

REGULAR SESSION – MARCH 7, 2011

The Cape Girardeau City Council convened in regular session on Monday, March 7, 2011, at 7:00 p.m., with Mayor Harry E. Rediger presiding and Council Members Mark Lanzotti, Meg Proffer, Loretta Schneider, Debra Tracy and John Voss present. Council Member Kathy Swan was absent.

Prior to the regular session, the City Council convened in closed session for purposes of discussing property acquisition and confidential communications with legal counsel, pursuant to Section RSMO. 610.021(1) and (2) upon Mrs. Schneider's motion, Mr. Voss' second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

Reverend Bob Towner, of the Christ Episcopal Church, presented the invocation, and the Boy Scouts of America Troop 16 led the Pledge of Allegiance.

Mrs. Schneider made a motion, seconded by Mr. Voss, to remove Agenda Item No. 6, an Ordinance calling for an election on the question of issuing sewerage revenue bonds and an Ordinance calling an election on whether to extend the present one-quarter of one percent Capital Improvement sales tax for the purpose of funding capital improvements; and to remove the conditional approval of the liquor license for Shah Mari, LLC, d/b/a Cape Mart, from Agenda Item No. 13, and approve the Agenda as amended. The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

PRESENTATIONS

Mayor Rediger recognized Andrew Johnson, Hogen Code, and Paul Messmer, of Boy Scouts of America Troop 16, attending the City Council meeting to earn Community Merit Badges. Mr. Lanzotti said that the Boy Scouts would be cleaning tables at the St. Vincent's Knights of Columbus Men's Club fish fry on Friday nights for the next several weeks through Lent.

Mayor Rediger presented a plaque to Parks and Recreation Director Dan Muser, recognizing his 25 years of service to Cape Girardeau and wishing him well on his retirement. Mr. Muser spoke about his years working for the City and remarked on having met many great people.

COMMUNICATIONS/REPORTS

Mayor Rediger said that \$35,000 of playground improvements at Dennis Scivally Park had been dedicated to Mr. Melvin Gateley today. Mr. Gateley has served the City for many years. He started Vision 2000 in the 1980's, worked on beautification efforts throughout the City, and worked countless hours for the betterment of Cape Girardeau. He is a dedicated citizen.

City Manager Scott Meyer echoed Mayor Rediger's appreciation of Mr. Muser and said that he has left his mark on Cape Girardeau. He will always be remembered for the fact that he invested in people and filled his staff with competent people.

Mr. Meyer announced that the City has received a grant for bike lanes in Cape Girardeau. As the City begins creating bike lanes, they want to begin a public outreach campaign. Mrs. Heather Brooks, Assistant to the City Manager, said that the \$253,000 grant had been received from the Missouri Foundation for Health and will pay for striping and stenciling of bike lanes, and for bike racks. An open house will be held later this month after letters are mailed to homeowners on the affected streets. The City is considering bike lanes on seven routes, between 30 and 40 miles of roadway, depending on public input and how bids come in for the roadway striping. Mr. Meyer

said the City is working to knit together the trails and bike lanes to open up routes to bike to work, to play, and to schools.

PUBLIC HEARINGS

This being the date set for a public hearing regarding the request of Terry Allison and Susan Allison for a special use permit to operate a daycare for no more than ten children at their home located at 1341 Vantage Drive, the hearing was opened. 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.

Mrs. Allison appeared in support of the request. She told the Council that she had a child with special needs and has cared for four children in her home for several years. She now wants to keep up to ten children, and needs a special use permit. She said that no one objected to her special use permit application at the Planning and Zoning Commission hearing.

Ms. Jane Gockel, of 1351 Vantage Drive, addressed the Council and said that she had lived next-door to the Allison's for many years and the daycare has been a great addition to the neighborhood. She said there have never been complaints of traffic issues or other problems.

There being no further appearances, the hearing was closed.

BILL NO. 11-28 was given first reading as follows:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO TERRENCE S. ALLISON AND SUSAN M. ALLISON FOR PURPOSES OF MAINTAINING AND OPERATING A DAYCARE AT 1341 VANTAGE DRIVE, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 11-28 was approved upon Mrs. Schneider's motion, Mrs. Proffer's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

APPEARANCES

Mr. Don Howard, of 1100 Ranney Avenue, appeared before the Council opposing the proposed economic development sales tax and sewerage system revenue bonds. He also voiced opposition to the City using a portion of the \$2 million from property sold to Isle of Capri to pay off revenue bonds on the Commander Premier building at the airport. At least \$1 million of that money should be applied to the wastewater treatment plant. The residents of Cape Girardeau cannot afford the increase in utility fees, especially senior citizens and low income residents. Mr. Howard also objected to spending money on an administration building for the wastewater treatment plant. Those offices should be housed in the existing Public Works Department facility. He asserted that the wastewater treatment plant should not be constructed with financed dollars, but paid from casino revenue.

