

CITY OF WEBSTER GROVES
October 4, 2016

The City Council met this date in a regular session in the Council Chambers at City Hall at #4 E. Lockwood at 7:37 p.m.

Present at Roll Call: Mayor Gerry Welch
Councilmember Toni Hunt
Councilmember Greg Mueller
Councilmember Ken Burns
Councilmember Matt Armstrong
Councilmember Frank Janoski
Councilmember Bud Bellomo

A quorum was present.

Also present: Mr. Steve Wylie, City Manager
Mr. Helmut Starr, City Attorney
Ms. Katie Nakazono, City Clerk

REMARKS OF VISITORS

No Remarks of Visitors.

NEW BUSINESS - MAYOR, COUNCILMEMBERS, CITY ATTORNEY, CITY MANAGER

Mayor Welch stated that Coffee with the Council is Thursday evening, Coffee with a Cop is Friday morning, Saturday is the Fire Department Open House, next week is the Historic Preservation Lecture, and we have the Lifetime Achievement Reception and Make a Difference Day in October. There is a lot going on. October is a busy time in our town.

UNFINISHED BUSINESS

BILL #8946 – THIRD READING

On motion of Councilmember Bellomo, seconded by Councilmember Janoski, **BILL #8946 – ENTITLED: AN ORDINANCE AMENDING CHAPTER 10, BY ADDING A NEW ARTICLE X ENTITLED “RIGHTS-OF-WAY USAGE CODE” AND MATTERS RELATED THERETO**, having been introduced and read twice on September 20, 2016, was taken up its title read a third time and placed upon its passage to become Ordinance #8946.

Mayor Welch called for the vote on Bill #8946.

MEMBERS VOTING:

AYES: HUNT, MUELLER, BURNS, ARMSTRONG, JANOSKI, BELLOMO, WELCH

NOES: NONE

Mayor Welch stated that Bill #8946 was approved.

BILL #8948 – THIRD READING

On motion of Councilmember Armstrong, seconded by Councilmember Mueller, **BILL #8948 – ENTITLED: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF WEBSTER GROVES, AN AGREEMENT TO MAINTAIN CERTAIN PORTIONS OF THE SHADY GROVE/DEER CREEK TRAIL WITHIN THE CITY**

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OF WEBSTER GROVES, having been introduced and read twice on September 20, 2016, was taken up its title read a third time and placed upon its passage to become Ordinance #8948.

Mayor Welch called for the vote on Bill #8948.

MEMBERS VOTING:

AYES: MUELLER, BURNS, ARMSTRONG, JANOSKI, BELLOMO, WELCH, HUNT

NOES: NONE

Mayor Welch stated that Bill #8948 was approved.

BILL #8949 – THIRD READING

On motion of Councilmember Mueller, seconded by Councilmember Bellomo, **BILL #8949 – ENTITLED: AN ORDINANCE GRANTING A LOT SPLIT SUBDIVISION AT 250 S. OLD ORCHARD AVENUE, ZONED “A4” SEVENTY-FIVE HUNDRED SQUARE FOOT RESIDENCE DISTRICT**, having been introduced and read twice on September 20, 2016, was taken up its title read a third time and placed upon its passage to become Ordinance #8949.

Mayor Welch called for the vote on Bill #8949.

MEMBERS VOTING:

AYES: BURNS, ARMSTRONG, JANOSKI, BELLOMO, WELCH, HUNT, MUELLER

NOES: NONE

Mayor Welch stated that Bill #8949 was approved.

NEW BUSINESS

RESOLUTION #2016-33

A motion was made by Councilmember Hunt, and seconded by Councilmember Bellomo, to approve **RESOLUTION #2016-33 – A RESOLUTION SUSPENDING ORDINANCE #8676 THAT GRANTED CONDITIONAL USE PERMIT TO CARLO AND TANINA CAMPIERI (CAMPIERI AUTO SALES) AT 8627 WATSON ROAD.**

Mr. Starr stated the nature of this hearing is that you are sitting in a quasi-judicial/administrative capacity. You are not legislating here. You are really hearing a case. The City will put on some evidence, and then the applicant will have the opportunity to respond and show proof why the CUP should not be suspended at this time. This is not a revocation hearing, this is preliminary, hoping the business owner will come into compliance with all of the conditions of the City’s codes, and particularly the CUP that was issued. If that doesn’t occur within a period of time set by Council you can move on to the revocation stage if you so desire.

