



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

May 23, 2011

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

PRESENT

MAYOR TIM POGUE
ALDERMAN JIMMY TERBROCK
ALDERMAN RON MARKLAND
ALDERMAN MARK HARDER
ALDERMAN FRANK FLEMING
ALDERMAN JIM LEAHY
ALDERMAN RICHARD BOERNER
CITY ADMINISTRATOR ROBERT KUNTZ
CITY ATTORNEY ROBERT E. JONES

ABSENT

ALDERMAN MICHAEL FINLEY (RECUPERATION FROM SURGERY)
ALDERMAN KEN MELLOW

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *May 9, 2011 Board of Aldermen meeting and closed session* were submitted for approval. Alderman Markland said, “I noticed that the part where I asked for a special discussion prior to swearing in and Oath of Office of Alderman-Elect Terbrock, we had a heated conversation and I was offered the opportunity to be escorted out of the room if I didn’t refrain, has somehow been deleted from the record. I think this was an important discussion that should have been included.” Mayor Pogue said, “You were out of order. You were not recognized as having the floor and you were out of order.” Alderman Markland said, “I think that’s how Richard Nixon got into trouble. I still think it should be in the Minutes. I guess that’s up to you to sensor the Minutes.”

A motion was made by Alderman Fleming and seconded by Alderman Boerner to approve the Minutes. A voice vote was taken with the following result: Aye: Aldermen Fleming, Terbrock, Leahy, Boerner. Nay: Aldermen Markland and Harder. The motion to approve the Minutes passed by a vote of 4-2.

INTERIM PROSECUTING ATTORNEY

David Porta, Interim Prosecuting Attorney said, “I want to take this opportunity to thank you for the 3 months time I spent as the interim prosecutor for the City of Ballwin. I think you’ll find the docket in much better shape than it was when I took it. The certified docket is whittled down to precious few cases, where it was a lot more before that. I would like to have the opportunity to remain your Prosecutor, but it’s probably not going to happen. I thank you for the opportunity. It was somewhat of a trying time to get things in line the way they came out of line, and I appreciate that I was given this job to do. I’m presently still on the Board of Adjustment. I have not served on the Board of Adjustment since I was appointed Prosecutor. If you have any questions in the future about the process, I’ll be glad to talk to you. Thank you very much.” Mayor Pogue thanked Mr. Porta for serving in this position.

PRESENTATION

Annual Audit Report: The City of Ballwin’s 2010 financial audit was presented to the Board of Aldermen by Rick Gratza, a partner with the firm of Kerber, Eck & Braeckel LLP. The auditors issued

an unqualified opinion which is considered a “clean opinion”. It was also reported that no material weaknesses, significant deficiencies, or instances of noncompliance were identified. Various charts representing the City’s growth of unreserved fund balance, change in net assets, and other financial ratios for years 2007 – 2010 were presented for comparison. Mr. Gratza complimented the city staff for their prudent management. He noted that the City’s percentage of debt service (18%) to non-debt expenditures was particularly impressive. He also pointed out that our year-end general fund balance as a percentage of expenditures was way above acceptable levels at 67%. The 2010 audited financial report is available on the Ballwin website.

PENDING ISSUES

None.

CITIZEN COMMENTS

Jim and Mary Randall and Harry Freund, of Mr. Harry’s Carnival Foods: Mr. Randall said, “We opened our doors on May 1, 2010, and did well over the summer months. In the Fall business slowed and were getting ready to close. That’s when Mary and I stepped in with A.S.A.P. Barbeque and became partners with Mr. Harry’s. By adding barbeque, we were able to solidify our loyalty from our customer base and survive the winter. The second six months of revenues for our organization have grown 30% over the first six months. The barbeque is making a significant difference for the operation and making it successful. We have been able to pay back the majority of our debt and in an operating profit mode.”

Mr. Randall said, “Regarding the proposed legislation, we have some concerns.” Mary Randall said, “The solution that you have arrived at will not work for our operation. My health does not allow me to carry things up and down stairs. There are 21 steps in the back of the building. Hundreds of pounds of product are carried in and out. It will be extremely difficult to do this from the back of the building. The distance around the building is a little over 1/10 of a mile. Many time I am cooking throughout the night into the morning. I feel safe cooking in front of the building, but I’m concerned about my safety if I have to go up and down the steps or around the building in the dark where I cannot be seen by passersby or the police. I’m asking you to reconsider this for a safety standpoint.”

Mr. Randall asked, “Has the Board considered new legislation for permitting mobile food operations? Mr. Harry’s Carnival Foods has been licensed by St. Louis County Health Department for mobile food operation and we are current in the process of securing business licenses in cities where it is approved. It is not currently available in the city of Ballwin. Mobile food trucks are a new trend around the country.”

Mr. Randall said, “We have about 11 months on our existing lease. We are outgrowing the restaurant. We are considering space in Gordon Plaza that will provide a larger restaurant. The barbecue equipment would be inside the kitchen at that location. Putting the mobile kitchen behind the building at the current location will not work for us. It’s not safe. Perhaps a variance could be provided. We really need help with this situation.”

Press McDowell, 298 Portwind Place: Mr. McDowell said, “I’m here on some terms that I think need to be addressed. I’m speaking as a citizen of Ballwin, as a former Alderman, a former member of the Planning & Zoning Commission, and the first African American Alderman in the city history. The City was always based on mutual respect for each other, of actually demonstrating how citizens working together can achieve a great deal. I was part of that for ten years. I served under three administrations, and we did a lot of great work for the City of Ballwin. The audit is a testament of some of the great work that’s been done over the years. This is a fantastic staff in all of those aspects. When you look at other cities, Ballwin has always been a jewel to be proud of, and I’ve been proud of it. I’ve been a citizen of Ballwin for over 20 years with my wife and three daughters.”

