

October 2, 2000

The regular scheduled meeting of Mayor and Council was held at Smyrna City Hall. The meeting was called to order by presiding officer Mayor A. Max Bacon at 7:30 o'clock p.m. All council members were present. Also present were City Administrator Howard Smith, City Clerk Candis Joiner, City Attorney Scott Cochran and representatives of the press.

Invocation was given by Reverend Lee Delbridge of Smyrna Christian Church, followed by the pledge to the flag.

CITIZENS INPUT:

Mayor Bacon recognized Ms. Pamela Dingle, assistant principal of Campbell Middle School who introduced Maranda Banks, Hillary Osborne, Tocorra Gamell, Kaylie Dewrell, Whitney Hogg and Brittany Autrey students of Campbell Middle School. Ms. Dingle indicated the students would be discussing the Character Words of the Month for September. Mayor Bacon thanked the children and presented each student with a gift bag.

Mayor Bacon recognized Dr. Tom Dohrman who introduced Ms. Betsy Bunte, Cobb County Teacher of the Year. Dr. Dohrman thanked Mayor and Council for honoring the teaching profession and Ms. Bunte. Dr. Dohrman congratulated Ms. Bunte on her achievement and stated that she is a master teacher. Ms. Bunte thanked Dr. Dohrman for the kind words, Mayor and Council for their support and stated that she is proud to be a teacher at Campbell High School and invited the community to participate in school activities. Mayor Bacon presented Ms. Bunte with a gift.

Mayor Bacon recognized State Representative District 29 candidates Ginger Collins and State Representative District 29 Randy Sauder. Both candidates discussed their platforms and asked for the support of the citizens in the November election.

Mayor Bacon introduced Ms. Sue Verner of Creatwood Trail who requested the installation of speed bumps for Creatwood Trail. Councilman Lnenicka stated that Creatwood Trail is the only exit road out of this neighborhood and the whole neighborhood must be contacted.

Mayor Bacon introduced Mr. Jackie Aaron, Anderson Circle, who stated that on the Charter Cable property there are two new buildings, many loads of dirt and the parking lot has been paved with no provisions for water run off which has caused his property to flood. Mr. Aaron stated that the drivers of the heavy equipment and machinery are using his property as a turn around. Councilman Scoggins stated that he would meet with the City Engineer, Charter Cable and Mr. Aaron to solve this problem.

Mayor Bacon introduced Mr. Joel Powell, Frasier Street, who stated that he is concerned with the construction around the Cobb Park. Mr. Powell asked that this area not be cleaned out to insure a barrier between the park and his property.

Mayor Bacon asked Councilman Lnenicka to read a proclamation in honor of Public Safety Appreciation Week. The proclamation was read. Councilman Cramer urged the public to support and thank the public safety workers.

PUBLIC HEARINGS:

(A) Variance Request—1916 Newhaven Court—Reduce Side Yard Setback from 4 feet to 3 feet.

Mr. Smith stated that this variance request is necessary because of the size of the home on this lot. Mayor Bacon stated that this is a public hearing and asked for public comment. There was none.

Councilman Lnenicka introduced Mr. Alec Rickenbaker, president of Peachtree Residential, who stated that a sewer easement runs along the side of the property line. Mr. Rickenbaker stated that this request is an amendment to an earlier request due to the sewer line and that clarification is necessary on the distance between homes.

Councilman Lnenicka made a motion to approve the variance request of 1916 Newhaven Court to reduce side yard setback line from a 4 feet to 3 feet encroachment of 0.5 feet into the sewer easement. The minimum distance between buildings shall be 10 feet if both buildings include a building sprinkler system approved by the city Fire Marshall and the Chief Building Official. Councilman Wood seconded the motion. Motion was approved 7-0.

- (B) Variance Request—1916 Newhaven Court—Reduce Rear Yard Setback and allow a 15-foot encroachment into sewer easement by the wood deck.

Mr. Smith stated that this variance request is necessary in order to finalize the deed to the home. Mayor Bacon stated that this is a public hearing and asked for public comment. There was none.

Councilman Lnenicka stated that this home is a pre-sold home and that the deck has been completed and asked Mr. Cochran if a title insurance policy will stay with the property. Mr. Cochran stated that a title insurance policy will follow the land.

