



**DRAFT MINUTES**  
**BOARD OF ALDERMEN**  
**Meeting Minutes**

AUGUST 24, 2020

7:00 PM 1 GOVERNMENT CTR. BALLWIN, MO 63011

**THE MINUTES ARE PREPARED IN SUMMARY TO REFLECT THE OVERALL DISCUSSIONS, NOT VERBATIM QUOTES.**

The meeting was called to order by Mayor Pogue at 7:00 p.m.

**ROLL CALL**

Present

Mayor Tim Pogue  
Alderman Mike Utt  
Alderman Michael Finley  
Alderman Kevin M. Roach  
Alderman Mark Stallmann  
Alderman Frank Fleming  
Alderman Jim Leahy  
Alderman Ross Bullington

Absent

Alderman Raymond Kerlagon (family obligation)

City Administrator Eric Sterman  
City Attorney Robert Jones

**MINUTES**

The Minutes from the July 27, 2020, Board of Aldermen meeting were submitted for approval. ***A motion was made*** by Alderman Fleming and seconded by Alderman Stallmann to approve the minutes from the July 27, 2020 Board of Aldermen meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

The minutes from the July 27, 2020, Board of Aldermen closed meeting were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Finley to approve the minutes from the July 27, 2020 Board of Aldermen closed meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **CITIZEN COMMENTS**

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Charles Anderson, 7 Meadowbrook Country Club Estates, addressed the Board, stating he has lived in the area for 30+ years. He also stated this has been a pleasant experience and complimented the Mayor and Aldermen for what they do. He asked the Board to do whatever they can to stop the new cell tower.

Bob Skebo, representing Claymont Co. which owns Claymont Center, addressed the Board. He stated there is a reciprocal agreement with the neighboring property, where the tower is proposed to be installed. This request was denied on August 7, 2020 per the agreement. The request was to install the tower in the back of property and it was felt it was still intrusive so they feel it was reasonable to deny the request per the agreement. He stated he brought copies of emails/agreement; these were given to the City Clerk and then, the City Attorney.

Bob Biribin, 249 Geremma, addressed the Board, stating he has been a Ballwin resident for over 20 years and a Ballwin business owner (the Wolf Café) for over nine years. He thanked the Board for the support they have always given. His business has always focused on clean food, drink, water, etc. He stated customers have expressed concerns over the cell tower and, not only will it be a terrible sight, it's not healthy. He also feels the cell tower will impact his business.

Ken Dubinsky, 3 Meadowbrook Country Club Estates, addressed the Board and stated he was appreciative for the opportunity to speak. He is a nine-year resident of the City, but if the cell tower goes in, he and his family will move. He cited several reasons for denying the tower. Some of those are that the tower will be a huge eyesore, it will adversely affect the community, negatively affect health and lower property values.

Amy Weinstein, 3 Meadowbrook Country Club Estates, addressed the Board. She is Ken Dubinsky's wife. She created visuals of how the tower might look and shared those with the Board. She stated neighbors and businesses were not aware of the tower until the previous week and no one wants it. She asked the Board that, if they could not deny this permit tonight, could they please table it so more research can be done and possibly a more suitable location could be found.

Dawne Luleff, 5 Meadowbrook Country Club Estates, addressed the Board, stating this cell tower would obstruct the view of what is currently a clean landscape and be a hindrance. She stated she has a child with health concerns and is not willing to risk her child's health further for better cell service. She stated that approving this permit makes Ballwin not for the people, but for profit and will move if the tower goes up.

Steve Weinstein, attorney and brother of previous speaker, Amy Weinstein, addressed the board and stated he has read the Uniform Wireless Communications Infrastructure Deployment Act and does not believe it has taken away the City's power to regulate cell companies.



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Michael Jones, 828 Woodruff, addressed the Board from a health standpoint. He is concerned with how this tower will affect people medically.