Mr. McDowell said, "I want to speak on the aspect of being an alderman has always been a privilege, an honor to serve the people, to do what's right for the citizens of Ballwin to insure that when they walk out their doors, they feel proud of being a citizen. It has never been, never ever been an occasion to use it as political vendettas, to lash out at each other, or to present an image of the City of Ballwin other than to be respected, and I find that deplorable. When I read the "West Newsmagazine" and the rhetoric coming out of the meetings, out of the City of Ballwin, that I was a part of for so many years, it offends me greatly; it really does. It was never used as an aspect to hold a hammer or magnifying glass over staff to find out if there's something wrong, or to find out what I can do to attack another Alderman. If we had a disagreement, we always solved the disagreements in the back room. When we came out, we came out as a unified force, addressing the citizens as one, and we respected each other. I don't want to make it personal, but I think it's very important. Mr. Markland, I sit here and I listen to you make attacks on the City of Ballwin. I've listened to you as an Alderman, which was right. But some of the attacks which you're doing, and some of the things you're doing, and I'm telling you as a former Alderman to a present Alderman, they are not good and are not a good representation of the City of Ballwin, and they should not take place. Citizens contact me constantly saying, "Press, what is going on? Why is this different?" When you hear this audit report, the City's in good financial stability. So, something must be going wrong up here. The rhetoric that's coming out of here, if you have a political vendetta or something didn't go your way, all of that ends when you take the Oath of Office. You should begin to work as one team. The things that you are saying are not true and not right, and is not representing the City of Ballwin. I held back a great deal before I decided to come up here, but I think I owe it to myself and the citizens of Ballwin. Not everyone gets the opportunity to do what is right before the people. Please take it to heart. If you've got something personal or something another aspect, deal with it in the back room or on a personal level. We, the citizens of Ballwin, want to be proud of our City and see the right things come out of our City, and not the harsh rhetoric that's coming out right now that's taking the airways and magazines. I know as an individual that does not represent Ballwin. Not the Ballwin that I served. Not the Ballwin that I live in as a citizen, and not the Ballwin that I expect my children to grow up in. I expect, I expect a good Ballwin and I've worked hard as a citizen to insure, to insure that we have a good Ballwin. I'm not going to sit on the sidelines and watch it go to waste. I expect better results and better air coming out of this aldermanic team. Thank you, gentlemen."

Ken Laune, 477 Melanie Meadows: Mr. Laune said he is a Trustee at Ries Meadows Subdivision. He spoke about the trail that may be installed and the common ground. He said, "We are totally against this project. Our privacy will be invaded. We don't see a necessity for this trail. My concern is for the residents of the subdivision. This is not a necessary project. If the funds are secured by the City of Ballwin can be used for something more beneficial than a trail that basically is not going to be used. I will never use that trail if it's behind my house. The residents in my subdivision are not going to use it. If we have a trail, what happens in November, December, January, February, and March when it's full of ice and covered with snow. Who is going to clean it and make it passable? I don't think it's necessary. I'm sure my neighbors who live down the street will have even more reasons that we need to reconsider this. I have lived there 32 years. The common ground behind my residence is not a city park. There's trash that has been there for 30 years. Walking through this area on a trail is not going to be an enlightening experience. If I go to the Pointe, I don't intend to use the trail. I will drive my car. I ask that the Board consider all of this before making a decision, to spend this much money on a trail in common ground that is not going to be used."

Lisa Sell, 499 Melanie Meadows: Mrs. Sell said, "I'd like for you to consider what I have to say as an urgent matter. Nestled in the woods in Remington Place Subdivision is our home at 499 Melanie Meadows. This is a home we searched for for nearly 27 months. It is the perfect home to raise our children, or so we thought. The neighbors and the children know each other by name. We've lived in our home for less than two months. The decision to run a connector trail between our home is less than ideal. Today kids of all ages can be seen riding bikes, scooters, and running between the yards. It's a very welcoming sight, and the proposed trail will turn our serene and secure neighborhood into the words of my six year old, "a stranger danger zone". This connector trail that really doesn't connect to anything will create negative foot traffic that is less than 14 feet from my home, and 16 feet from my sliding glass door. At least my front door is a more comforting 30 feet away from the public sidewalk. We were led to

believe that this trail was a bonus, a gift, from our neighboring Westglen Subdivision. It is not a bonus to our subdivision, and I strongly disagree. Linda Bruer, of the Parks & Recreation Department said that this trail is to add positive foot traffic in the area and is to cut down juvenile destruction in the area. This is very alarming to my family and the 50 other families in our subdivision who signed that they are not in favor of this community expansion. What constitutes juvenile destruction? Drugs, under-age drinking, destruction of property, vandalism, and I can guarantee that the list goes on. I am a principle of a school in a public setting for the last ten years. I can guarantee it's all of the above. I am not naive to what can happen without adult supervision, and paving the way to this destruction. This proposed path will open up our neighborhood, our children, and my children to this negative behavior. This is extremely disturbing. I have friends from my church that won't even allow their children at the Point area or the Westglen area because of the disturbances that are there.

"It was important to my husband and I to find a home where we could establish roots for our young family and create our oasis. Our oasis was planned with an aquatic oasis in our serene beautiful back yard. Our hopes have been shattered if this proposed trail is adjacent to our property. You might as well call our oasis the North Pointe Aquatic Center or the Manchester Aquatic Center. If this trail runs between our homes, we're welcoming trail goes to walk within 14 feet of our home and the side of our house. This was not what we planned for when we purchased our home less than two months ago. Would you want strangers walking within 14 feet of your home? For your children or grandchildren? I don't believe so. I would expect that what you would want for yourself is what you would want for the people who voted you into office. Tonight I am trusting you to make a conscious decision to keep our neighborhood safe. We are entrusting our fate, the fate of our subdivision, the fate of our children, my children in your hands. Please remember, a vote yes for this proposed trail and to proceed with this project is a vote to open our subdivision to put our family in harms way, which is a potential for drugs, vandalism, juvenile delinquency, stranger danger, and all within 14 feet of my home. I am sure that Westglen is in favor of this project because this trail will run hundreds of feet from their backyards. Please consider this an urgent request."

Michael Sell, 499 Melanie Meadows: Mr. Sell said, "What former Alderman McDowell said was very heartwarming and welcoming to hear. I appreciate your service. I wasn't a Ballwin resident when you were an Alderman, but from your comments, I'm sure you did a good job. Thank you for your comments." Mr. Sell also said, "In regards to the Pointe connector trail, two of my main concerns are safety, as my wife mentioned, but also cost. You are obviously doing a fantastic job with the money. The Pointe connector trail will be a Federal Grant for the money to construct the trail, but you have to think about how will it be maintained, how many years will it last before the entire trail must be redone? Who is it benefitting? When it comes to cost, is it worth spending that extra money putting in a trail that goes nowhere. It could be used for other parks, playgrounds, pools, etc. Just because the money is available, doesn't mean that it has to be spent. It should be spent on something that the people want. Governments are spending too much money on things that people don't need or want. My main concern is for my family and the other families within the subdivision. In the two months that we have lived here, I have been excited and happy for my children. This subdivision is filled with children. They are running through the backyards playing, especially in the back yards. Right now, our subdivision is like the old days when people didn't have to constantly watch the children. Putting in this trail will bring in people who we don't want coming into the neighborhood. It could open the door to sexual predators and people who can walk right into our back yard. We, the entire neighborhood, doesn't want that. I ask you to spend money wisely, treat each other like you want to be treated. I really appreciate the comments of Mr. McDowell. Please vote this down for the entire subdivision."