Councilman Lnenicka made a motion to approve the variance request of 1916 Newhaven Court to reduce the rear yard setback and allow a 15 foot encroachment into the sewer easement by a wooden deck subject to the following warranty deed statement: "By her acceptance hereof, Grantee, on behalf of herself and her successors and assigns (i) acknowledges that the deck and stairs in the rear of the property encroach onto a twenty (20) foot sanitary sewer easement (the "Easement"), and (ii) accepts the property described above subject to the condition that the City of Smyrna and Cobb County shall have no liability for the repair or replacement of such deck or stairs, or any other improvement hereafter constructed within the Easement, in the event any party is required to remove such improvements in connection with the repair, maintenance or replacement of the sewer line within the Easement." Councilman Wood seconded the motion.

Councilman Lnenicka amended his motion to stipulate that the motion as stated above will also include future decks and that the seller is to provide a title insurance policy that goes with the property. Councilman Hawkins seconded the motion. Motion to amend was approved 7-0.

Amended motion was approved 7-0.

- (C) Variance Request—2136 Valley Oaks Drive—Convert Duplex on One Lot to Two Fee Simple Properties.

Mr. Smith stated that the applicant would like to convert the duplex into owner occupied dwellings. Mayor Bacon stated that this is a public hearing and asked for public comment. There was none.

Councilman Cramer stated that this property was annexed into the City in 1991 and that the owner previously owned both sides of the duplex and introduced Mr. Parks F. Huff who is representing the applicant. Mr. Parks stated that this is one lot with 2 units and that the request is for a legal change not a physical change. Mr. Parks stated that these variance requests are to reduce the side yard setback to 0 feet and to reduce the lot size to 6,500 square feet. Councilwoman Capilouto asked what would happen if the shared structures need repair and Mr. Huff stated that the homeowners would have access to the other property for repairs.

Councilman Cramer made a motion to approve the variance request to convert the duplex on this one lot to two fee simple properties at 2136 Valley Oaks Drive and to reduce the side yard setback from 10 feet to 0 feet on this property as it stands and that any future buildings must meet all city building codes and variances. Councilman Hawkins seconded the motion. Motion was approved 7-0.

- (D) Variance Request—2136 Valley Oaks Drive—Reduce Lot Size to 6,500 Square Feet.

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

Councilman Cramer made a motion to approve the variance request of 2136 Valley Oaks Drive to reduce the lot size to 6,500 square feet as per the submitted plat. Councilman Newcomb seconded the motion. Motion was approved 7-0.

- (E) Variance Request—2138 Valley Oaks Drive—Convert Duplex on One Lot to Two Fee Simple Properties.

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

Councilman Cramer made a motion to approve the variance request to convert the duplex on this one lot to two fee simple properties at 2138 Valley Oaks Drive and to reduce the side yard setback from 10 feet to 0 feet on this property as it stands and that any future buildings must meet all city building codes and variances. Councilman Hawkins seconded the motion. Motion was approved 7-0.

- (F) Variance Request—2138 Valley Oaks Drive—Reduce Lot Size to 6,500 Square Feet.

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

Councilman Cramer made a motion to approve the variance request of 2138 Valley Oaks Drive to reduce the lot size to 6,500 square feet as per the plat. Councilman Newcomb seconded the motion. Motion was approved 7-0.

- (G) Rezoning Request—1.4 Acres—Highlands Parkway—from G.C. to T.S.

Mr. Smith stated that the applicant is requesting this rezoning in order to build a 72 room Comfort Inn. Mayor Bacon stated that this is a public hearing and asked for public comment. There was none.

