

REGULAR SESSION – JULY 6, 2010

The Cape Girardeau City Council convened in regular session on Tuesday, July 6, 2010, at 7:00 p.m., with Mayor Harry E. Rediger presiding and Council Members Mark Lanzotti, Meg Davis Proffer, Loretta Schneider, Kathy Swan, Debra Tracy and John Voss present.

Reverend Robert Towner, of the Christ Episcopal Church, presented the invocation, and the Pledge of Allegiance was recited.

Prior to the regular session, the City Council convened in closed session for purposes of discussing personnel, property acquisition, and confidential communication with the City Attorney pursuant to RSMo. Sections 610.021 (1), (2) and (3) upon Mr. Lanzotti's motion, Mrs. Proffer's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

A motion to remove agenda Item No. 7, an Ordinance appropriating funds, from the Consent Agenda and to approve the agenda as amended was approved upon Mr. Voss' motion, Mr. Lanzotti's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

COMMUNICATIONS/REPORTS

Mayor Rediger reminded everyone of the upcoming Study Session scheduled for Thursday, July 8, 2010, at the Osage Community Centre where gaming companies will make presentations to the City Council. No public input will be permitted at the meeting, but citizens are encouraged to attend.

Mayor Rediger then commended the Cape Girardeau Police Department and the Major Case Squad on their handling and resolution to the recent murder on North Park Street. Police Chief Carl Kinnison gave the Council a summary of the incident and thanked the Major Case Squad, including 35 investigators from several counties, for their assistance.

PUBLIC HEARINGS

This being the date set for a public hearing regarding revisions to three sections of the City Development Code, including general provisions, exterior lighting and off-street parking and loading, the hearing was opened. There being no appearances, the hearing was closed. Mayor Rediger stated that the proposed Ordinance would be forthcoming from the Planning and Zoning Commission and presented to the Council at a future meeting.

This being the date set for a public hearing regarding the request of Kerry Smith and Tim Smith for a special use permit for a mix of commercial and residential uses for the property located at 260 North Middle Street, 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 30-401 entitled "Special Use Regulations" from the City Code; (2) the application for special use permit; and (3) the application file.

Kerry and Tim Smith appeared before the Council in support of the request and to address the concerns of neighbors relating to the service of alcohol, parking, and noise that were brought up at the Planning and Zoning Commission meeting. The live entertainment will mostly be acoustic music once a week, between about 7:00 p.m. – 11:00 p.m. with films shown throughout the rest of

the week. All events will be indoors, except for some smoking tables outside. Mr. Smith noted that they would also be living on the second floor of the premises. He said that they currently have an operation in Farmington and operate a coffeehouse.

Ms. Margaret Browning, of 724 Watkins Drive, addressed the Council with concerns about the requested special use permit and said that she has owned an apartment building at 419 Bellevue Street since the 1970's. Ms. Browning asked what the Ordinance would say if it were approved, and she asked if the Smiths would be able to use the building for other commercial uses if this business doesn't work out. She expressed concerns about loud music and noise, and she asked if the Smiths would be able to increase the live music entertainment to more than once a week. Ms. Browning said that granting their request for a special use permit would bring noise, cars and trash to the area.

Mayor Rediger answered that the Smiths have requested a special use permit, so they cannot change the intended use of the property. Mr. Voss noted that the current special use permit application permits music events seven days a week, but it could be amended to limit that number since the applicant indicated that the music will be hosted only one time a week. Ms. Browning said that the Planning and Zoning Commission told her to call the Police Department if she had a noise complaint.

There being no further appearances, the hearing was closed.

BILL NO. 10-88 was given first reading as follows:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO MYRLE MALONE, TIM SMITH AND KERRY SMITH FOR THE PURPOSE OF MAINTAINING AND OPERATING A MIX OF RESIDENTIAL AND COMMERCIAL USES AT 260 NORTH MIDDLE STREET, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI

Mr. Lanzotti asked what the RUMD (Residential Urban Mixed Density) District meant. Mr. Ken Eftink, Director of Development Services, stated that the RUMD is a newly created zoning district for mixed use, and it is specific to this part of Cape Girardeau, along Bellevue Street. Properties in the area had previously been zoned as commercial before the new zoning code. This new zoning designation allows the City Council to place restrictions on the use of property.