Steve Ahlbrand, 476 Madrina Ct.: Mr. Ahlbrand said, "My house borders the path also. I'm against this. Anyone I talked to said they wouldn't want it next to their house. Ballwin has put trails next to houses in the past, but each case should be considered individually. This trail will be too close to our homes and will be a privacy and security concern. The hill will have to be excavated in order to reduce the grade. The Sells have landscaping on the side of their home. This will put the trail 3 feet from the landscaping. There is overwhelming opposition to the trail in this neighborhood. My wife went through a tremendous

effort to contact 60 households in our neighborhood. Of the 60 households, only 4 people would not sign the petition. 93% of all of the people are in opposition to the plan. For something that Ballwin does not have to do, the people that it would seem to serve do not want it. This seems like a common sense decision to me.”

Cory Ahlbrand, 476 Madrina Ct.: Mrs. Allbrand said, “I also oppose the Pointe connector trail. In the petition, 93% of the people that I talked to sign the petition. Several called me back and asked me to come back for the signature. Most signed immediately. The residents that I spoke with said that the trail will take away the wildlife. Woods are not wasted space. It’s okay for woods to be woods. The wildlife that the neighborhoods enjoy are owls, deer, fox, bullfrogs, etc. The common ground and open space would be taken away by the trail that cuts right in the middle. The children get together and play in this area with no-fenced backyards. We exchange phone numbers and keep informed on what’s going on. This is an amazing community that I didn’t have in the two neighborhoods where I previously lived. The privacy will be gone and will take away the safe environment. It will increase litter, theft and undesirable activities. This is a hidden trail in the woods and suddenly someone pops out close to my back yard. Has the City considered patrolling the trail to enforce the proper use of the trail? Many trails do not cut right between homes. It would be more comfortable if the trail went through a public area. I know you want to do good for the community. Please don’t forget that we are part of that community – these three neighborhoods that are speaking to you. Your decision will affect our neighborhood and our lives forever. Please don’t take it lightly.”

Edward Wilhelm, 373 Remington Way Drive: Mr. Wilhelm said, “I am in total disagreement with your plan to put in this proposed walkway. Who is going to take care of maintenance of the path in January, February and March when the trail is completely vacant of people? Who is going to be watching the kids that are there? I have a 5 and an 8-year old and I don’t want my kids playing with people I don’t know. Our neighborhood is very close and we know each other. This particular idea is not a good idea for our subdivision and not a good idea for the City of Ballwin.”

Gary Williams, 7 Remington Place Ct.: Mr. Williams said, “I am very much opposed to the trail project because of all of the reasons that these people have brought up. My main reason is security and taking care of the children. I don’t think anyone is going to use it because most people don’t let their kids get very far out of their sight. This is a long trail in a desolate area. It will be trashed, skateboards, accidents. Who will patrol it? Who will take care of it? I will hate to see something like this come about.”

Ross Bullington, 530 Blazedwood: Mr. Bullington said, “I’m one of the Trustees for Westglen Woods Subdivision. I’m representing the 500 homes within Westglen Woods. On May 3rd, we met in an open meeting in this room. We presented the information for the trail, fully expecting someone to be in opposition. There was none. Throughout the room, there was happiness and excitement. There were a few concerns, but those were alleviated as we look to and reflected upon the great trail system that Ellisville has, and that Ballwin has the opportunity to build. The trustees reviewed this plan. I compliment Linda Bruer on the fantastic job that she has done in representing the City of Ballwin to those of use in Westglen Woods. She has worked diligently to explain every step of this process and to further enhance our wooded area, our park, our subdivision, and our city. I have children and friends along the route and they are looking forward to having access to go back and forth without having to take a drive. They are looking forward to being able to bike, walk, jog, rollerblade on this trail. It’s not just our subdivision. It’s our neighbors too. All the residents expressed their opinion. All those opinions were positive. We presented the facts and diagrams. They look forward to it. This grant proposal is not one that we can use to improve our roads – it’s for a trail system. It’s to get the public out and get them moving, and to expand the neighborhoods. It will allow us to get back into this wooded area, help to clear it out, and provide an 8-foot trail. The trail does run into our neighbors’ subdivision and will provide them direct access to The Pointe. It will provide our families and children direct access to the neighborhoods. As a principal of a middle school, sometimes they need direct supervision. That’s what being a parent is all about. This trail is a fantastic opportunity to bring our community closer together. One more step into bettering the City of Ballwin. I hope that you will take into consideration the 500 homes that I represent within Westglen Woods, and that those homeowners have contacted me to express

to you that we are in favor of this plan. We look forward to enhancing our wooded area and helping to develop it into more of a park-like setting. We're not talking about clear-cutting. We hope you will take this into consideration. We hope that you will vote in favor of this grant and this trail to enhance our city, our subdivision, and our lives."

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL # 3675 - AN ORDINANCE AMENDING ARTICLE XIV, SECTION 1 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO A SPECIAL USE EXCEPTION FOR THE STORAGE OF TRAILERS IN THE C-1 ZONING DISTRICTS OF THE CITY.

A motion was made by Alderman Boerner and seconded by Alderman Terbrock for a first reading of Bill No. 3675. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3675 was read for the first time.

Alderman Boerner asked, "This is a special use for the benefit of Harry's, right?" Mayor Pogue said, "No. This will establish a mechanism for a special use application." City Attorney Jones said, "This does not grant a special use exception, so we don't have to make findings on this particular bill."

Alderman Fleming said, "Is there any mechanism at all, short of this ordinance, that can grant some temporary relief?" City Attorney Jones said, "I'm not aware of anything. There is no way to grant a variance. The Board of Adjustment is not set up to handle a variance for the use of the property itself. It is for unique situations where the topography of the site or the way it is situated is unique and causes practical difficulty. This isn't something that the administration can do without legislation. I'm not aware of any way to accommodate other than this type of a more general ordinance."

Alderman Fleming said, "Would you say that this is a good ordinance in general?" City Attorney Jones said, "This ordinance would still require the trailer to be parked behind the building." Alderman Fleming said, "We don't have this situation anywhere else now. Are you saying that in general, this is useful to have on the books for the next 2, 3, 4, or 5 times that this may arise." City Attorney Jones said, "This will continue the current practice of the City, to get the trailers behind the building lines."

Alderman Fleming asked, "Other than this request, have there been a lot of similar situations?" City Planner Aiken said, "No. I can't recall a time when this issue has come up in recent years."

Alderman Boerner asked, "The only way we can deal with this situation is to honor their request and to pass an ordinance to allow them, for the next 11 months, to do what they have been doing. Can we do that?" City Attorney Jones said, "I don't think you can do that. You would effectively be re-zoning the property, giving it a different kind of use than what's allowed to other commercial properties in the same zoning district."

