



MINUTES OF THE BOARD OF ALDERMEN MEETING  
CITY OF BALLWIN – 300 PARK DRIVE

February 13, 2012

The meeting was called to order by Mayor Pogue at 7:08 p.m.

PRESENT

MAYOR TIM POGUE  
ALDERMAN JIMMY TERBROCK  
ALDERMAN MICHAEL FINLEY  
ALDERMAN MARK HARDER  
ALDERMAN SHAMED DOGAN  
ALDERMAN FRANK FLEMING  
ALDERMAN JIM LEAHY  
ALDERMAN RICHARD BOERNER  
ALDERMAN KATHY KERLAGON  
CITY ADMINISTRATOR ROBERT KUNTZ  
CITY ATTORNEY ROBERT E. JONES

ABSENT

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *January 21, 2012 Workshop session* were submitted for approval. A motion was made by Alderman Leahy and seconded by Alderman Boerner to approve the Minutes as submitted. A voice vote was taken with a unanimous affirmative result and the motion passed.

The Minutes of the *January 23, 2012 Board of Aldermen meeting* were submitted for approval. Alderman Finley amended page 7, to add (*Mayor Pogue check the St. Louis County website, and noted that Mr. Goetz's taxes were paid, at the request of Alderman Finley.*) Alderman Harder requested on page 5, last sentence, replace "but" with "put".

*A motion was made* by Alderman Fleming and seconded by Alderman Leahy to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

None.

PENDING ISSUES

**BILL # 3729: AN ORDINANCE ESTABLISHING A MORATORIUM ON THE ENFORCEMENT OF SECTION R501.3 OF THE 2012 INTERNATIONAL RESIDENTIAL BUILDING CODE WITH RESPECT TO FIRE PROTECTION OF FLOORS.**

This bill had a first reading at the January 23 Board meeting.

A motion was made by Alderman Terbrock and seconded by Alderman Leahy for a second reading of Bill No. 3729. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3729 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3729 with the following results:  
Ayes – Terbrock, Finley, Boerner, Dogan, Leahy, Kerlagon. Nays – Fleming, Harder. Bill No. 3729 was approved and became **Ordinance No. 12-08**.

### **CITIZEN COMMENTS**

None.

### **PUBLIC HEARINGS**

None.

## **NEW BUSINESS**

### **LEGISLATION**

#### **A RESOLUTION FOR A MUNICIPAL PARK PLANNING GRANT FOR FERRIS PARK.**

Alderman Harder said, “On the memo dealing with the Park Grant, this is just to go ahead and apply for it, and to recommend a certain architect. Are we voting on that as well, or just that we’re going to move ahead with putting this grant together?” City Administrator Kuntz said, “They are separate but connected.” Director of Parks & Recreation Bruer said, “On a grant application, we submit a proposal from the architect that you prefer to work with. That is a separate item.” Alderman Harder asked, “Is it determined what architect we are going to work with, or do we still have to discuss this?” City Administrator Kuntz said this is also on the agenda. Alderman Harder asked, “Are we going to see a number of different plans?” City Administrator Kuntz said, “They won’t do plans. It’s for them to create a plan. What we have to do tonight with this grant, because of the February 28 deadline, we have to get our application turned in, and the recommendation that we’re going to engage the services of this company to perform the plan, and then we’re going to seek the reimbursement for that planning service through the grant.” Alderman Harder asked, “This discussion is about moving forward to get the grant, and the next discussion is to accept that person as the architect, or is there going to be a bid process for the architect job?” City Administrator Kuntz said, “No, we can’t do that either.” Mrs. Bruer said, “Legislation was passed that said that you cannot send the request for proposal out and ask for a fee. You have to accept the proposals based on qualifications. We went through the process. We received 13. We checked the qualifications and interviewed four. We checked their qualifications and references, and then determined the best that is our recommendation. From there we negotiate a fee.” City Administrator Kuntz said, “We did get a cap. The second phase of that was that Mrs. Bruer and I visited the office, met the employees, met the principal person, and then I took a follow up tour to view one of the parks that this particular firm had designed recently for the City of Dardene Prairie. It’s basically a professional service contract that geared more towards relevant experience, type of philosophy, and a little bit on fees. We can’t accept just the lowest anymore because the State has changed the statute for that type of thing that makes it not possible to negotiate that way.”

Alderman Harder said, “By these two motions, one is to start the process, paperwork, and apply for the grant, and the other one is to permit this architect to move forward if we get the grant.” Alderman Terbrock said, “No, it is so that we can apply for the grant. We can’t apply for the grant if we don’t have someone we are going to be working with. We’re short on time.” Mrs. Bruer said, “The Planning Grant is backwards. We used to be able to ask for a fee, and now we can’t. I don’t think we can submit the grant application without a proposal with the fee on it.” Mayor Pogue said, “I thought that when I reviewed the application, that they require us to state who the architect is going to be because they want a planner that meets a certain criteria.” City Administrator Kuntz said, “We need both tonight, if not, there’s no sense in moving forward with the Resolution. The deadline is February 28.”

Alderman Harder said, “It sounds like, because we want to get this grant, we have to believe that this architect is the best person for Ferris Park, and that his plans are going to be the best. Are we going to have any choices later on about the way the plans are going to be, or is this a done deal after this?”

Mayor Pogue said, “We will have citizen input sessions and input from the Board to help guide the plan.” Alderman Harder asked, “By picking this, and we start the ball rolling, are we going to have any other input after this guy is clocking hours and putting plans together?” Mrs. Bruer said, “Yes, there will be two public sessions to obtain input from all community members, including Board members.”

“The master plan is a guide for redevelopment of the park. If we can get the master plan done by the end of the summer, then we can apply for a development grant in the Fall. That’s another reason we are on a schedule. The Plan Grant is a small grant, but I didn’t want to not apply for it. It’s designed for departments and cities without professional staff to help them put together a grant proposal for the Fall. I want to take advantage of this.” City Administrator Kuntz said, “There will be two formal opportunities to either accept or reject. We want you to be part of the citizen meetings also. There will be a series of options, not just this plan and this is the planner, and this is what will be built. You will have to budget for it, approve it, endorse it, endorse another application like this for funding. There are several steps along the way, but these first two are interrelated to the extent that we have to trust the chemistry. We know that there’s a cap on the fee. We were able to say, the bottom line is, and not going to exceed a certain amount. He kind of blinked and said, okay, it won’t exceed that amount.”

*A motion was made* by Alderman Kerlagon and seconded by Alderman Fleming to adopt the Resolution to apply for the planning grant. A voice vote was taken with a unanimous affirmative result and the motion passed.

**BILL # 3730 - AN ORDINANCE SETTING THE REAL ESTATE TAX RATE OF ZERO (0%) PERCENT IN THE CITY OF BALLWIN FOR THE FISCAL PERIOD BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012.**

A motion was made by Alderman Finley and seconded by Alderman Leahy for a first reading of Bill No. 3730. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3730 was read for the first time.

Alderman Terbrock said, “Should this be presented earlier for approval?” City Administrator Kuntz said, “This legislation has to be sent to St. Louis County by September. Since the Board recently completed a planning retreat and no ballot issues, it is acceptable to have this on tonight’s agenda. The only reason it would be held is if there was any contemplation of a tax initiative that might affect this. It has to be stated annually so that it’s on the record.”

A motion was made by Alderman Terbrock and seconded by Alderman Kerlagon for a second reading of Bill No. 3730. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3730 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3730 with the following results:  
Ayes – Terbrock, Kerlagon, Leahy, Finley, Fleming, Harder, Boerner, Dogan. Nays – None. Bill No. 3730 was approved and became **Ordinance No. 12-09**.

**BILL # 3731 - AN ORDINANCE AMENDING RESTRICTIONS UPON DRIVERS AND PASSENGERS OF MOTOR VEHICLES.**

A motion was made by Alderman Kerlagon and seconded by Alderman Boerner for a first reading of Bill No. 3731. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3731 was read for the first time.

Alderman Dogan asked, “What is the impetus for this bill and why is it written so broadly? The language states that, there are two parts. One part says it’s unlawful for any person to operate a motor vehicle which has more than three persons over the age of 16 in the front seat, which sounds a little weird. I don’t

know how you would get more than three people in the front seat of any car. The second part, which is more concerning to me, saying that nobody can put any part of their body outside of a window. I know there was some incident that spear headed this, but I want to get that explanation.”