Mr. Brian Longwell, of 312 Bellevue Street, addressed the Council in opposition to the application of Shah Mari, LLC, d/b/a Cape Mart, 238 North Fountain, for a new original package liquor and Sunday sales license. He said that he was attending the Council meeting with at least ten others to protest this liquor license application, and he stood for several neighbors who could not attend but

who supported him in this issue. Mr. Longwell strongly urged the Council to deny the license to sell package liquor at this location. He and many others have invested in the downtown area, and with the casino coming there is a lot of effort going into historic district revitalization. There are a lot of challenges, many properties are substandard, and there are areas with litter and trash everywhere. He said he believed that the type of establishment requesting this liquor license would exacerbate this type of situation. There is a place for this type of establishment in the historic district, but this is not the proper venue. Recently, the area has had problems with noise, booming stereos, a methamphetamine bust down the street, a murder a block and a half from there, and too much litter. Don's Mart was robbed on Sprigg Street, and this is a similar type of business.

Mr. Lanzotti questioned what kind of business had previously been in that location and if the business had the same liquor license that Cape Mart is applying for. Mr. Longwell responded that Ganex was a specialty store with a liquor license, but it only sold specialty lines of liquor. The business owner also owned the house on the corner. City Attorney Eric Cunningham said that he was not familiar with the previous business and the liquor license it held.

Mrs. Schneider questioned why this business was permitted, since it was not zoned correctly. Mr. Meyer answered that under the new zoning code this location is not properly zoned for this type of business. However, it was zoned C-1 when the previous business was located there. The new zoning ordinance allows nine months for the same type of business to be established in the same location as a nonconforming use. Therefore, the owners have until end of March to qualify for the same type of business in this location. Mr. Longwell said that the previous business was an organic food store, with health food and a few selective specialty items.

Mr. Lanzotti said that the Council must make certain determinations based on if certain parameters are met regarding the transition from the old zoning code to the new zoning code. He asked if the prior business had some type of liquor license, whether it is the same as transferring a nonconforming use. Mr. Cunningham answered that the presence or absence of a liquor license is not the use, it is the character of the property as this type of commercial use.

Mr. Lanzotti said that it was his opinion that a change in type of retail is a substantial change in use. He asserted that he felt the change from one type of liquor license to another type is a substantial change. The change from a few specialty items to a package liquor store is a different type of use and is enough to make the decision on nonconforming use within the nine month period. Mr. Cunningham said that the question of use is more general. If they are both retail convenience stores, they would both qualify for nonconforming status under Chapter 30, and on the liquor license application, if there has been compliance with the terms of the ordinance, then the Council should grant the liquor license.

Mr. Lanzotti said that there had been no problems with the organic store, but the applicant has had a violation of the City liquor law. Mr. Cunningham said that the question is whether the City Police Department feels the violation is a sufficient cause to believe that the applicant cannot run a clean and orderly business. Mr. Meyer stated that Police Chief Kinnison has recommended that the liquor license be approved.

Mrs. Schneider asked if there is a difference in the type of liquor license for this applicant. Mr. Cunningham answered that the general character of the business and not the type of liquor license is used to determine if is a nonconforming use. Mr. Lanzotti said that the question for him is whether an organic store with specialty liquors versus a full liquor store makes a substantial change of use. Mr. Cunningham stated that the Council can make that decision.

Mr. Limon Pickman, of 312 Bellevue, addressed the Council to protest the liquor license application of Cape Mart. He said that this building is half of a block from his house. Previously, there was a business in the building and it was not a problem, but this business strikes them all as a different utilization of the building. They are all nervous about the type of customer this business will bring. No one is eager to see a business brought in that will take the neighborhood in the opposite direction than they are trying to take it.

Reverend Bob Towner, pastor of Christ Episcopal Church at 101 North Fountain Street, objected to the liquor license application. He said the package liquor store would be three blocks from his church, and this type of business is a magnet for unwanted people and circumstances.

