

REGULAR SESSION – SEPTEMBER 20, 2010

The Cape Girardeau City Council convened in regular session on Monday, September 20, 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.

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

Reverend Barry Pfanstiel, of the Good Shepherd Lutheran Chapel, presented the invocation, and the Pledge of Allegiance was recited.

A motion to remove Agenda Item No. 5, an Ordinance authorizing the City Manager to execute a Development Agreement between the City of Cape Girardeau and IOC-Cape Girardeau, LLC for a riverboat gaming facility and related development (BILL NO. 10-116), from the Consent Agenda, and to approve the agenda as amended, was approved upon Mrs. Tracy's motion, Mr. Voss' second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

COMMUNICATIONS/REPORTS

Mrs. Tracy stated she attended the Missouri Municipal League Annual Conference last week and enjoyed Mr. Neil Peterson's inspirational speaking. She said she would recommend him for the University Speakers Series or the Martin Luther King, Jr. Celebration Dinner. Mrs. Swan agreed and said she enjoyed his lecture about not losing the vision you have for your community. Mayor Rediger commented that the Conference sessions were good.

Mr. Scott Meyer, City Manager, stated that several members of City staff were in Emmitsburg, Maryland participating in Emergency Operations Training conducted by the Department of Homeland Security, in order to learn disaster preparedness procedures. He noted that the Cape Girardeau Municipal Airport had handled an emergency this week when a Delta MD-80 commercial flight made an emergency landing. Airport staff, the Public Works Department, and the Cape Girardeau Police and Fire Departments all responded according to the Emergency Response Plan, and all went well. It is important for staff to be trained to be ready to act in the case of an emergency.

Regarding the noise Ordinance, Mr. Meyer said the Council had previously discussed creating a committee composed of downtown residents and business owners, sound professionals, at-large members, the City Attorney, and representatives of Old Town Cape, and the Chamber of Commerce. A list of recommended names for this committee will be presented at a future Council meeting.

Mr. Meyer said he had researched several of the City's Ordinances regarding raising chickens within the City limits, and he had found inconsistencies where one Ordinance prohibits chickens, and another Ordinance explains how to keep them. He said that he will continue his research and bring a proposed Ordinance to the next Council meeting.

Regarding the on-going issues near the Whispering Oaks Subdivision, Mr. Meyer said that City staff continues to monitor the situation. In August, the City wrote a letter to the developer and his attorney stating that if they constructed duplexes just outside the City limits, they would not be allowed to connect to City services, unless the property was properly zoned and annexed. The City has not received an annexation request from the developer since the last Council meeting.

Mayor Rediger announced that a special Council meeting will be held on Wednesday, September 22, 2010, at 6:30 p.m. with two items on the agenda: 1) the review of the final draft for approval of the City input plan for gaming operations to send to the Missouri Gaming Commission by October 1, 2010, and 2) the designation of plans by project for the remaining \$1 million of \$2 million that was in the development agreement with IOC-Cape Girardeau.

PUBLIC HEARINGS

None.

APPEARANCES

Mr. Tom Emmendorfer, 115 Omaka Springs, gave a brief history of the development of Whispering Oaks and The Meadows of Whispering Oaks Subdivisions. Mr. Emmendorfer said that his home is within Cape Girardeau City limits and he pays for City services, but the City does not maintain the roads or water drainage, since those are the responsibility of the Property Owners Association. Ownership of the property in and around the subdivision which is not in the City limits is divided among Rodney Arnold, Mike Mathes, 360 Development, a local bank and both Property Owners Associations. There are issues with home ownership, plat reassignments, outside development, annexation issues, road maintenance, and the rumor of a rock quarry next to Subdivision. With annexation, he said, comes the City's responsibility to protect taxpaying homeowners. The land annexed by the City is surrounded by County property, and the City has no policies in place to govern this land. He said the City is responsible for annexation, and the City has nothing in place to protect homeowners from having a high-rise complex built next to their Subdivision. Annexation was the City's decision, and he believes it is the City's responsibility. Mr. Emmendorfer asked the Council to fix this, act swiftly, and use all means possible to protect the subdivision homeowners' investments.

