

City of Cody
Council Proceedings
Tuesday, March 1, 2011

A regular meeting of the Cody City Council was held in Council Chambers of City Hall in Cody, Wyoming on Tuesday, March 1, 2011 at 7:00 p.m.

Present: Mayor Nancy Tia Brown, Council Members Steve Miller, Jerry Fritz, Stan Wolz, Bryan Edwards, Charles Cloud and Donny Anderson, City Administrator, Andy Whiteman, City Attorney, Scott Kolpitke, and Administrative Services Director, Jenni Rosencranse.

Absent: None

Mayor Brown called the meeting to order at 7:00 p.m.

Council Member Miller made a motion seconded by Council Member Cloud to approve the agenda as presented. Vote was unanimous.

Mayor Brown recognized City Administrator, Andy Whiteman for his four years of service as City Administrator of the City of Cody. The Governing Body presented Andy with a plaque for his service. No action was taken.

Mayor Brown informed the public that a reception will be held on March 17, 2011 for Andy Whiteman and Jenni Rosencranse from 4:30 p.m. to 6:30 p.m. at Olive Glenn Country Club.

Council Member Miller made a motion seconded by Council Member Fritz to approve the consent agenda including the approval of the 2/10/11 Special Meeting Minutes and 02/15/11 Regular Meeting Minutes; approve Vouchers and Payroll totaling \$442,118.25; and accept minimum reserve for previously declared surplus vehicles and equipment and direct staff to proceed with the bid or auction process for the sale of these items. Vote was unanimous.

At 7:18 p.m. Mayor Brown began the public hearing to determine if it is in the public interest to transfer ownership and location of Retail Liquor License currently held by Cooter Browns LLC, to Wal-Mart Stores at 321 Yellowstone Avenue. Jenni Rosencranse, Administrative Services Director provided background information about the application and stated that the application was complete, all fees had been paid, and appropriate notice of the public hearing was published. Scott Kolpitke, City Attorney provided legal information regarding a license transfer, and also discussed the five statutory reasons for which a license transfer could be denied. Mayor Brown discussed the procedure for the evening stating that Wal Mart would be allowed to make their presentation, followed by Laurence Stinson, representing Josh Edwards of Cooter Brown's, LLC, followed by the Cody Liquor Dealer Association representatives, followed by those who wish to speak in favor of the transfer, those who wish to speak against the transfer, Wal Mart will be allowed to speak again, and then the public hearing will be closed.

John Dickson, Manager of Wal Mart introduced the Wal Mart team. Perry Dray, Wal Mart attorney from Cheyenne, discussed the five standards for approval within Wyoming State Statute 12-4-104. He discussed the definition of vicinity and what it means to this city and this application. He also discussed the practice of free enterprise within the City of Cody and the element of competition that should not be a factor of the decision making process.

John Dickson, Wal Mart Store Manager, presented a power point providing the audience with facts about Wal-Mart's charitable donation efforts, recycling assistance, a layout of the plans for the liquor area in the store, the security measures planned for the store, and discussed Wal Mart's history of perfect compliance check record for tobacco over the years. Questions of John Dickson were asked including how many people per day enter Wal-Mart (approximately 3000), of the 1,612 people who are in favor, what percentage is from Cody (approximately 56%), how many new jobs would be created in the Cody Wal Mart store (approximately 3 to 5), what signage is Wal-Mart planned in the store (minimal signage is planned for the store, would consider posting no vendor signs in the windows), how many full time employees are employed at Wal Mart (there are approximately 350 associates and 65% to 70% of them are full time employees), where will beer be purchased (from Tanager Beverages and Teton Distributors), are there any plans for direct shipping on wine (not at this time), does Wal Mart do any secret checks on employees, or do you only rely on the compliance checks done from the state or the Cody Police (yes, there are secret shopper programs within the store to monitor the employees), what plans does Wal Mart have to prevent cart swapping (Wal Mart has brainstormed this topic a bit, but more research will be done, and there are security cameras within the store to help address this issue), and would Wal Mart consider only selling beer and wines and abstain from selling hard liquors (Wal Mart has had requests for all liquor, but a high majority of the requests were for beer. Wal Mart would be willing to discuss this issue with the City of Cody).

Laurence Stinson, of Bonner Stinson in Cody spoke on behalf of Josh Edwards, Cooter Brown's LLC. Mr. Stinson discussed why the license is for sale and the financial hardships that Mr. Edwards has faced over the past year. Mr. Stinson spoke of the rumors in town that there are others interested in purchasing the license from Mr. Edwards. He stated that to his knowledge, there have been no other offers made to Mr. Edwards. He also discussed that if the liquor license transfer is approved, then Mr. Edwards has also entered into a contract with Whole Foods Trading Company for the sale of his building. The sale of the building is contingent upon the approval of the liquor license transfer.

Speaking in favor of the Liquor license transfer were Pat Tweddle (employee of Wal Mart for 19 years and interested in providing better customer service), Tammy Leguerski (wanted to explain the process for asking for support at the table, employee of Wal Mart for 10 years, explained that she is a member of the Cody community and that she has taken the comments personally as she feels people are ridiculing those who work at Wal Mart), Sheron Byers (Wal Mart employee who provided the definition of fascism, and also explained that Wal Mart hires all people including the disabled, the elderly, and everyone in between), Rhonda Dunlap (employee of Wal Mart for 19 years, favors the one stop shop and convenience that Wal Mart will offer the citizens of Cody). Kay Chandler and Shawna Chandler, (owners of Whole Foods Trading spoke in favor of the transfer in order for them to purchase the Cooter Brown's building from Josh Edwards and to grow their business and employment opportunities within the City of Cody), Keith Conrad (member of the management team at Wal Mart and 20 year employee, discussed how Wal Mart is part of the community and how the associates make up the community), and James Graves (discussed his support for the approval of the transfer, and discussed the opportunity of free enterprise, and that it is an individual's choice as to where they shop).