Councilman Wood introduced Mr. Harrison, attorney for the applicant, who stated that this is a hotel with all the normal amenities. Mr. Harrison stated that the property is near the intersection of Highlands Parkway and South Cobb Drive and that this rezoning will allow the applicant to build a 72 room Comfort Suites Motel. Mr. Smith asked Mr. Harrison to describe the building material of the proposed motel and Mr. Harrison stated that it will be stucco with wood frame. Mr. Harrison stated that the rooms will be entered from the inside of the building. Mr. Smith asked Mr. Harrison to describe the roof and Mr. Harrison said that it will probably be pitched with a front stucco façade. Councilwoman Capilouto asked Mr. Harrison if the easements being utilized by the fast food restaurants will be part of the motel property and Mr. Harrison said that the relocation of the easements is being investigated. Councilman Lnenicka asked Mr. Patel, owner of proposed motel, to describe his plans to landscape and Mr. Patel stated that plans include a fountain in the front of the hotel and that he would work with the City of Smyrna with all landscaping. Mr. Smith asked Mr. Patel if he would install decorative acorn lighting and Mr. Patel stated yes. Councilman Lnenicka asked Mr. Patel if he would install decorative pavers and Mr. Patel stated yes.

Councilman Wood made a motion to approve the rezoning request of the 1.4 acres at Highlands Parkway from G.C. to T.S. with the stipulations that the developer agrees to install decorative lights approved by the City Engineer, landscaping plans to be approved by the City Engineer and that street pavers be installed subject to approval by the City Engineer. Councilman Hawkins seconded the motion. Motion was approved 7-0.

- (H) Land Use Change Request—1.4 Acres—Highland Parkway—from Industrial Compatible to Community Activity Center.

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

Councilman Wood made a motion to approve the land use change request of 1.4 acres of Highland Parkway from Industrial Compatible to Community Activity Center and Councilman Lnenicka seconded the motion. Motion was approved 7-0.

- (I) Variance Request—1.4 Acres—Highlands Parkway—Reduce Required Number of Parking Spaces for Motel from Ninety Parking Spaces to Eighty Parking Spaces.

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

Councilman Wood asked Mr. Patel to explain why the reduction in parking spaces is needed and Mr. Patel said that parking is at a premium and that the aesthetics of the hotel will be improved with a reduction of spaces. Mr. Harrison stated that the applicant is requesting a reduction in parking spaces because of past experience and they believe that 80 spaces will be sufficient. Mr. Harrison stated that the applicant will run a shuttle to the Galleria area and that most of the motel guests will be business travelers.

Councilman Wood made a motion to approve the request of Marietta Hospitality to reduce the required number of parking spaces from 90 to 80 subject to the applicant preparing for the retention of 110% of normal water runoff. Councilman Cramer seconded the motion. Motion was approved 6-0. Councilman Hawkins was absent during the vote.

FORMAL BUSINESS:

- (A) Adopt Resolution Establishing a Community Greenspace Program and Trust Fund in the City of Smyrna.

Mr. Smith read the resolution that establishes a Community Greenspace Program and authorizes a trust fund for the resolution.

Councilman Wood stated that the parks and recreation committee has reviewed and recommended this resolution and made a motion to adopt the Community Greenspace Program and Trust Fund Resolution for the City of Smyrna. Councilman Cramer seconded the motion. Motion was approved 5-0. Councilman Hawkins and Councilwoman Capilouto were away from the desk during the vote.

- (B) Approval of Proposed Retirement Service Credit Amendment.

Mr. Smith stated that the City of Smyrna adopted a new retirement program through GMA in 1999 and that the program did not provide for the credit of unused or approved leave toward retirement service credit that is included in the Policy and Procedures of the City of Smyrna. Mr. Smith stated that this proposal is an amendment that will bring compliance between the two documents.

Councilman Cramer stated that this amendment will not bring about any policy change and made a motion to approve the retirement service credit amendment. Councilman Newcomb seconded the motion. Councilman Newcomb asked if this will change any current policies and Councilman Cramer stated no. Motion was approved 7-0.

COMMERCIAL BUILDING PERMITS:

There were none.

BID AWARDS:

- (A) Bid Award #2000-0026—Portable Sewer Camera for Public Works Department.

Councilman Scoggins stated bids were solicited from four vendors with two companies responding. Councilman Scoggins made a motion to award the bid for the portable sewer camera for the public works department to Adams Equipment, the low bidder, for a total cost of \$12,170.20. Councilman Hawkins seconded the motion. Motion was approved 7-0.