City Attorney Jones said, “There was a municipal court prosecution of, what I would characterize as a road rage incident, where a gesture was made to another motorist. The defendant was given a municipal court citation. The matter was set for trial, there was some publicity, and ultimately the ACLU hired Council to defend this particular person in municipal court. The question was raised about whether our existing ordinance was overly broad, because the freedom of speech, I suppose, impact that such a prosecution might have, even though it never was intended to stop the speech itself, but instead the dangerous act of extending a body part outside of the car. The first part of this section about three persons over the age of 16 in the front seat is an existing part of our ordinance. We’re not changing that. The second part that you asked about, is being changed so that it will not be overly broad and prohibit, otherwise lawful acts, like reaching out to retrieve a prescription from a drive-up prescription area at the pharmacy, or using ATM machine, for example. The way we did that was to prohibit it on any roadway in the City. Since the two examples I just gave are not on a roadway, that action would not be prohibited.”

Alderman Dogan asked, “But this still would prohibit someone waving outside their car, or to adjust the mirror?” Alderman Boerner said, “Or perhaps is their vehicle is stalled and they wave people around them would also be prohibited?” City Attorney Jones said, “The person that’s stalled wouldn’t be traveling or moving. This is talking about a person traveling in or on a moving vehicle. It’s not perfect, but better than what we have.” City Administrator Kuntz said, “The prosecuting attorney went to some length to research this. There’s no way to write out the discretion of the officer, but it takes away some of the potentially argumentative or distorted argument with respect to freedom of speech subterfuge that was used in this case and blew the whole thing out of proportion, and brings it down to more common sense and reality. The attempt was to remedy and make sure we wouldn’t have another situation that would reflect, in a less than positive way, or be connected to freedom of speech. That’s what both attorneys agreed would get us closest.” City Attorney Jones said, “The prosecutor seemed to think that this language would give him the ability to prosecute a case that was appropriate in the municipal court, while not being overly broad and making it subject to some kind of a constitutional challenge.”

Alderman Terbrock said, “In the situation that took place before, if this ordinance was in place, would that have kept the ACLU out?” City Attorney Jones said, “I don’t know. It certainly would have been a much more difficult argument for such a group to make with this kind of an ordinance in place.” Mayor Pogue said, “The current ordinance says that if you extend a body part out the window, but this one, in Section 15, 162 and State Statute 304-19 defines what are acceptable hand signals.” City Administrator Kuntz said, “This came from your prosecuting attorney who is an integral part of your local judicial system. I know that he took this very seriously and was concerned. He is well prepared for future municipal issues, as much as possible. That was his recommendation.”

Alderman Harder asked, “If I’m reading this right, if somebody wanted to express themselves, they would have to be on a motorcycle, not in a vehicle, and then that would be okay.” City Attorney Jones said, “A motorcycle is a motor vehicle.” Alderman Harder said, “It says a moving vehicle upon a roadway, and then any part of a person’s body outside of a window or door of the vehicle. A motorcycle doesn’t have a window or door. Unless the person is the driver of the vehicle and giving a hand signal, which motorcycle people do, they can also give other hand signals also, or a convertible.” City Attorney Jones said, “Unless you want to repeal the section altogether, you have to have some confidence in the ability of the Police Officer to make a determination at the scene whether or not it’s appropriate to give a ticket. And then, you have to trust the prosecuting attorney to determine whether or not it’s appropriate to follow through with the prosecution, and the judge to determine whether or not there is an act that would make the defendant guilty. To me, it’s not as big a deal we might believe it is, because it goes through several levels of trying to determine if there is an act that is appropriately within the confines of this ordinance.”

Alderman Harder said, "I'm looking at the officer on the street, and he has to make a judgment call between a motorcycle and a regular car, whether to issue a ticket or not, and if there is a violation. Once the process starts, other gatekeepers make decisions, but it always comes back to the officer whether he made a good call or not. I don't want to put him in a situation if it's not clear to him, if he can pull somebody over for flipping the bird to somebody on a motorcycle, or if they had to be in a car before he can give a ticket."

Alderman Boerner asked, "How many occurrences have we had like this?" City Attorney Jones said, "I think we determined that there were three violations that we could locate over a 20 or 25-year period." Alderman Boerner said, "I would say that it doesn't warrant any change. If the prosecutor lost the case and ....." City Attorney Jones said, "He didn't lose the case. The case was dismissed. It was presented with an argument that it was overly inclusive. The examples that were used were the drive up pharmacy and the ATM machine." City Administrator Kuntz said, "The other option is to repeal this piece of legislation rather than amend it, and be silent to it in the code. That might be easier than trying to appease all the what ifs." Alderman Boerner asked, "Wouldn't it be covered under reckless driving?" City Administrator Kuntz said, "That is always a fallback, if there was a situation in conjunction with another inoperable type of violation." City Attorney Jones said, "And if the drivers pull over and decide to act upon the occupant, then there are other ways that they can be prosecuted."

Police Chief Schicker said, "One of the safety issues is young adults hanging out of a car as its going down a roadway, whether it's sticking a head out the window or a T-top. That's part of the legislation. How do we enforce a behavior that's unsafe if we don't have an ordinance to cover it?"

Alderman Leahy said, "At the first reading of this bill, I couldn't see myself voting for it, but then I don't think our police officers are the type of people who are going to go out and hunt to give this kind of citation? I don't think our police officers are going to actually go out and look for this kind of a problem. I think we should defer to the officer on the street, and I will go ahead and vote for it."

Alderman Fleming said, "It was mentioned that the prosecuting attorney has suggested that this change would be better for him. It's a direct recommendation from our prosecuting attorney, who feels that if he had this available, he would be better able to do his job. Given that, I'm inclined to vote for it. Since the prosecuting attorney has reviewed it and said this is what he thinks will work and this is what he needs, then I'm inclined to follow his recommendation."

Alderman Finley said, "Also an attorney, when I reviewed everything and took into consideration that this was the recommendation of the prosecuting attorney and city attorney, I thought everything looked very good. Alderman Terbrock brought up a good point about reaching out the window to adjust the mirror. Is there an ordinance that would cover something like that, wherein the operator of a motor vehicle is allowed to make certain adjustments if they need to in an emergency?" City Attorney Jones said, "I think that would have to be within the discretion of the arresting officer. I'm not aware of anything specifically that would make that differentiation."

Alderman Dogan said, "I think the kind of behavior that people would be engaging in that would be a concern that we would want to stop, would depend on what the particular gesture is. I'm not too hung up on someone sticking their arm or finger out the window. The only thing I would be concerned with is kids mooning each other or sticking other body parts out the window. Even those incidents could probably be covered by the fact that those people are getting out of their seats or unbelted. I would be inclined to just repeal the whole thing; something that's not a danger. If someone was sticking their head out the window, this is possibly dangerous. Even with that, people are more of a danger to themselves. If people want to be idiots, I don't see why police officer have to spend their time protecting people from their own idiocy. Rather than going through this whole exercise and deal with civil liberties issues, which body parts might be legal and which are not, it's better to repeal it and if there's some other violations going on, such as some other ways people are being unsafe, I think there's other ordinances that can cover that."

Mayor Pogue said, “How do you think the person would feel to know that their motor vehicle that made contact with this person because they stuck their head out the window? We’re not only protecting the person doing it, but the other motorist and the lifelong ramifications they may have.” Alderman Dogan asked, “Have we had a drive-by decapitation in Ballwin recently? I don’t like addressing problems that aren’t really problems.”

Alderman Boerner said, “Alderman Dogan makes a good point. Isn’t there a requirement to wear seat belts?” City Attorney Jones said, “Yes, but it’s not a primary enforcement ordinance. You can’t stop somebody only because they are not wearing a seat belt.” Police Chief Schicker said, “Yes you can on a roadway.”