A representative for the project (Matt O’Grady) stated that he wanted to request a continuance to a future date in light of the short time to retain counsel to address the issue. The Campieris were only given two weeks to prepare for tonight, and I think that is inadequate time.

Mara Perry, Director of Planning and Development, gave a presentation (**See Exhibit A, pages 1-8 in City Clerk’s office**). I am providing information relating to this property going back to the approval of the 2010 Conditional Use Permit, Ordinance #8676, for a used car lot use. Currently, the property is in arrears for back taxes for the last two years, and has been in arrears every year for the last ten years. She explained the history of the ordinance, approved in 2010, permit applications, and property violations (**See Exhibit A, pages 2-3**). A revised site plan was submitted and I rejected it because it does not meet the parking and ADA requirements. The aisle widths were not met, parking spaces were too small in many cases, the ADA accessible space was located on too steep of a slope for a wheelchair, the customer spaces have to back into the right-of-way, and the diagonal parking for the

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one-way flow was in the wrong direction at the rear end of the property. We then received an updated plan. She reviewed the updated plan as well as information on the right-of-way (**See Exhibit A, pages 5-6**). Currently it is listed for sale. She showed photos and information from the real estate website stating that it was renovated in 2012 (**See Exhibit A, pages 6-7**). No permits have been pulled for any of that work. Currently CUP regulations 1, 2, 3, 4, 7, 9, 10, 11, and 15 are not being met. There is no occupancy or business license applied for or obtained. The reason we brought this forward to you most recently is that we observed work being done on a vehicle inside of the building. We came back and it was observed that work was being done, and we issued a cease and desist letter. She reviewed the CUP items that aren't being met (**See Exhibit A, pages 7-8**). That is a listing of the items and a brief history of what my staff has been dealing with since 2010.

Matt O'Grady, representative for the Campieris, stated that he requested a continuance from the outset. I take it from the presentation that that was denied but I renew that request at this time. We haven't had enough time to prepare. Mr. Campieri and his mother haven't had time to retain counsel because of the relative short time between the date of the cease and desist order with which they were served on September 8, just last month and today is October 4. I was retained in this matter on Friday of last week. It is my understanding that the Campieris had another attorney appear at this meeting about two weeks ago. He had to withdraw from this matter because he is in Dallas, Texas. I spoke to him on the phone. Due to the relative short period of time with which I have had to prepare, and Mr. Campieri and his mother have had to prepare, and find lawyers. Just to give a comparison, municipal courts all over our state -- a simple speeding ticket would garner more time for a defendant to find a lawyer and meet the evidence that has been presented. I am requesting a continuance to, perhaps the next meeting, so I can have time to prepare and put on a presentation that would meet the issues that have been raised.

Councilmember Armstrong asked if he thinks two weeks is sufficient. Mr. O'Grady stated probably not.

Councilmember Armstrong asked how much time he needs to prepare. Mr. O'Grady stated that if he could have 30 days that would be sufficient, and in light of what has transpired previously, the total amount of time there would be six weeks even though I was only retained Friday. This would be my request at this time.

Mayor Welch asked if staff has a recommendation. Mr. Starr stated that this doesn't come as any surprise, or shouldn't to the Campieris. They have been on notice for one violation after another for a period of years. This notice of this particular ordinance has been out there for three weeks. We were assured by the attorney at the last meeting that they would have someone here and present to make the case for the Campieris.

Mr. O'Grady stated that that misstates the amount of time and notice that the Campieris had. As I mentioned they were served exactly on September 8, 2016 with an order to cease and desist which is what this hearing is about.

