

JULY 18, 2012 COUNCIL MEETING

Mayor Paul opened this Regular Meeting at 7:05 p.m. Also in attendance were Council Members Pirrello, Reel, Pieper, Murray and Acup.

Also present were: City Manager Bookout, Asst. City Manager Muskopf, Atty. Martin, Asst. City Atty. Moore, Planning Director Hood, City Engineer Schwer, Chief Felgate, Finance Director Cary, Parks Director Blumer, and City Clerk Demeter.

APPROVAL OF AGENDA

Council Member Pirrello moved to approve the Agenda, seconded by Council Member Acup. The votes were all "AYE".

APPROVAL OF MINUTES

Council Member Acup moved to approve the Minutes of the June 14, 2012 Special Meeting, June 20, 2012 Regular Meeting, and June 26, 2012 Special Meeting; Council Member Murray seconded the motion. The votes were "AYE" with the exception of Council Members Reel and Pieper "ABSTAIN" for June 26, 2012; Council Members Murray and Acup "ABSTAIN" for June 14, 2012.

RECOGNITION OF HUFFMON RETIREMENT

Mayor Paul read in full a Resolution thanking Katie Huffmon for her 20 years of service and honoring her on her retirement. After accepting the resolution engraved on a plaque, Mrs. Huffmon said a few words thanking Staff and Council and wishing the best for the City.

PETITIONS

Marine Corps League Bar B Que

Carl Brown, representing the Ballwin detachment of the Marine Corps League, requested authority to conduct a fund raiser Bar B Que at the Bed Room store, 15599 Manchester Road, on August 28, 2012 and October 20, 2012. Council Member Pirrello moved to approve, seconded by Council Member Reel. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE".

RECEIPT/FILING PLANNING AND ZONING REPORTS/RECOMMENDATIONS

Council Member Pirrello moved to take the following actions:

Receive and file Planning and Zoning Commission's positive recommendation dated July 11, 2012 relative to the Petition of the Sansone Group and Walmart, Inc. for a conditional use permit to allow the operation of a general merchandise department store over 50,000 square feet with multiple tenant space, a structure over 30 feet in height with a drive-through, and the sale of every class of liquors by the package and Sunday sales at a location numbered 15970-16012

Manchester Road within the C-3 Commercial Zoning District.

Receive and file Planning and Zoning Commission's approval dated July 11, 2012 relative to the Petition of T-Mobile Central LLC for approval of a minor amendment to Ordinances #2952 and #3050 to allow the replacement of six (6) antennae and the installation of replacement and additional associated equipment within the existing enclosure located at 415 Old State Road and zoned M-1 Light Industrial Zoning District.

Receive and file Planning and Zoning Commission's approval dated July 11, 2012 relative to the Petition of T-Mobile Central LLC for approval of a minor amendment to Ordinance #2900 to allow the replacement of six (6) antennae and the installation of additional associated equipment within the existing enclosure located at 15828 Manchester Road and zoned C-3 Commercial Zoning District.

Receive and file Planning and Zoning Commission's approval dated July 11, 2012 relative to the Petition of Triple J, d/b/a "Pasta House", for approval of an amendment to a Conditional Use Permit to allow a full service outdoor dining area, including the sale of alcohol within the outdoor dining area as part of the existing Pasta House Restaurant located at 15601 Manchester Road within the C-3 Commercial Zoning District.

Council Member Acup seconded the motion. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE".

