

CITY OF MONTEVIDEO
CITY COUNCIL PROCEEDINGS
November 2, 2009

The city council met in regular session Monday, November 2, 2009 in the council chambers at city hall. President Hodge called the meeting to order at 7:00 P.M. with the Pledge of Allegiance.

Council members present: Karen Nieuwbeerta, Bryce Curtiss, Sandra Hodge, Marvin Garbe and Al Johnsrud. Mayor Jim Curtiss absent.

Also present were: City Manager Steven C. Jones, City Engineer David Berryman, City Attorney Janice Nelson and City Clerk Glennis Lauritsen.

It was moved by Johnsrud, seconded by Curtiss and unanimously passed to approve the agenda, with the following modifications:

MODIFY:

5(A) CONSIDER APPROVAL OF VERIFIED CLAIMS FOR THE PERIOD ENDING OCTOBER 30, 2009 IN THE AMOUNT OF ~~\$1,144,147.54~~ \$1,257,521.29.

Modified amount reflects the following additional claims:

<u>LEVEE</u>		
Bonnema Surveys, Inc.	Services	\$ 7,704.75
<u>MISCELLANEOUS</u>		
SW/WC Service Co-Op	Blue Cross/Blue Shield-November	53,761.00
SW/WC Service Co-Op	Blue Cross/Blue Shield-December	51,908.00

ADD:

7(F) CONSIDER REQUEST BY MATT SATHER, HUNT BAR & GRILL, TO ALLOW A LIMITED FOOD MENU, IN CONJUNCTION WITH THEIR INTOXICATING ON-SALE LIQUOR LICENSE.

It was moved by Garbe, seconded by Nieuwbeerta and unanimously passed to approve the minutes of the regular meeting of October 19, 2009, as presented.

4. Notices/Communications/Announcements or Appearance of Interested Citizens.

- None.

5. Consent Agenda.

It was moved by Nieuwbeerta, seconded by Johnsrud and unanimously passed to approve the following consent agenda items:

5(A) VERIFIED CLAIMS FOR THE PERIOD ENDING OCTOBER 30, 2009 IN THE (MODIFIED) AMOUNT OF \$1,257,521.29.

6. Public Hearings.

- None.

7. General Business.

7(A) CONDITIONAL USE PERMIT - RELIGIOUS FACILITY.

On October 26, 2009, the Montevideo Planning Commission held a public hearing to consider a request by Armando Castaneda to operate a religious facility in a B1 District, at 301 South First Street. Staff had recommended approval, with the following conditions:

1. Permitted entity must comply with all city ordinances concerning parking, signage and the basic operation of a religious establishment in a B1 Zone. Future expansion beyond first floor is contingent upon meeting the minimum requirements of zoning and building codes.
2. Permitted entity is cognizant of existing businesses and their characteristics upon entering/operating the religious facility, i.e. liquor establishments within 300' of 301 South First Street.
3. The city reserves the right to review this permit at any time and to add additional conditions to preserve and protect the character of the area and to lessen the impact of the project.

The planning commission voted against the conditional use permit on the grounds that property values would be negatively impacted if the church were to go into operation at that location. This was based solely on the restriction in a B1 District that establishments within 300' of a church or school are ineligible to obtain an on-sale intoxicating liquor license.

After further discussion, however, the planning commission then made a motion which encouraged staff and the Montevideo City Council to begin the preparation of an ordinance amendment to protect property values within 300' of this location. That ordinance amendment was prepared by the city attorney and will be considered later in the meeting as Item 8(A).

Based on the additional motion, staff had prepared a fourth condition to the conditional use permit, as follows:

4. The permitted entity will not receive a conditional use permit until the intoxicating liquor ordinance is modified as to allow the simultaneous use of the B1 District [the area bounded by State Road to the south, Canton Avenue to the north, Parkway Drive to the west and 2nd Street/2nd Street alley to the east] for both religious institutions as well as entities that have or might possibly in the future possess an intoxicating liquor license.

