

REGULAR SESSION – OCTOBER 17, 2011

The Cape Girardeau City Council convened in regular session on Monday, October 17, 2011, at 7:00 p.m., with Mayor Harry Rediger presiding and Council Members Mark Lanzotti, Meg Proffer, Loretta Schneider, Kathy Swan, Debra Tracy, and John Voss present.

City Attorney Eric Cunningham presented the invocation, and the Boy Scouts of America, Troop 16, led the Pledge of Allegiance.

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

Mayor Rediger welcomed the Boy Scouts and introduced Raymond Boos, Zach Brown, and Drew Beussink, of Troop 16, and Chance Ziegler, of Troop 4016. He also introduced Mr. Glenn Beussink and Mr. John Boos, honorary Troop Leaders. Mr. Voss encouraged the Boy Scouts to persevere and continue to reach for the goal of earning the Eagle Scout rank.

PRESENTATIONS

Mayor Rediger presented certificates of appreciation to Mr. Danny Essner, recognizing his nine years on the Parks and Recreation Advisory Board, and to Mr. Charles Haubold, for 24 years of service on the Planning and Zoning Commission. The Mayor thanked them for their many years of volunteer service and the work they did toward the growth and development of the City.

COMMUNICATIONS/REPORTS

Mayor Rediger said that last week he had taken part in the announcement of the renovation of the Esquire Theater on Broadway. The City is starting to see development on Broadway even before the Broadway road improvement project begins.

The Mayor announced that the ribbon cutting for the Main Street relocation will be this Thursday at 11:00 a.m. Isle of Capri constructed the relocation to improve the access to the Red Star area. He said that last week, he spent several days at the Isle of Capri in Boonville. He visited with the City Administrator, Mayor, Chamber of Commerce, the Convention and Visitors Bureau, and the general manager of the operation at length, and they all feel that Isle of Capri is a great partner.

Mrs. Schneider said that on Friday, October 7, she had represented the City as Mayor Pro Tem in the Golden Age Games at the Osage Centre. The Osage Centre was filled with residents from long-term care facilities from around the region. They were very appreciative of the facility and the event.

Mrs. Proffer reminded everyone of the Southeast Missouri State University Homecoming events this weekend. Mayor Rediger said that he would serve as Grand Marshall of the parade. City Manager Scott Meyer said that the Army's Golden Knights will parachute onto the field at the homecoming game. Mr. Meyer said that recently changes have been made to some of the parade procedures. Candy is not to be thrown from the floats, but may be handed to the kids on the street. There have been close calls with kids going into the street to retrieve candy. Also, litter pickup will begin directly after the parade. Mr. Meyer said that the University has cooperated with City on these changes.

Mrs. Tracy reminded everyone that the Cape Girardeau Public School District will have several ribbon cuttings coming up celebrating improvements to local schools.

Mr. Meyer said that the fall leaf pickup program starts November 7. The zones have changed this year to allow different areas to start first, beginning November 7 in Area A. In addition, City residents can haul their own leaves to the drop-off area, purchase compost bags for curbside collection, or mulch their yard waste.

Mr. Meyer said the Council has upcoming appointments to the Municipal Golf Course Advisory Board, the Show Me Center Board of Managers, and the River Campus Board of Managers at the next Council meeting.

PUBLIC HEARINGS

This being the date set for a public hearing to consider the request of Shah Faisal for a Special Use Permit to operate and maintain a convenience store which sells package liquor seven days a week at 238 North Fountain Street, in the RUMD (Residential Urban Mixed Use) District, 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 Permits" from the City Code; (2) the Application for Special Use Permit; and (3) the Application file.

Mr. Shah Faisal, of 604 Redbud Circle, addressed the Council in support of the request. He said that at the Planning and Zoning Commission meeting, Mr. Brian Langlois, owner of the Bellevue Bed and Breakfast, said that the previous owner of that store stated he did not know what Mr. Faisal was going to do after he bought the store, but that was incorrect. The previous owner knew that he was going to have a liquor store and had even offered to sell Mr. Faisal some freezers. The City and State have approved liquor licenses at this location, and the State even gave him a Sunday sales license. Mr. Faisal said that if he had known that Sunday sales was going to be an issue, he would not have bought the property. He said that that Mr. Langlois told the Planning and Zoning Commission that he does not cooperate with neighbors, but Mr. Faisal asserted that he has done everything he could to improve his area. There have been issues with trash, loud noise, picketing. He has addressed each of those issues. He has installed signs warning against loitering and loud music, he has an employee that picks up trash at the neighbors' houses. Mr. Faisal said that the Cape Girardeau Police Department is helping him to get rid of the loiterers and the violators. He stated his store was robbed twice, but the same person also robbed another store besides his. He was the victim of the robbery, and the robber lived on Bellevue just down from the bed and breakfast. Mr. Faisal said that he will do whatever it takes to get the Sunday sales liquor license.

