



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

July 16, 2012

The meeting was called to order by Mayor Pogue at 7:02 p.m.

PRESENT

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

ABSENT

ALDERMAN JIMMY TERBROCK
ALDERMAN KATHY KERLAGON

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *June 18, 2012 Board of Aldermen meeting* were submitted for approval. Alderman Finley amended page 8, paragraph 6, sentence as follows: “*He recalled that City Attorney Jones mentioned.....*” Alderman Finley amended page 9, the voting on the two motions: First motion: Change Terbrock to Aye, and Finley to Nay. In the second motion, for a first reading, change Finley to Aye. *A motion was made* by Alderman Fleming and seconded by Alderman Leahy to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

PROCLAMATION

Ballwin Athletic Association – International Baseball Week: August 5 – 11, 2012.

A motion was made by Alderman Harder and seconded by Alderman Finley to accept the Proclamation declaring August 5 – 11, 2012, International Baseball Week in the City of Ballwin. A voice vote was taken with a unanimous affirmative result and the motion passed.

PENDING ISSUES

None.

CITIZEN COMMENTS

Marc Lopata, President of Microgrid Energy (14 S. Central Ave, St. Louis, MO 63105), and Emily Martin, President of Aschinger Electric/Microgrid Energy (4232 Flora Place, St. Louis, MO 63110), addressed the Board regarding bid submission for the solar installation project at The Pointe. Ms. Martin said that the recommendation for the project be awarded to Straight Up Solar is not awarding the project to the lowest responsive bidder.

Ms. Martin said the specifications called for a 40kw system to be designed and installed at the Pointe. In the specifications, there was no request for alternate pricing, and no request for alternate sizes. It also states that the engineering and contractor is to provide a complete system, and there are some specifications for how that system should operate, and what some of the warranties are and the energy requirements for the system.

Ms. Martin said that Straight Up Solar submitted a price of \$118,915 for the 40kw system, without monitoring. They submitted an alternate price of \$125,329 for a 40kw system, with monitoring. Microgrid Energy and Aschinger Electric are partnered on this project, and submitted a price of \$124,000 for a 40kw system including monitoring. Her letter from June 28, 2012 explained why the monitoring is a necessary part of the project in order to assure that the array is producing, per the specifications, required in the bid package.

Ms. Martin said the recommendation that is before the Board is that the award be made to Straight Up Solar for an alternate system. There were four alternate bids provided by four of the bidders. Microgrid and Aschinger Electric did not provide an alternate bid for a solar array of any other size because the specification called for a 40kw. The recommendation can be made that an alternate array of 60.84kw be awarded to Straight Up Solar for a price of \$187,500. It appears that at some point, since the bid was submitted, Straight Up was approached and asked to modify their pricing and provide an alternate. Aschinger and Microgrid were not asked to provide any alternate pricing or provide any modification to their bid.

Ms. Martin said it is their opinion that based upon the specification, they were the lowest responsive bidder, are providing the system called for in the specification, and that gives a different array than is called for if the request from the City is to give the City the most kw possible for the dollar amount. She said if that is the request, she asked that a second bid be sent out with that specification. All of the bidders will be allowed to re-price and re-engineer the system so that the City gets the most for its money.

Mr. Lopata said unless there is a monitoring system that allows you to see how the system is performing, you would have to go onto the roof or in the mechanical room to access the performance information. He said that he has installed over 156 systems. Only one was installed without a monitoring system. As a result, they were called back two months later to install a monitoring system. He said he provided what the RFP asked for. He said the Straight Up pricing with monitoring is almost \$2,000 higher than his bid.

Mr. Lopata asked the Board to reconsider the recommendation of awarding the project to Straight Up.

Carl Essen, 520 Kehrs Mill Road: Mr. Essen asked the City to consider publishing the bid tabulation sheet, a copy of all the information that was submitted, and all the bid documents.

Joe Elstner, 618 Forest Leaf Drive: Mr. Elstner said he is representing a group of homeowners on Forest Leaf Drive (Oakleigh Woods Subdivision). He said there are excessive numbers of deer and they are eating flowers and other plants. The deer eat hosta plants. They can be seen during the day, not just at night. He said that most of the deer are in the wooded areas on both sides of the creek. Due to houses in the area, weapons and bow hunting could be dangerous. He suggested trapping the deer. If bow hunting was used, the neighborhood could be notified of this and told to avoid the area at certain times.

Mayor Pogue said that he and City Administrator Kuntz are in discussions with the City of Ellisville about trying to coordinate a regional approach.

Robert Klein, 2452 Capitol Landing: Mr. Klein said the KMOX Radio website displayed an article by Michael Calhoun, as follows: "City Administrator Robert Kuntz watched the Cardinals win the World Series as a guest of Allied Waste, months before his city inked a decade-long, no-bid contract with the company. That's one piece of new information surfacing in just-obtained City Hall emails, which help explain how the deal came together. Kuntz confirmed the World Series tickets gift in a message sent to three aldermen last week, adding that the face value was \$250.00. Competitors say ten years for a refuse contract is unprecedented among St. Louis County municipalities. For example, the county itself just signed five-year contracts for unincorporated areas. Those competing trash haulers, including IESI and Waste Management, appeared at April's board of aldermen meeting, asking for a chance to show that they

could reduce residents' bills. But some of them also sent emails, urging a public process. "Why not see what my company and the others can offer you when your opportunity comes?", one of them wrote to city officials in the emails, information from which was obtained by KMOX News. Even residents themselves chimed in. One message cited the aforementioned deal for unincorporated residents and posed the question: "Why can't we get a bid from these people?????" Alderman Frank Fleming said, both at June's board meeting and in an emailed response to the resident in early May, that he'd collected rates that other areas had negotiated, and he was 'comfortable' that Ballwin was getting a good value from Allied. City Administrator Kuntz took both the resident's email and the aldermen's response and forwarded it on to an Allied representative, adding that 'You have support and I have the votes.' In the effort to get the new contract approved by June 18, Kuntz wrote to Allied representative Tony Lamantia on May 6th that he was 'reluctant to push forward with a half-baked proposal.'"

Mr. Klein said he is surprised that KMOX has access to emails and information that the citizens of Ballwin don't have access to. He said many residents have asked for information, but the residents can't break into what is not a transparent government.

Mr. Klein said he is willing to pay for everyone on the Board, and their spouses, to attend this year's Super Bowl, if they are willing to give him a 10-year no-bid contract on the things he sells.

Mayor Pogue said that Mr. Calhoun, with KMOX Radio, submitted a Sunshine Law Request to get the information that they requested. This process is open to anyone requesting information.

J. C. Hagan, 209 Cool Meadows: Mr. Hagan said that cell phones should be turned off in the Board room. He said that he observed a Ballwin Police Officer driving while talking on a cell phone. Ballwin was one of the first cities to pass the no-smoking law. Other communities have also passed this legislation. He suggested that an aggressive approach or ban should be considered regarding cell phone use and texting while driving, perhaps by joining with Manchester, Ellisville, and Winchester. He suggested sending a Resolution to St. Louis County and to the State of Missouri regarding banning cell phone usage while driving.