***A motion to amend Bill 3731 was made*** by Alderman Dogan and seconded by Alderman Terbrock under Section 1 to say that Section 15-130 of the Code of Ordinances of the City of Ballwin, shall be **amended** by repealing said section in its entirety. Mayor Pogue asked, “Will that will also repeal the section regarding the number of people in the front seat.” Alderman Dogan said yes. City Administrator Kuntz asked, “What’s left in this bill if this amendment is approved? There is no bill after that.” City Attorney Jones said, “It will still require two readings, as amended, to repeal the section in its entirety.” Mayor Pogue asked, “Would we actually need a separate motion to draft legislation to repeal this section? We’re not actually amending the section, we’re going to repeal it. Would it be cleaner to let this do whatever action it’s going to take, and then decide from there to draft legislation to repeal if that’s the way the Board is inclined?” City Attorney Jones said, “I think you could do it either way. I don’t think you have to have a separate ordinance to draft legislation. It could be amended and then read twice.” Mayor Pogue said, “I prefer to handle bill 3731 like it is, to either amend a section of it or defeat it, and draft legislation to repeal that other section in its entirety, rather than amending this to have nothing in Section 15-130.” Alderman Harder said, “If we amend it, then we bring it up for a second vote.” Mayor Pogue said, “The amendment is if anybody wants to make an amendment to that section. If not, we’ll vote on it as presented. If it dies, then someone can make a motion to draft legislation to repeal this section in its entirety.”

Alderman Terbrock withdrew his second to the motion, and Alderman Dogan withdrew the motion.

***A motion was made*** by Alderman Fleming and seconded by Alderman Finley for a second reading of Bill No. 3731. A voice vote was taken with a unanimous affirmative result and Bill No. 3731 was read for the second time. A roll call was taken for passage and approval of Bill No. 3731 with the following results: Ayes – Fleming, Kerlagon, Finley. Nays – Terbrock, Leahy, Dogan, Boerner, Harder.  
**Bill No. 3731 was defeated by a vote of 3-5.**

Alderman Boerner said, “This bill states ‘drivers’. It could be a non-driver that was doing this.” City Administrator Kuntz said, “Bill 3731 is gone. It was defeated.” Alderman Fleming said, “By this is gone, what that means is we don’t take the prosecuting attorney’s recommendation and what’s on the books now currently stands at this time.”

### **BILL # 3732 - AN ORDINANCE AUTHORIZING EMINENT DOMAIN PROCEEDINGS AGAINST CERTAIN REAL PROPERTY ADJACENT TO KEHRS MILL ROAD.**

***A motion was made*** by Alderman Kerlagon and seconded by Alderman Boerner for a first reading of Bill No. 3732. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3732 was read for the first time.

Alderman Boerner said. “In this particular bill, I saw no reference to the amount of square footage of the property that is involved in any of the eminent domain requests.” City Attorney Jones said, “There is a metes and bounds description of each parcel showing the amount of square feet attached to the bill as Exhibit A. Parcel 1, for example, the permanent easement is 872 square feet, the temporary construction

easement is 274 square feet. Parcel 2, the temporary construction easement is 270 square feet. It's in the last line of all the legal descriptions. They are relatively small parcels."

Alderman Boerner said, "There was an issue with the person with the cypress tree, requesting extra money. It may be good to put in there in case the tree would die within a year as a result of putting in the sidewalk, that the City would be responsible for removing it." City Engineer Kramer said, "It was determined that the tree was worth \$5,250." City Administrator Kuntz said, "We would have no objection, and we have not in the past, tied a maintenance agreement or a one year; in fact, there was one tree previously that went beyond a year that we signed off on. That's reasonable and we would do that. Ten years is too long. We have some reason to believe that some of these numbers are based on actual self closures, that this is a bit excessive and it simply is to initiate the process. We're not going out tomorrow, but we want to let them know that we're serious and not going to hold up construction. We feel that without this, we would be excessive in terms of our negotiations to meet their demands, and we don't think that's in the best of the City's interest, so, we're asking you to put this condemnation option on the table, as a form of settlement for compensation, if necessary. We need to have this initiated so that it can go to an arbitration and be resolved. It won't stop the project. It's just the level of compensation to be determined."

Alderman Terbrock said, "The ordinance says the City shall proceed with eminent domain proceedings. It doesn't say we possibly will. It says we will." City Administrator Kuntz said, "Proceed with proceedings and actually, it's still the last resort." City Engineer Kramer said, "This means that returning with a file for condemnation. The court judge would look at the document and see if it is a valid use of eminent domain. If the judge says yes and determines it is, then he will appoint three commissioners and set a hearing date. Our consultant estimates that it may not be until April that there will be a hearing with the commissioners. In the mean time, we will still negotiate in good faith with these people, in hopes of coming up with a settlement, and not have the hearing. In the interest of time, if we keep dragging it on and on, we will run out of time. We have to have easements acquired, plans approved and to MoDOT by the first of August so that the funds can be obligated for the construction. There have been occasions when you file a condemnation and never use it because you end up settling before you get to the hearing. That's our hope." City Attorney Jones said, "More often than not, it's going to occur after the commissioners view the property and have a hearing. The only way I'm going to be able to get a condemnation order is to have an ordinance passed where this Board determines that it's necessary for public purpose."

Alderman Terbrock said, "I don't have an issue in two of them. The one with the tree, that's the only thing. If it's only hung up on the issue with the tree, and we feel confident that the tree is going to be safe, I don't know why we can't give them some sort of a guarantee. If it dies, we'll take care of it."

City Engineer Kramer said, "I think they want a 5-year guarantee. If it dies, how will we know what caused it to die?" City Administrator Kuntz said, "I countered that with the idea that 5 years was excessive. Five is too long and there's too many things that can happen in the interim. We were not opposed to a guarantee, but five years is a long time." Alderman Terbrock asked, "He wouldn't accept any less than five years?" City Engineer Kramer said it doesn't appear so. We might be going back and forth with them and still settle before the hearing. Negotiations are staying open the whole time." City Attorney Jones said this is correct and the Statute requires that the offer be left open.

Alderman Fleming said, "City Engineer Gary Kramer has done a good job of explaining this. Basically, they look at the property and decide if it's a reasonable use of eminent domain. If they decide that it is, then what happens?" City Attorney Jones said, "The petition is filed and it's served. We've already by this time given the notice of intent to acquire the property, and that's been done by the city's consultant. An offer letter has gone out and we've met those pre-conditions. The next step is to file the lawsuit and have it served. I would approach the court and obtain a condemnation order. That's when the court decides that it's necessary for a public purpose. That is going to happen. Building sidewalks by a city is necessary public purpose. We're not going to have any problem getting a condemnation order. The court will appoint the three commissioners. The attorney for the city would then work with the attorney for the

property owner and the commissioners, and have a commissioners hearing set as soon as possible. They would go out and view the property and come up with their determination of value after listening to the parties and inspecting the property. They would enter a Commissioner's Award. This would be the amount of money that the City would have to pay into the registry of the court in order to acquire the property. Both the city and property owner would have the ability to file an exception if they think it's too much or too little. The exceptions trigger a typical kind of jury trial where the jury would determine exactly what the property owner is entitled to for the taking of the property. It's subject to appeal in the same way as any other civil action."

Alderman Fleming said, "For the benefit of the public who might be wondering why we are doing this, we're not taking this from people; they will be compensated through the process." City Attorney Jones said, "Absolutely. They have an appraisal, a determination of value that was sent to them at the beginning, an offer is made, counter offers are made, the commissioners make a determination, and ultimately, a jury will make a determination. There are four different points at which fair market value should be determined in this process."

Alderman Fleming said, "The dollar amounts are what I consider to be small. There's one that the figures are very far apart. What would be the City's liability through the process, using the example of the one where we're very far apart? I'm trying to find out what's our potential exposure. Have you seen instances where through the process, we end up compensating for small parcels in the hundreds of thousands of dollars? Do you think the figures in here are the figures we are going to be working with? What have you seen and what do you expect?"

City Attorney Jones said, "These are all relatively small acquisitions. They're not going to be in the hundreds of thousands of dollars. They are easements; not what we call fee simple taking, although the property owner still maintains the fee simple interest in their property. Without getting into the numbers which we shouldn't do in open session, if there was an extremely commissioner's award, the City would still have the ability to abandon the condemnation process." City Administrator Kuntz said, "We're not talking about any habitable structures, any demolition of value of future improvements in terms of partial takes, which would make it a hardship parcel so it couldn't be built on for residential purposes." City Attorney Jones said, "There's no heritage amount in this situation, no relocation expenses, or the other kinds of things that sometimes contribute to larger awards in condemnation cases. It's very straight forward."

