



MINUTES
PUBLIC HEALTH & SAFETY COMMITTEE
December 12, 2011

The Public Health and Safety Committee was called to order at 6:00 p.m. on December 12, 2011, by Chairman Jim Leahy. Committee members present included Alderman Michael Finley, Alderman Mark Harder, and Alderman Kathy Kerlagon. Also in attendance were Mayor Tim Pogue, Aldermen James Terbrock, Shamed Dogan, Frank Fleming, Richard Boerner, City Administrator Robert Kuntz, Assistant City Administrator Tom Aiken, Director of Parks & Recreation Linda Bruer, Code Enforcement Supervisor Jerry Klein, and City Attorney Robert E. Jones.

Street Lights

Chairman Leahy asked City Administrator Robert Kuntz to provide a report on the city street lights. Mr. Kuntz referred the committee to the street light map posted on the wall. He said most lights were put in by petition or required as a condition of approval in new subdivisions. These were mostly post top units. He introduced Gene Unverfehrt from Ameren Missouri.

City Administrator Kuntz said that the city has looked at the option of purchasing the existing street lights and also wanted Ameren to consider energy efficient lights. It was determined that this process was too expensive and that Ameren is not currently authorized to install energy efficient lights. There are about 1,200 post top lights in Ballwin at this time.

Mr. Unverfehrt said it is hard to eliminate some lights because the systems may not be wired in a manner to easily allow this. This makes intersection-only locations difficult to achieve.

Another rate increase is expected in 2013. Street lights will probably be part of this increase. The current \$18.80 monthly charge is for 9,500 lumen post top street lights. Mr. Unverfehrt said that about \$3.50 of this monthly charge is for power.

Mr. Unverfehrt presented his report. He said in 2010, Ameren asked for a rate increase of 8%. It was not granted, but a cost of service study was done. In 2011, Ameren got an 11% increase in lighting rates approved by the PSC.

Alderman Harder asked are there increases for all parts of the cost or just energy. Mr. Unverfehrt said all costs of service is included.

Alderman Harder asked if the street light cost is metered or based only on light type? Mr. Unverfehrt said it is based on the lumen rating of the lamp. Rates are based on the average annual electricity consumption. Pole and wiring costs are based on a state wide average cost for similar facility maintenance.

Chairman Leahy asked if they have an actual cost breakdown for each municipality? Mr. Unverfehrt said no.

City Administrator Kuntz asked does Ameren have an LED rate? Mr. Unverfehrt said they are looking at this. This is part of the reason for the experiment along Holloway Road in Ballwin. It will probably be expensive initially, but may get cheaper over time.

City Administrator Kuntz asked about tree trimming. Mr. Unverfehrt said Ameren does not trim for lighting. This would increase the cost substantially.

City Administrator Kuntz asked if cost containment is a goal, what can be done under Ameren? Mr. Unverfehrt said some lights can be deleted, which will result in pedestals remaining in place. He recommended an experimental turn off first.

Alderman Harder asked when a light is removed, will Ballwin no longer pay? Mr. Unverfehrt said all lights in Ballwin have been audited and the current list is accurate. All lights out of Ballwin's right-of-way were removed from Ballwin's list.

Chairman Leahy asked has Ameren ever sold poles to a city? Mr. Unverfehrt said no. Ameren will not sell systems if the light cable is in the ground near a high voltage line.

Alderman Harder asked if there are any plans to upgrade pole style and quality. Mr. Unverfehrt said pole upgrades happen as technology changes. Wood was first, later aluminum was used, and now the lights are installed on fiberglass poles.

Alderman Harder asked when LEDs come along, will the old lights be upgraded. Mr. Unverfehrt said they will probably be replaced as they become obsolete. This is how it was done in the past.

Alderman Kerlagon said she had an experience in Arizona with a yellow light. Do we have that technology? Mr. Unverfehrt said the HP sodium in use today is yellow in color.

City Administrator Kuntz said the current contract with Ameren will be up in August, 2012. Chairman Leahy said he does not want the city to go dark, but believes the pole costs are excessive.

Carl Essen asked about having lights be private. He said it's hard to get them repaired in a timely manner. Mr. Unverfehrt said this is correct. Disaster recover does not go to the city, but they may go to the PSC to ask for an adjustment afterward.

Deer Control

Chairman Leahy asked Alderman Terbrock to discuss the deer issue.

Alderman Terbrock said he has been approached by some residents about the large deer population. He said that Creve Coeur is working on an ordinance that addresses this problem. He is concerned that if surrounding cities pass laws, Ballwin may become a refuge and the deer population will increase.

Chairman Leahy asked could salt licks that are treated to sterilize deer be set around the city. City Administrator Kuntz questioned if that technology exists. Creve Coeur plans to allow hunting. Similar approaches like this are used in Chesterfield and other cities.

Alderman Terbrock said that Town & Country has fought this issue for years. They are paying professional hunters.

Director of Parks & Recreation Bruer said most legislation is just enabling people to bow hunt inside city limits. This requires insurance and permission.

Alderman Harder asked where is the deer population the worst? Director of Parks & Recreation Bruer said it mostly seems to be an issue in the southern parts of town, but also some parts of Ward 3 have been having problems.

Alderman Terbrock said three local cities seem to have reasonable and consistent regulations.

The committee adjourned at 6:50 p.m..

Chairman Jim Leahy

ATTEST:

Robert Kuntz, City Administrator

December 12, 2011



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

December 12, 2011

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

Den 5 of Pack 357, (Fourth Graders), posted the Colors and presented The Pledge of Allegiance.

