



MINUTES OF THE BOARD OF ALDERMEN MEETING
CITY OF BALLWIN – 300 Park Drive

April 13, 2015

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

The meeting was called to order by Mayor Pogue at 7:06 p.m.

PRESENT

ABSENT

MAYOR TIM POGUE
ALDERMAN JIMMY TERBROCK
ALDERMAN MICHAEL FINLEY
ALDERMAN MARK STALLMANN
ALDERMAN JOHN SCHWENT
ALDERMAN FRANK FLEMING
ALDERMAN JIM LEAHY
ALDERMAN KATHY KERLAGON
ALDERMAN MIKE BOLAND
CITY ADMINISTRATOR ROBERT KUNTZ
CITY ATTORNEY ROBERT E. JONES

The Pledge of Allegiance was given.

MINUTES

The Minutes of the **March 23, 2015 Board of Aldermen meeting and closed session** were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Terbrock to approve the Minutes. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

None.

CITIZEN COMMENTS

Lynn Goetz, 504 Kenilworth: Mr. Goetz said that the Planning & Zoning Commission approved a proposal for an EZ Storage, off of Ballpark Drive, south of Manchester Road. He asked that the Board consider that the property is unusable because of the lay of the land and the building that is currently on the property. He said if a self-storage is approved by the Board, and if that business goes out of business, that will be another building that cannot produce revenue for the City.

PENDING ISSUES

None.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

None.

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

Ballwin Days Meeting: Mayor Pogue said that the next Ballwin Days meeting will be on Thursday, April 16, at 7:00 p.m. at The Golf Clubhouse.

National Telecommunications Week: Mayor Pogue thanked the Ballwin Dispatchers and said they do an excellent job. These positions can be stressful under crisis conditions. They manage to keep everyone as calm as possible in reporting the emergency situations.

MSD Meeting: Mayor Pogue said that last week, he attended the MSD meeting that was held at The Pointe regarding rate proposals. There will be another meeting at The Pointe on Tuesday, May 12, at 6:00 p.m. This will be the PSC rate hearing, regarding storm water and waste water, including a possible bond issue for voter approval. These meetings are open to the public.

St. Louis County Municipal League: The next meeting will be held on April 23, at 7:30 p.m. at Clarkson Valley. Changes in the St. Louis County staff and governing process and how it will affect the municipalities will be discussed by the County Executive Steve Stenger.

CITY ADMINISTRATOR'S REPORT

Micropaving: City Administrator Kuntz said this is a new process that he recommends Ballwin test. It was used by the City of Rolla. He said he visited the pilot project in Rolla. This is a product that is less expensive than traditional full-depth asphalt. The contractor has agreed to use this process on Graywood Drive and Whiteacre Court. These are excellent test streets since these are residential streets. The cost for the test application is \$35,000. Our street personnel will do the initial preparation before Donelson Construction Company applies the materials.

Alderman Fleming said that this cost less than what was budgeted for Graywood, and will allow for two streets to be resurfaced. This is a technology that may be used on other streets.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to approve the micropaving with Donelson Construction Company. A voice vote was taken with a unanimous affirmative result and the motion passed.

Salt: City Administrator Kuntz said this is an advance authorization for soliciting bids to replenish the salt supply. This procedure was approved by the Board several years ago, which is an extra step for the future purchase of salt to bring the dome to full capacity. Bids will be required.

Alderman Finley asked how many tons is full capacity in the salt dome. City Engineer Kramer said 5,000 tons is the full amount. At this time, there is approximately 2,000 tons in the salt dome.

Alderman Boland asked about the current price of salt. City Engineer Kramer said that St. Louis County is opening bids this week. This will be the first price he has heard for this year.

Alderman Fleming asked if the advance authorization to solicit bids for salt purchase is a necessary procedure to continue. City Administrator Kuntz said this is an extra step in the process. Alderman Terbrock said that he is in favor of continuing with this approach.

A motion was made by Alderman Fleming and seconded by Alderman Boland to accept the recommendation for authorization to bid salt purchase. A voice vote was taken with a unanimous affirmative result and the motion passed.