Pastor Jose Guerra and members of the church were present to address questions/concerns raised by the council. Pastor Guerra gave a brief background of the church, stating that they have been a part of the Marshall community for the past eight years. The church considers Montevideo to be a growth area for the Hispanic community. Guerra discussed their short-term agenda, including providing a church/Hispanic community center, boys/girls club, food bank. He also noted long-term visions for the second and third floors to include a possible hair salon, radio station, FedEx office. Pastor Guerra felt the church would provide a bridge for the community, with doors open for the Hispanic community.

Council president Hodge asked about current church membership. Pastor Guerra said there are now 80-100 members. He explained that, at its inception, the church had four members, and he introduced two of the original members who were with him tonight.

Council president Hodge then asked what type of facility the church was utilizing in Marshall. Pastor Guerra stated that for five years, a church facility was used in Minneota,

with the past three years spent in Marshall. Currently, they are remodeling a building located along College Drive in Marshall.

Council member Johnsrud asked about the radio station idea and whether that would be a Hispanic station. Pastor Guerra answered yes. Their intent would be to provide a Spanish-speaking station, along with business advertising.

City Manager Jones asked Guerra if the church is all right with the location of the church in proximity to the liquor establishments in the area. Pastor Guerra stated the church has no problems or issues with the location.

City Manager Jones reminded the council that the applicant is not required to meet the 300' parameter; rather, this is a liquor ordinance requirement for on-sale establishments.

Council member Garbe spoke as a member of the planning commission, stating that their concern was for the protection of existing businesses, i.e., Hollywood Theater, Java River, Jake's, Bill's Supermarket, and other buildings/businesses that may want to obtain a liquor license in the future. If the existing city ordinance was not amended, it would preclude these entities from obtaining the license.

Glen Herfurth was present and stated that he is a member of the planning commission. Herfurth reiterated Garbe's comments, noting that had the ordinance amendment been part of the original conditions, he felt that the commission would have recommended approval of the conditional use permit without objection. He stated that existing property owners/businesses should have the opportunity to add liquor sales to their businesses, if they so desire. He added that if staff's recommended fourth condition is now incorporated into the conditional use permit, he felt that the planning commission would be 100% in favor of the permit.

It was moved by Garbe and seconded by Johnsrud to issue the conditional use permit to Armanda Castenada, with conditions 1-4 incorporated.

Further discussion followed.

Council member Nieuwebeerta asked about future use of the other floors of the building. She said the rumor about town is that there may be apartments in the upper level(s).

Community Development Director Nick Haggenmiller was present and prior to addressing Nieuwbeerta's question, he noted that the 300' restriction issue is a local ordinance, not a state statute. Therefore, there is greater flexibility in amending it.

To address the question of the second and third floors, Haggenmiller explained that there are issues with use of those levels; namely, the elevator, handicap accessibility, etc. He noted that the mezzanine level could still be used, as it has a fully functional kitchen which was recently used by Samora's lunch wagon business. The area is not, however, ready for apartments at this point.

City Manager Jones noted that the city zoning ordinance allows for mixed uses of the building; however, there are building inspection issues for use of the second and third floors.

Council president Hodge asked about the status of the basement level. Haggenmiller noted that this level is a more usable area than the others inasmuch as it provides three exits. There are, however, some fire code and other issues that would need to be addressed.

City Attorney Nelson advised that the conditional use permit should be issued in the name of the legal property owner and not an individual. Therefore, Garbe amended his original motion and Al amended his second to reflect the legal property owner (church).

At this time, the motion was voted upon, as amended, and passed unanimously.

Due to its subject matter, Item 8(A) was considered at this time.

8. Ordinances.

8(A) INTRODUCTION OF ORDINANCE NO. 895.

As discussed in the previous agenda item, the city's current intoxicating liquor ordinance states places ineligible for licenses to include those located within 300' of a church or school. An ordinance has been prepared by the city attorney to amend that ordinance so that religious institutions and liquor establishments can exist simultaneously (in a B1 Zone only.)

City Attorney Nelson stated that the proposed language provides an exception for the downtown district; the restriction would still apply in other districts.

COUNCIL MEMBER NIEUWBEERTA INTRODUCED ORDINANCE NO. 895, AN ORDINANCE AMENDING 3-2A-7 OF THE MONTEVIDEO CITY CODE, PLACES INELIGIBLE FOR LICENSE.

