

REGULAR SESSION – OCTOBER 4, 2010

The Cape Girardeau City Council convened in regular session on Monday, October 4, 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 Ronald Knapp, of the First Church of God, presented the invocation, and the Pledge of Allegiance was recited.

The agenda was approved as distributed upon Mrs. Schneider's motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

COMMUNICATIONS/REPORTS

Mr. Voss requested an update on the single stream recycling and automated solid waste pickup programs, as well as glass recycling. Mr. Tim Gramling, Public Works Director, stated that in the first four months of the program, there was an increase of approximately 213 tons of recycling collected, an overall 57% increase in tonnage. The number of residents participating in the recycling program had increased by approximately 52% over the same period last year. Mr. Gramling said that solid waste pick-up had decreased by approximately 5%, but the tonnage was down 134 tons. The response has been very positive so far.

The remote glass recycling stations have been full at each location. Glass recycling bins at the Fire Stations, the Osage Centre, and the Public Works Department building were collected three times a week and were full each time. He said that the City will increase the number of glass recycling containers for a second time since the program began, and he will have more figures to give the Council in the near future. He said it is hard to tell whether they are collecting more glass recycling now because they didn't measure the recyclables separately before implementing the single stream recycling program.

Mrs. Schneider said she had noticed quite a few cans overflowing with garbage, and she asked if that was a problem for the drivers. Mr. Gramling said the automatic waste pick-up vehicles can handle overflow up to a certain amount. If there is a problem, the drivers will tag the can and ask the resident to reduce the amount of garbage placed in the can. Mr. Meyer said that the drivers tag the trash containers first to warn the residents, but they eventually won't pick up the garbage or they will cite them. Mrs. Schneider asked if there were outreach plans to help those residents begin to recycle more. Mr. Gramling answered that they talk with residents and provide them with recycling information. Many of those residents will begin to recycle more after talking with City staff.

Mrs. Tracy announced that on October 10, 2010, the Downtown Council of Churches is hosting an event at the band shell in Capaha Park where Dr. Frank Nickel will tell the tale of Capaha Park. There will be a worship service, and Dr. Nickel's tale will be the focus of the service.

Mr. Meyer stated that in the Study Session, the Council discussed the casino traffic study and received preliminary data and routes. The Council gave input and instructed City staff to look at truck routes. In addition, he said the Council had discussed allowing raising chickens for private use within City limits, and a proposed Ordinance will be on next agenda. A Noise Disturbance Committee will be appointed to address concerns in downtown Cape Girardeau between

businesses, events, and residents living downtown. Mrs. Proffer will be the Council liaison on the Noise Disturbance Committee.

Mr. Meyer also referred to the end of year financial analysis presented to the Council, and he commended the outstanding work of City staff during the last year in addressing revenue challenges. During the 2009-2010 fiscal year, the City put \$370,000 in the unreserved fund balance sooner than the City had anticipated. Mayor Rediger also thanked City staff for their work and said that each Department was contributing with cost control, productivity and innovation. Mr. Meyer noted that the automated solid waste disposal system was an innovation made by the Public Works Department that resulted in no rate increase for Cape Girardeau residents.

Mr. Meyer stated that the Council discussed the Whispering Oaks Subdivision and other areas receiving City utility services outside of City limits. The City has spoken with residents that receive City services now about annexing into the Cape Girardeau city limits. They had also spoken with the Bank of Missouri about its properties receiving City services, and they told the bank that it is expected to annex those properties into the City limits. The Bank of Missouri owns other properties not currently receiving City services, and those properties will not receive such services without first annexing into City limits.

Mr. Meyer also announced Alma Schrader Elementary School's Walk to School Day on Wednesday, October 6, 2010.

PUBLIC HEARINGS

This being the date set for a public hearing to consider vacating the City's interest in a portion of Frederick Street from Mason Street to Olive Street, the hearing was opened. There being no appearances, the hearing was closed.

BILL NO. 10-126 was given first reading as follows:

AN ORDINANCE VACATING THE CITY'S INTEREST IN A PORTION OF UNIMPROVED STREET RIGHT-OF-WAY, LOCATED ON FREDERICK STREET, BETWEEN MASON STREET AND OLIVE STREET, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

A motion to postpone the first reading of BILL NO. 10-126 to a future date 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. Mr. Voss said that the Council had discussed the possibility of a future casino development in the city, and he did not think this was a prudent time to take such action. Once the property is vacated, the action is permanent.