CONSENT AGENDA:

- (A) Approval of September 18, 2000, minutes.  
 (B) Approval to Purchase New Copy Machine—Police Records Department.  
 (C) Approval to Use Council Chambers Monday, October 9, 2000, from 7:00 p.m. to 9:00 p.m. for Ward 7 Meeting.  
 (D) Approval to Solicit Request for Proposals for Replacement Chairs for Community Center.  
 (E) Approval to Request Bids for Replacement Outdoor Signage at Community Center, Library and 3 Parks.  
 (F) Approval to Close Ridgecrest Road from Manor Drive to Sharon Circle, on Saturday, October 14, 2000.

Councilman Scoggins made a motion to approve the consent agenda. Councilman Lnenicka seconded the motion. Motion was approved 7-0.

#### COMMITTEE REPORTS:

Councilman Lnenicka stated that the number of lots in Oak Ridge Estates, being built on the McKay property, has been reduced from 54 to 50 and that house construction will begin soon. Councilman Lnenicka thanked Bowen Homes for working with the City on lot size.

Councilman Cramer stated that there will be a neighborhood meeting on speeders on Bank Street and that there may be a community meeting to address the proposed rezoning on Church Street.

#### SHOW CAUSE HEARING

- (A) Show Cause Hearing—Alcoholic Beverage Violation—Amoco Oil Company #353—5160 South Cobb Drive—Agent Lawrence Joseph Owens.

Mr. Smith stated that on August 25, 2000, the Smyrna Police Department conducted a sting operation and a 17-year old informant was sent into the Amoco at 5160 South Cobb Drive and purchased a 6 pack of 12 ounce Heineken Beer from the store clerk, Terrence Powell, after being asked for identification. He continued that the case will be heard in the Smyrna Municipal Court on October 10, 2000.

Mayor Bacon asked Mr. Owens, the agent, to come forward and the City Attorney administered the oath to him and the police officers who would be testifying.

Officer Bennett stated that on August 25, 2000, around 9:45 p.m. he and a 17-year old female informant went into the Amoco located at 5160 South Cobb Drive. He continued that the informant retrieved a 6 pack of Heineken beer from the cooler. He stated that he accompanied the informant to the checkout stand where the order was processed and the clerk asked for identification. The informant produced a valid Georgia driver's license that showed the informant as 17 years old. He stated the transaction was made and he and the informant exited the store. Officer Bennett stated this operation was part of the Cobb Underage Drinking Task Force/Alcohol Service Compliance check in which 18 stores were visited.

Mr. Reichert, attorney for Amoco Oil Company, stated that Mr. Owens was not on the premises at the time of the sale and that the clerk has been terminated. Mr. Reichert stated that Amoco is very serious about underage alcohol sales and there are training procedures for new and as well as experienced employees. Mayor Bacon asked Mr. Reichert how to deter underage alcohol sales and Mr. Reichert stated that Amoco uses a training manual that includes an eight page section focusing on alcohol sales identification as well as mystery shoppers to deter. Mayor Bacon stated that he has had suggestions to impose strict fines and penalties toward the clerk who actually sells alcohol to underage customers and Mr. Reichert stated that he would support these type of penalties. Mr. Reichert stated that Amoco offers financial incentives to the manager of the establishment in order to deter under age alcohol sales. Councilman Lnenicka asked Mr. Owens what his position in the store is and Mr. Owens stated that he was originally the store manager but that he is now a district manager. Councilman Lnenicka asked if Mr. Owens believes that his absence in the store is part of the problem and Mr. Owens stated that he routinely watches security videos, visits the store in the evenings and confers with the present manager.

Councilman Wood made a motion to suspend the license to sell alcohol of Amoco Oil Company #353, 5160 South Cobb Drive, for 7 consecutive days beginning at 12:01 a.m. on Tuesday, October 3, through midnight Monday, October 9th, and place the establishment on a 5-year Class I probation. Councilman Cramer seconded the motion. Motion was approved 7-0.

- (B) Show Cause Hearing—Alcoholic Beverage Violation—Super Giant Foods—3240 South Cobb Drive—Agent Yenn Sung Yim.