MINUTES

The Minutes of the *November 28, 2011 Board of Aldermen meeting* were submitted for approval. Mayor Pogue **amended** page 3, to read as follows: Mr. Klein asked how many of the Ballwin officials are actually contractors and “none of the Board raised their hand”, signifying that none were contractors or suppliers on the Schnuck’s store. Alderman Boerner **amended** page 14, second paragraph, remove the word “another”, and second to the last line on the page, change “why can we accept it” to “why can’t we accept it”. Alderman Dogan **amended** page 2, paragraph 6, change copulations to calculations.

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

PRESENTATION

None.

PENDING ISSUES

None.

CITIZEN COMMENTS

Robert Klein, 2452 Capitol Landing: Mr. Klein said, “During the last meeting, there was a lot of discussion among the Board of Aldermen members of what rights a candidate seeking to become an Alderman deserves. It appears to me, and to many of my neighbors, that the sitting Government of Ballwin feels that they deserve special rights and privileges. The government officials try to parse words when it comes to their own responsibilities of citizenship. Due dates and the taxes and fees needed to run the infrastructure of our lives in Ballwin, do not pertain to them. Yes, we have schools, libraries, arts, parks, and fire departments that all need money to operate. They are every bit as essential to our lives as Police protection, leaf and snow removal, and the disregarding of our planning and zoning efforts.”

“I heard a theme repeated over and over by our Mayor, our City Administrator, our City Attorney, and our President of the Board, that the candidates seeking election deserve every benefit of doubt over their

qualifications. The City Attorney even went so far to give his misguided interpretation of our State laws, citing that any disqualifications is to be avoided at all cost. Our City Attorney is wrong. His opinion isn't any better than any of yours or mine."

"As you contemplate on what qualifications that each of you should hold in order to represent us citizens and taxpayers in Ballwin, ask yourselves, what do the citizens deserve, rather than what the candidates deserve. We deserve the benefit of all doubt that we have the best amongst us working on our behalf. We deserve to have people who are honest, forthright, and with unquestionable integrity serving us."

Alderman Terbrock asked, "Mr. Klein, are you an attorney?" Mr. Klein said no.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL # 3719 - AN ORDINANCE AMENDING PROVISIONS RELATING TO SOLICITING, PEDDLING OR HAWKING IN THE CITY OF BALLWIN.

Mayor Pogue said, "At the last meeting, there was discussion that the title of this chapter should be "Permit" instead of "License". Right now, we are looking at two sections of that chapter to amend. If we decide to use the word "Permit", we will have to amend other sub-chapters. I recommend that Bill 3719 and 3720 be held over and authorize City Attorney Jones to draft bills to make this change in all of the appropriate sections of the chapter."

City Attorney Jones said, "That is correct. Bill 3719 only amends parts of sections 14-3, 14-6, and 14-6(b). The term license is also used in sub-section 14-4 and 14-5, but it's not being amended by Bill 3719. In order to make it internally consistent on all of the sub-paragraphs of that particular section on soliciting, canvassing, we need to repeal and amend all of the sections. We were not doing that with this bill. If that's what the Board desires, to change it from a license to permit, which I'm not sure makes a whole lot of difference one way or the other, then we should hold these bills over and amend all six sections, changing license everywhere it appears to permit. If you decide to do that, Bill 3720 cannot be passed at this time. It amends a section that you were going to enact tonight with Bill 3719."

Alderman Harder said, "How will enforcement be done regarding penalties and the due process of someone in violation?" City Attorney Jones said, "The general enforcement provisions of our ordinances, which is a fine of up to \$1,000 or a jail term of up to 90 days or both, would be initiated by a complaint and information in the municipal court, and would be an opportunity for the defendant to be arraigned, plead guilty or not guilty and then defend himself if a trial is appropriate. It is the same process that someone with a parking ticket would have. Our general penalty provision in the ordinance states that each day is a separate violation. That applies to all of the miscellaneous offenses such as traffic offenses, housing code violations, etc. There's nothing unique about this. The penalty for not getting a permit would be within the discretion of the court."

City Attorney Jones said, "The reason there are two separate bills, is because when we passed the previous effort at trying to add \$5, not only did we add it to both sub-categories, but we also referred to the wrong ordinance because it was not yet codified. We didn't know what section it would go into."

Alderman Harder asked, "If someone has a no trespassing sign displayed, does that do the same as no soliciting?" City Attorney Jones said, "A no solicitation notice would be a stronger notice than no trespassing. Somebody soliciting may not be trespassing. Someone is only trespassing if they remain somewhere after they are asked to leave, or they approach a posted property. Soliciting with a permit,

they are allowed to approach that property and knock on the door. If there's a no solicitation sign posted, they would not be trespassing, but should not knock on the door."

Alderman Harder said, "In C, the last sentence, it says no handbiller shall affix any handbill to any tree, lamp post, or utility pole. When that happens, who takes it down? Is that a first amendment issue? How does this cover coupons and other things hanging on your door? If someone puts a political sign on a lamp post, and the police take it down, is that going to be an issue?" City Attorney Jones said, "No, I don't think it would be an issue. If it's on private property, the owner always has the right to take it down. If it's on public property, the City has the right to take it down. Things that are in the public right-of-way are regulated by the city. If the language is too restrictive and any of the Aldermen feel it should have a different tone or description, this can be changed in the next draft."

Alderman Terbrock said, "I feel changing license to permit eliminates confusion." The Board agreed.

BILL # 3720 - AN ORDINANCE AMENDING THE AMOUNT OF FEES CHARGED FOR THE ISSUANCE OF SOLICITOR IDENTIFICATION CARDS.

A motion was made by Alderman Terbrock and seconded by Alderman Fleming to draft legislation amending the remaining sections that are not covered by Bill 3719 and 3720. A voice vote was taken with a unanimous affirmative result and the motion passed.

