

**REGULAR SESSION – MARCH 21, 2011**

The Cape Girardeau City Council convened in regular session on Monday, March 21, 2011, at 7:00 p.m., with Mayor Harry E. Rediger presiding and Council Members Mark Lanzotti, Meg Proffer, Loretta Schneider, Kathy Swan, Debra Tracy and John Voss present.

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. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

Reverend Mark Martin, of the St. Andrew Lutheran Church, presented the invocation, and Cody Bunger, of the Boy Scouts of America Troop 8, led the Pledge of Allegiance. Cody Bunger attended the City Council meeting to earn a communications merit badge.

Mrs. Schneider made a motion, seconded by Mrs. Swan, to approve the Agenda as presented. The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none

**PRESENTATIONS**

Mayor Rediger presented a Proclamation to Ms. Cheryl Klueppel, Executive Director of the American Red Cross, declaring March as American Red Cross Month. Ms. Klueppel gave a presentation of the services offered by the Red Cross and spoke about the Central U.S. ShakeOut earthquake disaster exercise on April 29. She also invited everyone to attend the Red Cross open house this Friday from 10-2:00 p.m. at the blood donation center in Cape Girardeau.

**COMMUNICATIONS/REPORTS**

Mayor Rediger said that last week he had attended an open house at the Shawnee Park Center. The Center is scheduled to open on March 28. The Stormwater and Parks sales tax funded the Shawnee Park Complex construction.

The Mayor also recognized City Clerk Gayle Conrad on her election as State Treasurer of the Missouri City Clerk and Finance Officers Association (MoCCFOA). Mrs. Conrad also received a 200-hour certificate for advanced education and training from the MoCCFOA and the Southeast Division's "Everyday Hero Award."

Mr. Lanzotti commented that the City is now running the boys youth baseball league. Recreation Division Manager Penny Williams stated that the boys baseball league opening would be on April 4, 2011, and reviewed registration and evaluation dates for the boys and girls leagues. This will be the City's first year running the boys league and the second year running the girls league.

Mrs. Tracy asked about the City's timeline for interviewing to fill the vacant Parks and Recreation Director position. City Manager Scott Meyer answered that résumés will be accepted through Friday, March 25. A meeting will be scheduled with Parks and Recreation staff to hear their thoughts on what they are looking for in a leader, then an evaluation team will be selected to review the applicants. The entire process may take between four and six weeks.

Mr. Meyer announced the City Council retreat will be held on Wednesday, April 20, at the new Shawnee Park Center.

**PUBLIC HEARINGS**

This being the date set for a public hearing to consider vacating the city's interest in a portion of Mason Street, Pearl Street, Mill Street, Main Street, Spanish Street, Chestnut Street, alleys east of Lorimier Street between Mason and Mill Streets in Ingram's Addition Subdivision, utility easements within the proposed Isle of Capri Planned Development District, and a public alley in Ingram's Addition, the hearing was opened.

Mr. Dick Meister, of Isle of Capri, appeared in support of the vacation and said that this public hearing was necessary because part of Spanish Street had not been incorporated in the legal description at the time of the prior vacation public hearing on January 25. He reviewed a map of streets to be vacated in three phases. Mr. Meister said that the street work had been bid and a contractor should be selected within a week, with groundbreaking scheduled for March 31, 2011 at 2:00 p.m.

There being no further appearances, the hearing was closed.

**APPEARANCES**

Mr. Don Howard, of 1100 Ranney Avenue, addressed the Council and said that he had questions and concerns about the wastewater treatment plant funding proposal. He said that he did not expect full answers to his questions tonight, but said that he would attend the next City Council meeting on April 4, and would expect answers at that time. Mr. Howard questioned: 1) Regarding casino money, \$125,000 is being applied to the Wastewater Plant facility design, but he would like to see double that for the facility; 2) Why wasn't revenue from the Cape Splash water park used to fund the wastewater treatment plant, since that revenue goes to the general revenue fund? 3) Why does the City need to construct a \$2 million administrative building when the Public Works administrative building is so close to the site of the new wastewater treatment plant? 4) Why did the previous Council – which some of these current Council members were on – think that a water park was more important than this new wastewater treatment plant? 5) The Transportation Trust Fund-4 (TTF-4) was a priority for the Council – why was it such a priority when the City faced a \$72 million debt to construct this new wastewater treatment plant? Why weren't the two taxes, TTF-4 and Parks/Stormwater, combined and used for the wastewater treatment plant? Mr. Howard reiterated that he did not expect answers tonight, but would allow the City time to research and answer on April 4. Mayor Rediger replied that the City would respond in full.