Mayor Rediger stated that the City has influence over property annexed into the City, but outside the City limits, the City has no authority. As far as the duplexes being constructed, the City's only recourse is to deny utility hook-ups without proper annexation and zoning. Mayor Rediger said that the City is in contact with the developer's attorney.

Mr. Meyer continued that withholding of City services is the only tool the City has to influence the developers of the property in question. When Whispering Oaks Subdivision was annexed by the City, one of the conditions of the agreement stated that the streets would not be maintained by the City because they were not constructed to City standards.

Mr. Emmendorfer stated that he is not a member of the Whispering Oaks Property Owners Association and does not know if the association has an attorney. He said he understands the City does not have control of what happens outside the City limits, but the Council should be aware that at the builders' request, the City annexed the land and that even though the soccer fields and swimming pool remained outside of City limits, both of them have City utility services. He said the City didn't take time to recognize the intent of the builder and just gave the builder what he wanted. He said that he doesn't feel the City is ethically, legally, or morally protecting citizens by

allowing the construction of an apartment complex in the middle of a Subdivision on land the City intentionally cut out or missed annexing.

Mr. Mike Ingram, President of the Whispering Oaks Property Owners Association, said he attended a meeting approximately two weeks ago at the offices of the Limbaugh law firm. Mr. Arnold, his attorney Nancy Browne, and the Board of Directors of Whispering Oaks and Meadows Subdivision Land Owners Association were also present. He reviewed with the Council Mr. Arnold's intentions for developing the property in question, as explained to the Association at the meeting. Mr. Ingram questioned if the duplexes currently being constructed are within Cape Girardeau City limits. The Subdivision was originally established in the County, but is proceeding as if it were within City limits. The builder continues construction with no water or sewer hook-up to the new construction, and there are no wells or septic tanks. Mayor Rediger replied that the duplexes are not within City limits. Mr. Ingram continued that since the new construction is not in City limits, and no wells or septic tanks have been dug, he asked if the City would extend utilities. Mayor Rediger answered that City utilities will not be extended to the new construction. Finally, Mr. Ingram said that references were made to a letter written by Mr. Ken Eftink, Development Services Director, and sent to the developer, and he asked if the Association could get a copy of the letter. Mr. Meyer replied that the letter he referred to was actually sent to the developer's attorney. Mayor Rediger answered that a copy of the letter would be provided as Mr. Ingram requested.

Mr. Lanzotti questioned if the three homes that are built and not in City limits were occupied and whether they receive City water and sewer. He was answered that they were occupied, with two homes rented and one home privately owned. Mr. Ingram said the pool is owned by the Bank of Missouri and is provided City water and sewer even though it is located in the County. Mr. Lanzotti suggested that the owner of the R-1 house and the Bank of Missouri be approached and asked to voluntarily annex into Cape Girardeau City limits.

Mr. Ingram stated replied that there are 40 lots owned by the Bank of Missouri that are part of The Meadows and are already within City limits. Mr. Lanzotti asked if the Land Owners Associations were making plans to meet with the developer. Mr. Ingram replied that the Association had formulated a counter-proposal to be presented to Ms. Browne. He said they are attempting to work with the developer in good faith, but the development is moving quickly and they have concerns. Mr. Lanzotti requested the Associations share their counter-offer with City staff to keep them informed.

Mrs. Schneider said that it should be noted that the land in question is in the Jackson School District, which complicates matters. Most property taxes go to the Jackson School District. Mayor Rediger stated that the school district boundaries are not going to change.

Mr. Michael Barnes, 405 Monterra, addressed the Council and said that he had met with Mr. Meyer and Mr. Eftink about this issue. He asked what the meaning of property zoning was if the City required an R-1 zoning, then changed the zoning for the duplex properties because they were already built. He said that he thinks the City is proposing to change the zoning for those properties to R-3, and he said that would be changing the rules and standards.