The original order of the agenda resumed.

7(B) LEAD TRANSIT DRIVER PAY.

With recent service expansions and growth in the Montevideo Transit System, additional duties and responsibilities have been given to a lead driver but are not compensated accordingly. These duties include, but are not limited to, staff scheduling, limited billing and miscellaneous paperwork and training. The person responsible for these tasks would simply be compensated for the extra duties and called, "lead driver". Staff recommended following the pre-approved salary guidelines for non-union employees, but with an increase of an additional 50 cents per hour raise over base. Therefore, for 2010, the lead driver would be paid the base salary of \$10.55/hour plus \$0.50/hour, for a total of \$11.05/hour.

It was moved by Garbe, seconded by Johnsrud and unanimously passed to approve the lead driver transit position and associated pay, as presented.

7(C) SPECIAL ASSESSMENT AGREEMENT - TIM & GLENDA ABBAS.

City Attorney Nelson drafted a proposed Agreement for Special Assessment associated with the removal of a dutch elm diseased tree on property owned by Tim & Glenda Abbas at 603 North 4th Street. The agreement allows for the assessment of the cost of removal (estimated at \$2,500.00) over a 10-year period at 8% interest.

It was moved by Johnsrud, seconded by Curtiss and unanimously passed to approve the agreement, as presented.

7(D) STOP SIGN AT ASHMORE AVENUE/24TH STREET.

Police Chief Adam Christopher was present to discuss the need for a controlled intersection at Ashmore Avenue and 24th Street. Christopher explained that severe increases in traffic flow in this area justify the need. In addition, with harvest activity in the fall, visibility can also be limited. Therefore, staff recommended placement of a stop sign at the east end of Ashmore Avenue (gravel) at that intersection. It was noted that normally this type of request would come before the traffic safety committee; however,

staff felt that the need is immediate for traffic control purposes and they would also like to get the sign in the ground prior to ground freeze-up.

It was moved by Curtiss, seconded by Garbe and unanimously passed to approve the placement of the stop sign, as recommended by staff.

7(E) COMMUNITY FUND GRANT FOR MEDICAL BAGS.

Chief Christopher explained that the police department had applied for a grant to the Montevideo Foundation to replace some medical bags in the squad cars. One requirement of the grant is council approval for the application. Inasmuch as there was not enough time to obtain approval prior to the application deadline (October 30th); therefore, he submitted the application and is now asking for approval. Christopher noted that this grant would pay 100% of the costs associated, with continued maintenance to be paid using budgeted funds. Total cost of the project is \$837.00.

It was moved by Johnsrud, seconded by Nieuwbeerta and unanimously passed to approve the application, as submitted.

7(F) HUNT BAR & GRILL LIMITED MENU.

Matthew Sather, dba/Hunt Bar & Grill, was present to request permission from the city council to run a "limited" menu, when the need arises. Sather explained that the full service kitchen would still be available; however, when business is slow, he would like the option to offer the limited menu items. He added that the full menu would be offered as business volume allows. He also noted that the Department of Health would check any new equipment.

City Attorney Nelson stated that current city ordinance allows on-sale intoxicating liquor licenses to be issued to "restaurants." Inasmuch as the code does not define "restaurant," it is the council's determination whether or not an establishment qualifies.

It was moved by Garbe, seconded by Curtiss and unanimously passed to approve the request, as submitted. A copy of this approval will be placed with Sather's On-Sale Intoxicating Liquor License materials.

9. Discussion and Miscellaneous.

- City Engineer Berryman stated that clean-up was progressing on the Buckeye Drive storm sewer project. When asked if the improvements solved the problem, Berryman said that the ground remains uneven, but he has seen no ponding at this point.
- Council member Garbe commented on the new 17th Street signage over the Highway 7 intersection by McDonald's. He also thanked the city engineer for the work on Black Oak Avenue.
- Council member Curtiss stated there was a good crowd for the hospital open house event.
- City Clerk Lauritsen reminded the council to submit their city manager performance evaluations. The review will be conducted at the November 16th meeting.

Meeting adjourned at 7:40 P.M.

Glennis Lauritsen, Secretary

Approved by council November 16, 2009:

Sandra Hodge - President