Alderman Leahy said, "If this is the only situation that has ever been requested, why would we pass this ordinance?" Alderman Fleming said it will be useful in this situation. Alderman Leahy said, "The next time this comes up, couldn't Mr. Aiken ask them to locate the kitchen inside? If someone is going to apply for a restaurant, couldn't we say as part of the application process, "your kitchen is going to be inside, isn't it and not in a trailer?" City Planner Aiken said, "I've never had anyone not wanting to have a kitchen in the building where they operate a restaurant. They have a kitchen; this is sort of an adjunct." Alderman Leahy said, "I'm having a difficult time thinking about voting for something that has not happened before."

Alderman Terbrock said, "This came about because of their situation when they asked for help because they were in violation of the ordinance. Is that correct?" City Planner Aiken said, "Yes. The trailer was there and we notified them that this was in violation of the zoning ordinance. They approached the city to find out if there is some way they can keep it there." Alderman Terbrock asked, "If they were to be in violation, how long could that go on without having major conflict? They said there are 11 months before they will outgrow the situation. I hate to do this when there haven't been any other issues like this."

Alderman Harder said, "If we don't pass this tonight, they are in violation of parking the trailer at the current location. Is that correct?" City Attorney Jones said, "That is correct. Even if the Board doesn't pass this legislation, they cannot leave the trailer where it is currently parked." Alderman Harder said, "If we pass this, they will move the trailer to the rear and still have that part of their business." City Administrator Kuntz said, "No. They will have to apply for a special use exception." Alderman Harder said, "If we don't get past this, the trailer goes away." City Administrator Kuntz said, "Right." Alderman Harder said, "This may not be to their liking today, but it will keep them in business if they want to stay in this location."

Alderman Terbrock said, "If they were to move the trailer out and then put it back, will that help?" City Planner Aiken said, "Changing the location does not make it less illegal. It's illegal anywhere on the site under today's regulations. Moving it from back to front doesn't change anything." City Attorney Jones said, "If the trailer is only utilized by someone who holds a valid Ballwin business license on the same property that the business is operated is the way the ordinance is drafted." Alderman Harder said, "By doing this, we are sanctioning both the parking and using it as a kitchen." City Attorney Jones said, "Assuming that they apply for a Special Use Exception, it is recommended, either favorably or unfavorably, by the Planning & Zoning Commission, and then this Board of Aldermen grants the Special Use Exception." Alderman Harder said, "Voting for this, we are voting for both of those issues, parking and continuing their business, using the trailer as part of their business." City Attorney Jones said, "You are giving them the mechanism to do that, but they still have to apply and convince the Board that all the things you have to find to issue a Special Use Exception are present."

Alderman Fleming said, "I agree with Alderman Harder that this at least gives them a way, even though it's not the most desirable way in their opinion. It's written in such a way that somebody else who has a business license can also do this. Are there other food operations in the area with this concept?" City Administrator Kuntz said, "We have started that survey work."

City Planner Aiken said, "I don't know if they are wanting to park the truck in their lot and operate there or to provision the truck from the restaurant so that it can go elsewhere in town." Jim Randall of Mr. Harry's Carnival Foods said, "Last weekend we were in the City of Chesterfield and next weekend we will be back there again." City Planner Aiken said, "They can do that if Chesterfield allows this. This is a different scenario with a mobile food truck. You're also going to let anybody that wants to come in town and set up in parking lots all over town and sell, provided they're licensed. This could be someone who wants to set up a snow cone booth in a parking lot or barbecue. We used to have the issue of Mexican pottery and tropical plants. All of these things are presently covered by the same prohibiting ordinance. What you're talking about with a food truck is creating another niche that would allow them to operate under that criteria. The questions are who is going to make sure they have permission of the property owner? How are you going to be sure they do this in a manner that doesn't create traffic hazards on the lot? Do we even care about those things?"

A motion was made by Alderman Fleming and seconded by Alderman Boerner for a second reading of Bill No. 3675. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3675 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3675 with the following results:
Ayes – Fleming, Boerner, Terbrock, Markland, Harder. Nays – Leahy. Bill No. 3675 was approved and became **Ordinance No. 11-19**.

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. Liquor License Renewals
- B. Police Department Security Enhancements
- C. Lightbars

A motion was made by Alderman Terbrock and seconded by Alderman Fleming to accept the Consent Items. A voice vote was taken with a unanimous affirmative result and the motion passed.

MAYOR'S REPORT

Maryland Heights: Mayor Pogue said he received a letter from Maryland Heights thanking for the aided we provided during their storm cleanup.

Future Meetings: Mayor Pogue suggested that the Board meeting summer schedule be used, which will be the second Monday in June (June 13), the third Monday in July (July 18), and the third Monday in August (August 15), unless something occurs that needs immediate attention. After discussing the upcoming schedule and possible Planning & Zoning issues, the following motion was made:

A motion was made by Alderman Leahy and seconded by Alderman Markland to utilize the summer schedule as proposed. A voice vote was taken with a unanimous affirmative result and the motion passed.

Closed Session – Personnel: Mayor Pogue requested a closed session meeting to discuss the candidates for Prosecuting Attorney, according to State Statute 610.213.

CITY ADMINISTRATOR'S REPORT

Debt Options: City Administrator Kuntz said, “In conjunction with the audit report, the issue of our investment portfolio, with respect to reserves which will be partially tapped this year through the supplement of additional funds for street improvements. Because we ended the year with a positive balance, we still will have a significant reserve fund balance at the end of 2011. We took a hard look, Finance Officer Loehr and Aldermen Fleming and Boerner, at the debt issues. Our debt is retiring in 2012 and 2017. The 2017 debt has higher interest rates. It was the consensus of the group that if some of the debt could be retired early, we would save on interest payments. In today’s market, we’re not earning high interest rates on our investments. We looked at this from what the downside was, cash needs, potential savings, and potential earnings. If it was possible to get 2.5%, and we took the money and couldn’t use it because we used it for debt retirement, what would the difference be between what we saved and what we lost in potential earnings. It is a considerable amount of money that could be saved.”

City Administrator Kuntz said, “We can leave things the way they are and do nothing; we can take a portion of it, and I understand that we could take from 2017 up to the last few years with the 4% interest rates, or we could retire the entire issue. The only cost is to get a bond letter. We don’t have to go back to the bond market to be rated because we’re not refinancing debt. The fee is about \$5,000 to do all the paperwork to close this up. We’ve already budgeted for the 2011 payment.