BILL # 3721 - AN ORDINANCE APPROVING AND ADOPTING A BUDGET OF ANTICIPATED CASH REVENUE AND CASH DISBURSEMENTS FOR OPERATIONS AND CAPITAL IMPROVEMENTS FROM THE GENERAL REVENUE AND CAPITAL FUNDS OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2012, AND ENDING DECEMBER 31, 2012, PROVIDING FOR EXPENDITURES IN ACCORDANCE WITH SAID BUDGET AND MAKING APPROPRIATIONS THEREOF.

Mayor Pogue read the Budget Message from the Summary for 2012: "Our proposed financial plan reflects a projected expenditure of \$18,749,419, compared with \$17,668,313 for 2011. On the revenue side, we are projecting a total of \$19,447,699. This dramatic shift is not a reversal in recent economic conditions, rather it primarily reflects application of a Federal grant of \$1,080,000 for the reconstruction of Kehrs Mill Road, which will partially, 80%, offset our one-time expenditure of \$1,351,500 for the project. When you take Kehrs Mill out of the equation, total expenditures will actually be \$270,394 less than in 2011. While overall revenues are expected to come in at \$28,775 above 2011 levels. Although we are not completely out of the woods, the future looks somewhat brighter than it has in the recent past. Continued cost cutting and greater efficiencies have enabled us to insure continuation of all current programs and services in 2012. In 2011, we aggressively pursued numerous energy efficiency measures, which will reduce our future operating costs. Obsolete mechanical units have been replaced. Building lighting has been retrofitted. Additional insulation is in place. Solar panels are being installed on the roof of the Government Center by year end. We continue to explore options to reduced our escalating street light bill, which is now approaching ½ million dollars per year. Perhaps our greatest achievement of 2011 has been the Board's commitment to reduce our debt obligation by pre-paying the final four years of our 2002 certificates of participation issue for the construction of the City's Aquatic Center. As a result of this decision, the City will be completely debt free by 2013. This will free up over a million dollars per year for other purposes such as additional street improvements and repairs. Looking forward, the Board and I will address the issues of formulating a long-range plan for allocation of resources for the future of this community. As always, these meetings will be posted, advertised, and open to the public. We welcome and encourage your attendance and participation."

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a first reading of Bill No. 3721. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3721 was read for the first time.

Alderman Finley said, "\$5,000 was budgeted for a legal review of the Personnel Manual. This makes sense because it needs to be revised to be sure we are in compliance with any changes in the law. The banks service charges and credit card service charges are appropriate because of the fact that as a municipality with a large budget, there are a lot of monetary transactions and the charges accompany those transactions. In Parks and Recreation, it's not a large expenditure, but it's something I have an issue with. It's the wildlife expenditure of over \$4,000 for the trained dog to go into the water to chase away the geese. When I joined the Board, I looked into this issue. I visited the parks, talked to parents, and there were parents who felt there wasn't much problem with the geese, especially because of the fact that they stayed close to the pond and didn't come near the playgrounds. I have questioned whether this program really works. It was my understanding that the gentleman who trains the dog, his plan was he was providing the service for free in this budget year, and next year he would charge \$1,000."

City Administrator Kuntz said, "If it's the Board's preference, we can bid this out. This is similar to the deer control discussed earlier." Director of Parks & Recreation Bruer said this discussion should be held shortly after the first of the year. Alderman Finley said, "I may vote against any expenditure towards this." The Board agreed to discuss the expenditure after a bid process.

Alderman Boerner asked about the city's participatory obligation in funding the Olde Towne Plaza TIF debt. City Administrator Kuntz said, "The City has a cap on its potential participatory obligation, and that fluctuates based on the performance of the project. The municipal debt, the two issues that have funded the city infrastructure will be retired based on the schedule that we discussed. The TIF for Olde Towne Plaza, by law, we have to participate in and list it on our books. For the most part, with a very small cap, that is not a pure municipal exposure. It's the development's exposure." Alderman Boerner said, "All I can go by is what we have in our report and what the auditors have said."

Alderman Boerner said, "What is the source of the County road tax?" City Administrator Kuntz said, "It's a very small portion of the County property tax bill that then gets redistributed out to each of the municipalities based on the amount of roads that they have within their city." Alderman Boerner asked, "It's a component of the real estate tax and perhaps the personal property tax?" City Administrator Kuntz said, "That's a dedicated one. It's one of the few that's dedicated to the city. That's why we allocate it to offset road maintenance and expenses."

A motion was made by Alderman Finley and seconded by Alderman Fleming for a second reading of Bill No. 3721. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3721 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3721 with the following results:
Ayes – Finley, Fleming, Terbrock, Harder, Boerner, Leahy, Dogan, Kerlagon. Nays – None. Bill No. 3721 was approved and became **Ordinance No. 11-62**.

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. None.

MAYOR'S REPORT

Clarkson Road night work: Mayor Pogue said, "MoDOT has recommended that the contractor do night work. They were doing day work with single lane closure. They were experiencing a large back up and MoDOT had safety concerns. As a result, MoDOT required that they do the work at night. The lane closure will be at night, while the shoulder closure will be during the day. There was also concern about the Ameren work because the Ameren trucks were parking in some of the subdivisions. It was thought that this was for the Schnuck's construction. That is a separate project that Ameren is working on."

Alderman Harder asked, "What is the anticipation of how long this is going to proceed both with the MoDOT construction and the Ameren work in that area?" City Administrator Kuntz said, "We'll pursue that, but I was led to believe it wasn't extensive." City Attorney Jones said, "The lane closure request form says December 5 through December 9. There may be another permit." Alderman Harder said, "The concern is the 1,000 watt lights and generators running during the night as they are working on the intersection. Since there's no buffer, the sound carries for blocks in that area. During the day, there are bulldozers. It's like a 24-hour construction site." Mayor Pogue asked City Engineer Kramer to check to see if the night work is finished and to send notification to the Board.