Mr. Hagan said that chip monks are more destructive than deer, easier to handle, and easier to catch. He said his neighbor has caught 28. Even though they are cute, they burrow under porches and foundations. Flowers that deer have eaten are easier to replace than a porch or foundation. The City doesn't have any way of managing this problem. He said he called Director of Parks & Recreation Linda Bruer about this and she said to check in the Yellow Pages for pest control. St. Louis County has traps that they loan out. You pay a deposit, and get it back when the trap is returned. He said that Ballwin could loan out traps in this way and rid the city with a lot of very destructive pests, such as chip monks and raccoons. He believes that a lot of people will use traps if offered to them.

PUBLIC HEARINGS

Olde Towne TIF: City Administrator Robert Kuntz said that Finance Officer Glenda Loehr provided the information for this report. It is a 5-year status, statutory requirement regarding the redevelopment act of the Olde Towne plaza district on Manchester Road. Through 2010, the sales have remained constant. There has been a decline of 7% in overall sales at the retail center from 2010 to 2011. At this time, the project is performing according to expectations and is meeting the debt service requirement. There have been some property tax protests. This has decreased the amount of revenue available to satisfy the debt service requirements. We are currently fully funded with reserves and are on target to meet all payments in the foreseeable future. The plaza owner has stated that all spaces in the plaza will be occupied before the end of the year. There is a property tax assessment appeal that has been successful with St. Louis County. We are not a party of standing, but we are impacted by the overall results of those assessed reductions.

Finance Officer Loehr said, the property taxes have gone down by about 39% since 2005, due to appeals. We recently received notice from St. Louis County, after receiving the revenue from 2011, they are going

to take away \$136,000 from our next collection because of appeals in 2004. There have been more appeals in the process since then. As principal payments continue to decrease, there may be difficulty later on. The evaluation is done on the account 45 days prior to the principal and interest payment. There are sufficient funds to make the October payment. There should also be sufficient funds to pay the 2013 interest payment. An evaluation will be made after that.

Alderman Boerner asked if the revenues are exceeding the debt payment? Finance Officer Loehr said we have been able to make the debt payments without touching reserves. Alderman Boerner said the property taxes and sales taxes are sufficient. Finance Officer Loehr said that is correct.

Alderman Boerner said our annual exposure is \$250,000. City Administrator Kuntz said, yes, or 35%. Finance Officer Loehr said it is our half of the revenues or \$250,000 cap.

Alderman Dogan asked where do the debt service reserves come from? Finance Officer Loehr said, they are held by a trustee in Kansas City. It is money that is set aside. The reserve was not taken from the City. The initial bond selling was part of it to set aside \$2 million in reserves.

Mayor Pogue asked if there were any citizens that would like to comment on the TIF report for Olde Towne Plaza. There were none.

Mayor Pogue closed the Public Hearing at 7:37 p.m.

NEW BUSINESS

LEGISLATION

BILL # 3753 - AN ORDINANCE APPROVING A TEMPORARY IRREVOCABLE LICENSE AGREEMENT FOR TRANSPORTATION IMPROVEMENTS AND AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN TO EXECUTE THE SAME.

A motion was made by Alderman Harder and seconded by Alderman Dogan for a first reading of Bill No. 3753. A voice vote was taken with a unanimous affirmative result, the motion passed and Bill No. 3753 was read for the first time.

Alderman Dogan asked what does this license agreement involve? Jim Mellow, Attorney at Armstrong, Teasdale, representing Schnuck Market, Inc., said this license agreement provides the framework for improvements that are being done at the Kehrs Mill project, and to be transferred to the City, for those projects specifically tied to local improvements, such as landmark exhibit, entry feature, sidewalks, landscaping, screening areas adjacent to residential areas. These are things that are not to be conveyed to St. Louis County or MoDOT. This agreement only deals with the local elements of the plan that was approved by the City a couple of years ago. Ballwin takes on no liability. Schnucks provides the maximum amount of insurance on the improvements. Some of the sidewalks are permanently dedicated to the City. This is a standard follow through on the project contemplated when the project was approved.

Mr. Mellow said the water feature is typical and similar to the feature on the east side of the Chesterfield City Hall. It is more extensive than what was originally provided for in the overlay ordinance when it was first approved. It creates identification for that corner. Maintenance will be taken care of by the TDD and is part of the indemnification agreement. The fountain will run seven days per week.

Alderman Dogan asked to where will the water drain? Mr. Mellow said the water goes into a ponding area and then recycled into the fountain.

A motion was made by Alderman Boerner and seconded by Alderman Fleming for a second reading of Bill No. 3753. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3753 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3753 with the following results:
Ayes – Boerner, Fleming, Finley, Harder, Dogan, Leahy. Nays – None. Bill No. 3753 was approved and became **Ordinance No. 12-30**.

BILL # 3754 - AN ORDINANCE GRANTING AN AMENDED SPECIAL USE EXCEPTION TO FREEWORLD ENTERPRISES INC., D/B/A DENT DEVIL, FOR A SITE DEVELOPMENT PLAN AND SPECIAL USE EXCEPTION ORDINANCE AMENDMENT, AT 14949 MANCHESTER ROAD.

A motion was made by Alderman Fleming and seconded by Alderman Leahy for a first reading of Bill No. 3754. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3754 was read for the first time.

Alderman Harder asked is this a canopy type of unit behind the building? Terry McDonald, with Dent Devil, said it is an Armbruster tent structure that is temporary. It has a canvass top and sides can be open or closed. It can be a fully enclosed tent or both ends open or completely open. The posts can be anchored to the ground with stakes, or outriggers where there are lines that extend from the tops of the posts to the ground. It is a temporary structure for the work when there is overflow. He said this is not a permanent structure.

Alderman Harder said that Dent Devil has one of the most attractive lots along Manchester Road with the landscaping. The Dent Devil business has benefitted because of it. Mr. McDonald said the business is doing very well and he thanked the Board for their previous assistance.

A motion was made by Alderman Fleming and seconded by Alderman Leahy for a second reading of Bill No. 3754. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3754 was read for the second time.

Findings: A vote in favor of the bill finds that the Petition, as submitted, would not substantially increase traffic hazards or congestion; would not adversely affect the character of the neighborhood; would not adversely affect the general welfare of the community; would not over-tax public utilities; would not adversely affect public safety and health; is consistent with good planning practice; can be operated in a manner that is not detrimental to the permitted developments and uses in the District; and can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area. A vote against the bill means that one or more of these findings are absent.

A roll call was taken for passage and approval of Bill No. 3754 with the following results:
Ayes – Fleming, Boerner, Leahy, Dogan, Harder, Finley. Nays – None. Bill No. 3754 was approved and became **Ordinance No. 12-31**.