Alderman Markland asked, “If we would pay off the \$3,086,000, that would take our reserves from roughly \$8.5 million down to \$5.5 million. That will make \$736,000 per year available. Do we propose to dump that back into raising reserves?” City Administrator Kuntz said, “I would recommend of that amount, for at least the next two years, while we still have the other debt to pay, which is the 2012 issue and is the only other debt on the books, put it back into the reserves and only reserves until 2013, when all the debt is eliminated. There will then be no debt questions at all. I suggest to pretend that we didn’t

have that money and put it right back in reserves.” Alderman Markland asked, “All of it?” City Administrator Kuntz said, “Yes. If you wanted to put some into streets, I would say not to use any more than 50%. I would still put half of it back in the savings account.” Alderman Markland said, “We’re quite happy that we have an \$8.5 million reserves that we could draw \$1 million off for streets. If we drop it down to \$5.5 million, it becomes” City Administrator Kuntz said, “It takes some of the flexibility away.” Alderman Markland said, “Rather than use it as new-found money” City Administrator Kuntz said, “I don’t want to do that. I prefer that you pretend that you never saw that money and put it back in reserves. I would also like to have a restricted fund balance starting next year. I tried to have that discussion with this budget, but part of it can only be used for streets in the future. This is one of the new GASBY requirements that we let the public know that it’s for rainy day street improvements, and street improvements only.” Alderman Markland said, “I think most of us would appreciate that way of doing it.”

Alderman Harder asked, “Is it best for the city and the way we are positioned in the financial market to pay down our debt at this point and have less reserves, or have debt and more reserves. If we had to get an emergency bond issue passed or a bond of some kind and have to go out to the market, are they going to look at us and say “you have this much debt, what do you need this bond for? We’re not going to give it to you.” Or, with huge reserves, you are a good risk for this debt. Where is the break even and equilibrium?” City Administrator Kuntz said, “We wouldn’t be having this discussion at all if we could get 5% or 6% interest rates on reserves. Right now, it’s like putting money under the mattress. I think the answer is to hope the economy turns, and then to have the money in the bank to take advantage of it, we need to get rid of the debt and not have a payment.” Alderman Harder said, “If we did that, then with the \$735,000, we would have to discipline ourselves to put that aside and not touch it because it’s going directly to the reserves to pay ourselves back.” City Administrator Kuntz said, “I agree with you 100%.”

Alderman Fleming said, “Like Bob said, there really is not right or wrong. It’s a matter of what we’re comfortable with. Having looked at it and being conservative, my comfort level is not to pay it all off because it will take our reserve level down to a point where it would be uncomfortable. As we know, a tornado can devastate a community. If this ever happened down Manchester and interrupted our revenue stream in the future, the reserves should be strong. My preference is to come up with some kind of in between plan. It’s definitely a good idea to get rid of the debt if we could, but not to take down our reserve balance to where it’s uncomfortable.”

Alderman Boerner said, “What we’re doing is taking money that is part of the general fund and we’re paying off debt that ordinarily would be paid off with the special use type revenue, which is the sales tax that is for parks. We’re trading something that’s generally used for something that we, only for a specific use, this is one consideration. The second thing is that what I asked was what are we going to use the money for? If we take general funds and pay off something that’s special use, and those revenues are restricted in terms of their use, then what are we going to use the money for and how much are we going to have left over? That will not be an unreserved surplus that goes, the amount that we subsidize to the aquatic center is going to be going into the general fund, but the other piece that goes in there, what are we going to use that for? At these different levels of using these general funds, the unreserved surplus that’s part of the general fund, what is going to be our lowest reserve, assuming that we have the current trends when we pay off August, September, October? What is going to be the lowest reserve that we will have at that point in time under the various assumptions? I would be more inclined to, if we’re going to do it, to retire a portion of the debt rather than retire it all.”

City Administrator Kuntz said, “Once the debt is gone, the dynamics will be changed. The difference between the park expenditures and park revenues is \$1,472,319. The sales tax is \$1.2 million. The total revenue, including the park sales tax is partially funded, and versus the total expenditures, which includes the COPS debt payment and the general obligation debt, the COPS debt is \$735,641, the total expenditures is \$5.5 million. The total would be \$5,540,617. Our revenues combined was \$4,332,120. The spread is close to what the debt payment is. I would like to offer, thinking that it would be helpful to get everybody at a comfort level. We are up against a September 1 window to refinance or retire this debt. I would like to exercise that window. Every month that we keep trading water, we’re not making

money on our investments. If you are in favor of the concept, another idea might be to get the \$3 million that we need to retire it all, we would have to use some of our longer term investments early. We will have to have a check on the table for \$3 million in August. As an option, let us do the cash flow analysis and tell you, without cashing in anything early, just what's available, how far down would that take the debt, and what would remain. Is it half, a little less than half, and what would that leave us with in terms of the reserve. Maybe it's the midpoint, and at least put the option back on the table for the June meeting and come up with an answer at that time."

Alderman Fleming said, "In applying over \$3 million, it says this will result in a reduction of approximately \$5.5 million at year end. About what would that be in terms of a percentage?" Finance Officer Loehr said, "With a full payoff, it would be about, using budget revenues and expenditures, it would be down 33% of expenditures, because we also have the extra million for streets."

Alderman Terbrock asked, "What would be the effect if we did the mortgage approach and made an extra payment each year, instead of dumping all of the money at one time. I'm not in favor of spending down that far." City Administrator Kuntz said, "I used the mortgage analysis, but this is not a mortgage that the bond holders see. If we're going to change the coupons, these things that people have invested in and get returns on, we have to have a bond opinion, once per year, and the notes will go to the bond holders that will say that these things have been called and these are the new one and we have to pay for this. They're counting on a certain thing. They signed up to invest in a certain thing. We don't have that same flexibility. It's nothing, partial, or all. We will have to do this in September or we can't do it this year."

Alderman Harder said, "If staff could come back to the Board showing plan A, B, C, and D, with all the implications, good and bad, on each plan that we consider at the next meeting. This should show a detailed approach. If we do change, if making one extra payment is one of the choices, is this going to do anything to the bond? Will this activate something in our bond payment that says the contract is until 2017 and they're paying off early. Will that bump the coupon? This is like a pre-payment plan on a mortgage."

Alderman Boerner said, "There is an agreement like that. What you have to do is as each one matures, you can't redeem a part of one of the maturities. You have to redeem everything that matures in 2017. The thinking was with the highest interest rate."