Alderman Harder asked, "Is the tree in the easement, or is it immediately adjacent to the easement?" City Engineer Kramer said, "It's in the easement, but it's not in conflict. The easement is not exact, right up with the sidewalk. There's a little extra. The tree is close. They are worried that by digging near the tree, it will cause damage to the tree. The tree does not have to be removed to build the sidewalk." Alderman Harder said, "If you dig out, go down a foot or two for the sidewalk..." City Engineer Kramer said, "Typically we go down 4 or 5 inches for a sidewalk. The sidewalk will be only 4 inches thick." Alderman Harder said, "So, it may lose some roots on that side of the tree." City Engineer Kramer said, "I suppose that's what the tree person is trying to tell him, that there's a risk. Anytime you do any digging under the drip line, there's a possibility. I've seen lots of times where we dug under a tree for a few inches, not a foot, and the tree survived. The big hang up is that they want a 5-year guarantee. They actually want us to put money into an escrow for five years, if the tree were to die." Alderman Harder said, "The tree is their tree?" City Engineer Kramer said, "yes. Right now, the tree is on their property. It's not in the right-of-way. If it was, it wouldn't be their tree." Alderman Harder asked, "Are any of the parties associated with this here this evening?" City Engineer Kramer said he doesn't know. City Attorney Jones said, "We have a former owner of one of the properties here this evening."

Mayor Pogue asked, "Is our consultant planning on bringing in an arborist to consider root pruning like we have on some other trees prior to excavation?" City Engineer Kramer said, "I don't think we have gotten to that level of conversation at this time."



Alderman Terbrock said, “We’re discussing a tree that doesn’t need to be removed for the sidewalk to be installed, yet the roots are under there that could cause trouble. Inevitably, the roots are going to tear up the sidewalk later on down the road, so we’ll have to cut them back out again.” City Administrator Kuntz said, “Not necessarily. Some trees have a deeper root system than others. The silver leaf maples have shallow root systems but not all have this. Alderman Terbrock may be right.”

Mayor Pogue asked, “Is there any other discussion on Bill 3732?” (Silence). “Is there a motion for a second reading?”

**A motion was made** by Alderman Kerlagon and seconded by Alderman Boerner for a second reading of Bill No. 3732. (**Note:** At this point, there was no voice vote taken to approve a second reading of Bill 3732.)

Alderman Terbrock said, “Wait. What are we doing about this tree? Do we have closure on this, or are we going to just vote on through? I haven’t heard any solution.”

Mayor Pogue said, “Staff has said that they would be in agreement to putting something into an escrow for a one-year term. I guess it’s still in negotiations with the owner that could eventually come to term on two years. Right now this is just executing the potential to utilize this tool if staff and the homeowner are not able to reach an agreement on terms, and then it would go to litigation in the civil court.” Alderman Fleming how long is that process? City Attorney Jones said, “It would take a couple of months to get through the commissioner’s award; to actually have a jury trial to determine fair market value if one of the parties took exception from the commissioner’s award, it will probably take a year.” City Engineer Kramer said, “That won’t hold up the process.” City Attorney Jones said, “Once the commissioner’s award is determined and the City pays that money into the registry of the court, we get the property and we can proceed with the project. We can put all three parcels in the same lawsuit. We don’t have to have three separate lawsuits.”

Alderman Terbrock said “I have one more question about parcel 11.” Mayor Pogue said, “There is a motion and a second on the table at this time. I will call the vote.” (**Note:** There was no second reading of Bill 3732).

A roll call was taken for passage and approval of Bill No. 3732 with the following results:  
Ayes – Boerner, Leahy, Finley, Dogan, Fleming, Kerlagon, Harder. Nay – Terbrock. Bill No. 3732 was approved and became **Ordinance No. 12-10**.

**CONSENT ITEMS:** (Budgeted items which are low bid and do not exceed expenditure estimates and/or items which have been previously approved in concept.)

- A. Asphalt Overlay
- B. Concrete
- C. **Construction Debris** (Removed for discussion under City Administrator’s Report)
- D. **Hot Mix Asphalt** (Removed for discussion under City Administrator’s Report)
- E. Sidewalk Replacement
- F. **Slabs with Milling & Sidewalks** (Removed for discussion under City Administrator’s Report)
- G. **Slabs (no milling) & Sidewalks** (Removed for discussion under City Administrator’s Report)
- H. **Street Sweeping** (Removed for discussion under City Administrator’s Report)
- I. Police Continuing Education
- J. **Turf Sweeper** (Removed for discussion under City Administrator’s Report)
- K. Pool Chemicals
- L. **Ferris Park Master Plan** (Removed for discussion under City Administrator’s Report)

Mayor Pogue requested that Item D be removed for discussion.

Alderman Terbrock requested that Items C, F, G, and J be removed for discussion.

Alderman Harder requested that Items H and L be removed for discussion.

*A motion was made* by Alderman Leahy and seconded by Alderman Boerner to accept Consent Items A, B, E, I, and K. A voice vote was taken with a unanimous affirmative result and these items were approved.

## **MAYOR'S REPORT**

**Rothman Furniture property:** Mayor Pogue said, "We received a copy of the petition from the petitioner for the Rothman site. I would like for the City Attorney to review this petition, and we will ask that a representative from the developer be present at the next Board meeting to discuss any questions that the Board may have in regards to this TDD proposal. I also ask for a closed session at the end of the Board of Aldermen meeting on February 27 to discuss any strategy that the City needs to consider regarding the TDD case."

City Administrator Kuntz said, "You have an opinion from the City Attorney regarding your rights, responsibilities, and options with respect to this Board and the filing of a Transportation Development Plan that City Attorney Jones provided on December 6, 2011. If anyone needs to get refreshed on that before the next meeting, that might be to your advantage. This was an e-mail, not relative to this situation – just what your role is as a governing body."

**Ameren Rate Increase:** Mayor Pogue said, "Earlier this month, I received an e-mail from Ameren officially notifying me of their intent to file a request with the Public Service Commission for a rate increase. In this proposal, they will be requesting a 14.6% rate increase, which is 46¢ per day / \$15.00 per month. This new rate would go into effect on January 1, 2013. In the past, Ballwin, other municipalities, and the St. Louis Municipal League have tried to work with Ameren to develop a way for street lights to be converted into more efficient fixtures. Ballwin has also had many discussions with Ameren, but has been very unsuccessful. Ameren has been very reluctant to provide us with actual maintenance and electric usage for the fixtures that we lease from them. It also appears that whenever the city does have a discussion with an Ameren representative in regards to more efficient fixtures or system transfers, and we ask for a follow up discussion, we are told "that representative is no longer our representative, and now we have a new rep". With that response, any progress that was made is lost."

"Recently, we discussed converting the high pressure sodium fixtures with more efficient ones such as LED. Ameren's response to that was that they had no interest in LED fixtures and do not have a rate scale for municipalities to use those fixtures. Even with these requests from municipalities, Ameren did not include a proposal to establish a rate for these types of fixtures to be considered with their rate increase, but did state that 22% of this proposed increase is for energy efficient programs. It is obvious to me that they have little intention to become more efficient even when there are municipalities asking to convert these fixtures, but Ameren will not provide the rates to do so. Therefore, I ask this Board to draft a Resolution to be sent to the Public Service Commission in opposition of the rate increase, and request Ameren to establish a rate schedule for municipalities to have the ability to use energy efficient fixtures. I also encourage our residents to attend the public hearings concerning the rate increase, and I will notify the Board of the dates and locations of these hearings."

*A motion was made* by Alderman Fleming and seconded by Alderman Boerner to follow Mayor Pogue's recommendation to ask for a Resolution to be drafted. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Fleming asked, "The 14.6% rate increase, is that just for electricity, or electricity and maintenance combined?" Mayor Pogue said, "It is my understanding that it's across the board. That is similar to what they did on the last rate increase last year."

Alderman Terbrock said, "They could only need that 22% so they can learn about the energy efficient programs, but they don't need to take it off of our backs. They can use their profits."