Allen Rutledge, Meadowbrook Country Club Estates, asked the Board to look at the tower that is now in Vlasik Park and then imagine this in their backyards.

## **LEGISLATION**

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### **Bill 4067 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO NETWORK REAL ESTATE ON BEHALF OF AT&T MOBILITY FOR A COMMUNICATIONS TOWER AT 15407 CLAYTON ROAD.**

Alderman Utt and Alderman Leahy will be abstaining from any voting on this Bill. Alderman Bullington asked Mayor Pogue if, in the absence of Alderman Kerlagon, this should be held over for the next meeting. Mayor Pogue stated the Board will still hold discussion of the Bill.

In discussion of Bill 4067:

Mayor Pogue stated the Uniform Wireless Communications Infrastructure Deployment Act was passed in 2014. While the Board is sympathetic to concerns, there are certain items the Board has no power to control or regulate due to this law. Mayor Pogue then referred to State Statute 67.5094, specifically items 2, 3, 5, 6, 7, 8 and 16. He also explained further that, under these items, we cannot deny a permit if the petitioner doesn't agree to collocate or look for a different location; we have no authority to ask them to put up a small cell deployment system instead of a large tower and we cannot deny a permit based on health concerns. He also stated that when this bill was passed, it took away local control to work with cell companies. The Lafayette Area Mayors Group held a meeting with state representatives and senators and asked why certain sections of local control were stripped. When shown a copy of the bill, one representative stated she did not know some of the sections were in the bill. Lobbyists have stripped local control. Mayor Pogue also shared that, under State Statute 67.5096, Section 5, we have 120 days from submission to approve or deny the permit. No action means this is automatically approved.

Mayor Pogue stated that during his time as an Alderman and as Mayor, whenever there's been a petition, the Board has done everything to make things as acceptable as possible to the community. They recognize there are health concerns, but their hands are tied. Mayor Pogue asked City Attorney Bob Jones if the statutes are still in effect; City Attorney Jones stated they are and further explained that these have only been interpreted once and this was via a court case involving University City. There are significant limitations on what a city can do; when a city makes a mistake and applies a wrong standard, it is a violation of the Missouri Citing Act. Also, there are Federal regulations to meet in addition to state laws. Alderman Roach had a question regarding Bill 4067 and which part of 67.5094 prohibits someone from finding that the petition doesn't meet standards. City Attorney



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Jones responded that special use exception conditions need to be harmonized with both state and federal laws. Alderman Roach stated then that he is not considering based on those conditions, but only considering the petition based on conditions stated in the Special Use Exception bill.

Alderman Fleming asked Bob Skebo about Claymont Co. denying another location. Mr. Skebo stated they denied their request for a location close to Claymont Center. There was also discussion of the reciprocity agreement; Alderman Fleming stated our City Attorney has not had the opportunity to review this at this time.

Mayor Pogue asked the petitioner to come forward. Matt Schlichter addressed the Board, stating they understand resident concerns, but also stated this is not a new tower that is being proposed. It is replacing a site that has been there for over 25 years. It will be moved a couple hundred feet, but is a replacement. The pole will have space for an additional carrier as well. They are taking something that is temporary and making it permanent. Alderman Stallmann asked if the current site is 5G; Mr. Schlichter replied it is not yet, but they are trying to build for the future. Alderman Fleming stated that the reciprocity agreement was not discussed at the Planning and Zoning meeting that he is aware of; Mayor Pogue confirmed this is the first they have been made aware. City Attorney Jones stated he reviewed the agreement and said it was really an architectural review provision. Alderman Fleming summarized that we are still within the 120 day threshold (October 3), five votes are needed to pass, one alderman is absent and two are abstaining; the City Attorney needs to review the agreement as well.

A motion was made by Alderman Fleming and seconded by Alderman Stallman to table Bill 4067 until the next meeting. A roll call vote was taken with the following results:

Ayes – Aldermen Finley, Roach, Stallmann, Fleming, Bullington

Nays -- None.