Mr. Smith stated that on August 25, 2000, the Smyrna Police Department conducted a sting operation and a 17-year old informant was sent into the Super Giant Foods at 3240 South Cobb Drive and purchased a 4 pack of wild berry pina colada wine coolers from the store clerk,

Leticia Crespo, without being asked for identification. He continued that the case will be heard in the Smyrna Municipal Court on October 10, 2000.

The City Attorney administered the oath to those who would be testifying.

Officer Bennett stated that on August 25, 2000, around 9:00 p.m. a 17-year old female informant and Deputy Pete Gibson (Cobb County Sheriff's Department) went into the Super Giant Foods located at 3240 South Cobb Drive. He continued that the informant retrieved a 4 pack of wild berry pina colada wine coolers from the cooler. He stated that Deputy Gibson accompanied the informant to the checkout stand where the order was processed and the clerk did not ask for identification. Officer Bennett stated that the clerk did not have a valid permit to sell alcohol. He stated the transaction was made and Deputy Gibson and the informant exited the store. Officer Bennett stated this operation was part of the Cobb Underage Drinking Task Force/Alcohol Service Compliance check in which 18 stores were visited.

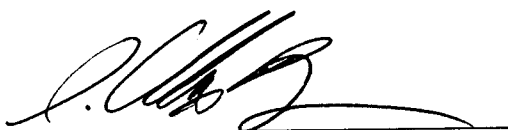
Mayor Bacon recognized Mr. Arthur Maritek, attorney for the defendant, who introduced the new owner of Super Giant Foods, Mr. Chang Lee and Ms. Sharon Griffin, head cashier of Super Giant Foods. Ms. Griffin stated that it is her responsibility to train the cashiers and that she was on duty the night of August 25<sup>th</sup> training a new cashier, Leticia. Mr. Maritek asked Ms. Griffin to explain the normal procedure for alcohol sales purchases, and Ms. Griffin said that cashiers are trained to always ask for identification and to enter the date of birth of the customer into the computer. Ms. Griffin stated that she was not with the cashier during the sting operation because she had left the store for the day. Ms. Griffin stated that the cashier was terminated.

Mayor Bacon asked if Mr. Yim is present and Mr. Maritek stated no that he is in California. Mr. Maritek stated that Mr. Chang Lee is the new owner of Super Giant Foods. Councilman Hawkins asked Mr. Lee to speak with the business license department on Tuesday, to correct all licenses. Councilman Lnenicka urged Mr. Maritek to assist Mr. Lee with meeting the business license and ordinance requirements for alcohol sales laws of the City of Smyrna.

Councilman Hawkins made a motion to suspend the license to sell alcohol for Super Giant Foods, 3240 South Cobb Drive, beginning at 12:01 a.m. on Tuesday, October 3, 2000, until the ownership of the business is corrected, the agent change has been completed and all clerks are licensed to sell alcohol and placed the establishment on a 5-year Class I probation. Councilman Capilouto seconded the motion. Motion was approved 7-0.

#### ADJOURNMENT

With no further business, the meeting adjourned at 10:23 p.m.

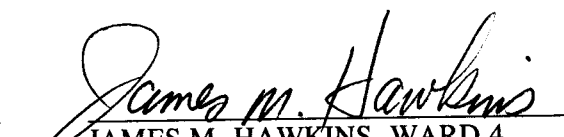
  
A. MAX BACON, MAYOR


  
CANDIS JOINER, CITY CLERK

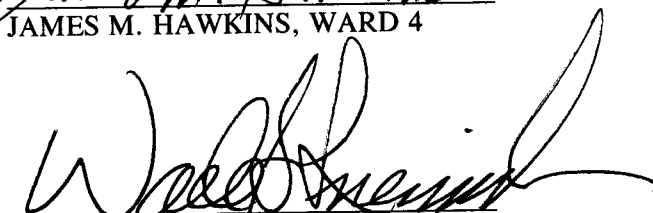
  
CHARLENE CAPILOUTO, WARD 1

  
RON NEWCOMB, WARD 2

  
BILL SCOGGINS, WARD 3

  
JAMES M. HAWKINS, WARD 4

  
JACK CRAMER, WARD 5

  
WADE S. LLENICKA, WARD 6

  
CHARLES PETE WOOD, WARD 7