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. Revenue / Expense Report
- B. Destruction of Records
- C. Kehrs Mill Reconstruction
- D. Papa John's Pizza S.U.E. Transfer

Alderman Harder requested that **Item C** be removed for further discussion.

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

MAYOR'S REPORT

Public Defender: Mayor Pogue said, even though this position is seldom utilized, Municipal Judge Nye recommends that it is in the best interest of the City to fill this position. He recommends further discussions to be able to fill this position with someone who has municipal experience as a public defender. This information can be presented to the Board at the next meeting with appropriate resume. He believes that because this position is seldom used, advertising would not be necessary. He asked for Board approval to continue discussion with Municipal Judge Nye, and to bring a recommendation to the next Board of Aldermen meeting.

City Attorney Jones said he had a conversation with Court Clerk Chris Northcutt. The court staff, judge and prosecutor are in the process of developing an application to determine eligibility for public defender status, based on the form that is used for St. Louis County. The Case Law in this area indicates that one is not constitutionally titled to appointed counsel if there is no liberty interest involved. If someone is not going to suffer a jail sentence, they are not entitled to have an appointed public defender. This is the reason the position has been so seldom used in our courts. Generally those cases are disposed of with a fine. The court staff is only aware of one case now pending that may qualify for an appointed counsel.

Alderman Dogan asked if this position will be on a contract basis? City Administrator Kuntz said it will have an hourly rate, no set attendance, as-needed, determined by the municipal judge.

Alderman Harder said it was his understanding that the backup person for the prosecuting attorney also served as a public defender. City Administrator Kuntz said the backup person serves only to fill in when the prosecuting attorney is absent.

The Board agreed that Mayor Pogue should proceed with discussions with the municipal judge and to present a recommendation at the next meeting.

Ameren Rate Increase Public Hearings: Mayor Pogue said that previously the Board passed a Resolution in opposition to the Ameren rate increase. He said Ballwin is also in discussion with the St. Louis County Municipal League, who mirrored our Resolution in opposition to this rate increase, to see if they are going to participate in the public hearings. The Public Hearings for the rate increase are as follows:

July 26 at Harris-Stowe University from noon to 3:00;
July 26 at the University of Missouri, J.C. Penney Conference Center from 6:00 – 9:00 p.m.;
August 15 at the St. Charles County Administration building from noon – 3:00 p.m.;
August 15 at the Arnold City Hall Council Chambers from 6:00-9:00 p.m.;
August 16 at the Holiday Inn on south Lindbergh from noon – 3:00 p.m.;
August 16 at the Wohl Community Center on North Kingshighway from 6:00-9:00 p.m.

Alderman Fleming suggested that someone read the Resolution during one of the Hearings.

International Baseball Tournament: Mayor Pogue said that the host city usually gives a gift to the International Delegates, which will be 3 International Delegates plus 1 Global International Delegate. This will be presented to the International delegates at the opening ceremonies on Aug. 4.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to authorize Mayor Pogue to proceed with the host city procedure. A voice vote was taken with a unanimous affirmative vote and the motion passed.

CITY ADMINISTRATOR'S REPORT

Kehrs Mill Reconstruction: City Administrator Kuntz said three bids were received from a formal solicitation process. This is within the budget that was allocated. It is recommended that the low bid be accepted. Krupp Construction is a reputable local contractor. Lane closures and traffic will be discussed in a pre-construction meeting. The right-of-way acquisition has been resolved. There will potentially be a discussion with the Rockwood School District.

Alderman Harder asked, if this is approved, what will the timeline be? Director of Public Works Gary Kramer said the middle of August is the anticipated starting time. The contract award will be sent to MoDOT and the Federal Highway Administration. They both have to concur with this. The concrete work for the sidewalks will be done first. It will take about 2 weeks to do all of the paving.

Alderman Harder said that it was anticipated that most of the work would be done at night to minimize traffic delays. Mr. Kramer said there are homes very close to the curb line. Night work would be very disturbing for those residents. Asphalt trucks and machinery are very noisy. The work will be done during non-rush hour times to minimize traffic delays. By the end of the day and weekends, all lanes will be open. Parking of vehicles and equipment will be discussed at the pre-construction meeting. City Administrator Kuntz said that the project will cost more if the work is done at night.

Alderman Harder said he is concerned about the street being tied up for 3 months. Mr. Kramer said it won't take 3 months to work on the street. Most of the time will be used in building the sidewalk. There will be short lane closures when concrete is being poured or dirt is being removed. Out of the three months, it is estimated that in 8 – 10 working days, the street will be paved. He said there are no utility relocations in this project.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to accept the bid from Krupp Construction. A voice vote was taken with a unanimous affirmative result and *the motion passed*.

Public Works Mutual Aid Agreement: City Administrator Kuntz said this is to formalize the exchange of equipment and manpower on a city-by-city basis to address catastrophic situations, such as tornados, etc. The purpose is to insure that all regulations are followed, and if there is reimbursement from FEMA, the guidelines will be followed. The City of Chesterfield is also considering this agreement at their Council meeting this evening. Mutual aid has been provided in previous years, but this agreement elevates it to a higher standard.

Alderman Harder said the agreement states, “..... encourage efficient and shared use of such assets as opposed to each community purchasing such items at significant cost, and leaving them under-utilized.” He said he is in favor of this agreement. City Administrator Kuntz said this proposal includes manpower to be provided with equipment, but there are exceptions to this. We have an informal arrangement with the City of Manchester that we have loaned golf carts for their festival. They have also assisted us by loaning us their bucket truck, which we use for maintaining the lights in city parks. A tub grinder is also shared with Manchester that was purchased jointly on a grant.

City Attorney Jones said in Section VI-E on page 6, is the provision that states that when equipment is provided, it should be operated by qualified employees of the providing agency.

Alderman Finley asked who will be participating in this agreement. City Administrator Kuntz said the agreement was drafted by the City of Chesterfield. They have asked Ballwin to sign on as the first participant. It will be built upon after that. All participants in the agreement will be close enough to allow reasonable portability of equipment, which would be Ballwin, Chesterfield, Clarkson Valley, Ellisville, Manchester, Town & Country, Wildwood, and possibly Creve Coeur.

Alderman Harder asked if this agreement needs to be renewed at specific intervals? City Attorney Jones said the agreement requires a bi-annual review. There will be a review every 2 years to determine the level of continuance.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to draft legislation for acceptance of the Public Works Mutual Aid Agreement. A voice vote was taken with a unanimous affirmative result, and *the motion passed*.

Solar Installation: City Administrator Kuntz said Code Enforcement Supervisor Jerry Klein and Charles (Chuck) Welegala, Consultant with Heartland Alternative Energy responded to comments made by Marc Lopata, President of Microgrid Energy, in the “Citizen Comments” earlier in this meeting. Mr. Klein said the monitoring system was not in the bid specs and not a requirement. The fact that it was not in Straight Up Solar’s bid was not a violation of the bid specifications. The term “complete system” is not anywhere in the bid specs. Most of the bidders included as an option a monitoring system, if we chose to take it. Anytime before the bids were accepted, Microgrid could have asked for clarification. They never asked for clarification on this point.