Alderman Markland asked, "If we reduce our reserves from \$8.5 to \$5.5 million in round numbers, we get rid of the debt, what's the impact at some future date if Ballwin chooses to go out for another bond issue? Do we have to go through a vote to do that, or is that something that can be done in house. It's going to take us 5 years roughly to get the reserves back to where it is today if we throw all those dollars back into reserves. Maybe you could borrow \$3.5 million or \$4 million if we wanted to do streets." City Administrator Kuntz said, "We could do, for example, a COPS program, which we've done before. Not everything will require a vote. We quickly eliminated the option of having to go to the rating agency with two empty big boxes and say we would like to refinance to get the 4% down because we don't want to take that chance. We've got a good rating. We should come in with a stronger cash position if we need to borrow." Alderman Markland asked, "What is the number that we feel is a fair reserve?" City Administrator Kuntz said, "Every year we have this discussion." City Administrator Kuntz said, "I would assume that you're looking for a higher comfort level than 32% on the reserves."

Outdoor Displays: City Administrator Kuntz asked, "Is there a volunteer from the Board that would like to serve to conduct a focus group meeting, with a series of 8-10 questions? Alderman Harder volunteered. The Board agreed that Alderman Harder should serve on the focus group."

STAFF REPORTS

Insulation: City Administrator Kuntz said, “The consultant for the project has been with us from the beginning with solar panels, lighting, installation, bid specifications, program monitoring, and reporting to the Federal Government. Jerry Klein, Ballwin Code Enforcement supervisor, has coordinated the process and for the \$100,000 energy grant.” Assistant City Administrator Aiken said, “Last Fall, Ballwin bid out this work. It was part of the energy grant that we got from the State. We were going to insulate three buildings – the Golf Clubhouse, which was a complete insulation of the entire structure and the Police Department building and Government Center, to apply spray foam insulation in the cracks and holes around the edges above the ceiling and not do a complete insulation of the buildings. This was based on an energy audit that had been conducted as part of the application for the grant. We bid the programs and there were only two companies that bid on the project. One company bid the Golf Clubhouse at a more reasonable rate, and another company bid the other two buildings at a more reasonable rate. We split the project. We had the Clubhouse done. We awarded the program on the other two buildings, and that gentleman basically refused to complete the work. He wouldn’t sign the contract. He put us off for a period of time, and then it got too cold to spray the foam. He promised that he would do the work in the Spring. He has refused to abide by his low bid. We had to rebid the project. There was only one bidder. We solicited more companies in the region, but we only received one proposal, which was the company that did the insulation on the Clubhouse. The bid was \$29,500. The problem is that we only got \$18,000 in the Grant for this work. Anything above that comes out of Ballwin’s pocket. We are well over that amount. There is enough money in the contingency fund to cover the overage. Do we want to move forward and complete the project, knowing that we will have to draw the extra money from the contingency fund?”

Mayor Pogue asked, “The low bidder backing out, when there was a similar situation in Public Works, they had to forfeit a certain amount?” Assistant City Administrator Aiken said, “They provided a bid bond, but it’s \$800 and not nearly enough to offset the higher cost of the second bid.” Mayor Pogue asked, “If we don’t do this portion, are we in jeopardy of losing any part of the Grant?” Jerry Klein said, “We would have to ask the State to amend our Grant application. We could also take the money we have gotten for the insulation and re-allocate it to some other project. This would be a Grant Amendment.”

Alderman Terbrock asked, “If we did not re-apply, how would this affect us for future applications for any further energy grants?” Jerry Klein said, “They have a whole procedure set up for the Grant Amendment. There are other communities that have done this. I don’t think it would affect our future applications at all.”

Assistant City Administrator Aiken said, “This was a big Grant. The HVAC equipment that we purchased was done in this building, the Government Center and the Clubhouse. It’s not like this was a stand-alone separate deal that we will get a black mark. This is about the same amount that this gentleman that bid the first time. The other bid it so much less and his bid was under budget, so, it made sense to go with him. Unfortunately he refused to comply. The bid for \$29,500 is not too much out of line with what he bid originally when he was the second low bidder the first time.”

City Administrator Kuntz said, “Think about the advantage that will come with solar panels. We estimate will generate a very significant amount of energy in terms of reducing our consumption. The project is very labor intensive. I thought that, because there is so much overage, we would be better served to leave that off the table, get the panels in even if they are going to be a little over budget. There are a lot of grant sources for insulation that come through Ameren and other sources. I wouldn’t eliminate it.”

Alderman Terbrock said, “Are you saying that you’re not opposed to putting this one off, getting solar panels on, and looking at a different grant for insulation?” City Administrator Kuntz said yes.

Assistant City Administrator Aiken said, “We’re tentatively scheduled to put a new roof on the Government Center in 2013. At this point, I expect that will probably be a foam roof process. That will

not be part of this Grant, but that will provide a substantial amount of insulation on the building, in addition to what's already there."

A motion was made by Alderman Terbrock and seconded by Alderman Leahy to reject this bid in lieu of future pursuing of this. A voice vote was taken with a unanimous affirmative result and the motion passed.

Pointe Connector Trail: City Administrator Kuntz said, "We need a determination by the Board if we should proceed with the submission of the application."

Alderman Boerner said, "The whole trail is ¼ mile. The creek runs to the west of the trail. There's also a gulley will also require a bridge to go across. There would have to be a bridge across the creek and also across the gulley. I walked the path for the proposed trail. Along Golfwood, there's about a 20-foot tall embankment. The only place that the residents of Westglen would have to access this trail would be at the trail head, north of the ballpark. I've been trying to figure out the justification to spend \$200,000 on a trail that's a quarter of a mile long, and ends between two homes. If it was a circular trail or a mile long, I could justify this, but spending \$200,000 on this trail, I'm opposed to this and do not see the justification to do this, especially when the residents say they don't want it. How many parents are going to let their kids walk all the way from the trail head to where it ends? I oppose it."

Alderman Harder said, "I too have driven to see the path. I agree with Alderman Boerner. The location of this trail is not a plus. I would rather see that much money spent on new equipment at The Pointe or anything else that it could be spent on. The people that this is supposed to benefit, they don't want it. 93% don't want it and some don't have an opinion. Even 50% would be marginal on use. This is a bridge and a trail to nowhere."

Mayor Pogue asked, "How did this city-owned easement come into play?" Assistant City Administrator Aiken said, "Part of the Remington Place Subdivision. This concept has been around for a long time and goes back as far as the creation of the Remington Place Subdivision, which about 2007."

