

September 8, 2020
6:00 p.m.
Regular Monthly Meeting
Ripley City Courtroom

Mayor Fitzhugh presiding

Mayor Fitzhugh call meeting to order and asked city recorder for roll call.

Aldermen present: Alston, Chipman, Davis, Hankins and Treadway

Aldermen absent: Beard

Also present: Donna Buckner, Attorney Jackson, Chief Mitchell Turner, Superintendent Johnie Ford, Director Randy Danley, Chief Tracey Worlds and Superintendent Scott Nelson

Visitors: Ron Goforth, Mary Ann Jarrett, Linda E. Love, Robin Bonds, Jackie Williams and Robert Garrison

Invocation: Lora Jean Gowan, Pastor of 1st United Methodist Church

Chief Worlds led in the Pledge of Allegiance.

1. Motion by Alderman Hankins and second by Alderman Treadway to approve August 31, 2020 minutes as printed and delivered in agenda package. Roll call - All aye
2. Motion by Alderman Chipman and second by Alderman Alston to approve August 2020 financial statement as printed and delivered in agenda package. Roll call - All aye

Mayor's comments: Mayor Fitzhugh stated pursuant to T.C.A. Code 45-2-405 and other particular provisions, prior to entering the race for this office, he asked for a review from a private law firm of a situation that could arise out of his position as mayor of the city and his family's long standing relationship with the Bank of Ripley. He stated, as you know, this city has maintained a long and publicly known banking relationship with the Bank of Ripley. As I hope you know I am serving, and have served, as the chief executive officer and chairman of the board of the Bank of Ripley. The Bank of Ripley is wholly owned by Bancshares of Ripley, Inc. and I am presently the chair of the board of directors of Bancshares. He stated he holds no ownership in the Bank of Ripley or Bancshares. Bancshares has several shareholders. The majority shareholder is Fitzhugh Holdings GP, a limited family partnership in which he and his spouse own minority interests. The combined percentage of which is less than 50 percent of currently outstanding partnership shares. Fitzhugh Holdings GP is managed by a managing partner, his father James R. Fitzhugh, for whom he serves as attorney-in-fact pursuant to a written general power of attorney. With the appropriate disclosure, that Tennessee municipal and financial institutions conflict-of-interest law does not prohibit his service as mayor of Ripley. Since 2016 the law has made that clear. It states "notwithstanding any law to the contrary an officer, director or employee of a bank can serve in any capacity in state or local government or on any board, commission or other agency of governmental unit provided that the officer, director or employee has: 1) disclosed to the chief executive officer, the bank and board of directors of that bank, the capacity in which the officer, director or employee serving with the governmental unit. He states he has done that, obviously to himself, and to the board of directors after he was elected; 2) disclosed to the chief executive officer of the governmental unit and to the appropriate board of commission or other agency, the relationship to the bank. He is the chief executive officer of that unit and has disclosed that to himself and by these words he discloses that to the ladies and gentlemen that he is proud to serve with on this board of aldermen and women. This statute, by its terms, applies to any officer of the Bank of Ripley and where there has been compliance with this section, the existence of the dual relationship shall not invalidate or adversely effect any sale, contract or other business transaction between the bank and this governmental unit (T.C.A. Code 45-2-405b). In accordance, therefore, the disclosure having been made, the banking relationship between the city and Bank of Ripley may continue notwithstanding his position as mayor of Ripley. Tennessee 2-405 establishes the public policy of the state and says "notwithstanding any law to the contrary the public service the bank officer, director or employee should not interfere with any business relationship between the banks and

