

MINUTES OF REGULAR BOARD MEETING JUNE 7, 2004

Board met in regular session at City Hall on June 7, 2004. Mayor Burger called the meeting to order and asked the Secretary to call the roll. The following members were present: Brad Mullinax, Steve White, Aaron Meeks, W.J. White, and Paul Young. The Mayor asked Alderman W.J. White to give a word of prayer. Alderman W.J. White then gave a word of prayer.

The first item of business was the minutes of the regular board meeting of May 17, 2004. Mayor Burger asked if everyone received their copy of the minutes of the regular board meeting of May 17, 2004. The Mayor then asked if there were any additions or corrections to the minutes of May 17, 2004, and if not did he have a motion to dispense with the reading and approve the minutes of May 17, 2004. Motion was made by Steve White and seconded by Brad Mullinax. All members agreed. Motion passes.

The second item of business was information received from MTAS regarding the proposed change to Walnut Street to accommodate a drive through window for Webb's Pharmacy. Mayor Burger then read the letter. It was the recommendation from MTAS that the City abandon that part of the south side of Walnut Street from 4th Street in a westerly direction for a distance of 62.23 feet and eleven feet in width. The developer would need to make slight revisions to the proposed drive through to enable the city to install a pedestrian walkway and continue its one way street. Mayor Burger asked if there were any questions or comments. After a few brief comments, motion was made by Brad Mullinax and seconded by Paul Young to follow the advice of MTAS and abandon a portion of Walnut Street to accommodate the proposed changes for a drive through window at Webb's Pharmacy. A roll call vote was taken. Brad Mullinax, Steve White, W.J. White, and Paul Young voted yes. Aaron Meeks voted no. Motion passes with a 4 yes – 1 no vote. A copy of the letter is shown in Attachment Number One (1).

The third item of business was First Reading on proposed Ordinance Number 360. Proposed Ordinance Number 360 is an ordinance abandoning a portion of Walnut Street, Smithville, Tennessee. Mayor Burger then read the proposed ordinance and asked if there were any questions or comments. With a few brief comments, motion was made to pass proposed Ordinance Number 360 on First Reading with the amendment in the width from eleven (11) feet to 10.6 feet in width by Brad Mullinax and seconded by Paul Young. A roll call vote was taken. Steve White, W.J. White, Paul Young, and Brad Mullinax voted yes. Aaron Meeks voted no. Proposed Ordinance Number 360 passes on First Reading with a 4 yes – 1 no vote. Mayor Burger reported that the Public Hearing and Second Reading will be held on June 21, 2004 at 7:00 pm.

The fourth item of business was First Reading on proposed Ordinance Number 359. Proposed Ordinance Number 359 is an ordinance to amend the Smithville Zoning Ordinance to incorporate zero lot line provisions for the R-2, R-3, B-1, B-2, and B-3 Zoning Districts. The Mayor then read the proposed ordinance and asked if there were any questions or comments. With a few brief comments, motion was made by Steve White and seconded by Brad Mullinax to pass proposed Ordinance Number 359 on First Reading. A roll call vote was taken. All members voted yes. Proposed Ordinance Number 359 passes on First Reading with a 5 yes – 0 no vote. Mayor Burger reported that the Public Hearing and Second reading will be held on June 21, 2004 at 7:00 pm.

The fifth item of business was First Reading on proposed Ordinance Number 361. Proposed Ordinance Number 361 is an ordinance amending City Code Document Number 103, City Code Document 175, City Code Document Number 249, and City Code Document Number 308: Smithville Beer Ordinance, and establishing a new Smithville Beer Ordinance. The Mayor reported that there are four or more changes and he was going to go over the changes and then they would discuss them. The changes being:

- (1) Any member of the beer board may be removed by the governing body with cause:
- (2) Before any permit is issued to any applicant, the applicant must show proof of ownership of twenty-five thousand dollars (\$25,000.00) (Wholesale Value) in

The first part of the book is devoted to a discussion of the historical development of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

The second part of the book is devoted to a discussion of the empirical evidence on the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

The third part of the book is devoted to a discussion of the policy implications of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

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The fourth part of the book is devoted to a discussion of the future of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

The fifth part of the book is devoted to a discussion of the conclusion of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

The sixth part of the book is devoted to a discussion of the bibliography of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

The seventh part of the book is devoted to a discussion of the index of the theory of the firm. It begins with a review of the classical theory of the firm, which is based on the assumption of perfect competition and perfect information. This theory is then contrasted with the modern theory of the firm, which is based on the assumption of imperfect competition and imperfect information. The modern theory of the firm is then developed in a series of chapters, each of which deals with a different aspect of the theory.