Mr. Klein said the Request For Proposal (RFP) allows us to take the bid that’s in the best interest in the requirements of the City, including going to a larger system. Several of the bidders, but not Microgrid, included the option for larger systems. The lowest bid for the larger system was from Straight Up Solar. This company has a good record in St. Louis and have done good work for other cities and government agencies. Mr. Klein said that he and Chuck have been working for eight months to try to get an amendment to the grant from the State to allow purchasing the new system at The Pointe. If we don’t take this bid at this point in time, we’ve got no chance of going back out to bid. Under State requirements, this project has to be complete by the end of August.

Mr. Welegala said in the specs, there’s nothing about a monitoring system. A monitoring system is necessary. Every company, including Straight Up, included the monitoring system, even though it was not in the specs. Straight Up Solar was the lowest bidder. Why did we consider or accept a larger bid? When we first sent this out in November, he asked the Department of Natural Resources Energy Department for this grant. We knew all the money in the stimulus program was going to be used. We said if there are extra funds, could we put an additional solar array on the property for the City of Ballwin. They allowed us to do this. Originally, we worked with Manchester with the solar array. We wouldn’t have put up solar originally if these funds were not available. He agreed that the project has to be complete, operational, paid for, and all paperwork for the project has to be into the State by August 30, or there will be no funding for the City. If you turn this down, you might as well walk away from the system.

Mr. Welegala said, regarding the 40kw system, when the bid was put together, the amount of money we were asking for, the average price was what would cover a 40kw system. Since then, the cost of solar panels, inverters, etc. has come down, and asked the State, if we could get more for the money, would it be acceptable. They said as long as we didn’t exceed the money we asked for, they had no problem with it. There were seven people who looked at the job; there were five bidders. Four of the five bidders all included an alternative bid. One chose not to. They asked if they could. We said if they wanted to include an alternative bid, it’s okay. Mr. Welegala said we didn’t say they had to or that they didn’t have to. Straight Up Solar’s bid was \$118,900, without the monitoring system. They included an option for the monitoring system. Mr. Klein said that Microgrid stated that they included it for \$124,000, although their bid specs did not show anything about a monitoring system. Straight Up showed it as an option, Microgrid didn’t show anything about a monitoring system.

Mr. Welegala said “made in America” was also required. All the companies submitted documentation that the solar panels, inverters, etc., were American made. No spec sheets were received from Microgrid. He said the bid was more complete, better for the City of Ballwin, it gave more energy for the price. With the Ameren rate increases, this will offset more of the cost of energy for The Pointe.

Alderman Harder asked what was the option for monitoring from that dollar amount? Mr. Klein said there wasn’t any. It doesn’t say that it includes a monitor. Alderman Harder asked, for the Straight Up

monitor, what is the dollar amount? Mr. Welegala said \$4,000. Mr. Klein said they gave an option for a different monitoring system that was quite a bit lower.

Alderman Boerner asked, are you recommending that we install solar panels without a monitor? Mr. Welegala said no. Everyone except one bidder included the monitoring system in their bid. Alderman Boerner asked, since the bid for \$119,000 doesn't include a monitoring system, why is it on the list? Mr. Klein said, because they wanted to give the option.

Alderman Boerner asked, do you want to install a monitoring system? Mr. Klein said, yes, that option should be used. Alderman Boerner said, if the monitoring system is added to the Straight Up Solar bid, how much is it? Mr. Welegala said \$122,000.

Mr. Klein said the option for the 60.84 kw system, which is \$178,670, is being presented for Board approval.

Eric Swillinger, with Straight Up Solar, said the proposal has a monitoring system. There is an option for a more deluxe monitoring system. He said his base bid does meet the specifications for the RFP with the base monitoring system. The option is open to change to the deluxe monitoring system.

Mr. Swillinger said the monitoring system is a built-in price, a built-in option. Without it, it would be like driving a car without a speedometer. The monitor gives more data and each solar panel is monitored. It will give minimal data, such as how many solar hours, and how much carbon dioxide has been saved. The \$187,000 is for the more deluxe monitoring system, and the alternate bid of \$178,670 is for a base standard monitoring system. This is similar to the base monitor used at the Government Center.

Mr. Welegala said it was not requested for any bidder to include an alternate bid. Four of the five companies included an alternate bid. Mr. Klein said this is a standard RFP format that is used by all of our departments. The form has wording that says we can take the bid that best meets the interest and requirements of the city, including a larger system, if we chose to do this. City Administrator Kuntz said we discussed a larger system on the Government Center when those panels were installed. The budget dictated that the best we could get was the system that was actually awarded. We wanted to go larger, but we were limited by funding. The funding is what's driving this. You want the most value for the amount of dollars that are captured from the grant. Mr. Klein said, since the bids came in, we had to ask the State if we could have a larger system that was within the budget. The State approved this.

Alderman Dogan asked why wasn't the other company asked to submit an alternate bid? Mr. Klein said he couldn't do that. It was a closed bid. We didn't know what the companies were submitting until the bids were opened. Alderman Dogan asked why wasn't the RFP written in a more clear manner. Microgrid is saying that the RFP states 40kw. You didn't tell them not to submit anything else. Those companies were being pro-active by asking if they could do an alternate bid, but you weren't being pro-active to everyone else. Mr. Welegala said since it wasn't in the specs, we didn't say that they should put in an alternate bid. He said that Alderman Dogan is correct.

Alderman Fleming said this is the second time there has been confusion in our bidding process. The first time was with the UPS system. He said the bid package is confusing to some people; therefore, this process should be reviewed. In fairness to Microgrid, if the RFP didn't say anything about a monitoring system, it's understandable why they didn't include this in their bid. They were being responsive to what was asked for. They are the second low bidder on the 40kw. If they had been playing by the same business mentality and set of rules as everyone else, they might be the low bidder for the bigger system. Mr. Klein said they had the option to do an alternate bid. Alderman Fleming said, from their perspective, they responded according to what was asked for. He said he would be happy to have the Finance & Administration Committee review the RFP form. City Administrator Kuntz said this may be a worthwhile expenditure for the City Attorney to review the process.

Alderman Fleming said that this project is nothing out of our pocket, and will save about 10% of our energy cost on an annual basis. The project proves its worthiness and we should take advantage of the grant. It appears that our bid process could have been better, and the deadline for this whole project is short. We shouldn't pass up the grant money for this project, therefore, staff recommendation should be accepted.

Alderman Finley asked when was it determined that we can fit a 60kw system on The Pointe? Mr. Welegala said the engineering drawings of the panels on the roof show what systems can fit. Buildings & Grounds Supervisor John Hoffman looked at the project and was comfortable with the size of the system they had proposed. A larger system, 67.6 kw that we didn't go with would require a \$200,000 budget. John Hoffman was not in favor of that because it would fill up the whole roof area. There wouldn't be enough space to do a roof repair.

