



CITY OF BALLWIN
BOARD OF ALDERMEN MEETING MINUTES
OCTOBER 13, 2014

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

The meeting was called to order by Mayor Pogue at 7:05 p.m.

PRESENT

Mayor Tim Pogue
Alderman Jimmy Terbrock
Alderman Michael Finley
Alderman Mark Harder
Alderman Shamed Dogan
Alderman Frank Fleming
Alderman Jim Leahy
Alderman Kathy Kerlagon
City Administrator Robert Kuntz
City Attorney Robert E. Jones

ABSENT

Alderman Mike Boland

The Pledge of Allegiance was given.

MINUTES

The Minutes of the **September 22, 2014 Budget Work Session** were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to amend page 3, paragraph 5, to reflect "Alderman Terbrock" instead of "Alderman Harder." A voice vote was taken with a unanimous affirmative result and the motion passed. A motion was made by Alderman Finley 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.

The Minutes of the **September 22, 2014 Board of Aldermen meeting** were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to amend page 2 by removing the second sentence and to amend page 11 by changing "Hope" to "H.E.L.P." A voice vote was taken with a unanimous affirmative result and the motion passed. A motion was made by Alderman Fleming and seconded by Alderman Finley to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

Ballwin Days Entertainment: Darryl Holman and Jim Lieber, co-chairs of the Ballwin Days Committee, spoke to the Board about upgrading the entertainment for the annual event. They proposed bringing the Marshall Tucker Band to the event on Saturday, June 6, 2015. They understand the venue has limits with size and logistics, but feel the site will hold the expected attendance.

Alderman Leahy asked what the anticipated crowd size is for the Marshall Tucker Band.

Mr. Lieber said he estimates the attendance to be between 4,000 and 5,000 people. They did a density study of the area. It has 22,875 square feet, with a site line of the stage. They used a 4-foot density calculation per person and anticipate the stage area can hold 5,700 people, but don't anticipate reaching that number. He mentioned the investment is about \$18,600 for this band. Each year the City of Ballwin has upgraded the entertainment there has been an increase in sponsorships.

Alderman Fleming asked if there is enough sponsorship support so we don't have to rely on rides and drinks to cover the costs.

Mr. Lieber indicated that he wouldn't expose the City of Ballwin to additional costs and believes history has shown that revenues can be increased.

Alderman Fleming asked Police Chief Schicker if there had been any problems in the past by stepping up the musical acts and bringing more people to the park.

Chief Schicker replied that there hadn't been any problems.

Alderman Harder asked what the cost was last year for Head East and others perform.

Mr. Lieber said Ballwin Days spent \$10,500 on the main stage last year.

City Administrator Kuntz mentioned that Ballwin would be looking at supplemental event insurance for this venue and that cost hadn't been determined yet.

Mayor Pogue asked if the \$18,600 included any backline fees.

Mr. Lieber replied that \$18,600 is the total cost and it is not to exceed that.

There was a brief discussion about the stage and sound system equipment. The Committee used Spectra in the past to provide the service and plans to use the company again this year.

Mr. Holman mentioned they have been looking into the parking logistics. They have a tentative agreement with Rockwood School District to use Selvidge Middle School for extra parking and Ballwin Baptist Church agreed to open up its parking lot. The bus routes can be adjusted for Saturday night's entertainment.

Mayor Pogue asked if there have been issues with overflowing Target's parking lot in the past.

Mr. Holman replied that there haven't been any issues.

PENDING ISSUES

None.

CITIZEN COMMENTS

Lynn Goetz, 504 Kenilworth Lane, inquired about the construction status coming south on Holloway Road from Baxter. He said the southbound lane gets narrow and is very slick when trying to break on the steel plates.

Mayor Pogue asked Director of Public Works Kramer to give an update on the progress.

Mr. Kramer said construction should be finished by November 1, 2014. He mentioned that another contractor will then come in and do the pavement.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL #3847 - AN ORDINANCE AMENDING SECTION 29-1(j) OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN.