This being the date set for a public hearing regarding the request of Good Shepherd Lutheran Church and Wireless Asset Group, LLC to rezone the property located at 1904 West Cape Rock Drive from the R-1, Single Family Suburban Residential District, to the PD, Planned Development District, and for a Special Use Permit to construct a 150 foot stealth telecommunication tower and fenced-in compound on the property located at 1904 West Cape Rock Drive, the hearing was opened. The Council Report in the Agenda Packet presented for the record a certified copy of the following items: (1) Section 30-401 entitled "Special Use Permit" from the City Code; (2) the Application for special use permit; and (3) the application file.

Attorney Nancy Browne addressed the Council on behalf of Good Shepherd Lutheran Chapel and Wireless Asset Group in support of the request. She gave a history of the property and said that

her client had been in contact with City staff in September of 2009 and had not heard of the need for rezoning until June of this year after they had filed an application. Effective March 1, 2010, the new zoning code dictated that no special use permits could be issued for cell towers in residential areas. She said that Wireless Asset Group had been working from September of 2009 through June of 2010 to comply with MIPA, FAA, FCC, and federal regulations to install the cell tower. MIPA had to examine the application to ensure the tower was not constructed on Native American burial grounds, and over 25 tribes reviewed the application, she said. Other than the new zoning Ordinance's requirements, the application submitted meets all the City's cell tower requirements. Ms. Browne stated there isn't sufficient cell phone coverage in the North area of Cape Girardeau, and there has been a significant increase in bandwidth use by smartphones and cell phone internet usage. City staff had recommended that Wireless Asset Group pursue this course. Ms. Browne said the issue at question was flexibility, and the City will have to address this inherent flaw in the zoning Ordinance at some point. She said the cell tower will be 150' in height, and they will make the tower consistent with the neighborhood.

Mr. Jeff Allen, of Wireless Asset Group, appeared before the Council and said that the problem with this area is coverage and combined capacity. He distributed a handout to the Council and explained that the map showed the existing cell towers in Cape Girardeau. He indicated the proposed site of this cell tower and said that if they are not permitted to construct a cell tower, the area will not be served. He explained a report showing the lack of coverage in the area, and he reviewed how the tower would be constructed.

Mr. Steve Fritzer, of 1507 Amblerwood and Director of the Chapel, addressed the Council and said that neighbors had two opportunities to give input on the placement of the tower and no one had appeared at any of the meetings at the church or at the Planning and Zoning Commission meeting in opposition. He said that Church Council members and voters' assembly had overwhelmingly approved proceeding with the proposed construction. Mr. Fritzer then read a letter of support written by the church's Pastor.

Mr. Lanzotti said that cell towers are usually built to technologically serve their purpose with top-notch antennas and structures. He asked who would be responsible for ensuring the aesthetic look of the structure and physically maintaining the structure. Ms. Browne answered that the maintenance issue is addressed in the lease contract between the Good Shepherd Lutheran Chapel and Wireless Asset Group. The maintenance responsibilities, including exterior maintenance, are included in the agreement and would be the responsibility of Wireless Asset Group.

Mr. Chris Koehler, of Koehler Engineering, appeared and said that they had prepared the rezoning and special use permit applications. He said that City staff had directed the property owners to pursue this route. The Planned Development District zoning protects the neighbors by maintaining the integrity of the site, and any improvements planned must be approved by the Planning and Zoning Commission. Mrs. Tracy asked if emergency sirens would be installed on the tower. Mr. Allen answered that sirens would be muffled if they were installed on the tower. Emergency sirens could be placed on the shelter but would not be placed on the tower because of aesthetics.

There being no further appearances, the hearing was closed.

BILL NO. 10-131 was given first reading as follows:

AN ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY OF CAPE GIRARDEAU, MISSOURI, BY CHANGING THE ZONING OF 1904 WEST CAPE ROCK DRIVE, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI, FROM R-1 TO PD

The first reading of BILL NO. 10-131 was approved upon Mr. Voss' motion, Mrs. Tracy's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. Mrs. Swan abstained from voting on BILL NO. 10-131 for financial reasons due to her competing business interests.

BILL NO. 10-130 was given first reading as follows:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO GOOD SHEPHERD LUTHERAN CHAPEL AND WIRELESS ASSET GROUP, LLC, FOR PURPOSES OF CONSTRUCTING, MAINTAINING AND OPERATING A TELECOMMUNICATION TOWER AND FENCED COMPOUND AT 1904 WEST CAPE ROCK DRIVE, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-130 was approved upon Mr. Lanzotti's motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Tracy and Voss. Nays, none. Mrs. Swan abstained from voting on BILL NO. 10-130 for financial reasons due to her competing business interests.