Mayor Pogue said, "City Administrator Kuntz brought to my attention that at the Richmond Heights City Hall, all of their lights in the parking lot are a combination of solar and wind powered. They are completely off the grid. At the last Lafayette Mayors' meeting, the Chesterfield Mayor mentioned that they are discussing a wind mill in the valley. They are right on the edge of being able to have enough wind generation." City Administrator Kuntz said, "They are at 17 miles per hour and we're at 7. We're better positioned from a cost benefit standpoint for solar. Wind would not quite give the same yield as it would in the valley; it's a natural current. It's not out of the question."

Mayor Pogue said, "The windmills are very small and becoming more common. The college in Farmington, Missouri has one. There's also the pilot program that the State has between Springfield and Branson. There's also one just outside of Rolla at the MoDOT station. More and more production is by wind power."

### **CITY ADMINISTRATOR'S REPORT**

**Item C: Construction Debris:** City Administrator Kuntz said, "We received one bid that was not responsive because transporting of waste across state lines without a license is not something that we are permitted to do. This bid needs to be rejected because it may not be considered a responsive bid."

Alderman Terbrock asked, "What does that material consist of?" City Engineer Kramer said concrete and asphalt. Alderman Terbrock said, "There's a recycling plant in Pagedale. Perhaps there would be a tradeout that we could get. It's called ETO Recycling and they deal recycled concrete. My company has used it. If there's a lot of concrete, it might be possible to bring raw material and good material on the same trip. We could make use of the trip rather than hauling it away and coming back empty. Maybe we can then get the crushed rock at a cheaper rate. The asphalt would have to be taken to a different place. If we're paying about \$145 per load for them to dump it, we may be able to take it to them and get a better rate on buying it coming back." City Administrator Kuntz said, "We still want to reject this bid."

Alderman Finley asked, "It looks like we're rejecting the bid in Item C, and having the concrete debris disposal now handled within Item D." City Administrator Kuntz said, "That's staff's recommendation, not Alderman Terbrock's recommendation. On both cases, we want to reject the bid no matter what. This is a non-responsive bid, so we want to formally reject this, then discuss the other items."

***A motion was made*** by Alderman Finley and seconded by Alderman Terbrock to reject the bid. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Item D: Hot Mix Asphalt Bid:** City Administrator Kuntz said, "Is there a way to address this and still re-solicit bids for disposal?" Mayor Pogue said, "My initial concern on this was it joins up with the crushed rock bid. Weber said if we accepted one of their bids, either for the hot mix or crushed rock as an alternate, then we could dispose of the asphalt there at no charge. I talked to City Engineer Kramer about this today, trying to get a time line of when we haul off debris, when we receive the rock, how do we get the rock to the site, and if it would be feasible to take the debris, as we remove it from the jobsite, to whichever location, and at that time get crushed rock, rather than going one way with a full truck and coming back empty, could we possibly save some of our expense on crushed rock if we do not accept their delivery and we do it in conjunction with our dropping off the debris? Mr. Kramer had a concern about the timeline that the travel time from taking the debris to the site and getting the rock and getting back to the site, making sure they would be able to keep in line with that and not having a crew there idle. You mentioned that when they deliver it, they bring 30 tons at a time. They bring the load down

Manchester Road. What is the weight limit on the bridges?" Mr. Kramer said, "The weight limit is 20 tons, but trucks deliver to Public Works via Manchester Road and Holloway Road.

Mayor Pogue said, "It appears that there would be more savings if we used Weber for the disposal of the asphalt. It was only \$170. Perhaps crushed rock could be rebid to get the price down so that our own drivers would bring the rock. What is the possibility of, early in the season, sending trucks to get rock and bringing it to the Public Works yard? There was concern about having rock actually here. We're taking away twice as much as we will be bringing back." Mr. Kramer said, "Our trucks can carry 6 tons. Thirty tons will take one of our trucks all day and have to make 5 trips, whereas, they would do this in one trip. I don't know how quickly they would go through a 30-ton pile of rock, and then we would have to go back for another load. If it's a summer with a lot of rain, and concrete couldn't be poured on other projects, that time could be spent hauling rock. If it's a dry summer, there won't be a lot of opportunity to take a man and truck off the crew to go back and forth transporting rock."

Mayor Pogue said, "It seems very inefficient. Right now our crews are dropping the debris in the yard and then pick up a load of rock that was delivered from another contractor, back to the site. We have to pick up the debris, back onto a truck, and take it back to the site. In my line of work, I try to find the most efficient way, not where everything has to be dealt with twice." City Engineer Kramer said, "The reason it is stockpiled is when there's downtime, it could be taken somewhere."

Alderman Harder asked, "They're bringing 30 tons at a time, they drop it off, we put our bad rock in a pile, can the pick up 30 tons and take it back at a later date, and we don't have to do anything with our trucks?" City Engineer Kramer said, "We haven't bid it, so I don't know what they would charge to do this. This probably could be done, but I don't know what they would charge." Alderman Harder said, "I guess it would be whether they see a value in it; if they're going to chop it up into chat, but asphalt is different." City Engineer Kramer said, "They won't take the concrete. There's no resale value for concrete. They'll take the asphalt and probably grind it up and mix it with fresh asphalt or recycled asphalt. The only reason Finch is taking the concrete is that they are using it for dam stabilization, because there is a lakefront next to the Meramec, and they keep trying to shore it up."

Superintendent of Streets, Jim Link, said, "A lot of the owners of trucks delivering rock are independent drivers, and they don't like taking big chunks of concrete debris because it dents the truck beds. Debris trucks could haul this away, separate from the rock." City Engineer Kramer said, "When Weber delivers rock, it's not a Weber-owned truck." Alderman Harder asked, "Are there people who will see the value of the asphalt and say they will pick it up for free because they can make money off of the asphalt?" City Engineer Kramer said, "They will take it for free, but I don't know if they'll come get it and transport it for free. They will have to hire a trucking person that has their own truck, fuel, and salary. It's my belief that no body will do this free. The reason they will take it is for recycling."

***A motion was made*** by Alderman Fleming and seconded by Alderman Boerner to accept the contract with Simpson with alternate bid one and two for the disposal of asphalt and concrete debris. A voice vote was taken with the following result: Aye: Finley, Dogan, Harder, Fleming, Leahy, Boerner, Kerlagon. Nay: Terbrock. The motion passed by a vote of 7-1.

**Item F: Slabs with Milling & Sidewalks:** Mayor Pogue asked for comments on this item. Alderman Terbrock said he didn't have additional comments that haven't already been made.

***A motion was made*** by Alderman Terbrock and seconded by Alderman Boerner to accept Item F, Slabs with Milling & Sidewalks. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Item G: Slabs (no milling) & Sidewalks:** Alderman Terbrock didn't have additional comments that haven't already been made.

**A motion was made** by Alderman Fleming and seconded by Alderman Boerner to accept Item G, Slabs (no milling) & Sidewalks. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Item H: Street Sweeping:** Alderman Harder said, "About a year ago, there was a discussion that we were required to do one sweeping per year. Is that correct?" City Engineer Kramer said, "We have a storm water permit. The permit states that we will sweep 4 times. We can amend the permit. I talked with MSD, who is the overseer of the storm water permits for municipalities. They said it can be changed by re-applying when its time to renew the permit. We have to sweep at lease once per year. There are several components. One is keeping the streets clean. Salt is another component. It all has to do with clean water and water quality issues. The city's permit takes care of city-owned property, which includes streets, parks, golf course, buildings, parking lots; how we keep them clean, what we do with trash, old light bulbs, etc. In this case, it's regarding keeping debris out of storm sewers, which eventually goes into creeks and streams. We're supposed to keep the streets clean and to sweep as much as we need to sweep. We used to sweep the mains every month, and the subdivisions every three months. When we no longer had a sweeper, we put everything on a 3-month cycle. We adjust for Ballwin Days, the end of leaf season, but basically it's a 3-month cycle. This has been the best plan."

Alderman Harder said, "In 2011, we swept the streets three times." City Administrator Kuntz said, "The streets were swept 4 times in 2011. We debated because we had an alternative to see what the cost would be for 3 sweepings. The bidder said if we were cutting back to 3 sweepings, they were going to want more money because it will take more time, because there will be more debris to pick up. It was determined by the Board, after two discussions, that it was more economical to sweep the streets 4 times per year, than to let it go longer, pay more on a unit basis, and there wouldn't be much of a saving."