Abstain – Aldermen Leahy, Utt

Bill No. 4067 was tabled to the September 14, 2020 Board meeting.

**Bill 4068 - AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF BALLWIN, MISSOURI AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION PROVIDING FOR ROADWAY IMPROVEMENTS ON NEW BALLWIN ROAD FROM MANCHESTER ROAD TO TWIGWOOD DRIVE.**

This ordinance will authorize the Mayor to execute a contract with Missouri Highways and Transportation Commission for road improvements.

A motion was made by Alderman Fleming and seconded by Alderman Bullington for a first reading of Bill 4068, title only. A voice vote was taken with unanimous affirmative result and Bill 4068 was read for the first time.

In discussion of Bill 4068:

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None

A motion was made by Alderman Roach and seconded by Alderman Bullington for a second reading of Bill 4068. A voice vote was taken with unanimous affirmative result and Bill 4068 was read for a second time.

A roll call vote was taken for passage and approval of Bill No. 4068 with the following results:

Ayes – Aldermen Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Utt

Nays -- None.

Bill No. 4068 was approved and became Ordinance No. 20-15

**Bill 4069 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION FOR AN AMENDED SITE DEVELOPMENT PLAN TO MSH ELCO CHEVROLET CADILLAC INC. FOR PROPERTY AT 15110 MANCHESTER ROAD.**

MSH Elco Chevrolet Cadillac Inc. submitted a Petition for a special use exception for an amended site development plan to change the showroom footprint for the property at 15110 Manchester Rd.

A motion was made by Alderman Finley and seconded by Alderman Utt for a first reading of Bill 4069, title only. A voice vote was taken with unanimous affirmative result and Bill 4069 was read for the first time.

In discussion of Bill 4069:

Alderman Roach stated he has reviewed the petition and believes it meets all the elements for a special use exception. Architect Jeff Kiser addressed the Board and presented the showroom renovation plans. Alderman Roach asked when construction would start; it is anticipated it will start around the first of January.

A motion was made by Alderman Finley and seconded by Alderman Utt for a second reading of Bill 4069. A voice vote was taken with unanimous affirmative result and Bill 4069 was read for a second time.

Before conducting the roll call vote, Mayor Pogue read the statement regarding Special Use Exception standards.

A roll call vote was taken for passage and approval of Bill No. 4069 with the following results:

Ayes – Aldermen Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Utt

Nays -- None.

Bill No. 4069 was approved and became Ordinance No. 20-16

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**Bill 4070 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO PANERA BREAD FOR FRONT YARD PARKING AND OPERATION OF A RESTAURANT WITH OUTDOOR SEATING AND A DRIVE-THROUGH SERVICE WINDOW.**

Panera Bread requested the use of certain property for front yard parking and operation of a restaurant with outdoor seating and a drive-through window.

A motion was made by Alderman Finley and seconded by Alderman Utt for a first reading of Bill 4070, title only. A voice vote was taken with unanimous affirmative result and Bill 4070 was read for the first time.

In discussion of Bill 4070:

Alderman Roach discussed the lighting issues, which have been addressed. Alderman Stallmann asked about start of construction; it will be starting next year. It was also pointed out that this is the site of the old Steak N Shake and the Winchester Panera will be relocating here.

A motion was made by Alderman Finley and seconded by Alderman Utt for a second reading of Bill 4070. A voice vote was taken with unanimous affirmative result and Bill 4070 was read for a second time.

Before conducting the roll call vote, Mayor Pogue read the statement regarding Special Use Exception standards.

A roll call vote was taken for passage and approval of Bill No. 4070 with the following results:

Ayes – Aldermen Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Utt

Nays -- None.

Bill No. 4070 was approved and became Ordinance No. 20-17

**Bill 4071 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO BEER SAUCE SHOP FOR FRONT YARD PARKING AND OPERATION OF A RESTAURANT WITH PACKAGE LIQUOR AND BY THE DRINK.**

BeerSauce Shop has requested the use of certain property for front yard parking and operation of a restaurant with package liquor and liquor by the drink.