- grocery stock, excluding all tobacco products, gasoline, petroleum products, antifreeze, and beer;
- (3) In no event will a permit be issued authorizing the storage, sale, or manufacture of beer at places within four hundred (400) feet of any school, church, shopping center, or other such place of public gathering. The distance requirement contained herein shall be measured in a straight line from the primary entrance of the establishment seeking a permit to sell beer to the primary entrance of the school, church, shopping center, or other place of public gathering;
 - (4) Advertise within the business establishment in any manner visible from off the premises of said establishment the price or location of beer on the premises of the establishment
 - (5) Section 2-213: However, no beer permit shall be revoked until public hearing is held by the board after at least five days notice, exclusive of the date of service, to all known parties in interest
 - (6) Section 2-212: Grandfather clause. No beer permit holder shall be precluded or prohibited from selling beer at the beer permit holder's business establishment where a school, church, or other such place of public gathering become located within four hundred (400) feet of the primary entrance of said business establishment at any time subsequent to the issuance of the permit holder's beer permit.

Alderman Steve White expressed his concerns regarding some of the changes recommended from the Beer Board. He felt like it should be stronger and not weakened. Alderman White expressed that he had contacted MTAS regarding his concerns and questions about the proposed changes in the proposed Beer Ordinance. Alderman White went over the questions he had and the answers that MTAS provided. It was felt that the city beer board has violated ordinance regulations on more than one occasion since 1993 and that by transferring the authority of issuing permits from an appointed board, which answers to no one, to an elected board, then it's more likely that all regulations would be followed and the public would have more influence on the process. Alderman White also felt that the Grandfather clause was illegal. A copy of Alderman Steve White's letter is shown in Attachment Number Two (2).

Alderman Mullinax expressed that the existing ordinance is already weak if the distance requirements cannot be enforced based on past violations and he is opposed to the City Council serving as the Beer Board. It was also felt if there had been some bad decisions made by the Beer Board in the past that it was due to the legal advice given to the board at that time.

Mayor Burger reported he had a motion by Brad Mullinax and second by Paul Young to pass proposed Ordinance Number 361 on First Reading and there had been plenty of discussion. He asked the Secretary to call the roll. The Secretary then called the roll. Brad Mullinax, Aaron Meeks, and Paul Young voted yes. Steve White and W.J. White voted no. Proposed Ordinance Number 361 passes on First Reading with a 3 yes – 2 no vote. The Mayor reported that the Public Hearing and Second Reading will be held June 21, 2004 at 7:00 pm.

The sixth item of business was First Reading on proposed Ordinance Number 362. Proposed Ordinance Number 362 is an ordinance adopting a city budget for the year ending June 30, 2005; amending the budget for the year ending June 30, 2004; establishment of water and sewer rates and charges; providing for the assessment, method, and rate of taxation of real property; and providing for the collection of said taxes. Mayor Burger then read the proposed ordinance and asked if there were any questions or comments. With no comments, motion was made by Brad Mullinax and seconded by Aaron Meeks to pass proposed Ordinance Number 362 on First Reading. A roll call vote was taken. All members voted yes. Proposed Ordinance Number 362 passes on First Reading with a 5 yes – 0 no vote. The Mayor reported that the Public Hearing and Second Reading will be held on June 21, 2004 at 7:00 pm.

The seventh item of business was the Council's permission for the Mayor to sign the audit contract for the year ending June 30, 2004 with John R. Poole, CPA. The cost of the contract is \$8,900.00. Motion was made by Steve White and seconded by Brad Mullinax

for the Mayor to sign the audit contract with John R. Poole, CPA for \$8,900.00. A roll call vote was taken. All members voted yes. Motion passes with a 5 yes – 0 no vote.

The eighth item of business was the three employees in the Police Department which have completed their six month interim probation period which took place November 21, 2003 and was completed May 21, 2004. The employees are as follows: Jim Baker as Police Chief, Richard Jennings as Lieutenant, Gary Harris as Sergeant. The Mayor asked if the Council wanted to approve or change any or all of the changes as listed above. Motion was made by Steve White and seconded by Brad Mullinax to approve them. A roll call vote was taken. All members voted yes. Motion passes with a 5 yes – 0 no vote.

The ninth item of business was a report from the City Attorney on what she found out from MTAS on the city's approach to deal with unkept lawns and other property maintenance problems. The Mayor then read the letter received from the City Attorney regarding this matter. In the letter, Don Darden with MTAS stated that the City Council can do nothing to address this problem until it passes a Property Maintenance Standard Ordinance very much akin to the one which the Board previously rejected. Two key provisions which must be in such an ordinance are (1) each day constitutes a separate violation under the ordinance, and (2) each violation is punishable by a fine of \$50.00 per day. The City should then allow the violations to accrue for thirty days and then cite the property owner into court for all of the ordinance violations. The Mayor asked the wishes of the Council. It was decided to have the City Attorney prepare a property maintenance ordinance and bring it back before the Council in the July 19, 2004 regular board meeting. Motion was made to this effect by Brad Mullinax and seconded by Paul Young. A roll call vote was taken. All members voted yes. Motion passes with a 5 yes – 0 no vote.

