

**REGULAR SESSION – JANUARY 19, 2010**

The Cape Girardeau City Council convened in regular session on Tuesday, January 19, 2010, at 7:00 p.m., with Mayor Jay B. Knudtson presiding and Council Members Charlie Herbst, Mark Lanzotti, Marcia Ritter, Loretta Schneider, Debra Tracy and John Voss present.

City Attorney Eric Cunningham presented the invocation, and Jake Johnson and Dillon Max of Boy Scouts of America Troop 8 led the Pledge of Allegiance, appearing at the City Council meeting to earn a merit badge.

Prior to the regular session, the City Council convened in closed session for purposes of discussing personnel and confidential communications with the City Attorney pursuant to RSMo. Sections 610.021(1) and (3) upon Mrs. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Herbst, Knudtson, Ritter, Schneider, Tracy and Voss. Nays, none. [Mr. Lanzotti was absent from this vote]

The minutes of the January 4, 2010, regular and closed sessions were approved upon Mrs. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

The agenda was approved as distributed upon Mrs. Schneider's motion, Mr. Herbst's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

**COUNCIL COMMUNICATIONS**

Mrs. Tracy spoke in support of the school district putting a bond issue before the people for capital improvements.

Mayor Knudtson commended the Public Works staff on the brochure produced for the new automated solid waste and recycling collection service scheduled to begin on May 1, 2010. He reminded residents to contact Public Works by January 29, 2010, if they want smaller containers. City Manager Scott Meyer stated that cities that have converted to single stream recycling had significant increases in recycling, and said that there will be drop-off locations throughout Cape Girardeau for glass recycling.

**CITY MANAGER COMMUNICATIONS**

Mr. Meyer commented on the Cape Air Open House ribbon cutting on Thursday, January 21, 2010. The events throughout the City honoring Martin Luther King, Jr. went very well.

**APPEARANCES**

Ms. Jennifer Guard, Local Director of the Muscular Dystrophy Association, presented a plaque to the Cape Girardeau Fire Department, recognizing their assistance with the "Fill the Boot" fundraising campaign. They have been participating in the MDA fundraiser for 28 years, and this year the Cape Girardeau Fire Department raised \$4,510. Since 2002, they have raised over \$25,000 for the Muscular Dystrophy Association. Captain Dean Lynn, Firefighter David Bell and Firefighter Matt O'Loughlin were present to accept the plaque.

**PUBLIC HEARINGS**

This being the date set for a public hearing regarding the request of Jeana Schoener for a special use permit for a photography business located at 3601 Old Hopper Road, in an R-1, single family residential district, the hearing was opened by Mayor Pro-Tempore Herbst. The City Planner's Council Letter in the agenda packet presented for the record a certified copy of the following items: (1) Section 30-39 entitled "Special Use Regulations" from the City Code; (2) the application for special use permit; and (3) the application file. Mayor Knudtson abstained from discussion for financial reasons because the applicant has a financial interest at the bank where he works.

Ms. Jeana Schoener, of 1138 Oak Ridge Court, appeared before the Council and spoke in support of her request. She discussed the type of business she would operate, hours of operation, parking, and her plans to improve the property. The property will have an external residential appearance, and she does not intend to live at the location. She presented photos of the existing property and letters from two adjacent property owners supporting her application for a special use permit. She also indicated she had sent letters to all the neighbors inviting them to an open house at the property where she could present her plans for the house, but she had not received a response from any of them.

Mr. Lanzotti commented that there were four neighbors listed on the application that Ms. Schoener had not received a response from: O.M. Collins, Charles Hopper, John Job, and Gary and Susan Wibbenmeyer. He noted that Bruce and Jana Jateff, Meghan Erwin and Glenna Ervin, and S. Alexander and M. Ogburn oppose Ms. Schoener's plans for the property.

Mrs. Jean Cambridge, 3606 Old Hopper Road, appeared in opposition to the request because she did not want a commercial business in her neighborhood.

Mr. Alex Ogburn, 3610 Old Hopper Road, appeared in support of the request. He said that it would be cost prohibitive to demolish the home and rebuild. It would be best for the neighborhood to renovate the house and invest in the property to increase property values in the area. He noted that the property has been on the market for over a year.

Mr. Steve LeGrand, 3618 Old Hopper Road, appeared before the Council in opposition to the special use permit request. He said Mr. Jateff was out of town but had sent a letter to the Council members stating his position. Mr. LeGrand said that he wants the area to remain an R-1 zoned neighborhood, and by granting Ms. Schoener's special use permit request, they would be spot zoning and allowing an R-1 area to become commercial. He presented a petition of opposition signed by ten property owners that he said are directly affected by this request.

Mrs. Ritter questioned if there was a home-based business on Highland Drive. Mr. LeGrand responded there is a gun repair home-based business. In addition, he, Mrs. Jateff, and Highland Masonry all operate home-based businesses, mostly offices, out of their homes. Mr. LeGrand noted that if this request had been made after the new zoning codes are implemented, it would not be allowed.

