

Mayor and Council Meeting

September 19, 2011

All council members were present except for Councilwoman Anulewicz. Also present were Finance Director Robert Porche, City Attorney Scott Cochran, City Clerk Susan Hiott, Community Relations Director Jennifer Bennett, Human Resources Director Kay Bolick, Assistant Fire Chief Roy Acree, Parks and Recreation Director Steve Ciaccio, Budget Officer Monica Jones, Library Director Michael Seigler, Police Chief Stan Hook and representatives of the press.

The regular scheduled meeting of Mayor and Council was held at Smyrna City Hall. The meeting was called to order by presiding officer Mayor Max Bacon at 7:34 o'clock p.m.

Mayor Bacon recognized Pastor Barbara Hatchell of Smyrna 1st United Methodist, who conducted the invocation and led all present in the pledge to the flag.

AGENDA CHANGES:

Mayor Bacon stated that there were none and recognized students from the Campbell High School student government.

MAYOR'S REPORT

Mayor Bacon stated that he would wait until the end of the meeting.

LAND ISSUES/ZONINGS/ANNEXATIONS:

PRIVILEGE LICENSES:

(A) Public Hearing-new application for owner and agent-sales of beer and wine (retail pouring)-Taqueria La Villa LLC dba Tacos La Villa-Ciro Covarrubias-2415 Cobb Parkway (MP)

Mayor Bacon read aloud the item and requested that the applicant approach. Mayor Bacon shared that Finance Director Mr. Robert Porche was filling in for the City Administrator, who along with the Assistant City Administrator, was attending a conference. Mayor Bacon also informed all present that Councilwoman Anulewicz was in Russia on an exchange program. The Mayor acknowledged Mr. Porche who provided the background for this agenda item.

Mayor Bacon stated that this was a public hearing and asked for public comment. There was none.

The Mayor acknowledged Councilwoman Pritchett, who requested that Mr. Covarrubias state the address, length of time in operation, nature and store hours of his business and the applicant responded. Councilwoman Pritchett inquired what regulations he had in place to ensure that no sales to minors would be conducted and he explained that clerks would request presentation of I.D. from all patrons. Councilwoman Pritchett confirmed the applicant's Evindi attendance and awareness of the City's policy of conducting periodic sting operations.

MOTION: Councilwoman Pritchett made a motion to approve new application for owner and agent-sales of beer and wine (retail pouring)-Taqueria La Villa LLC dba Tacos La Villa-Ciro Covarrubias-2415 Cobb Parkway. Motion was seconded by Councilman Newcomb and approved 6-0.

(B) Appeal of Denial of Alcohol License M&R Grocery dba 5 Point Food Store, 1649 Roswell Street (TA)

Mayor Bacon asked for the background, which Mr. Porche read aloud. Mr. Porche shared that the privilege license originally granted was later rescinded at the LVB (License and Variance Board) meeting of 7/27/2011 due to proximity to a school. The Board concluded that the grandfather location clause was not applicable in this instance. Mayor Bacon recognized City Attorney Scott Cochran to conduct the hearing.

Mr. Cochran stated that the store had multiple violations for sales to minors over the years and that there was a history of disciplinary actions being taken. He informed all present that the most recent action had been the revocation of the license in December of 2010. That decision had been appealed and then later dismissed. Mr. Cochran explained that a new applicant then approached the City requesting a permit for the location in question. Following a series of meetings, the request for a new license was denied by the LVB based on the determination that the minimum distance requirement from a school was not met. Mr. Cochran clarified that the issue under consideration by Mayor and Council was whether or not the applicant was entitled to a license based on their claim that they were grandfathered according to the City's ordinances. He reiterated that the LVB had taken the position that because the previous license had been revoked, rather than expired, that the grandfather clause did not apply. Mayor Bacon recognized the applicant's attorney, Joan P. Davis, and asked that all parties wishing to be heard be identified and sworn in.

Councilman Lnenicka asked for clarification on the dismissal of the original appeal. Mr. Cochran explained that following the license revocation an appeal was filed and subsequently withdrawn. Counsel Davis stated that she had only recently become involved and had no knowledge surrounding the withdrawal. She explained that the matter was being brought before Mayor and Council because, according to the City's ordinances, filling out an application for a new license on an existing licensed location grandfathered in and exempted the new applicant from complying with the distance requirement.