The last item of business was a report that the City Attorney has not completed the revisions to the property maintenance and junk car regulations. This was just a report, there was no action taken.

Mayor Burger asked if anyone had anything that they wanted to bring before the Council at this time. Alderman Brad Mullinax then addressed the Council in regards to the swimming pool. Alderman Mullinax reported that he had spoken with Jo Dean Bowman of the Tennessee Municipal League which is the city's insurance carrier about the cost of the city's liability insurance coverage if the city were to reassume control of the pool. It was found that it would increase \$1,526.00 per year. He went on to report that the city could employ one of the tenants to operate the pool as long as that employee was on the city's payroll and worker's compensation was being paid on the employee. The city would have to operate the pool in order to insure it which would mean the city would be responsible for employing life guards, as well as other costs in running the pool such as chemicals, electricity and water.

Alderman Mullinax recommended to amend the lease in order for the city to reassume control of the pool under its management, hire Joey Goodwin to operate the pool for the city for a dollar (\$1.00) a year, and to have two diving boards installed once the insurance issue has been resolved, and let the kids have some fun over there. Alderman Mullinax made a motion to approve these changes to the lease agreement. Mayor Burger suggested that he add the legal aspects of these changes to the lease. Alderman Mullinax then made a motion to amend the lease on the pool and golf course with the City taking over the pool at the City's expense, for the City to obtain insurance on the pool, hire Joey Goodwin at \$1.00 per year to manage the pool, and for the City to hire the lifeguards needed. Alderman Mullinax recommended that the revised lease reflect these changes. Before a second on this motion was made, Alderman Steve White commented that they had just passed the budget on First Reading and there is no money in the budget to accommodate these changes and run the pool. Alderman Mullinax replied that it was just passed on First Reading and the Council could recommend changes to the budget before its final passage. Mayor Burger informed the Council that they would need to rescind the action taken on Proposed Ordinance Number 362 and have the changes made to the budget and start all over with another First Reading on the proposed budget. Alderman Steve White also suggested that they set guidelines on the operation of the pool and to have those guidelines reflected in the lease agreement.

Alderman Mullinax, again made a motion to approve these changes to the lease by separating the pool from the golf course with the City taking the pool over under its management, and to bring the amended lease back before the Council for final approval. Motion to amend the current lease with these changes was seconded by Alderman Paul Young. A roll call vote was taken. Steve White, Paul Young, Aaron Meeks, and Brad Mullinax voted yes. W.J. White voted no. Motion passes with a 4 yes – 1 no vote.

Alderman Steve White then addressed the Council. Alderman White then publicly apologized to Burnace Vandergriff for allowing him to take the heat from some recent golf course controversy. It was explained that Mr. Vandergriff did what the city council had instructed him to do on contacting MTAS for advice on the issue and neither of the aldermen spoke up to set the record straight. Alderman W.J. White also apologized and Alderman Aaron Meeks apologized. Alderman Meeks reported that "you will never have another person working harder for you than Burnace." Mr. Vandergriff thanked them and accepted the apologies.

Alderman Steve White then brought a proposed ordinance before the Council to abolish the Beer Board. Alderman White then read the proposed ordinance. The proposed ordinance will be proposed Ordinance Number 363. Motion was made to pass proposed Ordinance Number 363 on First Reading by Steve White and seconded by W.J. White. A roll call vote was taken. W.J. White and Steve White vote yes. Brad Mullinax, Aaron Meeks, and Paul Young voted no. Proposed Ordinance Number 363 dies on First Reading due to a 3 no – 2 yes vote.

Alderman Steve White then presented proposed Ordinance Number 364 for First Reading. Proposed Ordinance Number 364 is an ordinance to limit the number of beer permit holders to three (3) in the City of Smithville, Tennessee. Motion was made by Steve White and seconded by W.J. White to pass proposed Ordinance Number 364 on First Reading. A roll call vote was taken. Steve White and W.J. White vote yes. Aaron Meeks, Paul Young, and Brad Mullinax voted no. Proposed Ordinance Number 364 dies on First Reading with a 2 yes – 3 no vote.