Mr. Voss noted that another structure was to be built next to the cross tower, and he asked how large it would be. Mr. Allen answered that the structure was to be 10' x 20', and they would be working with the Planning and Zoning Commission and will install whatever fencing they recommend. Mr. Voss asked if there are trees or shrubs now to camouflage the proposed structure. Ms. Browne replied that it was a wooded area.

APPEARANCES

Mr. Rick Vines, of 296 Bluebird Lane, appeared before the Council with questions about peripheral zoning. Mr. Vines asked about animal feeding operations and feedlots, what constitutes a "farm", what defines a nuisance, who would enforce the proposed peripheral zoning Ordinances, what is the process for voluntary annexation, and whether residents within the peripheral zoning area would receive City services. He also asked if County residents would be represented on the Council. Mr. Lanzotti answered that the proposed peripheral zoning used the Environmental Protection Agency's (EPA) definition of feedlots. Mr. Eric Cunningham, City Attorney, stated that the term "animal feeding operation" is defined in the City Code of Ordinances Chapter 30, Section 30-105 and incorporates EPA regulations. Mr. Lanzotti continued to explain acreage and nuisance definitions, and Mr. Cunningham noted that Chapter 13 of the Code of Ordinances defined nuisances. Mr. Lanzotti explained the process of voluntary annexation, and he said that properties within the two-mile peripheral zoning area would not receive City services, nor would they pay City taxes, or be required to comply with City codes other than AG1 zoning. Any existing non-conforming use would be grandfathered in.

Ms. Vickie Lance addressed the Council and said that she lives next to the Whispering Oaks Subdivision and owns an animal farm with 500 animals. She asked if the peripheral zoning would affect her operation. Mr. Lanzotti answered that the zoning would have no impact on her animals or petting zoos. It is designed to accommodate agricultural activity. Ms. Vance stated that she is opposed to the peripheral zoning.

Mr. Mike Ingram, President of the Whispering Oaks Property Owners Association, appeared in favor of peripheral zoning. He said that the Subdivision is flanked with a commercial farm on one side, and the 5-H ranch on the other and the subdivision property owners have no issue with either one. If the ranch changes hands at some point in the future and the property's use changes, the subdivision property owners would have some protection. Mr. Lanzotti said that the City would have no oversight of County property, as long as the use of the property conforms to AG-1 standards.

Mr. Pat Wissman appeared before the Council and said that he lives on County Road 621 and would be affected by the proposed peripheral zoning. He asked for assurance that County residents within the peripheral zoning area would not be required to pay Cape Girardeau City taxes. Mr. Lanzotti assured him that County residents living outside of Cape Girardeau City limits would not pay City taxes. Mr. Wissman asked for clarification of several phrases and references within the proposed peripheral zoning Ordinance, and Mr. Lanzotti and Mr. Cunningham gave several explanations.

Mr. Jeff Timmerman, 5403 County Road 205, addressed the Council in support of the proposed peripheral zoning. He asked about the planned expansion of a rock quarry. Mr. Lanzotti said that peripheral zoning would require a quarry to apply for a zoning change, and the matter would be under the review of the Planning and Zoning Commission.

Mr. Tom Emmendorfer, of 115 Omaka Springs, appeared and submitted a map to the Council outlining the Whispering Oaks and The Meadows Subdivisions. He asked what power the City had to prevent the Bank of Missouri from selling their land to a pig farmer or a low-income housing development. Mr. Meyer replied that the City spoke with the Bank of Missouri and told them that if they want to continue to receive City services, they must annex all the facilities receiving the City services. Mr. Emmendorfer asked whether they could sell the property, if they do not care to receive City services. Mr. Meyer answered that neither the City, nor the County, could prevent or control a property owner from selling land for any use. Mr. Emmendorfer stated that nothing was in place to keep the Bank from selling the property to anyone to do whatever they want with the property.

CONSENT AGENDA

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

Approval of the City Council September 20, 2010, regular and closed sessions minutes and the September 22, 2010, special session special session minutes.

BILL NO. 10-118, AN ORDINANCE APPROVING THE RECORD PLAT OF TIMON WAY SECOND SUBDIVISION. Second and Third Readings.

BILL NO. 10-121, 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. Second and Third Readings.

BILL NO. 10-120, A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ANNEXATION PETITION FROM LYNWOOD BAPTIST CHURCH AND SETTING A PUBLIC HEARING REGARDING THE PROPOSED ANNEXATION. Reading and Passage.

BILL NO. 10-125, A RESOLUTION ACKNOWLEDGING RECEIPT OF AN ANNEXATION PETITION FROM FRUITLAND LIVESTOCK MARKET, INC. AND SETTING A PUBLIC HEARING REGARDING THE PROPOSED ANNEXATION. Reading and Passage.