Mrs. Schneider said that she needed more information about when the Subdivisions were constructed and when the Subdivisions were annexed into the City. She asked if the Subdivisions were annexed by petition and what the regulations were at that time.

Mr. Ingram said that when Mr. Rodney Arnold began the original Whispering Oaks Subdivision, he had negotiated with the City to be included in the extension of water and sewer lines that were being installed North toward LaSalle Avenue. As part of those negotiations, he had agreed to friendly annexation which obligated him to bring the Subdivision into the City zoned as R-1. Later, he began construction on the Meadows of Whispering Oaks and that Subdivision was grandfathered in. Early houses had septic systems, but it was more cost efficient to be on City water and sewer. When both Subdivisions were simultaneously annexed, this became an issue because the developers had petitions to zone pieces of the Subdivision as R-4. The Planning and Zoning Commission disapproved the R-4 zoning and both Subdivisions were annexed as R-1. They had already begun construction on four duplexes prior to the annexation process at the end of the Subdivision in Cloverdale, and since they were already in existence, they were grandfathered in. A triplex was also under construction at that time. The Subdivision was annexed as R-1 except for the four duplexes.

Mrs. Schneider asked if the Whispering Oaks Subdivision and the Meadows Subdivision were annexed at the request of the developer and not by the petition of homeowners. Mr. Ingram said that the annexation was a preexisting agreement with the developer for friendly annexation in exchange for City services.

Mayor Rediger said that the Planning and Zoning Commissions of the Cities of Cape Girardeau and Jackson, as well as some Cape Girardeau County staff are working to draft a set of subdivision regulations for the County. The draft is near completion and will be brought forth before the end of this year in an attempt to help deal with this type of situation, and it could affect the 15 acres next to the City limits near Whispering Oaks.

Mr. Ingram said he wants the 15 acres outside Whispering Oaks Subdivision to be annexed into the City so any infrastructure and building is done according to City standards and specifications. In the past, construction has not been to City specs, and the homeowners are now dealing with the problems. If the developer decides to stay in the County and refuses annexation, then the development shouldn't have City benefits.

Mayor Rediger said that City staff and the Council is dedicated to working toward a solution. He said that the City will stay in touch, and he asked the Whispering Oaks Property Owners Association to provide any new information to the City's staff.

Ms. Sirena Bridwell, 109 Mill Street, addressed the Council in opposition to the liquor license application of Mr. Benjamin Burch, and she said that she appreciated the Council's denial of the last liquor license application at 701 North Main Street. Ms. Bridwell asked the Council to deny the license.

Mr. Eric Probst, 701 North Spanish, appeared in opposition to Mr. Burch's requested liquor license. He asked that the Council deny the liquor license.

A motion was made by Mr. Voss and seconded by Mr. Lanzotti to consider a retail liquor by the drink license for Benjamin Burch, d/b/a Vikings Bootheel MO 509, 701 North Main Street. Mr. Lanzotti stated that the Council has latitude in making the determination of whether the applicant has a proven record of operating a clean and orderly business. Mr. Voss noted that Mr. Burch has not been able to get along with neighbors in his previous establishment. The motion was denied upon the following vote: Ayes, none. Nays, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss.

CONSENT AGENDA

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

Approval of the City Council August 26, 2010, special session and September 7, 2010, regular and closed sessions minutes.

BILL NO. 10-109, AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL TAX BILLS FOR THE DEMOLITION OF DANGEROUS BUILDINGS UNDER THE PROVISIONS OF CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU, MISSOURI. Second and Third Readings.

BILL NO. 10-110, AN ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU, MISSOURI, BY CHANGING THE ZONING OF THE SOUTHEAST CORNER OF SPARTECH DRIVE AND OPTIMIST DRIVE, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI, FROM R-1 TO M-2. Second and Third Readings.

BILL NO. 10-115, AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A GENERAL WARRANTY DEED FOR A TRACT OF LAND LOCATED ALONG OPTIMIST DRIVE IN THE CITY OF CAPE GIRARDEAU TO ATLAS PLASTICS CORPORATION D/B/A SPARTECH PLASTICS. Second and Third Readings.