the governmental bodies served by such individuals. The public policy is especially important to rural communities where populations are smaller and healthy financial institutions, and their leaders, necessarily play outside leadership roles. Out abundance of caution, he has also looked at his minority interest in Fitzhugh Holdings GP given the limited partnership's ownership of Bancshares. According to the partnership formation documents, he is one of twelve (12) people holding limited partnership interest in Fitzhugh Holdings GP. He holds a minority share and even with the interest of his spouse it remains a minority share. He is not a managing partner of Fitzhugh Holdings GP nor does he hold any other position of employment with Fitzhugh Holdings GP. Under these circumstance, this minority interest in Fitzhugh Holdings GP does not create an impermissible conflict of interest with his service as mayor of Ripley. The Tennessee General Assembly has spoken frequently regarding potential conflicts of both public and private interest held by one serving in municipal government. In Public Acts of 1869-70 the law prohibited any persons "whose duty it is to vote for, let out, overlook or any manage or superintend any work or contract in which the public municipal corporation may be interested, to be directly or indirectly interested, in such contract" Shannon's Code 1133 (1918). However, ladies and gentleman that is no longer the Tennessee law. Beginning in 1977 and continuing through 1983, 84, 86, 88, 89, 98, 2006, 2013 and most recently in 2016 the Tennessee General Assembly has frequently amended that 19th century statute. Now in its present form, the statute makes it unlawful for persons "whose duty it is to vote for, let out, overlook or in any manner superintend" any municipal government contract from being only directly interested in such contract to only indirect interest are permitted provided proper disclosure is made under Tennessee 12-4-101(b). A government official is "directly interested" in contract if the municipal contract is "with the official personally or with any business in which the official is the sole proprietor, a partner or the person having controlling interest in the business (controlling interest is defined as being the individual with ownership or control of the largest number of outstanding shares owned by any single individual or corporation. Any contract between the city and the Bank of Ripley, by definition, is not a contract with him personally. He is not the sole proprietor of the Bank of Ripley. He is not a partner in the Bank of Ripley nor is he an individual with ownership or control of the largest outstanding share owned by any single corporation. It is irrelevant to this statute that he is the chief executive officer or a director of the Bank of Ripley. As the attorney general opined, 12-4-101(a), refers to an actual ownership, not merely governing authority. He owns no portion of the Bank of Ripley. The conclusion is that the Bank of Ripley is owned by Bancshares. Bancshares is owned by Fitzhugh Holdings GP. GP is controlled by the managing partner. He is not, nor has he ever been, the managing partner of Fitzhugh Holdings GP but the managing partner does have the full and exclusive power, on the partnerships behalf in its name, to manage, control, administer and operate its business and affairs. At most, in that situation there may be a direct indirect interest that he is interested but not directly so in any contract between the city and the Bank of Ripley. He must publicly acknowledge this indirect interest and at this time that is what he has just done for the purpose of this particular statute. He wanted to take a few minutes to disclose this information because it had come up after the election. He wants to be transparent. If any of the aldermen have questions now or later he will be most happy to answer those particular questions.

Correspondence:

- Linda E. Love's request for the city's money to be moved from the Bank of Ripley to avoid the appearance of a conflict of interest

Recorder Donna Buckner read Ms. Love's letter.

- Gwendolyn C. Blackman concerning Mayor Fitzhugh appearance of conflict of interest

Recorder Donna Buckner read Ms. Blackman's letter.

Alderman Hankins stated it sounds like Mayor Fitzhugh answered each of the points in these two pieces of correspondence in his comments.

Mayor Fitzhugh stated for clarity that the city attorney will be rendering her opinion, in writing, on this matter. Until that opinion is rendered no further action on this matter will be taken.

Ms. Jackie Lemons and Ms. Lucille Braden request to address the board regarding Foxberry Subdivision.

Ms. Lemons stated that since the last meeting, Mr. Carroll has petitioned the state to cut the subdivision for hay, which he did after the last meeting. The subdivision is going to need to be cut before winter. If Mr. Carroll doesn't cut it she would like to know what the city is going to do about it. She has had to pay to have the ditch behind her lot cut. Big areas left after they cut the hay. There is a tree down from a storm that has not been cut. She would like to know 1) did Mr. Carroll get permission in writing from the state to bypass the covenant and cut lots for hay, not keep the grass cut all summer and is the city going to cut the grass if Mr. Carroll doesn't or at least make sure that it gets done; 2) the portion of the road that is falling in has been blocked off but no repairs have started yet. When will it that be done.

Attorney Jackson stated, as she did during the previous meeting, Mr. Carroll is acting under the Tennessee Right to Farm Act. That state law preempts any local ordinance the city has requiring any local address to the circumstance. Specifically here, it changes the nature of the consideration from the cutting of grass to the harvesting of hay. The fact that the hay has been harvested doesn't change the nature of what's grown on the property to uncut grass. It's still a crop. It's still governed by the Right to Farm Act. She doesn't recall any implication in the earlier discussion that Mr. Carroll is required, he is not, to get any permission from the state to act under the authority given by that statute, nor did she imply that she be in touch with state officials to inquire as to whether he had done that. He is entitled to rely on that statute in conducting that farm activity. The restrictive covenants are something different. The city has no standing in the restrictive covenants. Restrictive covenants are enforceable between the owners of the subdivision who all purchased under those restrictive covenants. That may be a contract issue that would prevail over the issue of operating under the Right to Farm Act. The city does not intervene in that. It would incumbent upon the property owner to enforce their own restrictive covenant contained within their deed.