BILL NO. 10-127, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AND INDEMNITY AGREEMENT WITH BETHANY BAPTIST CHURCH FOR PARKING LOT IMPROVEMENTS IN THE CITY OF CAPE GIRARDEAU, MISSOURI. Reading and Passage.

BILL NO. 10-128, A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE MISSOURI FOUNDATION FOR HEALTH, FOR CYCLING IMPROVEMENTS IN THE CITY OF CAPE GIRARDEAU, MISSOURI, AND TO EXECUTE ALL NECESSARY GRANT DOCUMENTS. Reading and Passage.

BILL NO. 10-129, A RESOLUTION APPROVING A PROJECT FOR CAPE RETIREMENT COMMUNITY, INC. TO BE FINANCED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF CAPE GIRARDEAU, MISSOURI. Reading and Passage.

A motion rejecting all bids received September 15, 2010, for the raw water supply well foundations, pumps and controls, and authorizing the design consultant to rework the plans to accommodate cost saving alternatives.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 10-118 is ORDINANCE NO. 4157; BILL NO. 10-121 is ORDINANCE NO. 4158; BILL NO. 10-120 is RESOLUTION NO. 2561; BILL NO. 10-125 is RESOLUTION NO. 2562; BILL NO. 10-127 is RESOLUTION NO. 2563; BILL NO. 10-128 is RESOLUTION NO. 2564; and BILL NO. 10-129 is RESOLUTION NO. 2565.

NEW ORDINANCES

BILL NO. 10-132 was given first reading as follows:

AN ORDINANCE AMENDING SCHEDULE C OF SECTION 26-121 OF THE CITY CODE, BY REPEALING STOP SIGNS AT FOUNTAIN STREET AND MORGAN OAK STREET, AND ESTABLISHING STOP SIGNS AT WILLIAM STREET AND FOUNTAIN STREET, AND GOOD HOPE STREET AND FOUNTAIN STREET, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-132 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.

BILL NO. 10-133 was given first reading as follows:

AN ORDINANCE AMENDING SCHEDULE K OF SECTION 26-121 OF THE CITY CODE, BY PLACING YIELD SIGNS AT THE INTERSECTIONS OF MORGAN OAK STREET AND FOUNTAIN STREET, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-133 was approved upon Mrs. Schneider's motion, Mrs. Tracy's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

BILL NO. 10-134 was given first reading as follows:

AN ORDINANCE AMENDING SCHEDULE J OF SECTION 26-135 OF THE CITY CODE, ESTABLISHING A ONE-WAY ROUNDABOUT, AT MORGAN OAK STREET AND FOUNTAIN STREET, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-134 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.

BILL NO. 10-135 was given first reading as follows:

AN ORDINANCE AMENDING SCHEDULE C OF SECTION 26-121 OF THE CITY CODE, BY ESTABLISHING A STOP SIGN ON DUNKLIN STREET AT PENNY AVENUE, IN THE CITY OF CAPE GIRARDEAU, MISSOURI

The first reading of BILL NO. 10-135 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. Brian Ozark was appointed to the Airport Advisory Board for a term expiring April 30, 2011, upon Mr. Voss' motion, Mrs. Swan's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none.

OTHER BUSINESS

BILL NO. 10-136 was presented as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE GIRARDEAU, MISSOURI, DIRECTING THE CITY MANAGER TO REQUEST THE CAPE GIRARDEAU COUNTY COMMISSION TO APPROVE AN ORDER AUTHORIZING THE CITY OF CAPE GIRARDEAU TO ADOPT AN ORDINANCE ESTABLISHING A SYSTEM OF PERIPHERAL ZONING AROUND THE CITY, PURSUANT TO THE PROVISIONS OF SECTION 89.145 OF THE REVISED STATUTES OF MISSOURI

Mr. Lanzotti extensively reviewed the process of implementing peripheral zoning and its regulations and limitations. Mayor Rediger said that he had been concerned that the Council was moving too fast with the draft Ordinance, but he was now more comfortable with this Resolution since it presents the issue to the Cape Girardeau County Commission for their review. He said the proposed County subdivision zoning plan would complement the peripheral zoning Ordinance. Mrs. Tracy and Mrs. Swan agreed.

The reading of BILL NO. 10-136 was approved and the Resolution adopted upon Mr. Lanzotti's motion, Mr. Voss' second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy and Voss. Nays, none. BILL NO. 10-136 is RESOLUTION NO. 2566.

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.

Harry E. Rediger, Mayor

Gayle L. Conrad, City Clerk

THIS PAGE INTENTIONALLY LEFT BLANK.