Alderman Harder asked, "If it's MoDOT, do we have jurisdiction to shut them down or does someone through the State have to do this?" City Attorney Jones said, "MoDOT would pre-empt our enforcement on a State highway. We can control the site and the construction times, but someone from the State would have to control MoDOT on the street. There are hours of limitation by ordinance for the construction site."

CITY ADMINISTRATOR'S REPORT

Practice Field Fees: City Administrator Kuntz said, "This is a recommendation by the Parks Director to increase the fees for practice field rentals. This is a popular program starting in the spring. It's recommended that the fee be increased from \$25 to \$50 per session. A comparative survey was conducted."

Alderman Fleming asked what is considered a session. Director of Parks & Recreation Bruer said the first session ends in May. Alderman Fleming suggested that the first session be extended to the time the next session starts so that it will go past Ballwin Days. He said Field One should be middle school and older, and Field Two should be grade school and younger.

City Administrator Kuntz said, "We're looking at an option of restoring the potential of a field at Ferris Park on a temporary basis because of taking one field out of commission."

Mayor Pogue spoke to the Scout Troop in the audience: "The City of Ballwin rents out the ball fields in Vlasik Park. The coaches can rent the fields for you to practice. In the past, we charged \$25 per session. There are two sessions in the year. It is being discussed to increase the rate to \$50 per session. When we did a comparison of what other cities were charging, we charged less than other locations."

Mayor Pogue said, "I have a concern about increasing from \$25 to \$50. I don't have a son that will be playing baseball next year, so I won't be looking for a field. It's restricted to our residents. It's a great asset that we have. I have a hard time raising it 100% at one time." Alderman Kerlagon said, "I have that same thought."

Alderman Terbrock said, "One of the fields I will be renting this year will cost \$100. I feel that \$50 is cheap." Alderman Fleming said, "I agree. I paid more than \$100 for a church field, and I had to do work duty with other parents. \$50 divided by 10 – 15 families is only \$4 or \$5 for 8 weeks of fun. It's not too much."

Alderman Harder suggested, "Perhaps the revenue collected with the increase could be used to make more fields. The only place for fields is in Ferris Park." Alderman Terbrock said, "Ferris Park is full of soccer teams. If a baseball field is built, that will be a problem. I'm not in favor of putting a baseball field in Ferris Park."

A motion was made by Alderman Fleming and seconded by Alderman Terbrock to draft legislation to adjust the fee as recommended by the Director of Parks & Recreation. A voice vote was taken with a unanimous affirmative result and the motion passed.

Strategic Planning: City Administrator Kuntz suggested a Strategic Planning session for the Board, which will be a half day event in January or February. This will be an opportunity to take a look at some of the future directions that this community should take with policy guidance. He said, “At the Public Health & Safety Committee meeting held prior to this meeting, the discussion was about residential street lights. Our costs continue to escalate while this is an amenity that is enjoyed by the bulk of the residents in this community. It’s a standard that many of our neighbors do not provide in their communities. As costs continue to go up, we need to take a look at alternatives and be satisfied that it’s a good value for the tax paying dollars that are expended. That would be one of the topics that the Board could discuss. I’ve listed other options for consideration. The Mayor mentioned future directions in what in 2 years will be debt-free Ballwin. Where should the resources be allocated and what should the priorities be in terms of how much reserve fund balance is appropriate?” He asked that the Board consider deciding on a date for this work session.

Mayor Pogue said, “We had a meeting last week with MoDOT regarding funding to be allocated specifically for Great Streets in relation to the re-paving of Manchester Road in 2014. The \$5 million funding could be used in 2013. They asked the three cities who are still participating and have adopted the plan to come up with some project locations that we could use that funding towards. This is strictly for regional transportation for the Manchester Road Great Streets project on top of the re-paving project. MoDOT wants to do this in conjunction with the overlay work in case there’s any change in curb cuts.”

Alderman Terbrock said, “I don’t disagree with this agenda at all. I would also like to discuss getting a long range vision out of all of this. What do we see the city moving towards? Where are we going? There’s never been an elaborate discussion on this topic. We don’t have a plan or direction. There’s a Comprehensive Plan, but we just operate day to day and just sustaining. I’d like to get more direction on where the City is going.”

Alderman Terbrock said, “There are a lot of cities talking about their sustainability plans. We’re moving in this direction with the solar panels and street light discussion. Developers talk about using pervious pavement and storm water control. We don’t have any plan that we are following in that direction. Someone experienced in this area could speak with us to provide ideas. The City of St. Louis had a two-day summit last week on this subject.”

STAFF REPORTS

None.

CITY ATTORNEY’S REPORT

Candidate Filing & Certification: City Attorney Jones said, “The City Clerk attended a meeting on Wednesday, November 30, at the Board of Election Commissioners, prepared a memo that you have in your packet. I met with Marie Clark and Bob Kuntz, and Richard Boerner happened to be there as well, on Friday, December 2. We went over the information that Marie provided to us with regard to candidate filing and certification. I took the Declaration of Candidacy form that we used last year and I made some changes. I deleted the reference to Section 115.349 that’s at the upper right hand corner of the form submitted by the Election Board because it does not apply to municipal elections. I added, at the request of the Election Judge, an indication that all campaign finance disclosure reports from the previous election cycle were filed, and then I checked all of the additional requirements, which are in the boxes at the bottom of the form to make sure they were consistent with our ordinances and State statutes. Based upon the information that Marie received at her meeting, I prepared that Declaration with the changes and brought it back to you at your request. It also includes Alderman Harder’s recommendation to add United States Citizen immediately after the candidate’s name.”

Mayor Pogue said, “I want to thank Marie. From the memo that she prepared, she took all of the dialogue that’s been discussed at our Board meetings and made sure that the questions were asked and we got answers from the Board of Elections. We’ve asked quite a few different people and received various

different opinions. It was nice to finally get this hammered out with the Election Board and provide a direct answer.”