Mr. Gordon Glaus, of Dix & Glaus, LLC, appeared in support of the request as Mr. Faisal's attorney and distributed information to the Council. He said that the first item is a letter written by Mr. Clinton Wunderlich, of Wunderlich Properties, supporting Mr. Faisal's special use permit request. The second item is a petition signed by people in the neighborhood that supported his request, and the third item is a copy of Section 30-401 of the Cape Girardeau Code of Ordinances, the section on special use permits. Mr. Glaus discussed the conditions the Council must review in determining to issue a special use permit. He said the answer to five of six of the conditions is "No." The Council must decide, based on evidence, whether or not granting a Sunday license to Mr. Faisal's store will adversely affect the character of the neighborhood. Mr. Glaus asserted that it does not. There are numerous places where residents can buy alcohol within walking distance of this location. The store is now open seven days a week, but is only permitted liquor sales six days a week. Therefore, the Council must determine if the act of allowing alcohol sales on Sunday will adversely affect the neighborhood. He continued that denying the permit puts Mr. Faisal at an

unfair disadvantage when competing with other stores in the area. Mr. Faisal has taken many steps to protect the character of the neighborhood by talking with the same police officer on a regular basis to address loitering and other violations, and he pays a person to pick up trash six days a week in neighboring areas. Mr. Faisal is willing to have the employee come in on Sundays and has installed surveillance cameras on the property.

Rev. Bob Towner, pastor of the Christ Episcopal Church, addressed the Council and said that his church is located one block south of this area and participates in the Neighborhood Connections Community Organization. He said that Mr. Faisal's argument for granting this special use permit is based on an old zoning law that had allowed his business to be "grandfathered in" the first time on a limited basis, despite public opposition. There are no similarities between this store and the previous store at this location. Rev. Towner said that the burden is on this store to show that it is making a positive contribution to the neighborhood before the special use permit request is approved.

Mr. Cody Pearl addressed the Council in support of Mr. Faisal's request. He said that he has lived in the neighborhood for 30 years, and he has seen Mr. Faisal cleaning the neighbors' yards. He said that Mr. Faisal should have the same liberties that other stores have to sell liquor on Sunday.

Mr. Brian Langlois, of the Bellevue Bed and Breakfast at 312 Bellevue, appeared and said that a discount liquor store does adversely affect the character of the neighborhood. He said that Mr. Faisal is still presenting his store as a nice convenience store, but when he was given the previous permit to operate, there was a brochure that shows the store was actually a discount liquor store and not a grocery or convenience store. Mr. Langlois said that he talked to Mr. Rick Hetzel, who owns property in the area, and Mr. Hetzel said that he could speak on his behalf. Mr. Hetzel owns the house next door to Mr. Faisal's store and authorized Mr. Langlois to say that he shares the same concerns. Mr. Langlois said that the City denied the Sunday sales license, and the Planning and Zoning Commission denied the Sunday sales license. The neighborhood had previously expressed concerns, and their concerns have come to fruition. There is more noise, more crime, more traffic and increased speed of traffic, more cars idling with loud stereos in the store parking lot, and more panhandlers asking for money to go to the liquor store. The store was robbed in May, and he feels bad for Mr. Faisal, but he brought this crime into the neighborhood by opening a liquor store. He had a copy of the police report of all the times they have responded to this location. Mr. Langlois said that as a home and business owner, he has guests from all over the country who stay in his bed and breakfast, and their first perception of Cape Girardeau is what they see and hear in that neighborhood. He said he is also concerned with the safety of his guests, property values, and the perception of Cape Girardeau. This store is a detriment to a "walkable" community, which is what Old Town Cape promotes. He implored the Council to follow the recommendation of the Planning and Zoning Commission and deny this request.

Mayor Rediger asked for a show of hands of the neighbors in attendance at the Council meeting.

A female neighbor addressed the Council and said that she lives next door to this location. She said she does support small businesses, but they have a responsibility to the community. She has not seen any of the things Mr. Faisal has claimed to have done to help alleviate the problems in this neighborhood. She has had her car damaged, traffic has increased, vehicles going the wrong way on the street, and the character and welfare of public have suffered. Since Mr. Faisal's store opened, she has had to clean her property every day to pick up trash and beer bottles. People are drinking publicly on the street and leaving their bottles in her yard, which has a bus stop in front of her home. Mr. Faisal is already selling liquor six nights out of seven. The City should not enable

him anymore, because he has not treated the permits he has already been given with respect. She asked the Council to please not allow Mr. Faisal one more day to sell alcohol.