Mayor Rediger then asked the assembled residents to come forward and address the Council if they were present regarding the liquor license application of Shah Mari, LLC, d/b/a Cape Mart.

Mr. Gordon Glaus, of Dix & Glaus, LLC, addressed the Council representing Mr. Shah Faisal, the liquor license applicant. He said that Mr. Faisal was present at this Council meeting and apologized for not attending the last Council meeting. He explained that Mr. Faisal was attending to an immigration matter in St. Louis at the time of the last Council meeting on March 7 when his liquor license application was not acted on. Mr. Glaus said that at the last Council meeting, there were some characterizations made of Mr. Faisal's proposed business, and he and Mr. Faisal were attending to clear up any remaining questions about Cape Mart. It will not be a liquor store, nor was it ever intended to be a liquor store. Mr. Faisal wants to put a convenience store in this location and sell grocery and alcohol items, similar to Kidd's or Rhodes 101 stores, the same as the previous store at that location that sold food items and also had a liquor license. Mr. Glaus said that Mr. Faisal understood the concerns of his neighbors and is willing to work with them. It is not in Mr. Faisal's best interest to open a liquor store with bars on the windows, and he is committing

to limiting floor and cooler space to between 15-25% for alcoholic beverages. Mr. Glaus noted that the Council had previously granted a liquor license to the previous occupant of the building, and there were no problems with noise or crime. He said that a special use permit for a convenience store selling alcohol is permitted in a RUMD zone, so Cape Mart is not outside the character of the neighborhood. Mr. Glaus noted that the liquor license was applied for within the nine-month period to continue nonconforming use, similar to Ganix Market, the previous occupant. The Ganix Market liquor license was renewed on June 8, 2010, and vacated shortly after, around June 30.

Mr. Faisal addressed the Council and said that he will work with the neighborhood, and he asked that they talk to him if they have any problems. He said that neighbors had some concerns at previous locations and he had worked with them to resolve the issues. Mr. Faisal said that he will try to resolve any problems that he possibly can. Mayor Rediger asked if he had initiated any conversations with neighbors. Mr. Faisal responded that he had spoken with a few of them, but not all. He said that anyone is welcome to call him and discuss their concerns. Mr. Faisal said that 12 cameras had already been installed at the store location for safety.

Mayor Rediger asked if he would operate a substantially similar operation to the previous tenant, and was he committed to dedicating between 15-25% shelf space to liquor. Mr. Faisal affirmed that he would run a similar store with mostly groceries and other products and committed to meeting the 15-25% floor and cooler space for liquor. Mr. Lanzotti asked if the percentage of floor and cooler space dedicated to alcoholic beverages is similar in his operations in Scott City and Perryville. Mr. Faisal answered that the Perryville operation is a convenience store similar to Cape Mart, but the Scott City location is a liquor store.

Reverend Bob Towner, pastor of Christ Episcopal Church at 101 North Fountain Street, addressed the Council and expressed his objections to the liquor license application and his reasons therefore.

Mr. Brian Langlois, owner of Bellevue Bed and Breakfast at 312 Bellevue Street, addressed the Council in opposition to the liquor license application. He expressed his objection to this business locating in the neighborhood and said that it was not appropriate for the area.

Dr. Ed Williams, of 336 North Lorimier Street, addressed the Council in opposition to this liquor license request and expressed concerns about the neighborhood environment.

Mr. Frank Moreland, of 233 Bellevue Street, appeared and said that he could not think of any good reason why a liquor store would locate in the area. He said that the store would not fit in the character of the neighborhood.

Mr. Lyman Pitman, of 315 Bellevue Street, addressed the Council to in opposition and said that Cape Mart is different in intent from the prior occupant.

Mr. Andrew Vanamburg, of 114 Rivercrest Drive, addressed the Council in support of the application.

Mrs. Linda Langlois, owner of Bellevue Bed and Breakfast at 312 Bellevue Street, addressed the Council and opposed the liquor license. She said that she did not understand how a convenience store that will sell liquor can fit into the neighborhood.

A man addressed the Council in support of Mr. Faisal's application and stated this business will be a convenience for people in the neighborhood who don't have transportation to get groceries.

Mayor Rediger asked the attending residents who were opposed the liquor license application to stand; thirteen attendees stood.

Mr. Glaus said that the neighborhood is surrounded with establishments that serve alcohol. The Marquette building had a bar that served alcohol for many years and numerous liquor stores and businesses that serve alcohol are near. Mr. Faisal's store could be a benefit to the area and will be offering groceries and sandwiches in addition to liquor. A previous store at that location fell within nonconforming use for of this area and held the same liquor license Mr. Faisal is applying for. Mr. Glaus said that he understands the neighborhood concerns of character, but the City's zoning ordinance allows convenience stores with a special use permit in RUMD. If the area were of an historic nature that would forbid this business, then the zoning Ordinances would not allow for it.