Alderman Harder said, “For the issue of the Declaration, this is what I was after. If we need to make a motion to adopt this, I would be in favor of this.” City Administrator Kuntz said, “Tomorrow morning, this form will have to be used as candidate filing begins at 8:00 a.m.”

Alderman Finley said, “I feel we need to add to the sentence about the candidate certifying that I filed all the campaign finance disclosure reports. I think there should be a clause that states, filed all campaign finance disclosure reports required by the Missouri Ethics Commission.”

Mayor Pogue said, “We don’t file them with the Ethics Commission. Since we have an Election Board, we file them directly to the St. Louis County Board of Elections.”

City Attorney Jones said, “I took that language directly out of Chapter 71. I parroted the language in the section requiring those disclosure reports. These are the only ones that are disqualifying events if they are not filed.” Alderman Dogan asked, “Will that include disclosure reports both from municipal elections and from any past state or federal elections that a candidate would have run in?” City Attorney Jones said, “Yes. All prior elections of which I was a candidate or served as a committee treasurer or deputy treasurer. That is word for word out of the statute.”

Alderman Terbrock asked, “Should we put State or Federal in it to make sure someone doesn’t misinterpret this?” City Attorney Jones said, we can. City Administrator Kuntz said, “I want to remind the Board again that we are very much under the gun in terms of finalization of this form. The form has to be handed out at 8:00 a.m. tomorrow morning.”

City Attorney Jones said, “The campaign finance disclosure report was a topic that the Board of Election Commissioners did immediately and sent notification last year during the election cycle when they thought there were some candidates that may not have filed all the campaign disclosure reports that were required. Contrast that with municipal fees and tax issues, for example, which the Board of Election Commissioners did not really take any position on, they were very aggressive regarding this particular event.”

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to accept the Declaration of Candidacy form provided by the City Attorney. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Harder asked, “Do we have direction on what Marie’s job is going to be with this election, and is she going to check the website for payment of taxes based on what she found out at the Election Board and based on what we talked about at this meeting? Are we giving her direction on what to do?”

Mayor Pogue said, “Right now, it’s status quo.” Alderman Harder said, “Status quo means that she doesn’t check it.” Mayor Pogue said, “Correct.” Alderman Harder said, “It sounded like, at the last meeting, that based on what we saw with the website, what her conversation was with Judge Goeke, that the Election Commission and other clerks that attended this meeting, it was determined that 50% do check the website for payment of taxes, and see it as a reliable source for checking tax records. Why wouldn’t we participate in that? It looks like that’s what they expect of us. The question that Marie asked Ms. Wall was about the certification sheet. The Election Judge said at that point, we assume the City has checked for any irregularities in this case. They are assuming that the City is checking to make sure the candidate has paid their taxes, at least age 21, resident, and all the things that are necessary to certify the candidate. I think we should give Marie the ability to check on this. Even Judge Goeke said the use of the County website is a good thing to do because it’s available and updated by the County. We should decide if we are giving Marie the responsibility to check their driver’s license, age, residency, a citizen and if their taxes are paid.”

City Administrator Kuntz said, "Are you proposing that the City Clerk check the information and forward it, or certify or refuse to certify?" Alderman Harder said, "In the case of the tax bill, it's my understanding that they have until the last candidate filing date. If they haven't paid the taxes, she can notify them. If they haven't paid by the last candidate filing date, they will not be included on the ballot." City Administrator Kuntz said, "Where does the consequence come in at this level?" Alderman Harder said, "If the candidate has not paid their taxes by the last filing date, they cannot be on the ballot. If they say they have paid, but it's not shown on the website, they should bring their receipt to the Clerk as proof of payment. At that point, we can certify them to be on the ballot."

Alderman Terbrock asked, "What if they pay it and don't bring in the receipt of payment, and she doesn't certify their candidacy, what happens then?" Alderman Harder said, "She may have to check the website more than once." Alderman Fleming said, "Judge Goeke said that if they don't present proof of payment to the City Clerk, it will still be better to include their name as a candidate. You want Marie to check, and if she finds that they haven't paid, you want her to notify the candidate." Alderman Harder said yes. Alderman Fleming said, "When it gets down to sending in the paperwork, do you want us to go so far as not including somebody's name if it doesn't show them as paid, and if they don't take action and report back to us? Do you want us to not send in that person's name as a candidate?" Alderman Harder said, "Yes. That's the consequence of this procedure." Alderman Fleming said, "Even though Judge Goeke said it would be better to put the person's name on the ballot. There's still no black or white in this, with any court, with any office or official that we checked with. It's still coming down for me that the greater injustice is to keep someone off the ballot than to put them on. If they are put on the ballot, the opponent or anyone in the community can file a complaint, but there's no remedy to taking somebody off the ballot. If you mess that up, and keep them off the ballot, I'll pretty much guarantee, and even one of the cities said it resulted in much legal confrontation. That could be a Federal civil rights case at that point and as serious of an issue as you can put the city in. I don't think it's worth it for just the \$28 sewer lateral fee payment. This isn't about someone's personal property tax, right?" City Attorney Jones said, that's right. Alderman Fleming said, "For \$28, do you want to expose the city to a civil rights litigation? I don't. Feel free to convince me otherwise if I've overlooked something."

Alderman Harder said, "That's a good point. Which of the qualifications do we then strictly enforce and which do we overlook?" Alderman Fleming said, "The Election Board conducted the seminar, provided the forms, prints the ballots, deliver the voting machines, staff the polling places, tabulate the results, certify the results, but this one little part, they don't want to do. They do just about everything else related to the election, but they want to put that back on us."