Mayor Pogue said, "Last year, staff's recommendation was to sweep 3 times per year, and Alderman Markland made the motion to sweep 4 times per year, over the recommendation of staff. They gave us a per-sweeping price. Three would have kept it within budget."

Alderman Terbrock said, "This discussion is useless right now, because if the State is giving us a permit, and telling us that we can dump the fertilizer and all the debris from the golf course, as long as we hold the standard to the streets, if we reduce the number of street sweepings, what will be the effect on the permit? Are we not going to be able to do certain things that we are doing? It's clear that they are giving us a trade off. You either sweep the streets more and keep debris out of the creeks, they will let us do certain things. If we don't sweep the streets a certain number of times, they're going to want something else in return." City Engineer Kramer said, "I don't think that's the case. If you say you want to change the plan and go to 3 street sweepings per year, I don't believe there will be any effect on any other part of the permit. The plan is to keep the debris out of the sewers." Alderman Harder said, "That's a relative term, right?" City Engineer Kramer said yes. Our current permit states that we will sweep the streets 4 times per year, under our current permit, but this can be amended.

Alderman Fleming said, "If we said we are going to do this 4 times, let's not go down the road of amending something that's already working. If you want to set a different direction to sweep twice next year, which is what I asked for previously. For right now, I recommend sweeping four times this year." Alderman Terbrock said, "I would like to know more about the permit. There's more of a reason for a permit than just stating how many times to sweep. By the way you described it, if our streets are allowed to run off into the creeks, with fertilizer, etc., there has to be a trade off." City Engineer Kramer said, "If you don't do what they want, and they check and see that the streets are not being kept clean, that's when they are saying that more sweeping must be done. Eventually they are going to conduct an audit. They have already started auditing other cities. The bottom line is, if you don't meet what they think is enough, they will tell us to do something different." Alderman Terbrock said, "So, I don't think we need to be

arbitrarily just changing the number of street sweeping without knowing what the consequences might possibly be.”

City Administrator Kuntz said, “At \$25,600, I think cleaning streets make an impact on the community. If you sweep, no one may notice, but if you don’t sweep, it’s gets cruddy looking. I don’t think we want that in our community. We take pride in our snow removal, and we should take pride in keeping our streets clean. It’s a small price. You’re not going to balance the budget on the back of one less street sweeping.”

Alderman Kerlagon said, “The first one that we are recommending is Crowns & Curbs, Inc. It states that they have no known OSHA violations, but at times this contractor would bump them to sweep for other clients when you went out to ask other companies that used them. That comment gives me concern.” City Engineer Kramer said, “From what I understand is that they are pretty loose when their contract doesn’t have a deadline. We give 30 days to sweep the whole city. If they don’t finish, we have a liquidated damage clause.”

*A motion was made* by Alderman Terbrock and seconded by Alderman Boerner to accept staff recommendation for street sweeping. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Item J: Turf Sweeper:** Alderman Terbrock asked if the demo model is being recommended. Director of Parks & Recreation Bruer said yes, the recommendation is to purchase the demo model that includes a two-year warranty.

City Administrator Kuntz said, “This is a piece of equipment that has been asked for over the years. It makes a big difference in the playability of the course. By getting the demo with a warranty, it gives an opportunity to do projects that are very labor intensive, that in the past, didn’t get done at all.” Ms. Bruer said this is about quality of play.

Alderman Harder asked, “Will this be one unit for the whole golf course?” Mrs. Bruer said yes. This would not be used daily. It would be used in the Fall for leaves, for grass clippings if the roughs get tall. If there’s a storm, a lot of time is spent picking up sticks. This equipment would also be beneficial at that time. It’s a walking type of unit.

*A motion was made* by Alderman Terbrock and seconded by Alderman Boerner to accept Item J, Turf Sweeper as recommended by staff. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Item L: Ferris Park Master Plan:** City Administrator Kuntz said, “This is the recommendation by staff after reference checks, interviews, and field visits. Because of the unique characteristic of Ferris Park, it’s not a traditional open field, they seem to be very sensitive to the environment, as well as to the inter relationship of cities parcels to the back yards of surrounding neighbors. We know from the limited dialog we had relative to a cell tower potential, that these people were very pleased to see the City purchase the park, but I think they are also going to be very vocal about what components and what ends up. This company was very impressive when it came to inter relationship of natural environment, and not creating a total build out, hyper active space, but they seemed very committed towards sustainability. The direction that I’ve heard this Board over and over emphasizing in conjunction with commercial development, what better way to put this as a poster for us in the park setting. There are a lot more natural types of features, as opposed to the traditional cell. I think they were selected more for their uniqueness and their perspective than for anything else.” Director of Parks & Recreation Bruer said, “I agree. They almost embrace storm water rather than try to hide it. We have some storm water issues in the past, that can be made as a feature of the park. Ferris Park has a beautiful forested area. We could take advantage of that and the naturalness of it.”

*A motion was made* by Alderman Terbrock and seconded by Alderman Harder to accept the recommendation by staff. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Double Fine Zones:** City Administrator Kuntz said, “Due to the way the legislation was written, this is an annual review, subject to revision, and either re-approval, or revision by the Board with respect to double fine zones. A lot of these streets were selected either by aldermanic input, citizen concerns, and police report accidents and other data. Staff takes this very seriously because it involves a different level of enforcement. Sometimes the condition that is designated as double fine zone, does not always continue to justify that designation. This is the reason there are two lists; one list of streets cannot be supported by police action to continue as double fine zones, and the list that the streets continue to merit that designation. What further complicates the double fine zone question this year are the uniform sign requirements that dictate the size, location, and the number of signs that clearly spell out the double fine zone locations. This could be contested in court.”

Alderman Kerlagon said, “There was discussion in the past when a double fine zone was requested for Richland Meadows. I check a resident who lives on the downside hill of Richland Meadows, and he said he hasn’t had any issues since then. He sits on his deck and looks at the street below as it goes out of the subdivision. There have been some close calls there. He said some issues occur late at night, but not much during the daytime. He definitely supports the removal of the sign.”

Alderman Fleming asked City Engineer Kramer for more information about signage. City Engineer Kramer said, “The federal standard is 24 inches tall by 30 inches wide, and a sign for “begin double fine zone” and another for “end double fine zone” are also required. I spoke with our area representative in St. Louis County, and was told that the County doesn’t have any double fine zones. The County sign shop confirmed the sign measurements and the beginning and ending zone signs. The double fine zone sign should be mounted under the speed limit sign. I checked on how many speed limit signs we have, and that determines how many double fine zone signs we need to buy, with the beginning and ending signs. This would cost \$7,500 for new signs.”

Alderman Fleming said, “I rarely go contrary to the police recommendations. We put signs in place sometimes because citizens have asked. None of the citizens have asked for the signs to be taken down, or that the signs are not effective. The current signs could be what’s making things better. I don’t mind paying for the additional signs. I guarantee that if we start taking down the signs, there will be more residents asking what’s going on? The signs helped to make the area safe. I think you are looking for trouble by taking down the signs.”

Alderman Terbrock said, “I agree with that whole heartedly. We’re not getting complaints now, so, I don’t think we should take them down. If the sign doesn’t meet a certain standard, then the signs should be changed.”

City Attorney Jones said, “I’m not sure the size of the sign would lead to a successful defense in Municipal Court. It would be a good idea for us to be in compliance in terms of being able to enforce our own ordinance.”

Alderman Terbrock said, “I brought this up 5 or 6 years ago. I saw it in St. Peters and thought it was a deterrent in the neighborhoods for the safety of the kids. I think the signs should stay.” Alderman Boerner said, “I concur with Alderman Fleming.”

Alderman Leahy asked Police Chief Schicker, “Are you saying that these streets should go back to a regular fine zone?” Police Chief Schicker said this is correct, except for the 5 streets that are high violation streets. Alderman Leahy said, “I agree with Chief Schicker.” Alderman Leahy asked, “Is it the voice of the majority of the police officers that agree with this, or is this just your opinion?” Chief

Schicker said, "I would have to say they agree with it." Alderman Leahy asked, "Are the police officers looking at this as an aspect of people when they get pulled over saying that we are becoming a revenue collector?" Chief Schicker said no. The consensus is that we're sending them out to do a radar surveillance for 20 minutes to a half hour, to sit there and get no violations. They feel that they can be more productive in other areas of enforcement. Alderman Leahy said he still agrees with Chief Schicker.

