



BOARD OF ALDERMEN
Meeting Minutes

SEPTEMBER 28, 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
Alderman Raymond Kerlagon
City Administrator Eric Sterman
City Attorney Robert Jones

Absent

Alderman Leahy left the meeting at 8 p.m.

MINUTES

The Minutes from the September 14, 2020, Board of Aldermen meeting were submitted for approval. A ***motion was made*** by Alderman Fleming and seconded by Alderman Utt to approve the minutes from the September 14, 2020 Board of Aldermen meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

The minutes from the September 14, 2020, Board of Aldermen closed meeting were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Bullington to approve the minutes from the September 14, 2020 Board of Aldermen closed meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

CITIZEN COMMENTS

Bob Biribin, 249 Gerenza, addressed the Board regarding the proposed cell tower. He stated he has been a resident of Ballwin for over 20 years and is a business owner (the Wolf Café). The proposed site of the tower is across from their business. They now have a petition with over 100 signatures against the tower. He urged the Board to deny the petitioner's application.

Robert Workman was called to speak but did not approach.

Steve Weinstein addressed the Board speaking on behalf of his sister and brother-in-law who live across from where the tower is proposed. He still believes the City has the power to approve or disapprove the application. He stated the City has the right to make sure the tower meets certain standards. He also questions whether AT&T had authority from all who have the right to approve the tower when they proposed the tower. He states they had not obtained approval from the adjacent property owner.

Amy Weinstein, 3 Meadowbrook Country Club Estates, addressed the Board and thanked them for all they do for the City and the residents. She stated, with help from the Wolf Café, they gained more signatures on their petition and not one person she has talked with is in favor of the tower. She had been doing a lot of research and has found a large amount of evidence which shows the damage people's bodies sustain from cell towers and phones, but knows that health cannot be considered when voting on the tower. She also had comments directed to the petitioner, stating that residents would like direct answers and facts; quit stating this is to help more children who are home during COVID or to be used for search and rescue. Children need WIFI to do their schoolwork, not 5G. She asked if she could direct questions to the petitioner; Mayor Pogue stated she could ask and the petitioner has the right to answer when he speaks. Ms. Weinstein's questions were: Can the tower go above the 100 feet applied for?, Is there anything in the small print that will allow a vertical addition?, Is there a limit to the number of carriers?, Does he have anything to back the statement made about the water tower being an interference?, Could the tower be disguised as a tree?, Have they looked at alternate locations? She again asked the Mayor and Board to deny this application.

Ken Dubinsky, 3 Meadowbrook Country Club Estates, addressed the Board and thanked them for allowing citizens the opportunity to speak. Mr. Dubinsky stated that Mayor Pogue talked about the City not having much power to deny the application due to state statute. He also shared that, per the City of Ballwin July 2020 Planning & Zoning meeting minutes, AT&T did not have a finalized agreement with property owners and the only reason this was tabled at the August 24 meeting was because the Claymont Center representative was there with new information regarding permission for AT&T. A number of parties have reached out to the petitioner with no response.

Catherine Cogoro, a citizen of Kirkwood, addressed the Board. She also represents St. Louis for Safe Technology, a group of people who have been harmed by towers, EMFs, WIFI, etc. They give talks throughout the St. Louis area. She spoke of Robert Workman, a certified building biologist and his research which shows EMFs are damaging.

OLD BUSINESS

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.

In discussion of Bill 4067:

Mayor Pogue asked City Attorney Robert Jones to render his opinion on Claymont Center and interest on the property. Mr. Jones stated he's been in communication with AT&T counsel, both locally and in Dallas, as well as the attorney representing the owner of Claymont Center. He discussed the restrictive covenant presented to the Board and the restriction on use of the property that was sold by the owner of all the ground at one time. The property where the tower is proposed no longer belongs to the Claymont Center. State law allows the City two things to consider when looking at the application, but 19 things they cannot, including health. The City can require a letter of authorization from the proper owner evidencing the applicant's right to pursue the application. Missouri law does not consider Claymont Center to be the owner, within the meaning of the State Statute, in his opinion. This is a private, contractual dispute between the owners of the shopping center and the property where the tower is to be located and the City should not intervene in this dispute; the City should proceed to consider this on its merits. Alderman Stallmann asked Mr. Jones if the petitioner has met the qualifications under state law for us to move forward; Mr. Jones stated he sees nothing in the application that would permit the City to decline the application.