Alderman Fleming asked, "Would it be acceptable for us to send in the paperwork and state, please note that we have not been able to verify that this candidate has paid their sewer lateral fee, and then just leave it up to them?" City Attorney Jones said, "Yes, we can do that. The Declaration of Candidacy allows the candidate to certify that they are either not in arrears or if in arrears, will pay the municipal sewer lateral fee, which is the last day of filing, which is January 17, 2012. In my opinion, that's the only responsibility we have is to secure this attestation from the candidate. Since the City Clerk is not the Election Authority, we do not have an obligation to further investigate or keep the candidate's name off the ballot. For all the reasons we've discussed over the last few months, the case law that seems somewhat inconsistent, the statutes that are in conflict, the position of the Election Board, which is wishy washy at best, the fact that it's impossible to determine what would be adequate proof that the sewer lateral fee was paid by a candidate, for all of those reasons, it's still my opinion that we should not wade into this fray. If we wanted to temper the attestation by saying it's been impossible to determine whether Candidate A has paid the taxes, I suppose we could do that. I think all we need is a signed Declaration of Candidacy."

Alderman Harder said, "If we proceed down that path, then you're saying that the candidate takes some kind of legal responsibility, they swear to it, or whatever, that they have fulfilled the qualifications, and they lie on this form, what's the consequence for that candidate? Will they be taken off the ballot by a court action?" City Attorney Jones said, "They can be." Alderman Harder said, "Somebody has got to take responsibility. Either Marie takes it or the candidate takes responsibility for these qualifications. If

we put it on the candidate, what's the consequence and due process if they lie on this form?" City Attorney Jones said, "that would be up to an opponent or the Election Authority, which is the St. Louis County Board of Election Commissioners, if they decided to exercise that jurisdiction, which I believe they have, but they won't acknowledge it."

Alderman Harder said, "They are saying this is our responsibility and that we should decide who gets on our ballot, and we come up with our own rules." Mayor Pogue said, "I prefer that Marie checks the website. If it appears that they have not paid, Marie should notify them. We will have done our due diligence. If they don't come in and show proof of payment before sending in the forms to the Election Board, we make the notation and send the forms to the Election Board. At that point, we will have done everything we could do. We can't force them to come in to show proof of payment. We can not leave them off the ballot." City Administrator Kuntz said, "I'm okay with that. It's keeping the person off the ballot that scares me."

Alderman Boerner asked, "What is proof certain that someone has paid their taxes?" City Attorney Jones said, "A receipt from St. Louis County is proof, however, if the person gave the Collector a check and it bounces, arguably, the taxes have not been paid. Adequate proof is not up to us to determine." Alderman Boerner said, "Sure it is. That's what this discussion is about." City Attorney Jones said, "We've had this discussion for months, and you and I obviously disagree." Alderman Boerner said, "I'm asking for an up or down vote. It's my opinion that the City Clerk should be checking the County website. The attestation form is also a certification that the candidates are not in arrears in their taxes. We have a State law that says, notwithstanding any provisions or laws to the contrary, no person shall be certified as a candidate nor shall their name appear on the ballot as a candidate for such office who is in arrears for any unpaid city taxes, etc. That's a fact. Section 115.631, which is the statute that says anyone who willfully and falsely makes any certification or files an affidavit, and that's 115.01 through 115.364. That's a Class C felony." City Attorney Jones said, "We don't prosecute a felony." Alderman Boerner said, "I've been told that if you have an official copy of the tax history, that's good proof because a title company will take that. The taxes of the office complex that I have my office in, the taxes are \$120,000. They will accept that if the taxes have been paid or not. I think by the fact that we have sworn to uphold and support the statutes of the State of Missouri, this is a statute. I believe the rule of law."

Alderman Boerner said, "If someone brings up a copy to Marie the day after the last day for filing for candidacy and says here is the official copy from the County related to this individual, and it shows that this person as of the last day of filing is in arrears on their taxes, so we would go ahead and file that anyway, we would certify and provide an affidavit that potentially was false, to the Election Board, and would that be grounds for a suit under 631?" City Attorney Jones said, "That would be up to a prosecutor, a warrant officer, or somebody that makes that decision." Alderman Boerner asked, "Do we want to put Marie in that position?" City Attorney Jones said, "I don't think she is in that position." Alderman Boerner said, "She is if a suit is brought under that statute. The statute is pretty clear. The intent in what the statute says is undeniable. The issue is what is absolute proof that someone is unqualified? The whole issue revolved around whether we are going to abide by the law, and whether the official copy of the property record is sufficient to deny someone to be on the ballot."

Mayor Pogue asked, "Whose job will it then be to interpret the legal document from an attorney saying that this person doesn't have to pay their taxes?" Alderman Boerner said, "If its his attorney, we should go by that because it has to be something that's official from a Judge." Mayor Pogue said, "That's why I think submitting a statement that Ballwin has not been able to obtain proof that taxes are paid is the best way to go." Alderman Boerner said, "We can do that." Mayor Pogue said, "If we notify the candidate that they have not paid their taxes, and we put that note on the form and forward it to the Election Board." Alderman Boerner said, "That's not what we are supposed to be doing. We are supposed to certify that they have complied with 115.346. We can't certify that." Mayor Pogue said, "If we're not able to obtain proof that they have, are we going to keep them off the ballot? That's what the whole question is. If we're not able to obtain that, are we going to keep them off the ballot?" Alderman Boerner said, "We can obtain the proof because that's an official copy of the history. Marie has one week from the time that the Declaration of Candidacy closes. During that period of time, she can inform the candidate that they are

not paid and she cannot put them on the ballot unless they provide proof that they have paid the taxes. If they pay in that 7-day time frame, that will be a judgment call.” Mayor Pogue said, “I don’t want to have a judgment call. If we’re not able to obtain proof that they have paid, we send it to the County with notice of our findings.” Alderman Boerner said, “If they’re not paid as of that date, they shouldn’t be on the ballot. That’s what the statute says. I believe in the rule of law, and I believe that we should abide by the statute, and that’s what I feel strongly about.”