A motion was made by Alderman Finley and seconded by Alderman Utt for a first reading of Bill 4071, title only. A voice vote was taken with unanimous affirmative result and Bill 4071 was read for the first time.

In discussion of Bill 4071:

Alderman Stallmann asked about the background on the shop, but no representatives from BeerSauce Shop attended the meeting.





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A motion was made by Alderman Finley and seconded by Alderman Utt for a second reading of Bill 4071. A voice vote was taken with unanimous affirmative result and Bill 4071 was read for a second time.

Before conducting the roll call vote, Mayor Pogue read the statement regarding Special Use Exception standards.

A roll call vote was taken for passage and approval of Bill No. 4071 with the following results:

Ayes – Aldermen Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Utt

Nays -- None.

Bill No. 4071 was approved and became Ordinance No. 20-18

## **CONSENT ITEMS**

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### **ADMINISTRATION – Liquor License Renewals**

Liquor license renewals for the Craft Beer Festival and St. Louis Taco and Pita Grill are presented for the Board’s approval.

Discussion:

None

A motion was made by Alderman Fleming and seconded by Alderman Bullington to approve the liquor licenses. A voice vote was taken with unanimous affirmative result and the motion passed.

### **PUBLIC WORKS – Salt Recommendation**

Staff recommendations for salt purchases are presented for the Board’s approval.

Discussion:

None

A motion was made by Alderman Fleming and seconded by Alderman Bullington to accept the staff recommendation. A voice vote was taken with unanimous affirmative result and the motion passed.

## **MAYOR’S REPORT**

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Mayor Pogue thanked the Parks and Recreation staff for getting the playgrounds open quickly and safely.

Mayor Pogue also welcomed new City Administrator Eric Sterman to the Ballwin family.



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**CITY ADMINISTRATOR'S REPORT**

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City Administrator Sterman expressed his appreciation for being given the opportunity to serve the City of Ballwin. He also stated he is looking forward to working with everyone.

**STAFF REPORTS**

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**ADMINISTRATION** – Budget Calendar for Fiscal Year 2021

The budget calendar for fiscal year 2021 is presented for the Board's approval.

Discussion:

Finance Officer Denise Keller presented the plan for the order of the presentation of various budget components. Employee compensation will be discussed at the September 14, 2020 Board meeting. She stated there will be a work session prior to the October 12, 2020 Board meeting; this work session will start at 6 p.m. The public hearing and proposing the budget for adoption will be at the first Board meeting in December. Alderman Roach asked if they should email their budget priorities to her; Ms. Keller stated they should. Alderman Fleming asked if there was only one early start; Ms. Keller stated there was only one.

**CITY ATTORNEY'S REPORT**

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Nothing to report

**ALDERMANIC COMMENTS**

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Aldermen Roach and Stallmann also welcomed City Administrator Sterman to Ballwin.

**CLOSED SESSION**

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A motion was made by Alderman Fleming and seconded by Alderman Finley to move to closed session pursuant to Section 610.021(1), legal matters and Section 610.021(2), real estate matters. A roll call vote was taken to move into closed session at 8:18 p.m.

Ayes - Aldermen Finley, Roach, Stallmann, Fleming, Leahy, Bullington, Utt

Nays - None





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**OPEN SESSION**

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A motion was made by Alderman Fleming and seconded by Alderman Stallmann to reconvene. The motion was passed by unanimous affirmative vote.

A motion was made by Alderman Fleming and seconded by Alderman Finley to adjourn. The motion was passed by unanimous affirmative voice vote and the meeting adjourned at 8:45 p.m.

\_\_\_\_\_ TIM POGUE, MAYOR

ATTEST:

\_\_\_\_\_ POLLY MOORE, CITY CLERK