Alderman Boerner said, "All this ground belongs to Westglen Subdivision, and, according to the St. Louis County records, the easement that goes between the two houses also belongs to the Westglen Subdivision." Assistant City Administrator Aiken said, "That's absolutely incorrect. Part of the planning plat of Remington Place Subdivision, I can show you the document." Alderman Boerner said, "You're going to have to do that because I have looked at it myself. That easement belonged to the Westglen Subdivision." Assistant City Administrator Aiken said, "It's not an easement. It's a dedicated right-of-way." Alderman Boerner said, "The dedicated right-of-way belonged to Westglen. I can tell you that with certainty. At least, it's color coded that way, it showed that. That belongs to Westglen Subdivision. I can assure you of that, at least on the County plat map, with 100% certainty I can say that. I looked at it and it surprised me. When I looked at it, I called the Ahlbrands and I said that this doesn't even belong to you, it belongs to Westglen, and they got that from Westglen. That's what I saw. If you have an agreement on that or something, show me." Assistant City Administrator Aiken said, "It's on the record plat of Remington Place Subdivision; it's part of that document." Alderman Boerner said, "Then what the County has is different than what the plat shows for the Remington Place Subdivision. I know for sure that what the County shows is different."

Alderman Fleming asked, "Are there any other opportunities for other segments? It's a Grant Application and we're not guaranteed to get the money. Are there other opportunities that we can apply for?" Director of Parks & Recreation Bruer said, "Not right now without more planning." Alderman Fleming said, "The deadline is June 13, there isn't time to produce more planning."

Alderman Fleming said, "People frequently say, 'I don't want this in my back yard'. Generally in the Planning & Zoning scenario, we can give people some relief in the way of screening or something else. With the amount of space between these two houses, I don't see how we can give them any relief. It's

tight between the two houses. It doesn't seem like an appropriate amount of space for this. It's unfortunate that we have to miss out on this cycle of the Grant, but I don't see that there's any way to give these residents relief. If I were them, I would certainly want some relief."

A motion was made by Alderman Boerner and seconded by Alderman Markland **not to apply** for the Grant. A voice vote was taken with the following result: Aye: Markland, Harder, Fleming, Leahy, Boerner. Nay: Terbrock. The motion passed by a vote of 5-1 not to apply for the Pointe Connector Trail Grant.

CITY ATTORNEY'S REPORT

Greenberg Appeal: City Attorney Jones said, "Mr. Greenberg and his attorneys are requesting an appeal from the November 5, 2010 order. They had requested transfer of their case to the Supreme Court by the Missouri Eastern District Court of Appeals, and that motion for transfer was denied. They have one more opportunity to fight for transfer directly in the Supreme Court. They'll have to do that within the next 15 days. If they do so, I will notify the Board."

Sewer Lateral Litigation: City Attorney Jones said, "In the Adams vs. Friganza case, the plaintiffs filed a motion requesting transfer from the Missouri Eastern District Court of Appeals to the Supreme Court for the alternative of re-hearing by the entire Court, as opposed to the three-judge panel that issued its opinion in the case. That is now pending. The Court of Appeals will not grant those motions unless it asks for a reply from the cities. To date, the cities have not been asked for a reply. If the cities are asked for a reply, we will use the same consortium to prepare that response. I'll keep the Board updated as those matters develop."

ALDERMANIC COMMENTS

Election Board: Alderman Fleming asked if there has been a response from the Election Board on the candidate matter. City Attorney Jones said no. Alderman Boerner asked, "Mr. Jones, what do you suggest?" City Attorney Jones said, "I don't have a good suggestion. We've gone directly to the Board. The attorney for the Board of Election Commissioners assured me that they would take up the matter at the next meeting and he would call me back. They either did not take it up or reached no resolution since he has not responded."

Alderman Boerner asked, "Should we follow up with another letter, perhaps from the President of this Board to do this? One of the things I see in looking at this, and I've spent a lot of time doing this, is that the form we submit to the Board of Elections with the list of candidates to be put on the ballot, specifically states that the City Clerk must be the election official for the municipality. It says must be. What kind of a weight does that hold? I would like to see put in a letter what do they mean by 'must be the election official'. What does that entail, because that is a mandate?"

Alderman Boerner said, "There are two statutes that we deal with, which is 115.346 and 79.250, which sets the deadline for paying taxes on the election day, and 115.346 sets that time to be at the closing of the filing. We certify and attest to that. I propose that we draft a letter to the President of the Election Board. It's been over a year since this first surfaced. I would like to see some movement on this as to what we are supposed to be doing. If they say 346, then that's what it should be, or we will have to say that we don't want to comply with 346 because we want to comply with 79.250, but that puts the burden directly on the candidate individually to police that situation. We're either going to take ourselves out of it, or we're going to do something."

Alderman Boerner said, "The other option, as Alderman Fleming suggested, is that we create an ordinance, as you pointed out that it's largely an administrative duty, and the fact that there's not clear guidance in the statute as to what that administrative duty is with respect to certification of candidates, then

perhaps we should pass an ordinance that will specify what the procedure should be, then it will become administrative duty. Is that correct? The ordinance could set out that we verify the residency, etc.” City Attorney Jones said, “If you create an ordinance, it will no longer be a merely administrative duty for a local election.” Alderman Boerner said, “Yes it will.” City Attorney Jones said, “No it won’t. If you put in an ordinance a set of criteria so that the candidates have to prove residency, prove payment of taxes, and the other criteria, then somebody has to determine if the proof is sufficient, and make a decision whether or not to certify that candidate. Maybe that’s a good thing. That’s up to the Board. Right now, the only thing the Board of Election Commissioners expect from the local election authority, the City Clerk, is certification.” Alderman Boerner asked, “Do you think we’re doing that now?” City Attorney Jones said, “We definitely do that now. We send a certification. When they receive that certification, the Board of Election Commissioners place the name on the ballot, and they are always going to do that when they get the certification.” Alderman Boerner asked, “What do we certify?” City Attorney Jones said, “The certification says that it complies with 115.346, and residency of the City of Ballwin.” Alderman Boerner asked, “Are you suggesting that this is sufficient to certify, that we just take the form and say that we’ve performed our, if we say we need to at least make sure that these are paid, then that becomes an administrative duty.” City Attorney Jones said, “Maybe we have a different understanding of administrative duty. To me, administrative duty means that the official has no obligation to go beyond the face of the record and the things that are available to them to make a decision. They perform an investigation when it’s a merely administrative duty, they have no discretionary act. That’s what administrative means to me.” Alderman Boerner said, “If they are required to go out on a website and look at something, then it’s not a discretion. If they satisfy a certain criteria, then it’s no longer, if we demand that, then it becomes administrative duty, right?” City Attorney Jones said, “No. I’m not saying it’s wrong to create those criteria, but I don’t think it’s any longer an administrative duty when we require certain criteria.”