Mayor Pogue said, if we go with the larger system, we are making this a zero cost to the city, and receiving the rebate. We've got the grant that pays \$132,000, plus the rebate from Ameren which is \$50,000. This becomes a no-cost system for the city after the grant and rebate are received. We will receive an estimated 10% reduction in our electric bill.

Alderman Finley asked about the use of the monitoring system. Mr. Swillinger said the monitor will show the kilowatt hours produced, the number of pounds of carbon dioxide saved, daily, monthly, yearly data.

Mr. Welegala said that at the Government Center, the production from the solar system on the roof is decreasing at this time because of the construction east of the Government Center. There's a lot of earth moving and dust that has to be clean. It was working fine prior to the construction. Hosing down the panels will help restore efficiency. This is the only maintenance required.

Marc Lopata, President of Microgrid Energy, said he has been a licensed engineer for over 20 years. He is a professional specification writer. He wrote specs for the U.S. Army Corp of Engineers for solar jobs. He said he is very careful to provide exactly what the Request for Proposal is asking for. The only thing that was requested in this spec was a drawing of the proposed layout. That is exactly what he provided. There was no need for further clarification. He said Mr. Welegala said that Microgrid did not provide a spec. That is not the bidder's job. It's the owner's job to provide the spec, and the bidder provides the proposal.

Mr. Lopata said this Board has a very difficult decision to make. In the calculation of the energy production, this system is way off. A 40kw system will produce about 50,000 kw hours per year. The 60kw will do about 70,000 to 78,000 per year, not the 90,000 to 100,000 that are in the recommendation. Going with the larger system that was not requested, you will end up pretty close to net zero initial cost. If you went with the 40kw system that the City asked for, you will end up with tens of thousands of dollars in your pocket. Ameren is going to give you, on a 40kw system, \$50,000. If your first cost is \$50,000, you end up with zero. If your first cost is \$30,000, you will end up with \$20,000 in the City budget.

Mr. Lopata said he believes that his bid for Microgrid Energy was not presented to the Board accurately. Whatever decision the Board makes, he appreciates the opportunity to speak on this matter.

Alderman Fleming said Ms. Martin had said that it seemed as though others had been asked to adjust their price. Are you referring to the sentence in the document that says "this reduced alternative bid from Straight Up Solar"? Ms. Martin said yes. She said, if the purpose is to get the most possible for \$10,000, that is an acceptable way to request that a project be bid under the specifications; the most for \$180,000 or whatever amount the grant is providing. That is clearly not what was asked for in the RFP. What was asked was a price for a 40kw system, which is what we did. If the RFP had been worded to provide all

that is possible for \$180,000, there would have been different presentations and you would have gotten the best deal for the money.

Alderman Harder said, Mr. Lopata submitted his proposal as a sealed bid. You reviewed the RFP and submitted a bid. After it was submitted, did anyone call you and say, "Can you tweak this, or add this?" Mr. Lopata said no. His bid was \$124,000. The Straight Up Solar bid was \$118,915. Someone said that the Straight Up bid with the monitoring was \$125,900. That is the reason we are here. If Straight Up's bid is \$125,900 with monitoring, then that makes Microgrid the lower bid, with monitoring. Ms. Martin said those were the numbers that were read at the time the bids were opened. Mr. Lopata said if you are looking for a complete system with monitoring, his Microgrid bid is the lowest by \$1,900.

Eric Swillinger, with Straight Up Solar said, he fulfilled the specs in the RFP, with monitoring, and with the additional deluxe version monitoring, at the lowest bid price. If you read the specs that we submitted with the proposal, it points out what everything costs.

Mayor Pogue said he has concern about the way this bid process took place. He said that staff tried to get the most for the amount of the grant. However, the bid process needs to be reviewed. He said it could have been done better.

Alderman Fleming said his concerns are the bid process, the validity of the project, and getting the lowest bid. He said he still believes that staff recommendation should be followed at this time because the deadline is August 31 for completion and payment. Mr. Welegala said if the deadline is not met, there will be no payment to the City of Ballwin from the State.

Alderman Boerner said the process should be reviewed. If we can do anything we want, what's the purpose of the bidding process? Is this standard in the industry? Mayor Pogue said with his experience in the construction industry, he sees this happen all the time. A bid is submitted, and there is a call after the bids are open, to tweak the bid. This is normal practice. Mayor Pogue said that he agrees that the dollar amount for the grant should have been stated in the beginning, instead of working in the opposite direction.

Alderman Dogan asked, is breaking even the best that the city can do? Mr. Welegala said that in the grant proposal by the Department of Energy, he did not have to state anything about extra funding. They didn't care if there was any other rebate.

Alderman Finley said he is in favor of accepting the Straight Up Solar bid of \$118,915 for the 40 kw. Alderman Boerner said that the comments from Mr. Lopata are credible. It disturbs him to see that there are issues related to the data in terms of the savings if they are inflated, and we should know this. If the data being received at the Board level is not accurate, we need to know this. This should be reviewed.

Mr. Lopata said, "If your deadline is at the end of August, Straight Up is a good company. We are a good company too. I think you need to do something quick. Ameren has 90 days to review the application. If you submit that tomorrow, they might not get that back for 3 months. Technically, you're not supposed to start installation before Ameren's approval. If you have Straight Up in the pocket now, ready to start work, you should go with them. I hate to tell you that, but if you change and decide to give it to another company, or re-bid it, your time is going to run out. This is what I would do if I was sitting in your chair."

Alderman Fleming said the larger unit will give a payback quicker than the 40kw. Again, at this point, we should take staff's recommendation. Mr. Lopata, from Microgrid, just now said the same. Microgrid is a good company. They are working on Busch Stadium, and are very credible. If we are going to do this, we have to do it now.

A motion was made by Alderman Fleming and seconded by Alderman Boerner to accept the recommendation from staff for Straight Up Solar, the size of the unit, and the monitor, the reduced alternative bid of \$178,670. A roll call vote was taken with the following result: Aye: Boerner, Leahy, Fleming, Harder. Nay: Dogan, Finley. **The motion passed by a vote of 4-2.**

Fee Waivers: City Administrator Kuntz said this is related to the Proclamation that was approved at the start of this meeting, regarding the International Youth Baseball week. Mayor Pogue has recommended the waiver of fees for the utilization of The Pointe recreational facility for participants in the International Baseball tournament, to be held at the Ballwin Athletic Association. Mayor Pogue said this is a good opportunity to showcase the City of Ballwin.

Alderman Harder asked if MoDOT would clean Manchester Road in that area, or re-stripe to freshen up the roadway? Mayor Pogue said MoDOT can be contacted to see if they want to participate. Alderman Harder asked if there is going to be any coordination with the Chamber of Commerce regarding business participation, sponsors, or prizes? Mayor Pogue said, BAA and the St. Louis Boys Baseball Association have worked with businesses to sponsor hospitality rooms, Des Peres Hospital with 5 doctors in case there are any injuries. These doctors will be on-call during the whole event. Alderman Harder asked if the City can put up banners? Mayor Pogue said that BAA is taking care of the banners. Metro West will also be participating with the opening ceremonies.