Mr. Voss asked whether amending the special use permit application to limit the number of days as a music venue would change the business plan or be an unnecessary hardship for the owner. Mrs. Smith answered that one time a week is all they intend to have music entertainment. Mrs. Proffer asked how the term "music entertainment" would be defined, and whether it would include an "open mic" night? Mrs. Smith responded that they will have hired music only, and they will never have music entertainment more than twice in a week. Mr. Lanzotti suggested that the amendment should restrict the number of days for music per month instead of per week.

Mr. Voss made a motion, seconded by Mr. Lanzotti, to approve the first reading of BILL NO. 10-88. Mrs. Tracy made a motion, seconded by Mr. Lanzotti, to amend the special use permit to restrict live music venues to 10 events per month. The amending motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. The original motion was approved as amended upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

Mr. Voss encouraged the Smiths to share their business plans for the property with their neighbors and to address their concerns.

APPEARANCES

Mr. Doug Austin, of 758 Woodbine Place, appeared before the Council on behalf of the Quality of Life in Cape Girardeau Committee. He said that a second group of petitions containing 1,541 additional notarized signatures will be given to the City to place the riverboat gambling issue before the voters in the November election. Petitions with a total of 3,080 signatures will be presented to have this quality of life issue placed on the ballot.

Mr. Pat Wissman, a Cape Girardeau County resident and Democratic candidate for Presiding Commissioner in the upcoming election, addressed the Council. He said that the Quality of Life in Cape Girardeau Committee claims not to be opposed to gambling, yet it has made efforts to place this issue on the ballot. He asked why the names of the 37 churches purported to have assisted in this effort have not been released to the public. Mr. Wissman said that it took the County Clerk's office 50 hours to validate the first 1,500 signatures. He also noted that the City of Cape Girardeau must pay to place the issue on the November ballot and that the Quality of Life in Cape Girardeau Committee is costing the City money. The Quality of Life in Cape Girardeau Committee should donate money to the County to help pay for Melaina's Magical Playland and to the City for park improvements, in an amount equal to the amount it is costing the City to put the gaming issue on the ballot.

Mr. Jay Purcell, 2nd District Associate Commissioner and Republican candidate for Presiding Commissioner in the upcoming election, addressed the Council. He said that county residents' taxes pay for County Clerk's office staff, and as long as the gaming license issue is on the general election ballot, there will be a nominal cost. He expressed concerns about previous lawsuits involving the City, and he discussed other issues he felt weren't appropriate for City government.

Ms. Sirena Bridwell, 109 Mill Street, appeared before the Council regarding Margarita Mamas on North Main Street. She said that she had spoken with both Chief Kinnison and Assistance Police Chief Roger Fields about Margarita Mamas staying open for business at all hours of the night, having "kool-aid" parties. Margarita Mamas has a business license, she said, but not a license to sell alcohol. On Friday, July 2, 2010, there were 43 cars outside Margarita Mamas with people paying \$5.00 each to attend this "kool-aid" party. Ms. Bridwell said that Mr. Benjamin Burch, the Managing Officer, still had alcohol on the premises.

Chief Kinnison replied that there was some confusion on the matter, but it is illegal for Margarita Mamas to be open if there is any consumption of alcohol of any kind, and also if an admission fee was charged. If either allegation could be proved, Mr. Burch could be prosecuted. Mayor Rediger suggested Ms. Bridwell make an appointment with Chief Kinnison and speak directly with him about the situation.

Mr. Harry Probst, of 701 North Spanish Street, appeared before the Council regarding Margarita Mamas. He said that on Friday and Saturday people were waiting in the street to enter Margarita Mamas. These people said they were allowed to carry alcohol inside and drink in the premises. Mr. Meyer encouraged Mr. Probst to contact Chief Kinnison about the issue.

Mr. Don Howard, 1100 Ranney Avenue, addressed the Council and said he has been working to clean up his neighborhood. He encouraged residents not to vote for the Transportation Trust Fund-4 (TTF-4). He said that an aircraft manufacturer owes the City \$500,000, and the citizens

are paying for this with their taxes. The City needs to be better stewards of taxpayer money, he said, and take care of this bad debt. Mayor Rediger replied that the City has been working on that issue weekly, and it doesn't relate to the TTF-4 tax. Mr. Howard said that the money used on the aircraft manufacturer's bad debt could be used fund road improvements instead of approving another road tax.