The last item of business was to rescind the action of the Council on proposed Ordinance Number 362. proposed Ordinance Number 362 is an ordinance adopting a city budget for the year ending June 30, 2005; amending the budget for the year ending June 30, 2004; establishment of water and sewer rates and charges; providing for the assessment, method and rate of taxation of real property; and providing for the collection of said taxes. This action is needed in order to include line items for the expenses of the swimming pool when the city takes it over. Motion was made by Paul Young and seconded by Steve White to rescind the action taken on proposed Ordinance Number 362. A roll call vote was taken. All members voted yes. Motion passes with a 5 yes – 0 no vote.

The Secretary-Treasurer asked if the Council wanted to set up some special called meetings in order to pass a budget before July 1, 2004. After a brief discussion, it was decided to hold a special called meeting for First Reading on June 16, 2004 at City Hall at 7:00 pm and hold a special called meeting for the Public Hearing and Second Reading and also the swearing in of the newly elected officials on June 30, 2004 at City Hall at 7:00 pm. The Secretary-Treasurer asked that the Council let him know by the end of the week if they want anything else changed or added due to the notices had to be placed in three different locations.

With no other business, motion was made to adjourn by Brad Mullinax and seconded by Paul Young. All members agreed. Meeting adjourned.

Approved: Cecil Burger
Cecil Burger, Mayor

Attested: Burnace Vandergriff
Burnace Vandergriff, Secretary-Treasurer

June 2, 2004

Mr. Burnace Vandergriff
104 East Main Street
Smithville, TN 37166

Dear Mr. Vandergriff:

MTAS has reviewed the proposed changes to Walnut Street to accommodate a drive through for a drug store.

Please be advised that the City of Smithville does not own a fee interest in city streets. The city has easements for streets, and when a street is closed or abandoned, the property automatically reverts to the adjacent land owners, generally to the center of the street. Sidewalks are part of city streets.

To accommodate the proposed development the city would simply abandon by ordinance that part of the street no longer needed for a street easement and make no further claims to ownership or use.

MTAS recommends that the city abandon that part of the south side of Walnut Street from 4th Street in a westerly direction for a distance of 62.23 feet and eleven feet in width. The developers will need to make slight revisions to the proposed drive through to enable the city to install a pedestrian walkway and continue its one way street. I have shown the changes needed on the proposal for Webb Pharmacy.

Please contact me if we can be of further assistance.

Sincerely,

Don Darden
Municipal Management Consultant
The University of Tennessee (MTAS)

THE UNIVERSITY OF TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE



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Nashville, Tennessee 37219
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June 4, 2004

Mr. Steve White
Vice-Mayor
City of Smithville
104 East Main Street
Smithville, TN 37166

Dear Mr. White:

These are the questions that I have from you relative to beer regulation in Smithville, Tennessee:

1. May the city board serve as the beer board?
2. May the city limit the number of permits?
3. Was the ordinance that I prepared making the city board the beer board legal?
4. If a business fails to provide the required inventory, may the city beer board revoke its beer license?
5. May a person who is serving a felony conviction have his beer license revoked?
6. May a beer license be transferred from an individual to a corporation?
7. May the city set up new distance requirements even though it has violated the existing distance requirements?

In answer to question 1, please be advised that Tennessee statutes specifically authorize the city board to serve as the beer board. This question has previously been addressed by our legal consultant to Mayor Burger.

In answer to question two, it is permissible for the city by ordinance to limit the number of permits.

In answer to question three, our legal consultant has reviewed the ordinance that I previously prepared at your request, and has advised me and the City of Smithville that the ordinance appears to be legal.

In answer to question four, if a business fails to provide the required inventory, the city beer board may suspend its beer license.

In answer to question five, if a licensed beer holder is convicted of a felony crime and is incarcerated, the beer board may revoke his beer license. In revoking the beer license, the city is required to observe established processes. I have never advised anyone to forcefully remove a beer license from the premises of a business without proper notice and other procedural processes.

In answer to question six, Dennis Huffer, our legal consultant, has advised that it is not permissible under the law to transfer a beer license from an individual to a corporation.

In answer to question seven, when the city beer board allowed a business that is 75 feet or so from a church or place of public gathering to have a beer permit, the city beer board effectively did away with the city's distance requirement. The city may enact a new ordinance with a 75 feet distance requirement. It cannot establish a new distance requirement of 200 feet, 300 feet, or anything over 75 feet, so long as it has a business that is 75 feet from a church or place of public gathering. If the city is concerned about beer permit holders not being located too close to churches or places of public gathering, the best way to ensure that this does not happen is to limit the number of permits to the existing permit holders. If it does not make any difference how close beer establishments are to churches, then I would not worry about limiting the number of permits.

I hope this answers your questions. Please feel free to call on me if I can be of further assistance.

Sincerely,



Don Darden

Municipal Management Consultant