Alderman Dogan asked who will be providing the complimentary visits at The Pointe? Mayor Pogue said that we are being asked to do this. Alderman Dogan asked if the families would be unhappy about not being included in these passes. Mayor Pogue said that if the passes were extended, there would be a very large number of participants, possibly 400 – 500.

A motion was made by Alderman Harder and seconded by Alderman Fleming to accept the waiver of fees for The Pointe and North Pointe for this event only, as described by Mayor Pogue. A voice vote was taken with a unanimous affirmative result and **the motion passed.**

Contractual Services: City Administrator Kuntz said that Finance Officer Glenda Loehr has announced her retirement, and her last day of work will be Friday, August 3. Due to the transition issues that will be involved in selecting a replacement, in light of the service and expertise that she has given to the City over the years, it will be a challenging position to fill going into budget time. The TIF audit is an example of things that don't come up on a routine basis. There are a lot of complicated issues that require a considerable amount of expertise. If someone from the public sector is selected, there will be a learning curve. He said Glenda Loehr will be very much needed whenever there's a question or background information is necessary. She is always able to provide the information requested. He said Glenda's attention to detail has kept the city afloat through many successful audits over the years.

City Administrator Kuntz requested that authorization be approved to utilize Glenda Loehr's services as in independent contractor, subject to her availability and the City's need, at her current hourly rate. This will be a contractor's position, not an employee position. We will need her wealth of knowledge in the near future. He asked for a motion to proceed with this concept.

A motion was made by Alderman Fleming and seconded by Alderman Finley to authorize Glenda Loehr's services as in independent contractor, subject to her availability and the City's need, at her current hourly rate. Alderman Fleming said we will absolutely need her assistance. A voice vote was taken with a unanimous affirmative result, and **the motion passed.**

STAFF REPORTS

None.

CITY ATTORNEY'S REPORT

None.

ALDERMANIC COMMENTS

Code Enforcement: Alderman Harder said, due to the late hour, he will postpone the discussion regarding grass and other property issues, until the next meeting.

Conflict of Interest and Purchasing: Alderman Dogan said there are issues with the bidding process, as shown in the discussion at this meeting regarding solar panels. The bidding process needs to be improved. He said he's looking forward to having this discussion with Alderman Fleming and his committee.

Alderman Dogan discussed the Allied Waste contract. He asked, what are the current rules regarding conflict of interest, purchasing, how were they applied in this situation, and what should be done going forward? He presented a timeline of event from e-mails that he received from City Administrator Kuntz. He thanked Mr. Kuntz for being forthright and providing the information quickly. Alderman Dogan also presented a brief overview comparing Ballwin's conflict of interest laws to the State law, and a couple of municipalities in this area.

Alderman Dogan said that there was a news story today that City Administrator Robert Kuntz attended Game 7 of the World Series with Tony Lamantia from Allied Waste. The face value of the ticket was \$250. He said that as the city official that was responsible for negotiating the contract on behalf of the City, he believes that Mr. Kuntz made a serious error in judgment, not by accepting the ticket, but by failing to share that information with the Board at the time that this contract was under negotiation. It should be noted that the contract was negotiated directly between Mr. Kuntz and Mr. Lamantia, the person with whom he attended the World Series game. He said that accepting such a valuable item from any city service provider at any time could call into question one objectivity when dealing with that provider. When that provider comes to the City just a few months later, asking for an unprecedented 10-year no-bid contract, and then the contract negotiations are conducted by the same individuals who attended the World Series together, most objective observers would agree that there's something wrong with the picture.

Alderman Dogan said, after the Allied contract was approved at last month's Board meeting, he asked how did City Administrator Kuntz negotiate the deal, to make sure everything was done on the up and up, to make sure the residents will receive the lowest possible price, and to make sure that he made every effort to comply with the Board's vote at the April 23rd meeting, in which we specifically said that Allied should reduce the length of the contract from 10 years to 7 years, with an "out" clause that would be flexible if circumstances changed.

Alderman Dogan said he requested that the City Administrator provide his correspondence with Allied representatives over the past several months, and he was forthright and provided that information very quickly.

Alderman Dogan said, regarding the 7 year contract that the Board voted on, the out option, why those changes were not included in the contract that was voted on last month, the response from Allied at last month's meeting that referred to their economic situation, and that the 10-year bid was necessary economically because if they reduced it to 7 years, we wouldn't get the same cost savings: Alderman Dogan said, that was just an assertion; they never actually provided a contract of 7 years which the Board requested. There's nothing in the documentation that says the City Attorney or anyone in the City insisted that they provide this. The motion that the Board approved was ignored. He suggested that the

City Attorney review the legality of the contract the Board approved, since the Board voted to change it to 7 years, and it was not considered.

Alderman Dogan said, "The most interesting aspect to Mr. Kuntz's e-mails was what he didn't say, which was his willingness to be willing to not sign the contract because there were three years left on the deal. That was the City's strongest negotiating point with Allied. We could walk away and go out to bid if we didn't receive a better deal. There was no indication in the documents that Mr. Kuntz seriously considered walking away from the table to put this out to bid. It seemed that from day one, he shared Allied's goal of getting a deal done regardless. On May 6, there were e-mails between the City Administrator, City Attorney, and Mr. Lamantia in which Allied proposed a contract that had some issues regarding trees and tree removal. Mr. Kuntz said, 'I will need a complete new contract to comply with the legislation. What you provided actually raises more issues and inconsistency than originally proposed. The clock is ticking and I need to get the packet out on Thursday morning. No letter has been sent to the Board members by your head man. At this point, I think we are pretty far apart.' That was on May 6 and Mr. Kuntz also said, 'That's fine with me, but I'm reluctant to push forward with a half-baked proposal.' The proposal they had on the table at that point was obviously not to his satisfaction. On May 7, Mr. Lamantia said he is taking out the tree ordinance, and this is going downhill fast. On May 8, Mr. Lamantia e-mailed Mr. Kuntz and asked that this be held off from the Agenda on May 14 so an extension contract can be prepared that the Board will be comfortable with."

Alderman Dogan said, "On May 9, Mr. Kuntz e-mailed Mr. Lamantia and stated 'You have support and I have the votes if you get this together and back on the table before year end.' Before we have gotten to the point of having a second agreement, Mr. Kuntz told him that he has the votes to approve whatever they propose. That suggests that this was a done-deal before anyone had cast a vote to approve this project, which I find disturbing."

Alderman Dogan said, "When you look at the terms of the deal that was proposed in June, after Mr. Lamantia had a month to negotiate with Mr. Kuntz, the rates were higher in each of the 10 years of the deal than they were in what was originally proposed in April. Year one, they were 3.5% higher, by year 10, they were 3.0% higher. If I were negotiating a deal and someone came back to me after I had been unhappy with the first revision, and then presented a higher price the second time, I would have been embarrassed to present that to the Board. That's what was proposed, voted on, and approved. The whole process was bothersome to me, and with the additional revelation about the World Series tickets, I think that most objective observers would question Mr. Kuntz's judgment with this contract."