Councilmember Janoski stated that his recollection is the same as Mr. Starr's in that the lawyer that was here two weeks ago stated that there would be someone here today who would be prepared to represent.

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Councilmember Armstrong asked if there is any activity going on at the property at this time. Mr. O'Grady stated that there was not. No building or repair activity. That raised some questions in my mind that need to be addressed.

Councilmember Armstrong asked if there was a health or safety issue with giving a two or four week extension. Ms. Perry stated that we have been trying to deal with this issue for multiple months. They were not allowed to be in the building, and have been in the building, which is how we served the cease and desist letter. I don't necessarily feel that someone wouldn't be in the building.

City Manager Steve Wylie stated that I think you saw in the presentation that we have documented that work has been done over the years and vehicles have been worked on inside the building.

Councilmember Armstrong stated that as a lawyer by trade I am aware of the fact that when hired at the last minute you need time to prepare.

Councilmember Armstrong made a motion to grant a continuance for two weeks, until the next meeting, which was seconded by Councilmember Bellomo.

Councilmember Hunt asked if Mr. O'Grady is affiliated with the lawyer that was here two weeks ago. Mr. O'Grady stated that he is not. I obtained his name and phone number from my client. I did speak on the phone to Mr. John Richards.

Councilmember Mueller clarified the name of the attorney from the last meeting who was a partner of Mr. Richards. At the last meeting, the partner, on the part of the applicant, said we can find someone in two weeks. Mr. O'Grady stated that that is not something a seasoned lawyer would say to a court of law or a judge. This is a quasi-judicial body tonight as Mr. Starr has mentioned, I would certainly never represent to any judge or court that I can find someone in two weeks. That is not how it ever works. They request leave to withdraw, or they request a continuance, and in the interim a new lawyer may appear. It is frequently the case, such as we have tonight that a new lawyer comes in last second and the court grants a continuance for that lawyer to prepare.

Councilmember Mueller stated that he just wants to mention that what Councilmember Janoski recalled is reflected in our minutes that Mary Maness spoke at the last meeting and told us that we can find someone in two weeks.

Mr. O'Grady stated that he can't speak to that, nor should he be bound by that representation. I am not affiliated with her.

Councilmember Armstrong stated that he can sense the frustration with the Council. If you get two weeks, that's all you're going to get because I think the Council is ready to suspend the CUP.

Mr. O'Grady stated that he has advised his client that there is to be nothing going on there. It has been my understanding that there hasn't been anything going on there. Over the years, as Councilman Wolf mentioned, that is one thing. Presently, and certainly since the September 8, 2016 service of the cease and desist, certainly nothing has been going on.

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Mayor Welch asked for clarification on the suspension. Mr. Starr stated that a suspension of the CUP is an intermediate step that would allow you to impose conditions as to when, and if, you would lift the suspension of the CUP, and whether you would move to revoke it at a later time.

Councilmember Armstrong asked if once the CUP is suspended, can the building owner apply for permits to work on the building to bring it up to Code. Mr. Starr stated that they could. I think we would recommend that you would tie completion or substantial completion to having the building ready for occupancy, and if it were ready for occupancy, you could put it back on the agenda and revoke the suspension. If it is not ready by the date that you set, you could proceed to a revocation hearing.

Councilmember Armstrong stated, if we go ahead and suspend the CUP tonight, your client could still apply for permits and work on getting the building up to code. Would that satisfy your needs? Mr. O'Grady stated that he has advised his clients what their options will be with respect to tonight and the decision of the Council and the Mayor. We are trying to avoid a suspension for a variety of reasons. It would be detrimental. If the suspension takes place it almost becomes a self-fulfilling prophecy that permanent revocation will happen because of the deleterious and detrimental effects to my client's ability to open the business in the first place, and come into compliance. The cart is getting a little bit ahead of the horse because the CUP was granted to allow my clients to open a used automobile business premised on certain conditions being met. If there is no business being run, they can't violate any of those conditions. They are not in business doing a used car lot. So that is number one. Number two, the CUP doesn't have a deadline or expiration date, so to impose deadlines or dates now and take an initial step and say you have to do X, Y, and Z by such and such a date violates Missouri law. So that is why to answer your question we are very concerned about the proceedings tonight and want to be able to respond adequately and have enough time to present the things we need to present.