Alderman Boerner asked, “What is a writ of mandamus as it relates to administrative versus discretionary?” City Attorney Jones said, “If there is a writ of mandamus, then the official has discretion, as opposed to just certification of something that is before them. Mandamus is used as an extraordinary writ to cause an official to do something they should have done because it was merely an administrative duty and they had no discretion.” Alderman Boerner said, “If we required that they look on a website, it would cease to be administrative duty. I mean it would cease to become a discretionary and be administrative is what I meant to say.” City Attorney Jones said, “I’m trying to give an opinion for you set out how difficult it would be to decide not to certify a candidate. Where you want to take that is up to the Board.” Alderman Boerner said, “I don’t understand where the difficulty lies.” City Attorney Jones said, “The difficulty lies in the fact that there is no mechanism in the State Statute. There’s no remedy in the State Statute for failure to comply. There’s nothing that talks about removing the name from the ballot. In the places that burden on another candidate, it places it on the Department of Revenue under subsection 342. There are some remedies in there, but none that specifically deal with this situation. If we’re going to put that onus on an employee of this City, we have to be very careful how we do it.”

Alderman Fleming said, “Before we decide to write our own ordinance, I suggest that we draft a letter to the Election Board and submit it to the Secretary of State’s office, saying that we sent a letter to the Election Board and they provided no answer, would you please provide an answer.” City Attorney Jones said, “I will be happy to do so, if I am directed by the Board to do this.”

Mayor Pogue asked, “Do we want to send a letter to the Secretary of State?” Alderman Harder said, “Yes. For some reason, they’re not responding to us. Either they don’t want to get involved with us or that’s just their position. I guess we need to find the next highest person that can take a position. That may be the Secretary of State. We need guidance.”

A motion was made by Alderman Fleming and seconded by Alderman Harder to have the City Attorney prepare a letter to the Secretary of State asking for guidance on the election process. A voice vote was taken with a unanimous affirmative result and the motion passed.

Bid Responses: Alderman Markland said, “When you look at the amount of non-responses to the proposals that we had in today’s packet, there were 6 on the foam insulation, only one responded, there were 17 on the light bars and only 2 responded, and one was indicated as an alternative. I would like to find out why we have such a poor response rate. In today’s economy, you would think that anybody that had an opportunity to sell something would take advantage of it. It seems like it’s going the other direction where we’re getting a very poor response. There are a lot of reasons why that might happen and I think it would benefit us to find out why. The Ballwin employees that are requesting the bids need to find out why they haven’t responded. To say that we’re so busy that we didn’t have time to bid it is probably not going to be an acceptable answer. Are we too specific in that they can’t bid it?”

Mayor Pogue asked, “Are you suggesting that Staff does follow ups on any non-respondent?” Alderman Markland said yes. Alderman Leahy said, “I think that’s a good question to ask because in this economy, you might think that people are looking for work, they may not be able to meet the standards that we set as far as insurance, workman’s comp. That’s the first thing that people do when times get tough. They pull back and go on their own. Some of the things that certain entities want, they don’t have a budget for it anymore. That might be part of the reason why we aren’t getting the quotes that we think we should get.” Alderman Markland said, “Are we being too restrictive? Once you have the information, it can be analyzed.” Alderman Terbrock said, “In other words, let’s reduce our standards so we can get a sub-standard product.” Alderman Leahy said, “No, that’s not what I said. I’m giving an example why we might not be getting as many bids as you would like.”

A motion was made by Alderman Markland that staff investigate recent requests for proposals, at least the two that are in this package, and give a report at the next Board meeting if possible, as to why we are having such a high non-response rate.

City Administrator Kuntz suggested an amendment that the two described in this packet be contacted, and advise the Board what is received from the telephone communication, and to make this an informal part of our process so that you can see this as you are considering a future item. City Administrator Kuntz said, “If there are four people that say next time that we only got one bid, and all four said that our standard was too high, I’d like to have the Board consider rejecting the bid, perhaps changing the bid, and putting it back on the market.”

Alderman Markland said, “I believe it was stated that the two that bid it the first time, went out for bid to six, and only one of those six bid it, and he was the guy who bid it the first time. It’s a continuing saga that we make a request and they ignore us.”

Mayor Pogue asked, “Is there Board direction on that to look into non-responses?” There were no comments.

Whispering Oakwood Subdivision Street Repair: Alderman Harder said, “I sent an e-mail to City Engineer Kramer about this, that in the Whispering Oakwood Subdivision, we started street improvements and scraped off the top layer of asphalt. We exposed the concrete below. At least half of the subdivision is now in the state of looking like the moon. It sounds like this has to be this way until August when the overlay will be installed. Is that true?” City Engineer Kramer said, “That’s not totally true because they are going to take out the really bad concrete. We will fill up any small holes then it will wait until August. The overlays typically take about a week and mobilization of bringing in the paver, rollers, etc. is expensive to bring them in on a monthly basis. We haven’t done that. Perhaps next year we could bid the overlay with alternates of one or two extra mobilizations to see exactly how much more that mobilization will cost. To keep these costs on the overlay, and because of the duration of doing the paving is short, we’ve only had it done with one paving operation and one mobilization. The streets will be tidied up, the slabs will be finished, and anything that needs to be touched up will be done. This will be into August when all of the remaining streets throughout the City to be milled and repaved are done in the same manner as slab replacements. Then the asphalt contract will come in and cover with new asphalt.”

Alderman Harder said, "You've come up with a sequence to do this, and now we've got, I almost broke an axle over there driving on the main street coming into the subdivision. It's the lane that you're supposed to drive in and is one pothole after another. If that's going to be that way, can we fill it with gravel?" City Engineer Kramer said, "We would do that. We will not leave it with holes until August."

Joplin, Missouri: Alderman Fleming said, "In the metropolitan area, we have aided other cities that needed help. Perhaps City Administrator Kuntz can find out if there is any kind of aid or relief we can provide?" City Administrator Kuntz said the updated are anticipated tomorrow.

Adjourn to Closed Session: A motion was made by Alderman Fleming and seconded by Alderman Boerner to adjourn to closed session, as recommended by Mayor Pogue, to discuss the Prosecuting Attorney interviews. A roll call vote was taken with the following results: Ayes: Aldermen Boerner, Fleming, Leahy, Markland, Harder, Terbrock. Nays: None. The motion passed to adjourn to closed session at 9:59 p.m.

City Administrator Kuntz said, "For the benefit of the audience, the Board will come back to open session for adjournment only. No action in closed session is anticipated. For all practical, the regular Board meeting is complete.

Closed Session:

The Board convened in closed session at 10:05 p.m.

The Closed session was discussion only and no votes were taken.

There was a unanimous roll call to adjourn the closed session and return to open session and was completed at 10:23 p.m.

A unanimous motion to adjourn the open session was completed at 10:24 p.m. and the meeting was adjourned.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

May 23, 2011