PUBLIC HEARINGS

Sansone/Walmart, conditional use permit

Mayor Paul opened the public hearing on the Petition of the Sansone Group and Walmart, Inc. for a conditional use permit to allow the operation of a general merchandise department store over 50,000 square feet with multiple tenant space, a structure over 30 feet in height with a drive-through, and the sale of every class of liquors by the package and Sunday sales at a location numbered 15970-16012 Manchester Road within the C-3 Commercial Zoning District. Atty. Martin entered the following exhibits for purposes of this hearing: Exhibits 1 through 21 previously submitted to the Planning and Zoning Commission on July 11, 2012; Exhibit 22, Planning and Zoning Commission's positive recommendation dated July 11, 2012; Exhibit 23, City Planner Hood's July 11, 2012 Power Point Presentation; Exhibit 24, City Planner Hood's Memorandum dated July 13, 2012; Exhibit 25, City's Third Party Landscape Consultant Review dated July 18, 2012; Exhibit 26, Petitioner's Memorandum regarding Criteria for Conditional Use Permit submitted July 18, 2012; and Exhibit 27, July 18, 2012 Memorandum from City Planner regarding Lorin Crandall (Missouri Coalition for the Environment) recommendations.

Rick Rohlfing and John Nilges with BFA Engineering; Architect Ryan McKay with BRR; Traffic Consultant Brian Eads with Crawford, Murphy and Tilly; Traffic Consultant Shawn White; and City Planner Ada Hood were duly sworn. Atty. Jim Sansone was also present.

Atty. Christine Bushyhead, representing petitioners Walmart and Sansone, addressed the Council. She advised they had worked to accommodate and incorporate staff suggestions

regarding lighting, screening, landscape design, reduced parking, buffers, sidewalks/trails, implementation of the Great Streets Initiative and traffic improvements. She reiterated the conditional use permits the petitioners were seeking and noted that conditional uses are types of uses considered to be essentially desirable, necessary or convenient to the community but which by their nature warrant a more detailed study. Atty. Bushyhead touched on some of the points (traffic, public utilities, highest and best use, structure in relation to adjacent structures, complies with standards of good planning practices, and mitigation of potential adverse impacts) within Exhibit 26, their detailed explanation of how each of 16 criteria was met in order for the conditional use permits to be approved.

Engineer Rohlfing then addressed the Council and reviewed the layout/site plan: signalization at Weis; parking field reduced at request of staff; cross-access west required and to the east when developed; rear and 2 front detention basins; trail extension; 31'4" tall portion of the front facade between store entrances and 24' tall rear facade; and drive-through pharmacy on east side. He then asked for consideration regarding certain city recommendations: delivery hours between 7:00 AM and 9:00 PM rather than 7:00 AM to 7:00 PM; and no restrictions on hours for loading/unloading within double walls near "no idle" loading dock allowing for safe "stocking the floor" during off-peak hours. Mr. Rohlfing pointed out the truck turn-around area and advised that instead of a screen wall there, it will be a sound wall. With regard to landscaping, trees have been located for preservation and grading plans have been modified to accommodate the requests of the city's landscape consultant who has indicated that the petitioner has met or exceeded all city ordinances.

Council Member Reel asked about whether the area for the walkover should be on the other side and was told by City Manager Bookout that it needed to be discussed in light of the change to the cross-access.

Council Member Acup clarified that petitioner had no objections to the other recommendations. She then addressed existing traffic issues and Weis Avenue residents' concerns for the future: accidents at Barney's, no parking on streets, traffic from Walmart through neighborhood streets, escrow account to restudy traffic impact after store opens and to mitigate, adding bus stop in front of store, Weis crosswalk to cross-over, limiting hours of operation rather than 24 hours, and 2 way stop. Atty. Bushyhead stated: they would have no control over Barney's parking situation; an amount would have to be determined by staff and traffic study for the escrow; \$50,000 will be contributed for maintenance of the trail; a bus stop may not be possible because of the reduced parking (at staff's request) with significant landscaping; one entrance is already restricted and they need at least one entrance with a 4 way movement; the crosswalk was not a problem; and limiting the hours of operation was not anticipated for this location.

Responding to Council Member Pirrello, City Manager Bookout advised they will now be working with the current cross-access to Bremen Bank which means the cross-over pad will be relocated. Council Member Pirrello asked if swapping the detention basin with the pad was an option and Mr. Rohlfing said their parking would further be reduced and any detention at that

higher point would be ineffective. The City may not need the entire 60'x90' and Mr. Rohlring will look at it further. Council Member Pirrello then addressed expanding upon the traffic study to have a reference point with regard to the nearby residential streets. Traffic Consultant White stated the original study did not go back into the residential subdivisions; it was thought once school started, hoses would be used and then, after Walmart opened, traffic counts would again be taken to see if traffic had increased. She thought if numbers increased by 50%, the residents would have a right to request traffic calming measures.