Counsel Davis called upon property owner Mr. Shamshudin Samnani, who stated that for almost six years he had owned the property where he operated a grocery store and had held a beer and wine license for 15 years. He stated that the property had a beer and wine license at the time he purchased it. He affirmed that the license had been lost at a hearing in December of 2010 following a temporary employee being cited with a violation for sale to a minor. S. Samnani communicated that the employee in question had stolen the license, money and audio/visual equipment on the scheduled appeal hearing date which prevented his appearance, necessitated a withdrawal and resulted in the filing of a police report. There was discussion about the amount of monthly mortgage and annual property taxes paid at that location.

A review of the violations at the location was presented and it was confirmed that Mr. Samnani had been the property owner at the time of all violations, had ceased operation of that business effective July 2011 and was not presently involved in daily operations there. Councilman Newcomb stated that under the City ordinance the business owner shared the license of his establishment and confirmed that Mr. Samnani had been the owner at the time of all four prior cited violations. Further discussion established that S. Samnani was not the applicant on the license that had been rescinded and that Yousef Shaikh had been the previous license holder.

Mr. Moez Samnani approached and stated that he had assumed the business in June 2011, becoming active in July. His rescinded license to sell beer and wine and a copy of a petition collected by the business owner were presented as exhibits. There was discussion about the relationship between the new business owner, the former business owner and the former license holder. It was made known that the new owner was the nephew of the original owner. It was also clarified that there had been no monetary exchange for transfer of the business and that it had been conducted to allow Moez Samnani to obtain a license for beer and alcohol sales at the location in question.

Councilman Newcomb requested that S. Samnani provide an explanation for the high number of violations and it was indicated that the cause was temporary employees. The Councilman inquired after S. Samnani's understanding of the business owner's responsibility and S. Samnani said that his practice was to tell all of his employees to always check I.D. There was discussion about an incident that involved an intoxicated

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person on the premises and discrepancy surrounding events as viewed on surveillance footage. It was stated that the high number of incidences at the location had resulted in the license being revoked prior to the scheduled expiration date. Councilman Lnenicka inquired if M. Samnani had employment in addition to his role with M&R Grocery and the response was affirmative. Mayor Bacon confirmed that no alcohol sales were currently being conducted at M&R Grocery. Councilman Lnenicka asked that M. Samnani supply his relevant experience and was provided such.

There was discussion about the business plan proposed to ensure the successful operation of the store in question given decreased revenue from loss of alcohol sales. Councilman Lnenicka commented on the objective of the City's governing body to see Smyrna businesses succeed but that compliance had to be enforced. Councilman Newcomb stated that this hearing was solely for the purpose of determining if the LVB interpretation of the ordinance was accurate and the City Attorney clarified that the Mayor and Council could not arbitrarily decide to issue a license, being required to base their decision on city law.

Counsel Davis summarized that the applicant was entitled to a license since the location was previously licensed and subject to the grandfather clause.

MOTION: Councilman Newcomb made a motion at 8:23 to adjourn to executive session. The motion was seconded by Councilwoman Pritchett and passed unanimously.

MOTION: Mayor Bacon asked for a motion at 8:32 to reconvene from executive session. The motion was passed unanimously.

MOTION: Councilman Newcomb made a motion to deny Appeal of Denial of Alcohol License M&R Grocery dba 5 Point Food Store, 1649 Roswell Street based on it not being grandfathered.

Councilman Lnenicka expressed his concern that a contract confirming the transfer of the business to the new applicant had not been presented and that the appearance was that a verbal agreement existed solely for the purpose of obtaining a license.

Councilman McNabb pointed out that the former owner abandoned his right to appeal by withdrawing and that six months had passed from the time of revocation of the license to the transference to the new owner. He made known that he appreciated the attempt to acquire a signed petition but without thorough knowledge of the ordinance by the signatories that document had no standing in this type of hearing.

Councilwoman Pritchett expressed her desire to be able to give consideration to the new owner as requested but that, under the city's laws, that was not possible.

Councilman Newcomb reiterated that no license had existed after the revocation. He commented that while that location had been licensed at one point, that license was not an expired one and therefore reasonable basis for denial was present.

Motion was seconded by Councilman Lnenicka and passed 6-0.

FORMAL BUSINESS:

Mayor Bacon stated that there were none.

COMMERCIAL BUILDING PERMITS:

Mayor Bacon stated that there were none.

CONSENT AGENDA:

Mayor Bacon acknowledged Mr. Robert Porche, who read the consent agenda.

(A) Approval of September 6, 2011 Mayor and Council Meeting Minutes