Councilmember Armstrong stated, like you, I am also new here, so I am also playing catch-up. But reading the record and seeing the presentation, there has been a long history of no business being opened and I think there is some frustration for the City.

Councilmember Janoski stated that it is his understanding that where we are right now with regard to the suspension is because of the numerous violations over time that staff now has requested a suspension of the CUP because no progress has been made. Or if there has been progress it has been without any building permits or authority by the City. And there may even have been misrepresentations to MODOT over the property.

Mr. Starr stated that as a matter of law, the Code section we are operating under is 53.179 which is part of the CUP regulations. There is authority in the Code for that. I would also argue that because the applicant hasn't taken sufficient steps to begin performing or operating the business there is no vested right in this situation.

Councilmember Armstrong stated that he does feel for Mr. O'Grady since he was just hired. I personally feel like it is ok to grant one two week extension and that is it. There can't be anything going on in that building. Mr. O'Grady stated that part he can be bound by. I can tell you right now there is nothing going on in that building because they have told me so.

Councilmember Mueller asked if he could give him an indication of what will be done with the additional time. Are you going to conduct discovery or engage contractors? What do you expect two

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weeks from now to be able to come back and tell us that you haven't already told us now? I am not debating attorney-client privilege or work product, but it would be helpful to know what you are actually going to be able to come back and tell us.

Mr. O'Grady stated that is difficult to say. I imagine I would be able to respond to the presentation more adequately. At the outset I meant no disrespect to the mayor, when I said I needed to make my record and ask for the continuance at that time, it was simply to make the record and everyone aware that rather than proceed and have the presentation go forward, that we all make our presentation when it was continued. At this point the presentation has gone forward, so now, I think I will be responding to the presentation.

Councilmember Mueller asked if Mr. O'Grady would agree that there will be no business loss. Mr. O'Grady stated there is no business being conducted there. I don't know what you mean by your question. If you mean that you rule to suspend tonight, or you rule to suspend in two weeks, yeah, there is a loss. But between now and the next two weeks there is not a loss because there is no business in there. We are here to answer a cease and desist order that they are ordered to cease and desist illegal business operations immediately. There is no business going on there illegal or otherwise, so what is there to cease and desist? As I mentioned earlier, that CUP was granted to enable the operation of a business by the Campieris premised on the meeting of certain conditions. If you are not in business or running the business, how can you violate the conditions? You can't.

Councilmember Mueller asked if he would agree that the Council tonight could decide and grant additional time with that decision so anything that is decided isn't perhaps executed tonight, but a period of time from now. Mr. O'Grady stated that would be arbitrary, but that is up to the Council.

Councilmember Janoski stated that if he is to understand the cease and desist letter, it prohibits any illegal activity on the property, which I understand is any activity done without permits. In the interim they could get permits, and then the activity would not be illegal. Mr. O'Grady stated that the way he is reading the letter it is an order to cease and desist all such illegal business operations. We read that to mean operations relating to the CUP for business operations. There is not a used automobile business there, and there hasn't been. There is no deadline in the CUP, and there is no timeframe in the CUP.

Mr. Starr stated that he thinks we are mixing apples and oranges. The cease and desist letter was sent for violations of other parts of the Code, and does not have anything to do with the resolution we are here to address this evening. But I will tell you this for your edification, I am pretty sure that the ordinance that granted the Conditional Use Permit has a condition in it that says your client will comply with all other provisions of the Code of Webster Groves. So when they are doing work without a permit, that is an illegal business activity.