Council Member Pirrello expressed concern about a possible hazard on the trail for pedestrians having to traverse at the cross-access point on the west side. He asked that consideration be given to providing some safety at the location. Mr. Pirrello asked if Walmart would build the store without a liquor license and Atty. Bushyhead answered she will speak with Operations. He then asked if taxes collected on liquor sales were the same as any other sales taxes. City Manager Bookout indicated that he would look into it.

Mayor Paul raised the following: 24 hour tire/lube operations and sales of outdoor goods in area near homes; trash compactor noise at night; 1'4" more than code allows for height when asking for \$10.8 Million in subsidies; parking code requires 5.5 spaces per 1,000 sq. ft. retail and the original 120,000 sq. ft. building would have complied with parking regs; Best Buy buffers irrelevant since it was built in 1992 and nearby houses built in 2003; was PR the reason for cancelling the CID and TDD; guns and liquor sales in same building; and regarding residential impact of traffic, study needed now not after built. The Mayor later stated the original prototype for Mr. Voss's building next door was to be over 30' and was rejected.

Mr. Rohlring responded: there will be no tire/lube operations; entrance nearest outdoor goods area closes at 10:00 or 11:00 p.m.; trash compactor fully enclosed and screened; cardboard is baled inside the building, stored outside and screened by 10' masonry wall; only an area in the front and center of the building is to be over 30 feet and the building will sit 400 feet from the street; store wouldn't be able to pay for itself with 120,000 sq. ft. and costs of redevelopment; project costs have not decreased, off site improvements have increased 300%. Atty. Bushyhead added that putting in 302 trees, 227 shrubs, double sound barriers, and a trail were overhead costs but they were able to stay within margins to justify the investment at this particular location; and their Real Estate Committee reviewed it, determined their portion of the TIF was sufficient, and gave approval to not charging the CID and TDD.

Mayor Paul thought if they were concerned about the community, they would lower the building to 30 feet. Atty. Bushyhead stated their petition as it related to height would remain unchanged.

Council Member Pieper asked about "multi-tenant" and was told there would be sub-tenants (such as an eye care business or Subway sandwich shop) within the building. He asked where the cross-over would be on the north side and City Planner Hood said it would be in front of City Hall.

Council Member Pirrello asked that a representative from Operations be present for the next meeting to answer questions. He pointed out that the 30' threshold was originally established because fire trucks couldn't reach any higher, but that was not an issue anymore and the code had not been revised. He then asked about whether tenant panels would be on the exterior monument sign. Mr. Rohlring said the panels are for the outlots and Phase 2.

Responding to Council Member Reel inquiry about the trees in the rear, Mr. Rohlring advised the location of the trees was depicted on the plans. They also showed the specific trees asked to be saved. Grading was also revised as requested to protect particular trees on and off the subject site. Mrs. Reel asked if the length of the sound wall could be extended further. Mr. Rohlring pointed out the sound wall, the bale pallet storage area with a 10' masonry wall, and retaining wall with 6' site proof vinyl screen. They would be willing at the 10' wall to increase the 6' screen to 10'.

Ed Hinch, 116 Covert Lane, could not see why the city should change the code now for this building and give a variance.

John Ruprecht, 146 Covert Lane, voiced concern about westbound Manchester traffic and asked that the proposed median be changed to allow left turns into his subdivision.

Mick Cahill, 42 Covert Lane, was worried about noise from diesel trucks at 10:00 p.m. disturbing neighbors. He wanted the Council to understand that the subject site had always been residential, people will be living just on the other side of the vinyl fence and wanted sound barriers instead.