Alderman Terbrock said, “Is everything so muddy and so wide open and broad and vague in this whole thing because no body wants to take a stand on this? From the top down, is that the case? It comes down to that point that nobody wants to be the one to take a name off the ballot.” City Attorney Jones said, “Probably, because you have a virtual absence of these kinds of questions in appellate court decisions. The cases that address this are not right on point with this question. As long as our City Clerk has a Declaration of Candidacy, for years we have taken the position that this allows the City Clerk to certify the candidate. Quite frankly, most other cities that I’m aware of do the same thing.”

Alderman Terbrock said, “In that regard, the Declaration of Candidacy becomes part of the problem because if they have violated that, it could become part of the prosecution.” City Attorney Jones said, “It could. There’s always a remedy available to an opponent or a tax payer or resident to challenge placement of the candidate’s name on the ballot.”

Alderman Finley said, “I want a clarification on specifically what are we going to vote on. I’d like specifics on this.”

A motion was made by Alderman Boerner that we make it a duty of the City Clerk to verify on the County website the next day after the last day for filing for candidacy in the City of Ballwin, that she would look at the County website to determine whether that candidate is in arrears on their taxes. I would say that we authorize Marie Clark, City Clerk, as a basis for determining whether someone is certified to appear on the ballot, that she check the County website to determine whether a potential candidate is in arrears on their County property taxes, which in this case would be the sewer lateral fee, the sewer lateral tax.”

Mayor Pogue said, “This just authorizing the City Clerk to check the County website the day after filing ends to verify if their taxes are paid, including the municipal fee.” Alderman Terbrock said, “To certify the candidate to be on the ballot.” Alderman Boerner said, “Yes, as a basis to determine if a candidate is certified.”

Mayor Pogue said, “This going to authorize Marie to check the website.” Alderman Fleming said, “Alderman Boerner’s motion is that she should check it after the filing closes, so, your motion is that she shouldn’t do anything until the filing closes.” Alderman Boerner said, yes. Alderman Fleming said, “so don’t look it up when they file and notify them if they are in arrears. Look it up after it closes.” Alderman Boerner said, “There’s no point in doing it before because the individual could pay it anytime between now and the closing date.” Alderman Fleming said, “That’s the only time you want her to do it.” Alderman Boerner said, “right”. Alderman Finley said, “She’s going to check the website to determine arrearage.” Alderman Boerner said, “Yes. She will use that as a basis to determine if the potential candidate should be placed on the ballot or not, should be certified.”

Alderman Fleming said, “The motion hasn’t been seconded yet. What I hear you say is that, when you say use this as a basis for qualification, is it part of your motion that she shouldn’t put someone on the ballot?” Alderman Boerner said, “Let’s keep it simple whether she should check the County website.”

Alderman Boerner **restated the motion** as follows: “**I make a motion** that we pass an ordinance that would allow Marie Clark, City Clerk, to check the County website the day after filing Declaration of Candidacy closes, to determine whether the candidates are in arrears in payment of their taxes.”

Alderman Fleming asked, "Is it necessary to pass an ordinance for this?" City Attorney Jones said, "It's not necessary. If we adopt a procedure, it would be nice to have an ordinance to include this in the duties of the City Clerk."

The motion was seconded by Alderman Finley.

Mayor Pogue asked for a show of hands. All in favor (Aye): Boerner, Finley, Dogan, Harder. Opposed (Nay): Kerlagon, Leahy, Fleming, Terbrock. Mayor Pogue voted Nay, to break the tie vote. The motion failed by a vote of 5-4.

Alderman Fleming said, "I don't have a problem with instructing Marie to check the County website when someone files and notify them if they are in arrears. I can take it a step further to instruct the City Clerk and City Administrator to notify the Election Board if they do not appear to have paid. That's where I stop. I don't want us keeping someone off the ballot."

Alderman Dogan said, "I'd rather do that than nothing." Alderman Terbrock said, "I'm in agreement with you, Alderman Fleming, I don't have a problem with Marie checking the County website, but I don't want the City to be involved in a lawsuit if the candidate is taken off the ballot." Alderman Fleming said, "I don't want to put Bob and Marie in that position." Alderman Dogan said, "Although there could be a lawsuit if someone is put on the ballot that's not supposed to be on. The city could be sued either way."

Alderman Boerner said, "If you are informed that someone is in arrears, and you certify them anyway, that's filing a false affidavit." Alderman Fleming said, "City Attorney Jones, what's your opinion on this. Your opinion is still that all we need is the attestation form." City Attorney Jones said, "Yes". Alderman Boerner said, "What if they are, in fact, in arrears, and we said they weren't?" City Attorney Jones said, "I don't think that attestation means anything more than that the candidate has met the qualifications, which is to demonstrate that they are a resident, they are the proper age, and that they've filed a Declaration of Candidacy, indicating that they have paid their taxes, or that they will pay their taxes. I've seen nothing to the contrary."

Alderman Dogan said, "Regarding what Alderman Fleming is proposing, if we go ahead and take the step of saying that once a candidate has filed, then we're going to instruct the City Clerk to check the County website. If she concludes that the person is in arrears at that time, and the person is still in limbo at the time of filing, then what do we do?" Alderman Fleming said, "I'd like to go at least this far with the idea to try to put this squarely back on the Election Board where I think it belongs. If we determine to the best of our ability that someone hasn't paid their taxes, based on these records that we don't have control of, but we send in the attestation form, I think Bob and Marie could be comfortable submitting it if we state on the form, that on the advice of our City Attorney..... Our City Attorney has indicated that the attestation form is the only thing required for the candidate, to the best of our ability, we cannot independently determine that the taxes are current and the decision to place them on the ballot is yours, or something like that, to have the City Attorney prepare a statement that Bob and Marie would be comfortable with. It at least takes it farther than nothing. We're shining a light on whether or not people have paid their taxes or not." City Attorney Jones said, "We'll prepare a statement that will notify the Election Board that we can't confirm the payment of taxes." City Administrator Kuntz said, "It will be a statement to at least call their attention to it."