Golf Construction Discount: City Administrator Kuntz said this is a temporary discount on the golf greens fees during the period of construction of the new irrigation system. This is a disruptive process that will inconvenience players until completion. This is suggested to maintain a good relationship with the people using the golf course during construction.

A motion was made by Alderman Stallmann and seconded by Alderman Kerlagon to accept the recommendation to temporarily reduce the golf greens fees during the construction of the irrigation system. A voice vote was taken with a unanimous affirmative result and the motion passed.

Government Center Partial Remodel: City Administrator Kuntz said that the Board decided to establish a funding mechanism, which is a dedicated amount of money for the next two years to have the ability to fund either a major remodel or a new construction of this facility. There are issues regarding the Municipal Court and its ability to separate confidential documents from other employees and the general public. He said this partial remodel addresses clerical work space so that the public can be better served, and satisfies the court requirements to provide separate lockable and more secure space for records.

City Administrator Kuntz said that five years ago, the court office was moved to the Government Center. This was a pro-active move for the public, as well as for the court to separate enforcement from the administration of the court. Bids were received that exceed the budget, but some items can be eliminated to lower the cost.

Assistant City Administrator Aiken said that window privacy shades can be eliminated. These are used to close the court office, and this will also be used at the front desk during preparation of Board meeting Minutes.

Alderman Finley said that this expenditure is only for the court and front desk lobby area. City Administrator Kuntz said that is correct. There will be no restroom addition or other window treatments, except for a plate glass window in front of the front desk and court personnel for added security. No other offices in the building will be included in this partial remodel.

Alderman Fleming said that the space where the Board meeting preparation and Minutes will be prepared is not as quiet as the area where Marie Clark has been doing this since before 2005. City Administrator Kuntz said that this partial remodel will not fix that problem. Assistant City Administrator Aiken said that during most of time, the three front desk personnel share work and need to communicate on customer and front desk duties, therefore, all three employees need to be at the same location. The window screen will allow some privacy from the lobby area for preparation of the Minutes. City Administrator Kuntz said that this will give more coordination of the clerical staff, with respect to relief of duty and being able to help the public because there will be three windows and three employees that they can come to for service. Public restrooms will not be provided at this time. He said this is an interim step instead of doing nothing.

Alderman Fleming said that it appears that we don't have a choice about a partial remodel since the Court has to be more secure. City Administrator Kuntz said that the City of Ballwin is periodically audited by the State. They review the administration of the Municipal Court. The State has determined that we don't meet the standard for Court, which is a secure perimeter. Everyone with access to the building where the Court is located has to be fingerprinted and background checked. This has to be submitted and on file. This has been done, and will continue to be done, but there is still the requirement to further secure the Court operation.

Alderman Boland said that currently, there is not a safe environment for the court and front desk personnel. The extra cost could be made up with contingency funds.

Alderman Terbrock asked about the timeframe for the remodel. Assistant City Administrator Aiken said it should take 60 days or less. During that time, the Court will move to the conference room on the other side of the lobby. Alderman Terbrock said that although he is not in favor of spending money on a partial remodel, he understands the need and the State mandate to do this.

A motion was made by Alderman Fleming and seconded by Alderman Boland to accept the recommendation to approve the partial remodel for the Government Center. A voice vote was taken with a unanimous affirmative result and the motion passed.

Future Meetings: City Administrator Kuntz recommended that the May 25 Board meeting be cancelled due to the Memorial Day holiday. He said that the summer meeting schedule, which is one Board meeting in June, July, and August, has recently been held on the third Monday of those months. It is recommended that the summer schedule utilize the 4th Monday for the Board meeting to accommodate any Planning & Zoning issues that may require Board approval. He also said that if the Board decides to have one Board meeting each month in the future, this would allow time for work sessions, if necessary.

A motion was made by Alderman Fleming and seconded by Alderman Boland to cancel the May 25 Board meeting and utilize the summer schedule on the 4th Monday in June, July, and August. A voice vote was taken with a unanimous affirmative result and the motion passed.