Barb Ellebrecht, 18037 Babler Woods, owner of the property at 17 Covert Lane, read a prepared statement (on file in the City Clerk's Office). She opposed the proposed buffering and granting a conditional use permit for the size and height of the building. She suggested the building be located up near Manchester with parking in the rear and for the developer to build multifamily residences before the Clarkchester Apartments were torn down.

John Hoffman, 1617 West Field, thought this project would be a traffic nightmare and asked it be denied.

Ray Massey, 14972 Manor Lake Drive, owner of property within Clarkchester, thanked the Council for doing what was needed to ensure the financial future of the city.

Phil Carney, 1350 Bridge Creek Trail, read from a prepared statement and presented petitions opposing the project signed by 332 of the 440 residents contacted in District 2 (on file in the City Clerk's Office).

Lorin Crandall, Missouri Coalition for the Environment, stated Walmart has a history of not being an environmentally conscious developer and he had concerns about the impact on Kiefer Creek. He had made recommendations which he did not see incorporated in the plan. He said he

had filed a records request for digital copies of plans and not received them. Mr. Crandall expressed displeasure he had not been able to adequately review plans.

John Whittier, 57 Pretoria Drive, spoke in opposition to the project and voiced concerns about noise, light and traffic. He asked why the project wasn't moved to RPA-2.

Elizabeth Schmidt, 48 Cathcart, Apt. C, Ellisville Article 9 Alliance, asked why the concrete trail extension should be credited as a green space contribution, what the "recognized conditions" for environmental clean up were, if the car dealership had been tested for dioxin, and if there was a bond or decommissioning fund if the building is abandoned. She stated Walmart stores brought in significant crime.

Bill Voss, 17360 Bridle Trails West, stated he and his wife own the Bremen Bank building. He stated staff had worked with him regarding this project, but he was still concerned for his building and didn't want to change anything on his property, lose parking spaces or have a median in front. Mr. Voss felt he had not been kept in the loop and wanted better communications.

Council Member Pirrello addressed the dioxin question and advised that he had done extensive research regarding the issue as well as EPA's study and hunt for potential areas of contamination. There was no dioxin sprayed on RPA-1 or RPA-2.

Mayor Paul recessed this public hearing from 9:30 p.m. to 9:50 p.m.

Responding to Council Member Pirrello about bore sampling, Mr. Rohlfing stated soil borings were done and no oil was found in those borings. Spilled/leaking oil from tanks was detected in the auto repair location and evidence found that oil and fuel had entered floor drains. Dioxin tests did not show up anything but they were still looking into it.

Atty. Martin explained that green space contributions only applied in residential zoning districts; city records indicate 130 residents in Clarkchester Apartments; Great Streets Initiative being implemented by city requires parking ratio of 4.25 per 1000 sq. ft.; and Manchester Road medians are another component of Great Streets Initiative.

Atty. Bushyhead provided the following information as response to questions and comments from the Council and audience: the city prefers to have a different type of development at RPA-2 and the subject site works for Walmart; having liquor sales and a 24 hour operation are critical to Walmart; the drive-through and entrance near garden center will close at 10:00 PM; clean water recommendations will be reviewed; Section 7.25 of the Redevelopment Agreement deals with vacancy of the building--the city can force the demolition or demolish it and sue Walmart to recoup costs; they were responding to staff regarding locations of access, cross-access, medians and trails; and traffic study and landscaping plans were reviewed by city's third-party consultants.

Mr. Rohlfing advised: the length and height of sound walls had been increased; they were requesting delivery hours to 9:00 PM not 10:00 PM; Mr. Crandall's recommendations were reviewed with Staff earlier in the week including liquid vs. rock salt pretreatment for snow/ice storms; more landscaping than required, revised landscaping plan to protect existing vegetation; storm water quality will be improved and storm water run-off will be decreased; Walmart cannot do anything if oil migrated offsite, but it intends to clean up this site; RPA-2 is too small site; trail extension will be asphalt not concrete; asbestos, fuel, oil, paints were found on sites; borings were done as part of the Geotech Report to determine the strength of the soils; Phase I Environmental Reports identify potential environmental risks, Phase II Reports look into suspect areas and will be done as part of the process as the project goes forward, and Phase III is remediation if needed; and moving the parking to the rear was not possible.