BILL NO. 10-117, AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU BY ADDING A NEW SECTION 5-48 ENTITLED "CONSUMPTION LIQUOR LICENSE." Second and Third Readings.

BILL NO. 10-122, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A WRECKER SERVICE AGREEMENT WITH SPERLINGS, INC., D/B/A SPERLINGS GARAGE AND WRECKER SERVICE. Reading and Passage.

BILL NO. 10-123, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A VEHICLE LOCKOUT SERVICE AGREEMENT WITH SPERLINGS, INC., D/B/A SPERLINGS GARAGE AND WRECKER SERVICE. Reading and Passage.

A motion accepting the sanitary sewer and water main extension improvements, as shown on the improvement plans for Boulder Crest Estates Subdivision contingent upon receipt of balance of inspection fees.

A motion releasing the remaining amount of \$130,410 of the escrow agreement covering the improvements for Boulder Crest Estates Subdivision.

Approval of a change in managing officer for a retail liquor by the drink license for Ronnie L. Abraham, d/b/a Alexander's, 433 S. Sprigg Street, Cape Girardeau, Missouri.

Approval of a temporary liquor by the drink license for Mary Burton-Hitt, d/b/a Southeast Missouri Hospital Foundation, for an event to be held October 28-29, 2010, at the Show Me Center.

Approval of a taxicab license for Pinnacle Transit, Inc., d/b/a Pinnacle Transit, 435 Everglades, Farmington, Missouri.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 10-109 is ORDINANCE NO. 4152; BILL NO. 10-110 is ORDINANCE NO. 4153; BILL NO. 10-115 is ORDINANCE NO. 4154; BILL NO. 10-117 is ORDINANCE NO. 4155; BILL NO. 10-122 is RESOLUTION NO. 2558; and BILL NO. 10-123 is RESOLUTION NO. 2559.

ITEMS REMOVED FROM CONSENT AGENDA

The following bill was given second and third readings:

BILL NO. 10-116 AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CAPE GIRARDEAU AND IOC-CAPE GIRARDEAU, LLC FOR A RIVERBOAT GAMING FACILITY AND RELATED DEVELOPMENT IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The second and third readings of BILL NO. 10-116 were approved and the Ordinances adopted upon Mr. Voss' motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan and Voss. Nays, Tracy. BILL NO. 10-116 is ORDINANCE NO. 4156.

NEW ORDINANCES

BILL NO. 10-118 was given first reading as follows:

AN ORDINANCE APPROVING THE RECORD PLAT OF TIMON WAY SECOND SUBDIVISION

The first reading of BILL NO. 10-118 was approved 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. 10-121 was given first reading as follows:

AN ORDINANCE ACCEPTING A PERMANENT WATERLINE EASEMENT FROM DONALD H. FROEMSDORF AND JOY L. FROEMSDORF, TRUSTEES OF THE DONALD H. FROEMSDORF AND JOY L. FROEMSDORF REVOCABLE LIVING TRUST FOR THE LASALLE AVENUE WATERLINE PROJECT

The first reading of BILL NO. 10-121 was approved upon Mrs. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

APPOINTMENTS

Mr. Edward Hart and Mr. James Matchell were reappointed, and Ms. Krisinda Cook was appointed, to the Board of Adjustment for terms expiring September 4, 2015, upon Mr. Voss' motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. Mr. Voss extended the Council's appreciation to the people

who apply to serve on Advisory Boards. Mr. Lanzotti encouraged citizens who want to be active in the community to attend Advisory Board meetings and participate.

Mr. Farris Nabors was reappointed to the Board of Appeals for a term expiring September 4, 2015, upon Mrs. Schneider's motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

OTHER BUSINESS

Mayor Rediger noted the City Council special session on Wednesday, September 22, 2010, at 6:30 p.m. in Council Chambers.

There being no further business, the City Council adjourned at 8:30 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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