Mr. Travis Barjain addressed the Council in support of Mr. Faisal's request and said that he lives one block towards river from store. He said that he frequently walks to Cape Mart at night and has not felt unsafe in doing so. He said that he supports Mr. Faisal as a business owner. Mr. Barjain said that it seems like the issue here is that the people in the neighborhood don't like the store itself and really don't care about a Sunday sales license. He said that this request is only to approve Sunday liquor sales. The people that live in the neighborhood are not going to move just because the store is or is not open. Mr. Barjain asked the Council to approve the license and treat Mr. Faisal the same as any other business in this area.

Ms. Katrina Hall appeared before the Council and said that she lives at the corner of Bellevue and Fountain Streets and frequents Mr. Faisal's store. She said that this store is very convenient for her to visit and she has not seen any trash in her yard. Crime in the neighborhood has not increased just because he moved in. There was murder and crime before Mr. Faisal moved in.

Mr. Halom Shahed addressed the Council in support of issuance of the permit and said he owns similar businesses such as Mr. Faisal's in Cape Girardeau. He said people throw trash on the ground all over the city, and having a Sunday sales liquor license is not going to make a difference in the trash in the area.

Mr. Scott Browning, of 419 Bellevue, appeared and said he has noticed panhandlers asking for money. He said that he had seen a car vandalized, that trash in the neighborhood is worse, and that Mr. Faisal's store is not an asset to the neighborhood. Mr. Browning said that he went to the store at Middle Street and Broadway today and found plenty of groceries available there, then he went to Mr. Faisal's store and could hardly find any groceries because of all the liquor. This is not a convenience store, but only a store to sell beer and liquor. Mr. Browning said that he feels Mr. Faisal's store is a negative influence in the neighborhood.

Ms. Sharon Pickens appeared before the Council in support of Mr. Faisal's request and said she lives on West End Boulevard. She said everyone knows that Mr. Faisal sells groceries. Regarding trash, she said Mr. Faisal said he would do whatever it takes to get this permit approved, and he would pick up the trash in the neighborhood. Ms. Pickens said she visited the store today and only saw groceries.

Mr. Dennis Seyer, of 320 Bellevue, appeared before the Council in opposition to this request and said that he operates a small internet business. He said that he has noticed the amount of litter in the area has increased and beer cans and bottles have increased. Mr. Seyer said that he was here tonight because he found a needle inside of a cigarette package near his yard, and he has safety concerns. He asked the Council to deny the special use permit.

Mr. Larry Spooler addressed the Council and said he lives directly across the street from the store. He said the trash has increased, there are numerous panhandlers in the area, and most people that come to this store do not live in the neighborhood. Mr. Spooler said the neighborhood has deteriorated since Mr. Faisal moved in.

Ms. Pickens addressed the Council again, and said she experiences panhandlers all over Cape Girardeau, but not in this neighborhood.

A female employee of store addressed the Council and said she does not understand why people are so opposed to this special use permit. She said Mr. Faisal will do whatever it takes to improve this area. She has talked with the panhandlers, and most of them do live in this area. She said that she does not feel this is about a liquor license, but she feels these objections are about other issues.

Mr. Lyman Pitman, of 315 Bellevue, appeared before the Council and said that the ability to sell liquor is a privilege and not a right. He said that Mr. Faisal has been dishonest in his request for liquor licenses. Mr. Pitman said that in the Spring the residents of the neighborhood were told that this would be mostly a convenience store. Mr. Faisal's liquor license was grandfathered in with a restriction. Now he is saying that he needs to sell liquor on one more day even though they originally said this would be a convenience store that sold liquor. Mr. Faisal is now asking for a Sunday sale permit just six months after his original liquor license was granted.

Ms. Beckie Mockerman, of 220 North Lorimier, appeared and said she owns two properties in this area. She said that since the business has opened, the neighborhood has deteriorated. There is glass and trash all over the sidewalks and streets from those who have walked from this store. Ms. Mockerman asked the Council not to grant Mr. Faisal's request for a special use permit.

Ms. Am Burns, who is building a house at 345 N. Fountain, addressed the Council and said she works for the State of Missouri near Mr. Faisal's business. She said she has seen people out there picking up trash during the day. Ms. Burns reported that she visits Mr. Faisal's business on a regular basis. She said that she is working on a Habitat for Humanity house and walks to this store at night. She has not felt that she was in danger. There are characters in the neighborhood that were there before the store showed up. Ms. Burns said that she is in favor of the store, and it is an asset to the area.

Mayor Rediger asked that attendees that own property in the area that are opposed to Mr. Faisal's request to raise their hands, approximately ten responded. He asked renters who support the request to raise their hands, four responded. He asked for a show of hands from renters in the audience who opposed the request, no hands were raised.

A woman addressed the Council, and she presented a petition signed by people who live in the neighborhood who support Mr. Faisal's request. Mrs. Tracy noted that there are numerous signatures on the petition that do not show the signer's address.

