- (p) plans for sustainable use of energy and recycling and solid waste disposal;
- (q) any other appropriate conditions and safeguards, in conformity with Chapter 14 or provisions of other chapters of the Santa Fe City Code that regulate development and use of land; and
- (r) conditions may not be imposed that restrict the use to a specific person or group.

PRIVATE CLUB or LODGE: A facility for social, cultural or educational activities open only to bona fide members and guests of the private organization operating the club or lodge, except those the chief activity of which is a service customarily carried on as a business.

AMBROSINO, MARGARET K.

From: Michael Koster <thirstyearfest@gmail.com>
Sent: Monday, December 03, 2018 12:33 PM
To: AMBROSINO, MARGARET K.
Subject: About The Music venue hearing

Margaret Ambrosino
mkambrosino@ci.santa-fe.nm.us

Dear Ms. Ambrosino,

I understand there is a public hearing Dec. 4 regarding About The Music (2350 Fox Rd., Santa Fe) and its attempt to get permitted as a public venue. I have been a nonprofit promoter of concerts and musical events in Santa Fe for 20 years. I have worked with nearly all of our city's ever-changing venues, both large and small, over that period to present folk, blues, jazz, bluegrass, Cajun, zydeco, and world music artists. An ongoing frustration has been the lack of consistency and professionalism in smaller venues. There are many performances by internationally touring artists that we turn down regularly due to lack of an appropriate venue.

I have known and respected About The Music proprietor Greg Eichman since he donated his services as master electrician at the Thirsty Ear Festival, which I founded and organized, many years ago. So many get it wrong, but I am sure that Greg will get it right. He is responsible, highly professional, successful, and his heart is in the right place. He is responsive to others' concerns and will be a responsible and friendly neighbor.

In short, I strongly urge the city to do everything in its power to support and encourage About The Music. I have no doubt that my organization, as well as other professional music organizations, will present world-class artists there: artists who would contribute greatly to Santa Fe's reputation as an arts center, as well as its tax base and economy.

Please submit this letter to the public record.

Best,
 Michael Koster, Director
 Southwest Roots Music
 68 Moya Rd. Santa Fe, NM, 87508
SouthwestRootsMusic.org
 505-670-0755

SELECT ARTISTS I'VE WORKED WITH OVER THE YEARS:

MICHAEL FRANTI, LOS LOBOS, ROSANNE CASH, THE ENGLISH BEAT, LOS LONELY BOYS, KEB' MO', TAJ MAHAL, RAY WYLIE HUBBARD, JOAN BAEZ, DOC WATSON, TOOTS & THE MAYTALS, BELA FLECK, THE WAILERS, RALPH STANLEY & THE CLINCH MOUNTAIN BOYS, DAVE ALVIN, ASLEEP AT THE WHEEL, THE BAD PLUS, BEAUSOLEIL, BE GOOD TANYAS, BLACK JOE LEWIS, GREG BROWN, JUNIOR BROWN, BUCKWHEAT ZYDECO, BURNING SPEAR, R.L. BURNSIDE, SAM BUSH, HAYES CARLL, DON CARLOS, NEKO CASE, GUY CLARK, ROCKY DAWUNI, IRIS DeMENT, TOUMANI DIABATE, ANI DiFRANCO, BO DIDDLEY, DIRTY DOZEN BRASS BAND, DR. JOHN, DUMPSTAPHUNK, HONEYBOY EDWARDS, RAMBLIN' JACK ELLIOTT, JOE ELY, FANTASTIC NEGrito, FISHBONE, THE FLATLANDERS, T-MODEL FORD, RUTHIE FOSTER, FRIGHTENED RABBIT, TONY FURTADO, GOV'T MULE, PATTY GRIFFIN, Nanci Griffith, KNOX HAMILTON, BUTCH HANCOCK, COREY HARRIS, ALVIN YOUNGBLOOD HART, RICHIE HAVENS, JIMMIE DALE GILMORE, INDIGENOUS, RICKIE LEE JONES, ROBERT EARL KEEN, LADYSMITH BLACK MAMBAZO, POKEY LaFARGE, ROSIE LEDET & THE ZYDECO PLAYBOYS, DAVID LINDLEY, DELFEAYO MARSALIS, LEYLA McCALLA, DEL McCOURY, JAMES McMurtry, SHANNON McNALLY, MONTE MONTGOMERY, IAN MOORE, THE MOWGLI'S, NAHKO & MEDICINE FOR THE PEOPLE, ODETTA, PINETOP PERKINS, PO' GIRL, REVEREND PEYTON'S BIG DAMN BAND, PETER ROWAN, BOB SCHNEIDER, CHRISTIAN SCOTT, DARRELL SCOTT, BILLY JOE SHAVER, SIERRA LEONE'S REFUGEE ALL STARS, SLY & ROBBIE, THE SKATALITES, THE SMOTHERS BROTHERS, JOAN SORIANO, MAVIS STAPLES, STEEL PULSE, BILLY STRINGS, NINET TAYEB, RICHARD THOMPSON, CEDRIC WATSON, YEMEN BLUES, YONDER MOUNTAIN STRING BAND, YOUNG DUBLINERS, and many more.