CONSENT AGENDA

A motion was made by Mrs. Schneider and seconded by Mrs. Tracy to approve the following items on the Consent Agenda:

Approval of the June 21, 2010, City Council regular and closed session minutes.

BILL NO. 10-83, AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE CAPE GIRARDEAU COUNTY TRANSIT AUTHORITY FOR PUBLIC TRANSPORTATION SERVICES. Second and Third Readings.

BILL NO. 10-77, AN ORDINANCE APPROVING THE RECORD PLAT OF A RESUBDIVISION OF LOTS 13, 14 & 15, ARBOR HEIGHTS SECOND ADDITION. Second and Third Readings.

BILL NO. 10-82, AN ORDINANCE ACCEPTING A QUIT CLAIM DEED FROM THE MISSOURI DEPARTMENT OF TRANSPORTATION FOR A PORTION OF RIGHT-OF-WAY ALONG ROUTE W TO THE CITY OF CAPE GIRARDEAU, MISSOURI. Second and Third Readings.

BILL NO. 10-85, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBORDINATION AGREEMENT FOR A SECOND DEED OF TRUST FOR PROPERTY OWNED BY R.A. HUGGINS APARTMENTS, LLC, LOCATED AT 403 SOUTH PACIFIC STREET, IN THE CITY OF CAPE GIRARDEAU, MISSOURI. Reading and Passage.

BILL NO. 10-87, A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE MISSOURI DEPARTMENT OF NATURAL RESOURCES DRINKING WATER REVOLVING FUND, FOR WATER SYSTEM ENGINEERING SERVICES, AND TO EXECUTE ALL NECESSARY GRANT DOCUMENTS. Reading and Passage.

BILL NO. 10-86, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 2 TO A GENERAL ENGINEERING SERVICES AGREEMENT WITH HORNER AND SHIFRIN, INC. FOR WATER SYSTEM ENGINEERING SERVICES, IN THE CITY OF CAPE GIRARDEAU, MISSOURI. Reading and Passage.

Approval of a retail liquor by the drink license for Glinda L. Seabaugh, d/b/a Mississippi Mud House, 811 Broadway, Glinda Seabaugh, Managing Officer.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 10-83 is ORDINANCE NO. 4135; BILL NO. 10-77 is ORDINANCE NO. 4136; BILL NO. 10-82 is ORDINANCE NO. 4137; BILL NO. 10-85 is

RESOLUTION NO. 2546; BILL NO. 10-87 is RESOLUTION NO. 2547; and BILL NO. 10-86 is RESOLUTION NO. 2548.

ITEMS REMOVED FROM CONSENT AGENDA

The following bill was given second and third readings:

BILL NO. 10-84 AN ORDINANCE APPROPRIATING FUNDS FOR OPERATING EXPENDITURES, DEBT SERVICE PAYMENTS, CAPITAL EXPENDITURES, AND TRANSFERS FOR THE FISCAL YEAR ENDING JUNE 30, 2010, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The second and third readings of BILL NO. 10-84 were approved and the Ordinance adopted upon Mr. Voss' motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 10-84 is ORDINANCE NO. 4138. Mayor Rediger stated that the new copy of the Ordinance distributed included a change to Article 1, the Parks and Recreation General Fund, from \$37,500 to \$46,000. Mr. Meyer said that the change included end of year expenses in the park fund.

NEW ORDINANCES

BILL NO. 10-89 was given first reading as follows:

AN ORDINANCE READOPTING SECTIONS 2-76 TO 2-83 OF THE CITY CODE RELATING TO CONFLICTS OF INTEREST

The first reading of BILL NO. 10-89 was approved upon Mrs. Schneider's motion, Mrs. Proffer's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

There being no further business, the City Council adjourned at 8:00 p.m. upon Mr. Lanzotti's motion, Mr. Voss' second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

Harry E. Rediger, Mayor

Gayle L. Conrad, City Clerk

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