Mr. O'Grady stated that there is no evidence of work without a permit number one. Number two, you can't separate the two, they go hand in glove. The suspension section you read from says the exact same thing. Those conditions can't be violated if they aren't working as a used auto lot.

Mr. Starr stated that they could. When they are working without a building permit that is a violation of our Code, and there is a condition in the CUP that says you can't do that. Mr. O'Grady stated that isn't his interpretation of it, and I think your interpretation is wrong as a matter of law.

Councilmember Armstrong stated that there is a motion on the table.

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Councilmember Hunt stated that the ultimate goal is to have a business. Suspension of the CUP doesn't prevent bringing it up to code so you can conduct your business. Mr. O'Grady stated he thinks it would substantially inhibit the ability to get that business up and running. The problem is that a suspension would ultimately inhibit a loan. With necessary financing that may be needed, the ability to leverage the funds they do have, that is just a reality of running and trying to start a business in today's world. No bank is going to lend on a property that has a suspended permit.

Councilmember Hunt stated that the CUP was granted in 2010.

Mr. O'Grady stated that Mr. Campieri has had a number of personal setbacks. I have represented him on a fall from a ladder, he had a broken back in October of 2014 that laid him up literally for two years. He labors under a disability as a result. He did the best he could with that. We were published in Missouri Lawyers Weekly so you can research that. I settled his case for a substantial amount of money in January of this year. Your question is a fair one, and I want to be able to explain that. In 2010 he fell and broke his ribs, also from a ladder. That is a bit of bad luck, two falls within five years. He lost his father in 2013, Mrs. Campieri's husband, that was the pillar of the family.

Councilmember Bellomo asked if staff would be involved in doing anything more about this if it is delayed for two weeks. Ms. Perry stated not unless someone contacts us. I met with the previous lawyer for over an hour and a half to go over the previous files and then the lawyer sent me an email with a letter attached at 3:40 this afternoon indicating that he was still representing the applicant. That is the letter you received.

Councilmember Armstrong stated that maybe as a lawyer you get hired and fired and don't have control over that.

Mayor Welch called for the vote to continue Resolution #2016-33 until October 18, 2016.

MEMBERS VOTING:

AYES: ARMSTRONG, BELLOMO, HUNT, BURNS

NOES: JANOSKI, WELCH, MUELLER

Mayor Welch stated that Resolution #2016-33 was continued until October 18, 2016.

Councilmember Hunt stated that in two weeks, if there is a different lawyer here, it will be totally different. Mr. O'Grady stated that it won't be my doing if there is another lawyer here.

CONSENT AGENDA

A motion was made by Councilmember Burns, seconded by Councilmember Janoski, to approve the Consent Agenda.

Mayor Welch called for the vote on the Consent Agenda.

MEMBERS VOTING:

AYES: JANOSKI, BELLOMO, WELCH, HUNT, MUELLER, BURNS, ARMSTRONG

NOES: NONE

Mayor Welch stated that the Consent Agenda was approved.

The following consent agenda was approved:

- **Approval of Minutes** – September 20, 2016

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- **Resolution #2016-38** – Authorizing the City Manager to Enter into a Multi-City Agreement to Share Staff for Inclusion Services

APPOINTMENTS TO BOARDS AND COMMISSIONS

- Andrew Potthast was appointed to the Board of Adjustment as an Alternate Member.
- Maren Mellem was appointed to a Regular Member position on the Board of Adjustment.
- Patrick Murphy was appointed to a Regular Member position on the Historic Preservation Commission.
- Zachary Wood was reappointed to the Board of Adjustment
- Joshua Tonnie was reappointed to the Crossroads Business District.
- Bill Stancil was reappointed to the Historic Preservation Commission.
- Christi Johanningmeyer was reappointed to the Crossroads Business District, and granted an excused leave of absence.

EXECUTIVE (CLOSED) SESSION

No Executive (Closed) Session.

ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 8:24 p.m. on motion of the Mayor, duly seconded.

PASSED AND APPROVED this 18th day of OCTOBER 2016.


CITY CLERK


MAYOR