Karen Ballinger (Wal Mart employee for 19 years, spoke in opposition of a transfer due to her convictions of her past votes regarding liquor license issues in her previous Council Member capacities).

Tony Martoglio and Juli Hinze representing the Park County Liquor Association spoke in opposition of the transfer of the liquor license. Juli Hinze addressed the number of liquor license establishments within the vicinity of Wal Mart and that the needs of the area are being met at this time. Cole Bormuth, also representing the Park County Liquor Association spoke in opposition of the transfer of the license. Mr. Bormuth discussed the five reasons that a license can be denied and demonstrated reasons for a denial based on some of the five standards that pertain in this situation.

Carter Nielsen, Maggie Sinner, and Kiera White of the Cody CAN group spoke in opposition of the transfer of the liquor license.

Those speaking in opposition of the liquor license transfer included Jean Ballinger, Kirk Morgan of the Super Bowl, Helene Pursley of Whiskey River, Tom Wilder of Eastgate Liquor, Juli Hinze of Libations and West Strip Liquor, Brandon McArtor of Rocky Mountain Liquors mentioned that the license that Cooter Brown's holds is an on premise license, and Wal Mart proposes an off site license, Mellissa Miller, Ernest, Peter Rhode, a retired citizen discussed the Hinze liquor license transfer that was denied due to the location and presence of youth several years ago. He asked that the Council maintain consistency in their decision making. Jim Bruno stated that he owned Jack's Sports for many years until Wal Mart came to town and then he had to liquidate. He also stated that he disagreed with Wal Mart's figures in how much they donated to the Cody Cupboard of which Jim is the President. Chan and Bev Richard spoke in opposition of the transfer due to the proximity of their home and rental property to Wal Mart. Noel McMillan, citizen of Cody, spoke in opposition of the transfer due to the economics of the situation, and the affects that a license issued to Wal Mart would have on the other liquor retailers. Jacque Cobourn, citizen, and employee of the Irma, stated her opposition to alcohol being sold in grocery stores, as well as her concern for taking an establishment out of the downtown area. Martie Clark, citizen of Cody and small business owner of Cody, stated her opposition of the transfer of the liquor license based on the premise that Wal Mart should be a good neighbor to the other retailers in Cody and the surrounding towns in the Basin. Larry Jones, retired teacher, spoke in opposition of the transfer for the reason that young people will be in Wal Mart and that it is not an appropriate place for a liquor establishment. Love Murray, citizen of Cody, read a letter from Roger Murray who opposed the transfer of the liquor license. She also discussed the healthy competition that Wal Mart brought to our community and that Wal Mart was able to draw in many other people to the downtown area due to their location in Cody. She stated her opposition due to Wal Mart being a family store, and that alcohol did not have a place in family stores. Amy King of King Temporary Services stated her opposition to the transfer. John Oberle, citizen of Cody, spoke against the transfer due to the comments he has heard from tourists commenting on how nice it is not to have liquor in our grocery stores in Cody. Hal Lee, neighbor of Wal Mart, spoke in opposition of the transfer of the liquor license due to the lights, noise, trash and traffic Wal Mart brings, opposes the transfer because there are too many in our town already, and that alcohol should not be in an establishment that sells groceries.

John Dickson of Wal Mart addressed some of the neighbor concerns with lighting and trash. He also addressed the aspect regarding children and that he is the father of seven children and he has taken his children to the rodeo, hockey games and other family type events where alcohol was readily available and displayed.

Perry Dray, Attorney for Wal Mart provided closing comments regarding the Wal Mart liquor license transfer. He commended the community for their interest in this issue. He provided some clarification about a potential miscommunication of his definition of vicinity

which was discussed earlier in the meeting. He discussed the five standards in which a liquor license can be denied according to Wyoming State Statutes and discussed which standards were challenged this evening. He stated that he feels that the evidence presented qualifies Wal Mart for the transfer based on all five of the standards.

Jenni Rosencranse, Administrative Services Director read all of the names into the record who have called in or who have written letters and/or emails. The documentation is attached.

Bev Richard asked for legal clarification on whether or not Wal Mart would be able to come back and put in a drive through or to sell liquor for consumption on site. Scott Kolpitke stated that Wal Mart would have to come back to the Council to request those changes as they are not in the original application.

Ron Maier stated his opposition due to the fact that there are too many licenses in Cody already, and also that he opposed to the tactics that Wal Mart used to garner support for the transfer. He stated that there was no ability to not support the transfer on the cards that they asked everyone to fill out.

Keith Conrad stated that he personally was involved with the fireworks on the 4th of July for the past two years and that alcohol was not abused.

Brandon McArtor stated that his father requested a transfer of the liquor license from Rocky Mountain Liquor to the Stecks IGA in 1983 and his application was denied.

After calling for public comments three times and there being none further, Mayor Brown closed the public hearing at 10:32 p.m.

Council Member Miller made a motion seconded by Council Member Wolz to approve a transfer of ownership and location of a Retail Liquor License from Cooter Browns LLC to Wal-Mart Stores at 321 Yellowstone Avenue. Voting in favor of the motion was Council Member Cloud, opposed to the motion were Council Members Anderson, Miller, Wolz, Fritz, Edwards and Mayor Brown. The motion failed.

There being no further business to come before the Governing Body, Mayor Brown adjourned the meeting at 11:13 p.m.

Jennifer R. Rosencranse
Administrative Services Director

Nancy Tia Brown
Mayor