Ms. Barb Schwepker, of 222 Bellevue, said that they have a few drug dealers already in their neighborhood, and they don't need a package liquor store in that area to bring any more characters of that nature into their neighborhood. Mr. Longwell said that the property is next door to the Family Services office. He had spoken to Mr. Robert Ginger, and customers at the Family Services office had expressed concern with the type of people this establishment would bring. Mayor Rediger asked for the residents attending the Council meeting who were opposed to the liquor license application of Cape Mart to stand. Ten people stood.

Mr. Jody Geiser, with the Humane Society of Southeast Missouri, appeared in support of the temporary liquor license for the annual auction on March 26, at the Arena Building, and to answer questions. Mr. Voss recognized Mr. Geiser for his service and recognized the Humane Society for partnering with the City to care for animals in Cape Girardeau.

CONSENT AGENDA

A motion was made by Mr. Voss, seconded by Mrs. Tracy, to approve the following items on the Consent Agenda:

City Council February 22, 2011, regular session minutes.

BILL NO. 11-19, an Ordinance approving the Thorngate Redevelopment Corporation Final Redevelopment Plan. Second and third readings.

BILL NO. 11-20, an Ordinance approving a Redevelopment Agreement in connection with the Thorngate Redevelopment Corporation Final Redevelopment Plan. Second and third readings.

BILL NO. 11-22, an Ordinance approving the record plat of Route K North Second Subdivision. Second and third readings.

BILL NO. 11-25, an Ordinance authorizing the prepayment of \$1,960,000 principal amount of the City's Certificates of Participation (City of Cape Girardeau, Missouri, Airport Facilities Project), 2001A, and the appropriation of funds and the provision of notice in connection therewith. Second and third readings.

BILL NO. 11-27, a Resolution adopting the Fiscal 2011-2016 Capital Improvements Program. Reading and passage.

BILL NO. 11-30, a Resolution authorizing the City Manager to execute an Agreement with Penzel Construction Company, Inc. for renovation of the Central Municipal Pool, in the City of Cape Girardeau, Missouri. Reading and passage.

A motion approving the improvement plans for the construction of water main, sanitary sewers and storm sewers to serve Woodland Place Subdivision Number 10.

Approval of a temporary retail liquor by the drink license for Jody R. Geiser, d/b/a Humane Society of Southeast Missouri, for an event to be held at the A.C. Brase Arena Building on March 26-27, 2011.

Conditional approval of the following new liquor licenses:

- La Torita, LLC, d/b/a El Torito, 1740 Broadway, retail liquor by the drink and Sunday sales
- Café Soupe, Inc., d/b/a Café Soupe, 2502 Tanner Suite 200, retail liquor by the drink and Sunday sales

Upon questioning by Mr. Lanzotti about the contract with Penzel Construction Company, Inc. for the 2nd phase renovation of the Central Municipal Pool, Mr. Meyer explained that the agreement renovates the bath house and concession area. Pool guests will be able to walk straight through to the pool area without having to go through the locker rooms. He said that the City will coordinate to shut down the pool house, and the renovations should be complete by June 10, 2011.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. BILL NO. 11-19 is ORDINANCE NO. 4200; BILL NO. 11-20 is ORDINANCE NO. 4201; BILL NO. 11-22 is ORDINANCE NO. 4202; BILL NO. 11-25 is ORDINANCE NO. 4203; BILL NO. 11-27 is RESOLUTION NO. 2594; and BILL NO. 11-30 is RESOLUTION NO. 2595.

ITEMS REMOVED FROM CONSENT AGENDA

BILL NO. 11-23 was given second and third readings as follows:

AN ORDINANCE CALLING AN ELECTION IN THE CITY OF CAPE GIRARDEAU, MISSOURI, ON THE QUESTION OF ISSUING SEWERAGE SYSTEM REVENUE BONDS

Mr. Voss made a motion, seconded by Mrs. Schneider, to approve the second and third readings of BILL NO. 11-23. Mrs. Tracy asked if there is a penalty for the early payment of the sewerage system revenue bonds. Mr. Meyer answered that City Finance Director John Richbourg had reported that there is no prepayment penalty, but there are other penalties the City may be subject to. The sewerage revenue bonds are very desirable bonds because they are subsidized and would be the last bonds the City would pay off, but there are restrictions as to when the bonds can be paid. The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. BILL NO. 11-23 is ORDINANCE NO. 4204.