Alderman Dogan said, "As newly elected city officials, we are informed that it is the wrong-doing of an individual occupying a position using the trust imposed in him and the position he occupies to further his own personal gain and the appearance of such wrong-doing, that the law seeks to eradicate; the appearance of wrong doing. Our current ordinance states any gift over \$500 that is taken from someone who has business with the city, has to be reported. Anything under that amount is unclear. I don't think there was a violation of the law. The State law says that no transactions over \$500 or totaling more than \$5,000 in a year may be accepted by municipal officials, except on transactions made pursuant to an award on a contract or sale after public notice and competitive bidding, provided that the bidder offers the lowest received. Another paragraph in the State law is very broad which states that no one should accept any money outside of their salary or official payments from anyone. I'd like to request that our City Attorney look into the State law to make sure that there was no violation."

Alderman Dogan said, "I think that this situation was embarrassing for the City, it's embarrassing for the Board because we approved the 10-year contract without pertinent information that may have changed a lot of people's minds. I want to propose a couple of measures to make sure that something like this never happens again. I'm looking at ordinances from other cities, and I'm the most comfortable with the Chesterfield conflict of interest ordinance. They basically said no fees, no compensation, no gifts, nothing of any monetary value may be accepted under circumstances in which acceptance may result in a conflict of interest. That takes care of the issue of even the slightest appearance. I don't want someone to

question one of the Board members, Mr. Kuntz, anyone working with the city, or one of the departments because someone went out to a fancy dinner with a contractor and voted on something that benefitted that contractor. All of those things are currently legal. I think that those items present a big public interest and something that the public doesn't like."

Alderman Dogan said, "I'd like the City Attorney draft legislation based on Chesterfield's legislation, outlawing any kinds of gifts from companies with business before the City."

Alderman Dogan said, "With all of the issues that have been raised with the Allied contract, the solar and the police contracts, our bidding process is a mess. I was at least glad that we had the option to choose among 5 companies that provided bids for the solar panel bid, but the fact that Allied Waste has had this contract with the City of Ballwin since 1995, when I was in high school, on a no-bid basis, that has to stop. The next time it will be bid out is 10 years from now. It's shocking to think about this."

Alderman Dogan said, "The Board should authorize City Attorney Jones to draft legislation that if a city contract has been awarded on a no-bid basis for more than 10 years, it has to be bid out the next time. People will say that we're obligating the Board in 10 years, but what are we doing right now by giving a 10-year contract? We've been doing this since 1995 by not bidding out this contract. I think it's time that we force this contract to go out to bid, and make sure it's done in the right way so that other companies can compete and that we can get the best service at the lowest price possible, which I don't believe we did at this time."

City Attorney Jones asked for clarification on Alderman Dogan's requests. Alderman Dogan said, "I would like City Attorney Jones to: 1) review the State law (Mo Revised Statutes Sec. 105.454 to make sure that accepting the World Series tickets did not violate the State law." Mayor Pogue asked, "Does any investigation into unethical or illegal behavior of personnel have to go before a special meeting of the Board of Aldermen?" City Attorney Jones said, "He does not see an ordinance that requires this." Alderman Boerner said this could be discussed in closed session. City Attorney Jones said yes.

City Administrator Kuntz asked, "Isn't our ethic ordinance patterned after the State Ethics statute? The \$500 per transaction is consistent in all the other examples, and I recall from the annual ethics form that this is the standard that is supplied by the State Ethics Commission. I believe that is what our forms are based on." City Attorney Jones said, "That is correct. That language is in Section 105.454 of the Revised Statutes of Missouri." City Administrator Kuntz said, "The answer to Alderman Dogan's question is consistent with State Statute and is answered by the reference you gave him." Alderman Dogan said, "There's a paragraph that ambiguous."

City Attorney Jones said, "I can look at this, but it's my understanding that statutory interpretation is that when you have a specific prohibition like that, it will control a general approach. The statute sets a limitation at which if there is a violation, that would control a general approach. That is the same language that we have in Section 2-53 of our ordinances, although it doesn't have the \$5,000 annual limitation in it. I can track through these sections and make a report back to the Board.

A motion was made by Alderman Dogan and seconded by Alderman Harder for the City Attorney to review the Statute regarding conflict of interest. A voice vote was taken with a unanimous affirmative result and ***the motion passed***.

A motion was made by Alderman Dogan that the City Attorney draft legislation similar to Chesterfield's conflict of interest legislation, in which we would prohibit the acceptance of compensation, gifts, payment of expenses, or other things of monetary value.

Alderman Leahy said, "It states in your notes that on October 28, 2011, City Administrator Bob Kuntz attends World Series Game 7 with Tony Lamantia from Allied Waste and 2 other people, including

Chesterfield City Administrator Michael Herring. Why would we go with them when he was sitting next to Bob Kuntz at the World Series game?" Alderman Dogan said, "You'll have to take that up with Chesterfield. It's not my issue." Alderman Finley said, "My feeling is, for consistency, it appears that the way our conflict of interest ordinance current mirrors the State, I'm satisfied with that." Alderman Dogan said, "The State statute is the bare minimum. Every municipality has to adopt something at least as tough as the State. Some cities do what Chesterfield does. Ellisville outlaws any lobbying activity unless public notice is given. I would be willing to consider lowering the amount. \$500 is too high an amount for accepting gifts from people who have business with the City."

Mayor Pogue said, "My concern with the amount of zero is that I frequently attend luncheons. The luncheons have to be reported by the party giving the luncheon, as a lobbying effort. I went to an award's banquet, and it showed up on a lobbying report for the next three months, saying that they paid for my lunch at the awards banquet. Under Chesterfield's, I would have to report that as well." Alderman Dogan said, "I have no problem with requiring us to report information. Right now, we don't have to report anything received under \$500. I think that opens a huge loophole. Not everyone has to report what they have given people."

Alderman Harder said, "I think the Chesterfield law is something we should review. The State has a \$500 limit. I think we can do better than that. Allied is a \$36 million contract over 10 years. That's a lot of dollars for Allied that's at stake. Unfortunately, people can be bought for certain amounts of money. I think the number should be zero. We should model a new conflict of interest ordinance off of the Chesterfield document."

Alderman Finley said that city officials must attend luncheons at times, and he is uncomfortable with the approach that everything has to be disclosed. The State legislature has spoken on the issue. He said what we have is acceptable.

Alderman Harder said he would rather have the City pay for their lunches, than a lobbyist for a vendor. Mayor Pogue said he would be insulted if he invited someone to receive an award at a luncheon, and they said they couldn't come unless they pay for their own lunch. Alderman Harder said, when you are dealing with the public interest, this shouldn't be a problem. Alderman Boerner said he thinks the amount in question should be an amount other than zero.