Architect Ryan McKay with BRR confirmed that the intent of the 30' height standard was for fire and life safety purposes which no longer existed. The building will be over 490' from Manchester Road and the top of the 31'4" parapet wall will probably not be visible from off-site locations. The only way to attach the identification sign is bolting it through the parapet wall and into the store, straddling steel inside the wall. If the wall was lowered, the heavy sign would have to be lowered causing a conflict with the wall structure.

Mayor Paul said all the other businesses had to be 30 feet and the height restriction had to be applied across the board. He asked if it was typical business to get \$10 Million and then dictate what was a deal breaker as far as the design of the building or if it was PR or branding. Mr. McKay responded that a request for a conditional use permit was permissible by the city's code. It was not a visual thing or just a branding thing; it affected the method of installing the sign.

Council Member Pirrello stated Councils had previously approved use permits for height exceptions throughout the city. Mayor Paul asked if any of them got \$10 Million and Mr. Pirrello didn't see the relevance but mentioned that Home Depot received a tax rebate and was reimbursed for certain public infrastructure costs and they exceeded the height limit. The Mayor said he would be more apt to grant an exception to a company not asking for such a large subsidy.

Council Member Murray stated that when warranted, exceptions are allowed and noted that the sign for Ellie's Café within Straubs was extremely large and was permitted.

In conclusion, Atty. Bushyhead restated the use permits they were seeking: for the operation of a general merchandise department store over 50,000 square feet with multiple tenant space, a structure over 30 feet in height with a drive-through, and the sale of every class of liquors by the package and Sunday sales. She asked the Council to consider delivery hours of 7:00 AM to 9:00 PM and deleting Staff recommendation #4 regarding restricting unloading operations. They were fine with all other staff recommendations.

Mayor Paul polled Ellisville residents and property owners as to authorizing the conditional use permit: Two (2) were in favor and seventeen (17) were opposed.

Mayor Paul closed this public hearing.

PUBLIC COMMENTS I

None

LEGISLATION

Bill #3276, Rezoning 14 Vesper to Commercial

Council Member Pirrello introduced Bill #3276 for consideration and perfection, AN ORDINANCE APPROVING REZONING OF 14 VESPER DRIVE FROM R-1 RESIDENTIAL SINGLE FAMILY ZONING DISTRICT TO C-3 COMMERCIAL ZONING DISTRICT AND APPROVING A LOT CONSOLIDATION PLAT. Council Member Pirrello moved for consideration and perfection of Bill #3276, seconded by Council Member Pieper. Council Member Pirrello moved to table the matter until Council Member Anglin could participate, seconded by Council Member Reel. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE".

Ord. #3079, T-Mobile amendment, 419 Old State

Council Member Reel introduced Bill #3277 for consideration and perfection, AN ORDINANCE AMENDING ORDINANCE #2952 AUTHORIZING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO T-MOBILE AT A LOCATION NUMBERED 419 OLD STATE ROAD WITHIN THE M-1 LIGHT INDUSTRIAL ZONING DISTRICT OF THE CITY OF ELLISVILLE TO REFLECT A CHANGE IN EQUIPMENT. Council Member Reel moved for consideration and perfection of Bill #3277, seconded by Council Member Pieper. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Council Member Reel introduced Bill #3277 for final passage, AN ORDINANCE AMENDING ORDINANCE #2952 AUTHORIZING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO T-MOBILE AT A LOCATION NUMBERED 419 OLD STATE ROAD WITHIN THE M-1 LIGHT INDUSTRIAL ZONING DISTRICT OF THE CITY OF ELLISVILLE TO REFLECT A CHANGE IN EQUIPMENT. Council Member Reel moved for final passage of Bill #3277, seconded by Council Member Pieper. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Bill #3277 becomes ORDINANCE #3079.