Alderman Finley said, "I'm in agreement with Chief Schicker and Alderman Leahy. It looks like a thorough job of investigating the issue and there are plenty of statistics that back up their recommendation. Some fines can be \$87 or \$100. The fines as they are, are sufficient. If somebody is caught speeding, most of the time it's inadvertent. I'm focused on the perception that there was a speeding problem. Our police have found that this is unfounded. I'm going to defer to their analysis and judgment on this."

Mayor Pogue said, "I agree that some of the streets can be pulled off the list, but there are some that could be left on the list. I identified six streets: Claymont, Cleta, Dutch Mill, Parker, Richland Meadows, and Twigwood, looking at the number of violations that were actually issued and the warnings in proportion to the surveys that were done. There wasn't a high amount of violations issued, but still enough to raise concern for myself. Richland Meadows has been discussed quite a bit lately. Twigwood is a major cut through with an elementary school near by, and the same with Claymont. Cleta is a major cut through from Parkway South and those trying to avoid traffic on Big Bend is better since the construction is complete. Dutch Mill also is a major cut through off Hwy. 141. My recommendation is to retain those six streets on the list, and then go with staff's recommendation to remove the rest."

***A motion was made*** by Alderman Leahy and seconded by Alderman Finley accept the Police Chief's recommendation. A voice vote was taken with the following result: Aye: Finley, Harder, Leahy, Kerlagon. Nay: Fleming, Terbrock, Dogan, Boerner. Mayor Pogue cast the tie-breaking vote and voted Aye. The motion passed by a vote of 5-4.

**Street Acceptance:** City Administrator Kuntz said, "This is regarding Coachgate Lane and Court in the Coachlight Subdivision. It is the recommendation that we accept the streets for maintenance, and retain a \$10,000 escrow to assure the tree survival during the warranty period. An ordinance is required to accept the streets, with the language to include the provision for the escrow retention, with Board approval."

Alderman Harder asked for an explanation regarding the trees. City Administrator Kuntz said, "There were 50 trees that were planted in November by the developer. It would be a one year warranty. Typically a nursery standard is one year. The trees are in the right-of-way. It is recommended that the \$10,000 be held in escrow until the trees are 12 months old. If they don't survive, they would have to be replaced. If they survive until November, 2012, the escrow money would be returned." City Engineer Kramer said, "This is a letter of credit. We would reduce down the letter of credit to \$10,000. That would remain in the letter of credit. They would not have to give us anything new."

***A motion was made*** by Alderman Terbrock and seconded by Alderman Boerner to authorize preparation of legislation to accept the recommendation and to maintain the streets, as recommended. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Dump Trucks:** City Administrator Kuntz said, "The contract is recommended to be awarded to Dave Sinclair Ford. It wasn't the lowest bid. When we got into the delivery aspect, it would cost more to take the low bid, get the vehicle, bring it back from Columbia and Kansas. For the light difference, staff is recommending that we purchase locally for this unit."

***A motion was made*** by Alderman Leahy and seconded by Alderman Kerlagon to accept staff's recommendation. A voice vote was taken with a unanimous affirmative result and the motion passed.



**Pick Up Truck:** City Administrator Kuntz said, “The same situation applies to this item. There were three other bidders that charge a delivery fee. Dave Sinclair Ford is again recommended as the low local bidder. A motion to accept this bid is requested by staff. City Engineer Kramer said a standard size pick up is needed due to size. The new truck will use gasoline. A diesel truck will cost \$5,000 more.”

Superintendent of Streets Jim Link said, “The one-ton dump trucks cannot operate the plows and spreaders because there’s not enough power with the gasoline motors. With the pick up truck, there won’t be a plow or spreader, therefore, there’s no need to purchase the higher priced diesel truck.

*A motion was made* by Alderman Harder and seconded by Alderman Leahy to accept the recommendation by staff. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Crushed Rock:** City Administrator Kuntz said, it is recommended by staff to award the contract for crushed rock to Simpson Construction Materials and accept the two alternates. This bid is in the amount of \$11,635, with a unit price of \$8.95 per ton, delivered.

*A motion was made* by Alderman Kerlagon and seconded by Alderman Boerner to accept the recommendation by staff. A voice vote was taken with a unanimous affirmative result and the motion passed.

Mayor Pogue asked, “In a couple of memos, it states where we bid through, such as St. Louis Business Journal, Reconstruction Data, Dodge Reports, E Plan online. Have we gotten feedback from any of the bidders and where they are finding our bid requests?” City Engineer Kramer said, “We never ask them. The only thing we pay for is in the St. Louis Business Journal. All the others are free and we just send the specs. The requests are also on our website. Most of our product suppliers are local.”

**Apparel Bids – Staff Uniforms:** City Administrator Kuntz said, “We received quotes from out-of-state or out-of-area companies, and this presents a logistical problem. It’s beneficial to look for a smaller radius for this product. There are so many issues with respect to dyes, colors, quantities, and incorrect marking of sizes and other adjustments. If you have to deal on the unit basis, it’s almost impossible if you don’t have a local supplier. Staff is recommending that this purchase be awarded to “Just Me Apparel” company.”

Alderman Leahy asked who was the supplier last year. Director of Parks & Recreation Bruer said it was “Just Me Apparel”. Mayor Pogue asked, “In what amount was the alternate bid?” Mrs. Bruer said one was for a different type of shirt for the Ballwin Days Run. The price per shirt was \$5.00 higher.

Alderman Harder asked who is this apparel for? Mrs. Bruer said the shirts are for participants in the runs, summer camp, life guard t-shirts, visors, our maintenance workers t-shirts. The price for the shirts for the participants in the runs is covered in the entry fee. The employees at The Pointe get one or two shirts each year, and they wear the old ones in addition to the new.

*A motion was made* by Alderman Terbrock and seconded by Alderman Leahy to accept the staff recommendation. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **STAFF REPORTS**

**Timbers at Ries Bend – Phase 1:** City Engineer Gary Kramer said, “This is the subdivision at Ramsey and Ries Bend. Phase 1 is the only one that has a street. The developer has been non-responsive. They have one lot left. The letter of credit expired around January 10. We called in their letter of credit because they weren’t doing anything. The bank sent us the money. We have a list of things that some are public and some are private. I suggest we do all of it because what we don’t do, whatever is left will be

returned to the bank. There are things on the common ground such as repairing erosion, we use the money to fix those things. One lot needs regarding because it has standing water. If we just do the public improvements, we would have to turn back the rest of the money. The question is should we just do the public improvements, which is the final layer of asphalt and some sidewalks, curbs and sealing of the joints. We have prices for sidewalks and asphalt overlay. Those things I'm recommending that we add on to the bids that were approved tonight. Crack sealing can be put in when we do the rest of the crack sealing in the Fall. They forfeited their escrow with MSD because they haven't done everything they need to do. They are holding an escrow for the sewers. I think they will go ahead and accept them because people are using the sanitary sewers. Do we want to go ahead and add the sidewalks and asphalt overlays to the contracts that were approved tonight, and add crack sealing in the Fall, and what do you want to do with outside the right-of-way that's listed as private improvements? Should we get prices for that and use the forfeited escrow?"

Mayor Pogue asked, "Is the petitioner a bank?" City Engineer Kramer said, "A bank is the one that has the letter of credit. The developer is an individual. He won't call us or even pick up certified mail. McKelvey is building Phase 2. There are two different owners."

City Engineer Kramer said, "There is about \$14,000 for all the public improvements to be made." Mayor Pogue said, "Since these items are mainly storm water issues, I recommend that we complete the private improvements also."

Alderman Harder asked, "Do we need to figure in the private improvements to make up the difference?" City Engineer Kramer said, "I have four recommendations. I'm looking for approval on some or all of them, especially the public improvements. If the private improvements are not done, it will be the responsibility of the trustees. If we don't spend the money and give it back to the developer, any repairs on private property, such as the common ground will be on the trustees, and they have no right to the money, but we do have right to the money. On the letter of credit, \$39,882.21 is available. We would have a right to use that money to finish what needs to be finished." City Attorney Jones said, "The city can use this money under the terms of the escrow agreement. Anything we don't use for the public or private improvements that were called for under the agreement, would have to be returned to the developer." City Administrator Kuntz said, "We have the money in hand. According to the agreement, the developer was required to make the private improvements but he did not do this." City Attorney Jones said, "If this agreement is the same as Clayton Corners, our agreement incorporates by reference the approved plans."