Alderman Roach asked Mr. Jones about the items the City can look at with regard to the special use exception (SUE) and if the petitioner hasn't met all eight conditions, does that allow us to deny the application. Mr. Jones stated that the land use powers of the City and its consideration of this particular SUE have to be harmonized with both state and federal laws; the City maintains the zoning authority, but findings when considered under stated/federal law limit the City's review. Alderman Roach asked about the process to harmonize these findings. Mr. Jones stated we would need to look at our findings and then review with state and federal factors and decide if they are actual considerations for the Board.

Mayor Pogue asked Matt Schlichter, AT&T representative, to come forward. Mr. Schlichter stated, with regard to questions presented earlier by Ms. Weinstein, AT&T is proposing a 100 foot, monopole style structure to replace the existing temporary site next to the water tower. It is possible up to three carriers could be accommodated. Mayor Pogue stated the tower cannot go over 100 feet; City Attorney Jones stated an amended

SUE would be required for the tower to go over 100 feet. As far as disguising the cell tower, Mr. Schlichter stated in some situations, it makes sense, but can also become an eyesore. Mr. Schlichter also stated they did try to look for other locations, but this location was ideal for what they need. Mayor Pogue asked AT&T counsel if he had any comments; he did not.

City Attorney Jones stated he had received a letter regarding the land use restriction issue; AT&T would indemnify the City in the event of litigation challenging the City's action based on land use restriction. Alderman Fleming asked for further clarification which Mr. Jones provided. Alderman Roach stated he feels there should be a separate SUE process for cell towers as he feels we are considering factors we can't consider under federal code. City Attorney Jones stated we can consider to the extent that they are not inconsistent with state and federal laws.

Alderman Stallmann made a statement and thanked all those who have come before the Board with their concerns. He stated he will also be able to see the tower from his home. Missouri legislature has tied the hands of local elected officials, taking away cities' rights to regulate cell tower structures. He also stated that, per the expert opinion of our city attorney, the petitioner has met the requirements to locate the tower at the requested location and that the Board has been advised there are no legal grounds to deny the application, and if we do, we will lose in litigation. This would not be responsible on the Board's part.

Alderman Fleming stated we are limited in our ability to do anything; we are not a judicial body that can interpret reciprocity agreements and whether they apply. Our city attorney has advised us that we do not have the basis to deny this petition. He also stated should this come before the Board again, this would cause serious concern.

Alderman Finley stated he has reviewed all the laws; he is an attorney as well. He also stated Mayor Pogue read the laws at the August 24 meeting (minutes are on-line) applicable to this situation. Alderman Finley cited portions of the Oath of Office for Aldermen. While the residents have had compelling arguments, there's nothing the Board can do as a legislative body.

Alderman Roach stated that the last three speakers have drawn the City Attorney further into this and he believes the City Attorney has been misquoted but wanted to give him the opportunity to add clarity. Several colleagues have stated there are no options and the applicant has met all the conditions and should be approved. He asked if the City Attorney had anything to add. City Attorney Jones stated he has found nothing to disqualify the application. Each member of the Board has to make their own decision on how they will vote. He has given them the best legal advice possible on what they need to consider. Alderman Roach asked Mr. Jones if he had given any advice as far as the factors in paragraph four; Mr. Jones replied he had not.

Alderman Utt stated he would be abstaining from the vote. Alderman Leahy stated he would be abstaining from the vote, but would have supported it.

A motion was made by Alderman Fleming and seconded by Alderman Stallmann for a second reading of Bill 4067, title only. A voice vote was taken with unanimous affirmative vote and Bill 4067 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4067 with the following results:

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

Nays – Roach

Abstain – Leahy, Utt

Bill 4067 was approved and became Ordinance No. 20-19.

LEGISLATION

BILL 4072 - AN ORDINANCE AMENDING CHAPTER 18, SECTION 18-1 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO PARK HOURS.