Ord. #3080, T-Mobile amendment, 15828 Manchester

Council member Acup introduced Bill #3278 for consideration and perfection, AN ORDINANCE AMENDING ORDINANCE #2900 AUTHORIZING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO T-MOBILE AT A LOCATION NUMBERED 15828 MANCHESTER ROAD WITHIN THE C-3 COMMERCIAL ZONING DISTRICT OF THE CITY OF ELLISVILLE TO REFLECT A CHANGE IN EQUIPMENT. Council Member Acup

moved for consideration and perfection of Bill #3278, seconded by Council Member Murray. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Council member Acup introduced Bill #3278 for final passage, AN ORDINANCE AMENDING ORDINANCE #2900 AUTHORIZING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO T-MOBILE AT A LOCATION NUMBERED 15828 MANCHESTER ROAD WITHIN THE C-3 COMMERCIAL ZONING DISTRICT OF THE CITY OF ELLISVILLE TO REFLECT A CHANGE IN EQUIPMENT. Council Member Acup moved for final passage of Bill #3278, seconded by Council Member Murray. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Bill #3278 becomes ORDINANCE #3080.

Ord. #3081, Pasta House, outdoor dining use and patio plans, 15601 Manchester

Council Member Pieper introduced Bill #3279 for consideration and perfection, AN ORDINANCE AMENDING ORDINANCE #2356 REGARDING "PASTA HOUSE COMPANY", A RESTAURANT AT A LOCATION NUMBERED 15601 MANCHESTER ROAD WITHIN THE C-3 COMMERCIAL ZONING DISTRICT TO AUTHORIZE OUTDOOR DINING AND THE SALE OF EVERY CLASS OF LIQUORS BY THE DRINK OUTDOORS AND TO REFLECT REVISED PATIO PLANS. Council Member Pieper moved for consideration and perfection of Bill #3279, seconded by Council Member Reel. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Council Member Pieper introduced Bill #3279 for final passage, AN ORDINANCE AMENDING ORDINANCE #2356 REGARDING "PASTA HOUSE COMPANY", A RESTAURANT AT A LOCATION NUMBERED 15601 MANCHESTER ROAD WITHIN THE C-3 COMMERCIAL ZONING DISTRICT TO AUTHORIZE OUTDOOR DINING AND THE SALE OF EVERY CLASS OF LIQUORS BY THE DRINK OUTDOORS AND TO REFLECT REVISED PATIO PLANS. Council Member Pieper moved for final passage of Bill #3279, seconded by Council Member Reel. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE". Bill #3279 becomes ORDINANCE #3081.

Resolution #07-18-12, ICMA Trustee

Council Member Murray introduced Resolution #07-18-12 for approval, A RESOLUTION OF THE CITY OF ELLISVILLE, MISSOURI, APPROVING AN AMENDMENT TO THE ADMINISTRATIVE SERVICES AGREEMENT WITH ICMA RETIREMENT CORPORATION APPOINTING WILMINGTON TRUST RETIREMENT AND INSTITUTIONAL SERVICES COMPANY AS NON-DISCRETIONARY DIRECTED SUCCESSOR TRUSTEE FOR PLAN NUMBER 303846, EFFECTIVE AS OF THE DATE OF EXECUTION BY THE CITY. Council Member Murray moved to approve Resolution #07-18-12, seconded by Council Member Acup. The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE".

PUBLIC COMMENTS II

None

MAYOR/COUNCIL BUSINESS/REPORTS

Appointment Fountain Plaza Board of Directors

Mayor Paul nominated Rich Obertino, Vincent Luongo, and Tony Bosworth for re-appointment to the Board of Directors for the Fountain Plaza Community Improvement District. Council Member Pirrello moved to appoint Rich Obertino, Vincent Luongo, and Tony Bosworth to the Board of Directors for the Fountain Plaza Community Improvement District, seconded by Council Member Acup. . The votes were: Reel "AYE", Pieper "AYE", Murray "AYE", Acup "AYE", Paul "AYE", Pirrello "AYE".

Mayor Paul adjourned this meeting at 10:35 p.m.

Respectfully submitted,
CATHERINE DEMETER, City Clerk