There being no further appearances, the hearing was closed.

BILL NO. 11-159 was given first reading as follows:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO SHAH FAISAL AND MARIA FAISAL, FOR PURPOSES OF OPERATING AND MAINTAINING A CONVENIENCE STORE WHICH SELLS PACKAGE LIQUOR SEVEN DAYS A WEEK AT 238 NORTH FOUNTAIN STREET, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, MISSOURI

Mr. Voss made a motion, seconded by Mrs. Schneider, to approve the first reading of BILL NO. 11-159.

Mr. Voss said that he had visited Mr. Faisal's store shortly after it opened. He had also been in the Corner Store before it had been sold to Mr. Faisal, and they are two very different types of businesses. Mr. Faisal is not operating the business as he said he would when he submitted the

first liquor license application where he had stated the store would have 10-20% floor space dedicated to alcohol sales. Neighbors have said there is an adverse impact on the area.

Mrs. Proffer said that she, too, had been in the store. She shared the concerns expressed by some of Mr. Faisal's neighbors.

Mrs. Schneider said she is familiar with the neighborhood and the efforts being made to restore the homes and the area for their historic value. The residents are trying to revive their neighborhood, and the homeowners should not have to be worried about picking up trash and preserving the value of their homes.

Mrs. Tracy noted that this is a special use permit request, and many of the issues raised at this meeting were discussed at length at the first public hearing. It was the consensus of most people at that meeting that this store was inappropriate for the mixed-use zoning of the area. The Council did not feel it was possible to deny the liquor license, but it is proper to allow one day of rest from alcohol sales.

Mayor Rediger said that the Council is not denying or changing the existing license for liquor sales six days a week. Mr. Faisal has heard the concerns of the neighborhood, with suggestions of what he can do to improve the area, denying this request would only deny his opportunity to sell alcohol on a seventh day.

The motion to approve the first reading of BILL NO. 11-159 failed upon the following vote: Ayes, none. Nays, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy, and Voss.

Mrs. Swan made a motion, seconded by Mrs. Proffer, to adopt the Findings and Conclusions in support of denying the request for a special use permit. The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy, and Voss. Nays, none.

CONSENT AGENDA

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

City Council October 3, 2011, regular and closed sessions minutes.

BILL NO. 11-156, AN ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES OF THE CITY GIRARDEAU, MISSOURI, BY REZONING 2901 HAWTHORNE ROAD, IN THE CITY AND COUNTY OF CAPE GIRARDEAU, FROM THE R-1 TO AG. Second and third readings.

BILL NO. 11-158, A RESOLUTION AUTHORIZING APPLICATION TO THE MISSOURI HOUSING DEVELOPMENT COMMISSION FOR HOME REPAIR OPPORTUNITIES (HERO) GRANT FUNDING FOR THE CAPE GIRARDEAU NEIGHBORHOOD RESTORATION PROJECT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY GRANT DOCUMENTS. Reading and passage.

BILL NO. 11-160, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A DEMOLITION CONTRACT WITH EAGLE EXCAVATING, LLC. Reading and passage.

A motion accepting into the City's system the raw water main improvements and authorizing final payment to R.L. Persons Construction, Inc.

A motion accepting into the City's system the Cape North Park Trail improvements, and authorizing final payment to JW Transport, LLC.

A motion approving the application of Rodney Pobst, 2221 Kent Drive, for a Taxicab License.

The motion was approved upon the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy, and Voss. Nays, none. BILL NO. 11-156 is ORDINANCE NO. 4275; BILL NO. 11-158 is RESOLUTION NO. 2652; and BILL NO. 11-160 is RESOLUTION NO. 2653.

APPOINTMENTS

Mr. Steve Maldonado was appointed to the Girardeau Goes Green Advisory Board for a term expiring July 1, 2014, upon Mrs. Tracy's motion, Mrs. Schneider's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy, and Voss. Nays, none.

Mr. Steve Taylor was appointed, and Mr. Lee Hillman and Mr. Troy Vaughn were reappointed to the Parks and Recreation Advisory Board for terms expiring October 29, 2014, upon Mr. Voss' motion, Mr. Lanzotti's second, and the following vote: Ayes, Lanzotti, Proffer, Rediger, Schneider, Swan, Tracy, and Voss. Nays, none.

Mr. Randy Kluge was appointed and Ms. Marcia Ritter was reappointed to the Planning and Zoning Commission for terms expiring November 1, 2015, 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

Mr. Lanzotti made a motion, seconded by Mr. Voss, to adjourn the regular session and convene in closed session for purposes of discussing property acquisition, litigation, confidential communications with legal counsel and personnel, pursuant to Sections RSMo. 610.021(1), (2) and (3). The motion was approved upon 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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