The hours of operation for Ballwin’s parks have not been amended since 1973; this amendment will reflect additions to the parks system and regular hours of usage.

A motion was made by Alderman Fleming and seconded by Alderman Stallmann for a first reading of Bill 4072, title only. A voice vote was taken with unanimous affirmative vote and Bill 4072 was read for the first time.

Discussion:

None

A motion was made by Alderman Fleming and seconded by Alderman Finley for a second reading of Bill 4072, title only. A voice vote was taken with unanimous affirmative vote and Bill 4072 was read for a second time.

A roll call vote was taken for passage and approval of Bill 4072 with the following results:

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

Nays -- None.

Bill No. 4072 was approved and became Ordinance No. 20-20

CONSENT ITEMS

PARKS – Ferris Park

Staff recommends awarding the construction contract for Phase 2 of the Ferris Park development to low bidder Ideal Landscaping for \$522,979.

Discussion:

Alderman Roach asked for an overview on what development will take place. Parks Director Chris Conway stated recreational greenspace will be created which may be used for any sport. A larger parking lot will be developed as this park is very popular. There will also be an eight foot wide path around the park as well as landscaping and an outdoor gym.

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

PUBLIC WORKS – Leaf Collection Labor

Staff recommends awarding the contract to Labor Finders for the unit price of \$17.35 per hour.

Discussion:

None

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

MAYOR'S REPORT

Mayor Pogue noted that there are quite a few businesses opening in Ballwin, which is encouraging especially during the pandemic.

CITY ADMINISTRATOR'S REPORT

City Administrator Sterman stated our application to receive funds under the CARES act has been submitted to St. Louis County. The County had been reluctant to say if funds could be used for public safety, but they are now accepting that use. Mr. Sterman stated we expect we will be eligible and he will keep everyone posted.



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STAFF REPORTS

ADMINISTRATION –Capital Improvements/Revenues

Finance Officer Keller presented projected revenues and expenses for the five year Capital Improvement Plan. Capital projects budgeted in 2021 include design work for the new Police building which had originally been planned for 2020. It was delayed due to economic uncertainty associated with the COVID-19 pandemic. Construction on Holloway Road will also occur in 2021, with 80% of expenses offset by federal reimbursement. Projects in future years include construction on New Ballwin Road and major park projects at Holloway, Vlasis and New Ballwin parks, assuming the receipt of grant funding.

Revenues for the operating and capital funds were also presented. A modest recovery of 10% is budgeted compared with current year revenue estimates for a total of \$20,989,000. Sales taxes are budgeted to increase by 3%, and recreation revenues are budgeted to increase by 36%. Both of these revenue sources were significantly impacted in 2020. Business license fees in 2021 are projected to decrease by 10% due to reduced local business revenues in the current year. Court fines and motor fuel tax receipts are expected to recover in part from the current year reductions. Cable franchise fees and telephone gross receipts continue to decline each year.

PUBLIC WORKS – Contractual Leaf Collection

Staff is recommending awarding the unit price contract to West County Landscaping, not to exceed \$45,000.

Discussion:

Public Works Director Jim Link stated they are asking for funds to do leaf collection in Meadowbrook Country Club Estates and Claymont subdivisions. The program will be similar to leaf collection done in Meadowbrook Country Club Estates last year; Mayor Pogue stated he feels this is a good program.

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.

CITY ATTORNEY’S REPORT

Nothing to report.

ALDERMANIC COMMENTS

Alderman Fleming talked about issues with the cell tower and possibly making a better way to approve things such as cell towers. City Attorney Robert Jones stated, by ordinance, we have to do the special use exception, but he will review alternatives for Board consideration.

Alderman Finley asked when leaf pickup would begin. Public Works Director Jim Link stated leaf pickup would start November 2.



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CLOSED SESSION

A motion was made by Alderman Bullington and seconded by Alderman Stallmann to move to closed session pursuant to Section 610.021(2), real estate matters. A roll call vote was taken to move into closed session at 8:29 p.m.

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

Nays - None

OPEN SESSION

A motion was made by Alderman Fleming and seconded by Alderman Bullington 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 8:54 p.m.

_____ TIM POGUE, MAYOR

ATTEST:

_____ POLLY MOORE, CITY CLERK