Police Body Cameras: City Administrator Kuntz said he provided to the Board information regarding the national debate and issues relative to police body cameras. He said that a report will be provided relative to the investigations through the Police Department with respect to body cameras. Not enough clear information has been acquired at this time. Police Chief Schicker expects to have the recommendation for the total replacement of all in-car videos, where 90% of Ballwin's traffic stops and contacts are made, ready for recommendation for contract award at the May 11 meeting.

Closed Session – Real Estate: City Administrator Kuntz said a brief closed session is recommended to discuss real estate. No formal action will be taken during the closed session.

STAFF REPORTS

None.

CITY ATTORNEY'S REPORT

Dangerous Trees: City Attorney Jones said in the Board meeting packet is a memorandum that he prepared regarding dangerous trees and sample ordinances from other communities in the St. Louis County area. Those that treat dangerous trees within their Codes, do so as a nuisance violation like weeds and debris. They have a hearing like Ballwin does for nuisance violations. He said that based on the

rights of citizens and private property, and entering upon private property, he is concerned about making more broad the nuisance ordinances with this type of provision.

Cities that have a process in place are using the procedure without incident. He is also concerned about entering upon private property, taking down a tree, etc. He said he is concerned about liability and cost for the City to remove a tree. This is not a \$200 or \$300 grass cutting bill. This could be a \$6,000 bill that could only be recovered after a tax bill or lien is placed upon the property. He said that Ballwin can do this, however, there are many concerns.

Alderman Fleming said he would like to pursue this and have a process that is very thorough, even if it involves the Municipal Judge. City Attorney Jones said that a complaint could be filed in Municipal Court, bring in the defendant, have a hearing, and part of the relief of the court would be a fine or perhaps imprisonment. He said the Municipal Judge cannot order someone to take down their tree. Alderman Fleming said that the Judge could review the situation and perhaps say that it is an imminent danger. City Attorney Jones said that a Judge is not going to issue that kind of advisory opinion. It will only be a Staff opinion.

Alderman Fleming said this is being discussed because an individual talked to the Board about a tree hanging over their house. What would happen if that tree was hanging over the street? He said that we would probably feel differently about it in order to protect the citizens driving under the tree and to protect the street. He suggested that the Board take some action, but be as strict as possible. He is concerned about property rights. It could be such a dangerous situation that action might be called for in very rare circumstances.

Alderman Terbrock said that this won't happen in only rare circumstances. It will be like the grass cutting that will be another government handout. People will let the tree go, the City will cut it down. At \$5,000 per tree, five or more times per year, it would be years before the City would get the money back. Alderman Fleming said he is concerned about the risk to someone rather than annoyance of high grass.

Alderman Terbrock said that people say they want less government involved in their lives, but the moment something can't be taken care of, they want the government to step in and take care of it for them. He said he is opposed to any legislation regarding trees. He said this situation will be abused and a lot of money will never be collected. Alderman Fleming said this is why it should be set up as a rare occurrence with very stringent set of restrictions. Alderman Terbrock said that's not possible. It will become the same process as for grass. There are some property owners who don't cut their grass and wait for the City to take care of it.

Alderman Boland asked if liens or penalties are filed in these cases. City Attorney Jones said that this has been done in the past. Alderman Boland asked when was this discontinued? City Administrator Kuntz said that since Ballwin is not going to have Administrative Search Warrants, it can't have a contractor on private property cutting grass. This is the policy that the Board agreed to follow. A year from now or sooner, the Board may learn from the citizens how they react to this.

City Attorney Jones said that if a tree in one yard falls into another yard and causes damage, that can be a civil liability from the owner of the tree that has fallen. This would not be any liability for the City.

Alderman Boland asked what was the experience in Maplewood with this ordinance. Alderman Stallmann said that there was a limited problem in terms of non-payment. For the most part, it was mostly grass that was dealt with. He doesn't recall any problem with dangerous trees in his experience on the Board in Maplewood. He said on one hand, he's reluctant to give government authority to go on to private property to investigate a tree. This would be several thousand dollars to have a tree service remove a tree.