BILL NO. 11-24 was given second and third readings as follows:

AN ORDINANCE CALLING AN ELECTION IN THE CITY OF CAPE GIRARDEAU, MISSOURI, ON THE QUESTION OF WHETHER TO EXTEND THE PRESENT ONE-QUARTER OF ONE PERCENT CAPITAL IMPROVEMENT SALES TAX FOR THE PURPOSE OF FUNDING CAPITAL IMPROVEMENTS

Mr. Meyer told the Council of a Missouri statute that does not allow a city to place the extension of a capital improvement sales tax on the ballot within one year of its previous submission to the voters. The change proposed to BILL NO. 11-24 would substitute the capital improvements sales tax with an economic development sales tax, if the originally proposed capital improvements sales tax is defeated in the April 5, 2011 election. The passage of the sales tax would have the same effect, but it would be an economic development sales tax instead of a capital improvements sales tax.

Mr. Voss made a motion, seconded by Mrs. Schneider, to approve the second and third readings of BILL NO. 11-24. Mr. Voss made a motion, seconded by Mr. Lanzotti, to amend the Ordinance to be an economic development sales tax for economic development purposes as presented in the agenda packet, to read as follows:

AN ORDINANCE CALLING FOR AN ELECTION IN THE CITY OF CAPE GIRARDEAU, MISSOURI, ON THE QUESTION OF WHETHER TO IMPOSE A ONE-QUARTER OF ONE PERCENT ECONOMIC DEVELOPMENT SALES TAX FOR ECONOMIC DEVELOPMENT PURPOSES

The motion to amend the Ordinance was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. The second and third reading of BILL NO. 11-24 were approved as amended upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. BILL NO. 11-24 is ORDINANCE NO. 4205.

Regarding the application of Shah Mari, LLC, d/b/a Cape Mart, of 238 North Fountain, for conditional approval of a new original package liquor and Sunday sales license, Mr. Lanzotti asked if the Council was required to make a finding of nonconforming use. Mr. Cunningham answered that the Council was not required to do so. Mayor Rediger called for a motion to conditionally approve the liquor license as presented. There license was not approved for lack of a motion.

NEW ORDINANCES

BILL NO. 11-29 was given first reading as follows:

AN ORDINANCE APPROPRIATING FUNDS FOR TRANSFERS FOR THE FISCAL YEAR ENDING JUNE 30, 2011, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

Mrs. Schneider made a motion, seconded by Mr. Lanzotti, to approve the first reading of BILL NO. 11-29.

Mr. Lanzotti said that his understanding was that the City would be using the \$2 million from the sale of City property to Isle of Capri, money originally slated to be used for Broadway and other identified improvements, to pay off bonds on the Commander Premier building. The interest saved by the City would be used to fund the Broadway improvement, as well as the other projects identified by the Council. This Ordinance would represent a \$260,000 per year budgetary saving for the City and would allow the City to freely market the building without the previous restrictions for airport manufacturing. He requested it be noted that the \$260,000 in this year's budget and future budgets should remain dedicated to pay back the fund for the Broadway improvements, and if the Commander building is sold, that money should be put back toward those improvements.

Mayor Rediger said that the City will be using the Transportation Trust Fund (TTF) to proceed with the Broadway improvements as the City agreed to with Isle of Capri to be completed by the Fall of 2012, and the funds will be repaid back into the TTF-4 fund. It is a movement of funds that will save a considerable amount of money for the City and its citizens. Mr. Lanzotti complimented the City's partnership with Isle of Capri to support the City's decision. Mayor Rediger said that Isle of Capri's only concern was that the Broadway projects be completed, and they will be.

Mr. Voss said that the \$260,000 savings identified by Mr. Lanzotti to help City finances did not include any potential rent collected from the building for short-term hangar space that the City cannot collect today. The current tenant has been served notice. Mr. Lanzotti also noted that the emergency reserve fund will also be replenished with the funds from Isle of Capri. The Broadway amenities will not be compromised, said Mayor Rediger.

The first reading of BILL NO. 11-29 was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

APPOINTMENTS

Mr. Larry Caldwell was reappointed to the Board of Adjustment for a term expiring March 1, 2016, upon Mayor Rediger's motion, Mrs. Proffer's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

There being no further business, the City Council adjourned upon Mr. Lanzotti's motion, Mr. Voss' second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none.

Harry E. Rediger, Mayor

Gayle L. Conrad, City Clerk

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