Mayor Fitzhugh stated the three (3) issues appear to be 1) the Right to Farm Act which is a state situation and recommended to Ms. Lemons to contact her state representative, senator or the Department of Agriculture to talk to Mr. Carroll about cleaning up; 2) the covenants are also a private matter between property owners and 3) Superintendent Ford has stated the roadway repairs are being addressed.

Ms. Lemons asked that all of the roads in the subdivision be taken care of.

Alderman Hankins stated that when he finds out that information he will share with everyone.

Ms. Lemons stated that the city isn't going to do anything about the grass.

Mayor Fitzhugh stated the city can't do anything because it's consider a farm crop. The Department of Agriculture might offer some assistance.

Mr. Braden asked about the drainage system behind her house. She stated she had previously contacted the state about Ms. Lemons issue on the grass. The State said they couldn't come into the city and tell the city anything. The lots, except for two, belong to Mr. Carroll's siblings. Why is the city allowing people to come in and do hay on the lots. How can Mr. Carroll dictate those lots be used for hay when they belong to other people.

Attorney Jackson stated that as long as Mr. Carroll has permission from the property owner to farm there. The law speaks only to farming operations and the use of farming equipment.

Attorney Jackson stated she did speak with general counsel for the state's Department of Agriculture with regard to the pending issue to insure her understanding was correct and that the state didn't have any other requirements. General counsel said a statement had been made to City Hall that an opinion had been obtained from the Department of Agriculture about whether something was appropriate or inappropriate. General council stated to her the Department of Agriculture does not respond to citizen complaints on these issues nor do they give advice to local governments. They reassured us that nothing contrary from their office to a citizens who called in versus our understanding of a simple reading of the law. They don't offer opinions to local governments as to what's appropriate or inappropriate. It's a mere reading of state law.

Mayor Fitzhugh stated he spoke with Superintendent Scott Nelson regarding the drainage problem. The issue is that the problem is on private property which enables the city to do anything because of lack of easements.

3. Motion by Mayor Fitzhugh and second by Alderman Hankins to approve the following appointments as submitted by Mayor Fitzhugh. Roll call – All aye

City Court Clerk – Angie Smith
Ripley Power & Light Board – Alderman Alonzo Beard
Ripley Planning Commission – Alderman Bill Davis
Ripley Board of Zoning Appeals – Alderman Janice Treadway
Ripley Housing Authority Board – Alderman Nyrita Alston

4. Motion by Alderman Chipman and second by Alderman Davis to approve application for off-premises beer permit for Joseph Marelle, Tobacco Superstores, Inc., d.b.a. Tobacco Superstore #108, 148 S. Washington Street, Ripley, TN 38063. Roll call – All aye
5. Motion by Alderman Alston and second by Alderman Hankins to approve Ripley Fire Department purchase of budgeted item 2016 Ford F250 Crew Cab Brush Truck from Missouri State Highway Patrol in the amount of \$19,500.00. Roll call – All aye
6. Motion by Alderman Davis and second by Alderman Alston to approve grant contract between the State of Tennessee Department of Safety and Homeland Security and the Ripley Police Department for highway safety grant in the amount of \$10,000.00. Roll call – All aye
7. Motion by Alderman Chipman and second by Alderman Hankins to approve resolution to select TML Associates, Inc. to provide engineering services assistance in the implementation of the city's FY 2019 Transportation Multi-Modal Access Project. Roll call – All aye
8. Motion by Alderman Hankins and second by Alderman Treadway to approve resolution to select Community Development Partners, LLC to provide administrative services assistance in the administration of the city's FY 2019 Transportation Multi-Modal Access Project. Roll call – All aye

Alderman Hankins asked to include COVID relief hazard pay and bereavement policy on agenda for next meeting.

9. Motion by Alderman Hankins and second by Alderman Alston to accept department reports as printed and delivered in agenda package. Roll call – All aye

Meeting adjourned at 6:55 p.m.

Donna Buckner, Recorder

Craig Fitzhugh, Mayor