Mayor Rediger asked if the store's hour of operation had been established yet. Mr. Faisal answered that they have not yet been set and he would work with the neighborhood on setting the closing hours. Mr. Voss asked if the business was currently open for business and what the target date for opening was. Mr. Faisal stated that Cape Mart does not have a business license yet, and it will probably be two weeks before the store opens. Mrs. Tracy asked if there would be an eat-in counter for customers who order sandwiches. Mr. Faisal said that there would be no seating for dining in the store.

Mayor Rediger called for a motion to consider Mr. Faisal's application. Mr. Voss made a motion, seconded by Mrs. Tracy, to conditionally approve an original package liquor and Sunday sales license for Shah Mari, LLC, d/b/a Cape Mart, 238 North Fountain Street.

Mr. Voss stated that the area had previously been zoned C-1 and the store was allowed. Then the zoning had changed to RUMD and the store was grandfathered as a nonconforming use and allowed to continue operation. Mr. Meyer confirmed this information, and further clarified that this type of use is allowed by special use permit in an RUMD zoning district. A nonconforming use could continue at a the location within a certain period of time.

Mr. Voss said that if Cape Mart complied with all applicable codes, then they had to commence operation within 274 days of the closure of the previous business. He questioned the definition of "commencing operations". Mr. Meyer said that Cape Mart cannot open for business because of the license issue. If the opening was delayed because of the licensing issue, and the City's actions had prevented them from commencing business within the mandated time, then the City would be responsible to approve the permit for nonconforming use and allow the business to open.

Mr. Voss noted that the business was not expected to open for another two weeks and he asked if a remodeling delay had kept Cape Mart from opening. Mr. Faisal said that he wanted to open the business with both the business license and liquor license. Mrs. Schneider asked if the store was stocked and if it could be opened now, if a liquor license were approved. Mr. Faisal answered that he planned on ordering stock on Friday as much of the store items are perishable. Mr. Voss asked if the coolers and shelves were installed, was he waiting to stock them, after the liquor license was granted. Mr. Faisal said that he was. Mrs. Swan agreed that a business owner wouldn't continue to invest money until the license is granted.

Mrs. Schneider asked if the Council had approved the liquor license at the last meeting, would the license have gone into effect immediately. Mr. Meyer answered that it is a conditional approval that still requires inspections from the Fire and Heath Departments. She asked if Cape Mart would

have had time to complete all of the conditional requirements and opened within the 274-day period, if the liquor license had been approved at the last Council meeting. Mr. Voss said that Mr. Faisal did have that intent.

Mrs. Proffer noted that the prior tenant did not have a Sunday sales liquor license. The Mayor agreed to approve the original package sales license, but since Ganix Market did not have Sunday sales, he would not support granting that liquor license. Mr. Voss agreed. Mrs. Schneider asked if the license would be subject to the same regulations when it next comes for renewal. Mr. Meyer said that the store would still be considered nonconforming use and would remain with the same restrictions.

Mr. Lanzotti said that in July, when Cape Mart seeks to renew the liquor license, they could apply for a special use permit to allow for Sunday liquor sales. He said that the Council is bound by a ministerial act due to prior nonconforming use without a Sunday sales license. Mr. Lanzotti said that the Council has to determine if the use complies with the prior nonconforming use and if the application was filed within a timely basis.

Mrs. Tracy said that in light of the information provided, the business has not spoken with the neighbors. She told Mr. Faisal that he should note what the neighbors have said about the service they want from his business and she hopes their words have made an impression on him. Mr. Faisal said that he will talk with the neighbors and work with them.

Mrs. Swan made a motion, seconded by Mrs. Tracy, to amend the application to exclude Sunday sales to be consistent with the location's prior use. The motion to amend was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. The conditional approval of an original package liquor license for Shah Mari, LLC, d/b/a Cape Mart, 238 North Fountain Street was approved as amended upon the following roll call vote: Proffer, aye; Rediger, aye; Schneider, aye; Swan, aye; Tracy, aye; Voss, aye; Lanzotti, aye.

Mr. Lanzotti said that the intended use of the property needs to be consistent with its prior use. He asked that Mr. Faisal's comments about dedicating 15-25% of the store's cooler and floor space to alcohol, and his assertions that Cape Mart will be a neighborhood convenience store, be reflected by the City Clerk in the City Council meeting minutes.