Alderman Fleming asked, "Does the Board want a motion in this direction?" Alderman Kerlagon said, "I do."

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to instruct the City staff to attempt to verify qualifications, including tax payments, and notify any candidates who appear to be in arrears, and to notify the Election Board of our findings. A vote was taken by a show of hands with the following result: Aye: Kerlagon, Leahy, Fleming, Dogan, Finley, Terbrock. Nay: Boerner, Harder. The motion passed by a vote of 6-2.

74 Breezeview: City Attorney Jones said, “At the last meeting, I talked to you briefly about the administrative proceeding to demolish the property at 74 Breezeview. We have provided all of the necessary notifications, and there will be a hearing this Friday morning, December 16, at 9:00 a.m. Notification has been provided to the lender, the trustee, and property owner. I spoke to the lender who does not intend to take a position on this one way or the other. We’ve had no contact from the property owner. I assume we’ll proceed on Friday morning. An appropriate order, after hearing the evidence will be administered by the City Administrator, then there’s a ten-day period before which the City can begin the demolition process.”

Mayor Pogue asked, “Would it be appropriate for this Board to authorize the City Administrator to solicit bids for the demolition after the hearing?” City Attorney Jones said, “Contingent upon an outcome of the hearing that would result in demolition, that would be appropriate.”

Alderman Harder asked, “We pay for the demolition and try to recoup it later?” City Attorney Jones said, “Yes, with a special tax bill against the property, which becomes a lien, and then also there’s a process in municipal court. I encourage taking advantage of both processes to try to obtain reimbursement. It could be \$15,000 - \$20,000” City Administrator Kuntz said, “We will be tapping into the Board’s contingency fund. Something like this could never be anticipated.”

City Attorney Jones said, “We’re not going to be selling the property. It will still belong to the property owner. It just won’t have a structure on it anymore. The lot will be seeded and restored to a grass lot.”

A motion was made by Alderman Terbrock and seconded by Alderman Leahy to direct the City Administrator to request bids for the destruction of the property, contingent upon the outcome of the hearing. A voice vote was taken with a unanimous affirmative result and the motion passed.

ALDERMANIC COMMENTS

Alderman Terbrock said, “This weekend, I heard something that appalls me. I hate to dredge this up because of the topic. We have a gentleman that comes in and speaks to us and chastises us for everything that we do since the Schnuck’s thing has gone on. My wife met some people that live in that same neighborhood. The husband works for Schnuck’s. It got mentioned because he found out she was my wife. He said considering the things that were done to us, I can imagine what you guys went through. One of the things he told us was that someone actually took their newspaper in the mornings and rolled dog feces in it and put it back on their driveway. These are the kinds of people that are coming in here and talking about being honest and having integrity run for aldermanic seats. I’m pretty sure that’s not very honest and doesn’t carry much integrity. It really makes me ill that someone would do that to their neighbor. This person had nothing to do with that process whatsoever. Considering his employment, they did that. It makes me ill.”

Budget: Alderman Finley said, “I did not receive any citizen feedback in person, e-mail or on the phone. Other than the scouts and their parents, we have only five citizens here, excluding the press. No one has commented on the budget. I feel that the citizens are in favor of what we passed tonight in terms of the budget.” Mayor Pogue said, “I do a frequent e-blast to the residents during the budget process, and especially during the discussion of debt retirement. I received numerous e-mails congratulating the Board and staff on this. It was an enormous step that we took that you just don’t see in the surrounding areas during these economic times. We are paying off debt, and some other cities are working to cut jobs and services. We continue to maintain our services while paying off the debt.”

Citizen Comments: Alderman Boerner said, “With respect to the people that come before this Board and make comments, and related to the Schnuck’s development, I’ve had exposure to a number of those people. They are always respectful and they respected me for my opinion. They did everything they could possibly do. They disagreed with the action of the City, and did all they could to prevent the development from happening, which was within the confines of the law. Just because one individual did

something inappropriate to a Schnuck's employee, does not mean that we should broad brush to condemn every one of them and compare them to that individual who did something very inappropriate." Alderman Terbrock said, "They do it to us all the time. They broad brush us....." Alderman Boerner said, "They were always very respectful to me. As you will recall, I was one who said the most in terms of that hearing."

Transportation Development District (TDD): Alderman Dogan said, "I want to go back to our debate at the last meeting regarding the presentation by Mr. Biermann about the TDD. I was reading the report in the "Patch" and it seemed unclear whether or not the Board had taken a position on the TDD. I want to clear up any misperceptions that sounded like the Board voiced hardly any questions about it. I want to state that at least I personally was very skeptical of a TDD, and that's where I stand on that type of government subsidy of development in general. In this particular proposal, I didn't think that the presentation outlined the justifications and benefits to the City well enough. I know it's not a matter that we are going to necessarily approve as a Board or that we even have jurisdiction over. To the extent that we can do anything about that, I recommend not approving it, as a citizen." Mayor Pogue said, "The article also reported that it comes from a property tax, which is incorrect."

Thank You: Alderman Fleming said, "I would like to conclude by thanking the city staff, the elected officials, and all the citizens who have worked on many issues throughout this year. Sometimes an occasional topic will get contentious. The staff, citizens, and elected officials have done a lot this year and there is a lot to be proud of. Even though we sometimes have a contentious issue or two, remember that our City is in a very good financial position. Our residents enjoy a high level of service. They do not pay a property tax, and we have a great deal to be proud of and thankful for. I want to wish everyone a happy holidays, and call for a motion to adjourn for the year."

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 8:50 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

December 12, 2011