Alderman Dogan said there are two avenues for consideration: 1) should it be allowed? 2) if you're going to allow a gift, should it be disclosed? You might have to set two different amounts. It's allowed up to "X" and that you have to disclose everything. He said he will always error on the side of disclosure. The public should have as much information as possible about what their public officials are doing. If campaign contributions are accepted, all of it has to be disclosed. You can't say it was under X amount, so I'm not going to disclose it. The amount could be changed to \$100, with everything disclosed.

Mayor Pogue said there is currently a motion on the table. What would you like to do?

Alderman Dogan said he will rescind his motion.

A motion was made by Alderman Dogan and seconded by Alderman Harder to authorize City Attorney Jones to draft legislation for consideration allowing gifts up to \$100, and requiring all of the gifts to be disclosed. A voice vote was taken with the following result: Aye: Aye: Harder, Finley, Dogan. Nay: Boerner, Leahy, Fleming. Mayor Pogue cast the deciding vote by voting Nay. ***The motion was defeated by a vote of 4-3.***

Alderman Dogan said there has to be some amount we can reduce it to from \$500. He suggested holding a Public Hearing on this issue for the next meeting. This situation calls into question our conflict of interest.

Mayor Pogue said, "Alderman Dogan, I have a major concern about the way you are going about this. You're trying to bring up an issue of what appears to be a problem, in which there was no violation of an ordinance and no violations of ethics. You're trying to give the perception that there was foul play that has taken place. You made comments earlier referring to City Administrator Kuntz saying that the votes are there. There are 9 members of the Board that all independently vote. I think you're taking that line out of context. I was very offended by that, saying that we had been bought off, and that possibly four other members of this Board have been bought off, saying that the deal was done. We vote our own conscience on what we believe is best for the City."

Alderman Dogan said, "That's great, but Mr. Kuntz said what he said. He said you have support and I have the votes." Mayor Pogue said, "Then you made the perception that a deal was already done. I don't think that was the case." Alderman Dogan said, "Is there any point in the e-mails in which Mr. Kuntz says I'm going to walk away from the table, this is too outrageous. Every single indication that he gave this Board, he was selling the contract to us." Mayor Pogue said, "He was negotiating the contract." Alderman Dogan said, "He was selling it to us." Mayor Pogue said, "I had discussions with Mr. Lamantia on concerns that I had with the contract. One of those was getting all the services on the same day was a big push that I had myself. It was not just Mr. Kuntz that was discussing the contract with Mr. Lamantia. I had input as well. There were three public meetings on this, as well as a public hearing. There were plenty of chances for other input. The representative from Allied Waste talked about why he couldn't go with a 7-year contract, and what would happen in that event. The Board voted whether to pursue the 7-year contract or to go with the 7-year extension. The Board passed the 7-year extension. Your accusations that you continue to make are false, saying that no reason was given. It was given during a public meeting." Alderman Dogan said, "We passed a motion in April saying that the contract should be reduced to 7 years." Mayor Pogue said, "At the following meeting, the gentleman from Allied explained what would happen if we dropped the term of the contract." Alderman Dogan said, "He never proposed anything for 7 years." Mayor Pogue said, "He gave reasons why he could not, and the Board proceeded to ask, do we want to go for the 7 year or the 7 year extension. The Board acted at that point." Alderman Dogan said, "When this whole deal was going on, the very least Mr. Kuntz should have done was to disclose to us that he had accepted the gift from Allied Waste."

City Administrator Kuntz said, "I disagree. There was no discussion about a contract at that time. You're talking about October and March. I'm not going to pursue a debate with you, Alderman Dogan. You've obviously made up your mind. I'm not going to engage you in a public discussion. I have issues with a lot of your accusations and allegations."

A motion was made by Alderman Dogan and seconded by Alderman Boerner to *draft legislation that if a City contract has been awarded on a no-bid basis for more than 10 years, it has to go out to bid after the expiration of the current contract.* A voice vote was taken with the following result: Aye: Dogan, Boerner, Finley, Harder. Nay: Fleming, Leahy. ***The motion passed by a vote of 4-2.***

City Administrator Kuntz asked City Attorney Jones, "Is it the vote of the members, or the vote of those in attendance?" City Attorney Jones said, "To draft an ordinance, the vote is for those in attendance. It would have to be a majority vote of those elected to pass such an ordinance."

City Attorney Jones said, "My concern about this particular contract, since it's the City purchasing the service, I made that assumption for the legal opinion that I gave a month ago, only because the City receives the leaf collection disposal service. That's an added benefit of the contract. I think a threshold item would always be to determine whether or not the City is purchasing this service or the item. I made the assumption that the City was indeed purchasing the service."

Solar Panels: Alderman Finley said, “I think a benefit that occurred to Straight Up was that they went above and beyond what was asked for. They gave other alternatives. I appreciated the Microgrid representative acknowledging the deadline with Ameren.”

Bid Specifications: Alderman Fleming said “Our bid specification said that the City of Ballwin is interested in having a 40kw system. In their position, I probably would have responded the way Microgrid did. It could have been made better by saying ‘interested in having a 40kw or greater, or alternate offer. There are things we can do to make the process more clear for the bidders.’”

Alderman Fleming explained to Alderman Dogan why he voted no on several of his issues. “Changing the amount before the City Attorney reviews a State Statute, like you asked him to, seems premature. Maybe after he reports back, we can say maybe the amount ought to be such and such, and it can be changed later. I’m still open to that.”

Alderman Fleming said, “The motion to draft legislation should require the no bid. I voted against that because the waiver still exists that we used for Allied. I believe that waiver is important for us to have, if we think it’s in the best interest of the City to act on a contract like that.”

Alderman Fleming said, “I’d like to apologize to City Administrator Bob Kuntz if he interprets that the Board in general has any questions with his honesty, integrity, or anything else. That is not the feeling of all members of the Board, and in particular, it is not my feeling at all. You provided the information to Alderman Dogan quickly, and you were not required to report the ticket. I don’t think that Bob going to a baseball game had any influence at all on how I voted regarding the Allied contract. I did my research to look up all the other cities and what they were paying. I put in time and effort into trying to do what was in the best interest of the City. I want Mr. Kuntz to know that I enthusiastically support all your efforts, and thank you for what you’ve done for the City.”

Finance Officer: Alderman Fleming thanked Finance Officer Glenda Loehr for her patience with the Board to explain the TDD and sales tax multiple times until he finally understood well enough to make a decent and informed decision. He thanked her for her dedication and service.

Ferris Park Planning Meeting: Mayor Pogue said this meeting will be Thursday, July 19, at 7:00 p.m. at The Pointe.

Board Reminder: Mayor Pogue said, “On four different occasions tonight, either questions were duplicated and explanations given, or questions were asked that the answers were in the packet. Please everyone due their due diligence to read the packet. It will save a lot of time.”

Adjourn: A motion was made by Alderman Fleming and seconded by Alderman Boerner to adjourn. The motion passed unanimously and the meeting was adjourned at 10:08 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

July 16, 2012