Ms. Shawna Penny, 1270 Co. Rd. 606, spoke in support of the special use permit request. She said that she had been a neighbor to Ms. Schoener when she operated a home-based business, and stated that it was a very quiet business with little traffic, and the property was well kept.

Mr. Joe Ervin, 2726 Luce Street, opposed the request because the property is on the curve of the street, and he said it could be a safety issue.

There being no further appearances, the hearing was closed.

BILL NO. 10-4 was given first reading as follows:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO THELMA L. RELLERGERT AND JEANA SCHOENER FOR THE PURPOSE OF MAINTAINING AND OPERATING A PHOTOGRAPHY BUSINESS AT 3601 OLD HOPPER ROAD, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

Mr. Lanzotti made a motion, seconded by Mr. Voss, to approve the first reading of BILL NO. 10-4.

Mr. Lanzotti made a motion, seconded by Mr. Voss, to amend the special use permit by adding the following conditions: no accessory structures or props be installed in the front of the home, and the business sign be no larger than 24" x 24" and not be lit. Following discussion, the amending motion was approved upon the following vote: Ayes, Herbst, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none. Mayor Knudtson abstained from voting for financial reasons because the applicant has a financial interest at the bank where he works.

Ms. Ritter asked if the Council could take future zoning codes into consideration when considering this special use permit request. Mr. Cunningham replied that the Council should make their decision based on present zoning codes. Mrs. Tracy noted that they could base their decision on whether it complies with the City's Comprehensive Plan.

Upon questioning by Mr. Voss, Mr. Cunningham stated that the special use permit will terminate in 12 months if the property is not developed, and the permit does not transfer with the property if it is sold. If the use begins and then stops in the future for a period of two years, the business cannot start up again. He noted that the new zoning code will change this period to nine months.

The first reading of BILL NO. 10-4 as amended failed upon the following roll call vote: Knudtson, abstain for financial reasons; Lanzotti, aye; Ritter, aye; Schneider, nay; Tracy, nay; Voss, aye; Herbst, nay. Mrs. Tracy made a motion, seconded by Mrs. Schneider, to adopt the Council's Findings and Conclusions related to this Special Use Permit. The motion to adopt was approved upon the following vote: Ayes, Herbst, Lanzotti, Ritter, Schneider and Tracy. Nays, Voss. Abstain, Knudtson for financial reasons.

### **APPEARANCES**

Mr. Pat Harman, Manager at Walgreens appeared in support of a liquor license for the store and to answer any questions.

Mr. Herbst made a motion, seconded by Mrs. Schneider, to approve an original package liquor and Sunday sales license for Walgreen Co., d/b/a Walgreens #3338, 1 S. Kingshighway, Gayle Preckel, Managing Officer. The motion was approved upon the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

**CONSENT ORDINANCES**

The following bill was given second and third readings:

BILL NO. 10-1            AN ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU, MISSOURI, BY CHANGING THE ZONING OF A PART OF 1634 NORTH KINGSHIGHWAY AND 1698 KINGSWAY DRIVE, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI, FROM R-1 AND C-2 TO C-2

The second and third readings of BILL NO. 10-1 were approved and the Ordinance adopted upon Mrs. Schneider's motion, Mrs. Tracy's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none. BILL NO. 10-1 is ORDINANCE NO. 4097.

**NEW ORDINANCES**

BILL NO. 10-2 was given first reading as follows:

AN ORDINANCE AMENDING SECTION 5-12(B) OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU, MISSOURI, REGARDING POSSESSION OF INTOXICATING LIQUOR BY A MINOR

The first reading of BILL NO. 10-2 was approved upon Mr. Voss' motion, Mrs. Schneider's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none. City Manager Mr. Scott Meyer stated that this Ordinance would bring the City Code of Ordinances in line with State statutes so minors in possession can be handled through the Municipal Court.

BILL NO. 10-3 was given first reading as follows:

AN ORDINANCE ACCEPTING GENERAL WARRANTY DEEDS FROM CARRIE E. WARFIELD, FOR PROPERTIES LOCATED IN THE VILLAGE OF LEADVILLE ADDITION, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-3 was approved upon Mr. Herbst's motion, Mrs. Schneider's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

**APPOINTMENTS**

Mr. Timothy Kelley was appointed as a full member to the Board of Adjustment for a term expiring March 6, 2014, upon Mayor Knudtson's motion, Mr. Voss' second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

Mr. James Matchell was appointed as an alternate member to the Board of Adjustment for a term expiring September 4, 2010, upon Mayor Knudtson's motion, Mr. Voss' second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

Mr. Dennis Coomer and Mr. Tim Pinkley were re-appointed to the Board of Examiners for terms

expiring January 1, 2013, upon Mrs. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

There being no further business, the City Council adjourned at 8:40 p.m. upon Mr. Lanzotti's motion, Mr. Voss' second, and the following vote: Ayes, Herbst, Knudtson, Lanzotti, Ritter, Schneider, Tracy and Voss. Nays, none.

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Jay B. Knudtson, Mayor

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Gayle L. Conrad, City Clerk

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