Mrs. Tracy asked what the plans were for exterior lighting. Mr. Faisal answered that lights will be put in the canopy in the storefront, and a large overhead light will be used. Mr. Lanzotti suggested that Mr. Faisal look at the new development codes relating to light pollution. Mrs. Proffer said that if there are neighbor who feel that they cannot talk to Mr. Faisal about their concerns, they can call her and she will speak with Mr. Faisal on their behalf.

### **CONSENT AGENDA**

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

City Council March 7, 2011, regular and closed sessions minutes.

BILL NO. 11-29, AN ORDINANCE APPROPRIATING FUNDS FOR TRANSFERS FOR THE FISCAL YEAR ENDING JUNE 30, 2011, IN THE CITY OF CAPE GIRARDEAU, MISSOURI. Second and third readings.

BILL NO. 11-28, 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. Second and third readings.

BILL NO. 11-32, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH K & K ELECTRIC COMPANY FOR THE WATER SUPPLY WELLS PROJECT, IN THE CITY OF CAPE GIRARDEAU, MISSOURI. Reading and passage.

BILL NO. 11-36, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE WITH SKYBOUND AVIATION, L.L.C., FOR OFFICE SPACE AND HANGAR SPACE AT THE CAPE GIRARDEAU REGIONAL AIRPORT. Reading and passage.

A motion accepting the improvements completed to Independence Street from Sprigg Street to Water Street, sidewalk and ramp improvements at William and Louis, and storm drainage and repair work at Etherton Drive and Bloomfield Road, and authorizing final payment to Fronabarger Concreters, Inc.

Mr. Lanzotti said that the Council had previously noted that \$260,000 in this year's budget and future budgets that would be saved from paying off the bonds on the Commander building, should remain dedicated to pay back the fund for any deficit to pay the Broadway improvements and other committed casino projects.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 11-29 is ORDINANCE NO. 4207; BILL NO. 11-28 is ORDINANCE NO. 4208; BILL NO. 11-32 is RESOLUTION NO. 2596; and BILL NO. 11-36 is RESOLUTION NO. 2597.

**NEW ORDINANCES**

BILL NO. 11-33 was given first reading as follows:

AN ORDINANCE APPROVING THE RECORD PLAT OF BALDWIN PLACE PHASE I

The first reading of BILL NO. 11-33 was approved upon Mrs. Schneider's motion, Mr. Lanzotti's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

BILL NO. 11-34 was given first reading as follows:

AN ORDINANCE APPROVING THE RECORD PLAT OF KELLER SECOND SUBDIVISION

The first reading of BILL NO. 11-34 was approved upon Mr. Voss' motion, Mrs. Proffer's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

BILL NO. 11-31 was given first reading as follows:

AN ORDINANCE ACCEPTING FEE SIMPLE INTEREST, PERMANENT TRAIL EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS FROM VARIOUS PROPERTY OWNERS FOR THE BLOOMFIELD ROAD 4 PROJECT

The first reading of BILL NO. 11-31 was approved upon Mrs. Schneider's motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. Mr. Lanzotti asked about the status of the Bloomfield Road project. Mr. Meyer answered that the project was approved in the Transportation Trust-3 project list and is about two or three weeks from advertising for construction bids. Construction will begin this spring. Mayor Rediger explained that the trail would run on Bloomfield Road from Stonebridge Drive to just past Benton Hill Trace. City Engineer Kelly Green stated that the project is a multi-modal trail for walking and biking.

Mrs. Schneider made a motion, seconded by Mrs. Swan, to conditionally approve the following liquor licenses:

- John J. Yallaly, d/b/a American Legion Post 63, temporary liquor license for an event to be held at the A.C. Brase Arena Building June 3-5, 2011
- James K. Lee, d/b/a The Billiard Center, 26 N. Main, retail liquor by the drink and Sunday sales
- Reed Edmundson, d/b/a Long Shots Bar and Billiards, 470 S. Kingshighway, retail liquor by the drink

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

**APPOINTMENTS**

Mr. Scott Campbell was reappointed to the Town Plaza Community Improvement District Board of Directors for a term expiring April 2, 2014, upon Mrs. Schneider's motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

Mr. Sam Blackwell was appointed to the Girardeau Goes Green Advisory Board for a term expiring July 1, 2013, and Mr. Adam Gohn was appointed to the Girardeau Goes Green Advisory Board for a term expiring July 1, 2012, upon Mr. Voss' motion, Mrs. Tracy's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. Mayor Rediger said that eight applications had been received for this Board vacancy. He encouraged the applicants not chosen to become active with the Girardeau Goes Green Advisory Board and participate on one of the focus groups.

Mr. Voss recognized Assistant City Attorney Greg Young for stepping in for City Attorney Eric Cunningham during his absence.

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

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Harry E. Rediger, Mayor

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Gayle L. Conrad, City Clerk

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