Mayor Pogue asked what liability would Ballwin have if an ordinance was passed and a tree fell that was not listed as a dangerous tree? City Attorney Jones said that he doesn't think Ballwin would have any

liability. We would be protected by sovereign immunity. This is a very bad public relations situation if an ordinance was enforced sometimes and not other times. The process of removing dead trees would be a difficult thing to handle in a way that is consistent, especially if it is based on a complaint-driven system.

Alderman Stallmann asked how is this handled if a tree is overhanging a sidewalk? City Administrator Kuntz said that there is a height requirement over pavement and over sidewalks. If it's a tree that is extending over either of those and it's a property owner's tree, they are asked to remedy the situation. It's approximately 12 feet or 14 feet over sidewalks to maintain free access within the public right-of-way. If it's a street tree, and is clearly determined to be within the city right-of-way, the Parks Department does the trimming or removal. It goes through a budget quickly to remedy those trees on an annual basis. There isn't much confrontation because it's not the homeowner's tree and we're not on the homeowners property. There's no cost to the homeowner; it's a city expense. It is a legitimate public expense because it's on public property.

Alderman Terbrock said if there's a difference in opinion between two arborists and one says the tree wasn't dangerous. The homeowner may take Ballwin to court for removing a tree on their property. City Administrator Kuntz said that we could have all of the best intentions and still end up in court.

Alderman Leahy asked if we had our arborist inspect a tree, and he said the tree is dangerous and should be taken down. If we didn't get to take it down for a couple of weeks, and in the meantime, it falls on someone's house, will Ballwin be liable by telling them that it's a dangerous tree? City Attorney Jones said the he doesn't think we would be liable, but that doesn't mean a claim won't be filed, our insurance company would have to be notified, and deal with the situation. Alderman Leahy said it sounds like we would be involved in a situation that we never should have gotten into.

Alderman Finley said that shortly after he became Alderman, a family in his ward contacted him about a dangerous tree. After research, he decided that in this situation, that family could bring action in civil court to sue the neighbor to compel them to remove the danger. In the City of St. Louis, the City can remove the tree, but there is a process to assess a fine on the personal property tax. Ballwin doesn't have that kind of taxing authority.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to authorize City Attorney Jones to prepare legislation for consideration at the next meeting. A voice vote was taken with the following result: Aye: Fleming. Nay: Terbrock, Finley, Schwent, Stallmann, Leahy, Boland, Kerlagon. The motion failed by a vote of 7-1.

ALDERMANIC COMMENTS

Alderman Terbrock suggested that in the profile for the City Administrator position, the chosen candidate should be expected to establish residency in Ballwin. He said that "expected" is not strong enough. He recommended that "expected" be changed to "required". He said that the City Administrator should be required to live within the city limits of Ballwin. Mayor Pogue said that the profile was released on Friday. The candidate can be asked about his plan to live in the City of Ballwin. Alderman Terbrock said that this should have been reviewed and changed before the profile was released.

Adjourn to Closed Session: A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to adjourn to closed session to discuss real estate under Code 610.0212 of the Missouri Statutes.

A roll call vote was taken with the following results: Ayes: **Aldermen Boland, Kerlagon, Fleming, Leahy, Schwent, Stallmann, Terbrock, Finley**. Nays: None. The motion passed to adjourn to closed session at 8:10 p.m.

Closed Session:

The Board convened in closed session at 8:14 p.m.

A motion was made by Alderman Fleming and seconded by Alderman Boland to adjourn the closed session. A roll call vote was taken with a unanimous result, and the closed session was adjourned at 8:22 p.m.

The Board reconvened in open session at 8:24 p.m.

Mayor Pogue stated that the Board met in closed session to discuss real estate. No formal action was taken in the closed session.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to adjourn the open session. The motion passed unanimously and the meeting was adjourned at 8:30 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

April 13, 2015