Alderman Boerner said, "If you can give me some assurance that we would have the right to use this money without any recourse from the developer, based upon the agreements in place, then we should do this." City Attorney Jones said, "I can look at the agreement. If it's like the other ones that I've seen, we absolutely do." Alderman Boerner said, "We can approve tonight the public improvements and then pending looking at the agreement, we can take care of the private improvements later?" City Attorney Jones said, "I suggest you do it now, and if I find something to the contrary....." Alderman Harder said he agrees with this to do the public and the private improvements. People that bought homes there are looking for some relief.

City Engineer Kramer said, "The private improvements are not on any occupied parcel. It's common ground and undeveloped lot.

Alderman Finley said, "On the vacant lot, is that just a dirt lot now?" City Engineer Kramer said, it has grass or weeds. The sidewalk is usually built when they build the house. They didn't build the house but built the sidewalk.

**A motion was made** by Alderman Boerner and seconded by Alderman Terbrock to accept staff's recommendation for the public improvements and also private improvements subject to the review by the City Attorney's to assure that we have the right to do so based upon the agreements. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **CITY ATTORNEY'S REPORT**

**TDD Lawsuit:** City Attorney Jones said, "Mayor Pogue, during his report, addressed the Transportation District lawsuit. It was actually filed by TACO Seven Trails on Friday. We received a copy of the unfiled version of the petition. I looked at the filed version today, and it's the same. The city has a limited ability to control this litigation. We are a party defendant just like St. Louis County and Missouri Highways and Transportation Department. What I planned to do was to enter my appearance for the city tomorrow so that a summons won't have to be served on the City, will then have 30 days to file a responsive pleading. That gives us until March 15 and an opportunity to hear from the developer at the meeting on February 27, and then meet in closed session and decide what position the City wants to take as a party to the litigation and the answer to the response of pleading that we're going to file. When we file that answer, the kinds of things that we're going to be looking at are the things that are on page 7 of the petition, whether it is legally defective, is the land in the district contiguous, and is it illegal or unconstitutional. If we're going to object to this, we have to have a reason to do it. We have to explore those things with the developer when they make their presentation on February 27. This TDD is the same as the Schnucks TDD to the extent that it's being filed with the plaintiff as the owners of all real property within the district. In the e-mail that I sent to you, that means that it now triggers this responsibility to have a public hearing. Sometime this week or early next week, the developer is going to present an order to the court. That public hearing is going to be set on March 27, 2012 at 6:30 p.m. in the Ballwin Elementary School auditorium. The city is not a participant in the public hearing, except to the extent that some of the Board may want to attend and ask questions. We're not conducting the hearing. The plaintiff in this lawsuit is doing this. This is a new law. That public hearing was not required when the previous Transportation Development District was established." City Administrator Kuntz said, "This is the reason the public hearing is going to be held at the elementary school to take away any public perception that it's Ballwin's TDD." City Attorney Jones said, "The proposed order that will be taken to the court will also contain an order and notice of publication that the circuit clerk will place in a newspaper of general circulation."

Alderman Harder asked, "Is it my understanding that we can take one of three positions, either be in favor of it, against it, or no position." City Attorney Jones said, "We could take no position and simply default. I don't recommend doing that because that seems irresponsible. As transportation authority, we should take a position, whether it be in favor or against, or some kind of a hybrid if we have problems with a particular aspect of it, we should raise that in our responsive pleading. We can talk about that after we hear more about what it is they intend to do."

## **ALDERMANIC COMMENTS**

Alderman Boerner said, "I propose that we have a closed meeting related to the conversion of the pension plan from the police to LAGERS or whatever. There are a number of sensitive issues that involve the employees and would warrant a closed session at the next meeting."

**Building Code:** Alderman Boerner said, "The International Code Council is the one that develops our code. I would like some time at the next meeting to address this issue." Mayor Pogue said, "We are scheduled to meet with the Home Builder's Association regarding their code review as soon as they complete their review of the 2012 code." Alderman Boerner said, "I understand that, but there are a lot of other issues that I think will be of interest to this Board. I would like to do this under Aldermanic Comments"

*A motion was made* by Alderman Fleming and seconded by Alderman Terbrock for Alderman Boerner's agenda item be placed on the next agenda. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Finance & Administration Committee Meeting:** Chairman/Alderman Fleming said, "Topic of discussion was whether or not the Police would like to move from their current plan to the LAGERS plan, and how we might do that, what would be the necessary steps, what would be the time tables that are in

place that we're working within, and what if any restrictions there are. The end result action items were that the Finance & Administration Committee agreed to recommend that the Board instruct staff to schedule LAGERS to come in and meet with the Police Department, and to prepare plans and recommendations for review for the police to move to the L3 option. That was one recommendation. I'm asking that the Board approve that recommendation to instruct staff to do this.

***A motion was made*** by Alderman Fleming and seconded by Alderman Harder for instruct staff to schedule LAGERS to come in and meet with the Police Department, and to prepare plans and recommendations for review for the police to move to the L3 option. A voice vote was taken with a unanimous affirmative result and the motion passed.

Chairman/Alderman Fleming said, "It was the general feeling of the committee that for the future, the Board should consider options such as offering an L7 plan for all employees, and discussing the question of whether or not we should have any financial consideration if employees move from one plan to another to try and compensate them in some way. It was discussed that this would be better for 2013, the reason being that all our employees must be in the same plan, and there's not enough time to take our current employees from L3 to L7 and put the Police in the plan also.

Chairman/Alderman Fleming said, "The final request was that Alderman Boerner wanted to have a closed session regarding personnel to discuss this topic to be held at the next Board meeting on February 27.

***A motion was made*** by Alderman Fleming and seconded by Alderman Boerner to add a Closed Session for personnel to the February 27 agenda. A voice vote was taken with a unanimous affirmative result and the motion passed.

**E-mail addresses:** Alderman Terbrock asked that resident private e-mail addresses not be published in the packet. Mayor Pogue said the e-mail addresses were eliminated by staff prior to being posted on the website.

***A motion was made*** by Alderman Dogan and seconded by Alderman Leahy to instruct the City Attorney to ***draft legislation for the next meeting to repeal Section 15-130 of the Code of Ordinances***. A voice vote was taken with the following result: Aye: Terbrock, Dogan, Harder, Leahy, Boerner, Kerlagon  
Nay: Fleming, Finley. The motion passed by a vote of 6-2.

**Recreation Specialist Position:** Alderman Harder said, "Director of Parks & Recreation Bruer put out a notice on a Recreation Specialist. Has that position been filled yet? What are you requiring on the senior programs? Perhaps special emphasis could be put on senior programs and senior issues to make this person more of a specialist." Mrs. Bruer said, "Their job description is pretty much general because half of their responsibilities are being manager on duty when their time comes around to manage the facility. The other part of their responsibility is the recreational programming. Many times when there's an opening, we try to move responsibilities around between staff. The person that left was responsible for running all of the summer camp programs and senior activities. We're looking for a recreation person that has some experience with those types of activities. In terms of recreation activities, we're always open to offering new things, not just the old. The next generation of the aging population is going to be different than the last. I don't know if we will be looking for anyone that will look at the whole community in terms of services. There can be transportation and flexibility issues." Alderman Harder said, "We don't have the budget or time to hire a person just to handle senior programs, but someone who has this additional education or background that can guide a program." Mrs. Bruer said, "That would be more of a gerontologist and that not what this job is."

City Administrator Kuntz said, "To bring that experience to the table is part of what Mrs. Bruer is looking for." Alderman Harder said, "That's why I'm asking that when you are interviewing, maybe we could

emphasize that. If you have a choice between two candidates, somebody with more senior programs experience might be the way to go.” Mrs. Bruer said this is an entry level position.

**Adjourn:** A motion was made by Alderman Fleming and seconded by Alderman Leahy to adjourn. The motion passed unanimously and the meeting was adjourned at 9:38 p.m.

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TIM POGUE, MAYOR

ATTEST:

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ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

**February 13, 2012**