A motion was made by Alderman Fleming and seconded by Alderman Finley for a first reading of Bill No. 3847. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3847 was read for the first time.

A motion was made by Alderman Fleming and seconded by Alderman Finley for a second reading of Bill No. 3847. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3847 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3847 with the following results: Ayes – Fleming, Dogan, Terbrock, Harder, Kerlagon, Leahy, Finley. Nays – None. Bill No. 3847 was approved and became **Ordinance No. 14-29**.

BILL #3848 - AN ORDINANCE TO ENABLE THE CITY OF BALLWIN, MISSOURI TO JOIN THE MISSOURI CLEAN ENERGY DISTRICT PURSUANT TO SECTIONS §67.2800 TO §67.2835, INCLUSIVE, RSMO., THE “PROPERTY ASSESSED CLEAN ENERGY ACT,” AND STATING THE TERMS UNDER WHICH THE CITY WILL CONDUCT ACTIVITIES WITHIN THE CITY AS A MEMBER OF SUCH DISTRICT.

A motion was made by Alderman Kerlagon and seconded by Alderman Fleming for a first reading of Bill No. 3848. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3848 was read for the first time.

Alderman Dogan had questions about the program, but no representative was in attendance to answer them. He expressed his concerns about the program exposing the City of Ballwin to a financial liability and said he opposes it.

There was a brief discussion about the City of Ballwin’s role in the program, which generated more questions.

Alderman Fleming suggested the Board table the discussion and invite the applicant from the Barn at Lucerne to attend the next Board meeting to answer our questions. It was the consensus of the Board that Bill #3848 is held over until the next meeting.

A RESOLUTION FOR GRANT APPLICATION TO IMPROVE BALLWIN GOLF COURSE

A motion was made by Alderman Fleming and seconded by Alderman Terbrock to adopt the Park Grant Resolution for improvements to the Ballwin Golf Course. A voice vote was taken with a unanimous affirmative result and the motion passed.

CONSENT ITEM:

Contractual Manpower: It is recommended that the City of Ballwin utilize the services of Westside Personnel Services for supplemental assistance with leaf collection in an amount not to exceed \$12,276.48.

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to accept the Consent Item. A voice vote was taken with a unanimous affirmative result and the motion passed.

MAYOR'S REPORT

Mayor Pogue mentioned that he had been appointed to the Legislative Affairs Committee for the St. Louis County Municipal League. At the first meeting, the Committee drafted a position for the League to take a more active approach throughout the year on handling multiple bills. At the next meeting, if the position is approved, he will share it with the Board.

There is a Great Streets Committee meeting next Monday he isn't able to attend because it conflicts with his legislative affairs, so City Administrator Kuntz and Assistant City Administrator Aiken will attend the meeting and afterward provide an update on the construction schedule.

CITY ADMINISTRATOR'S REPORT

Government Center Financing: City Administrator Kuntz referred to his memo in the packet that outlines an option for the Government Center financing based on the direction he received from the Board at the last meeting. He indicated there are some immediate needs to be addressed in the 2015 Budget for the Government Center and stressed that no public restrooms or updates to ADA accessibility will be addressed. He requested further direction from the Board.

A discussion took place about the specifics of the plan and concerns were expressed about how the funds would need to be allocated so they are not used for other purposes. There was disagreement on whether or not the Board should be bound by Ordinance due to changes that may occur in the future.

City Attorney Jones suggested that a motion be made to create a restricted account to earmark the funds. That way there is a safeguard in place if you take from the restricted account. It would be marked up on an audit and would be flagged. He explained that it is a common practice with not-for-profit organizations, like a church setting up a building fund, to do what is being talked about here.

A motion was made by Alderman Terbrock and seconded by Alderman Harder to put the restricted fund plan into the 2015 Budget process. A voice vote was taken with a unanimous affirmative result and the motion passed.

A motion was made by Alderman Terbrock and seconded by Alderman Harder to draft legislation to designate the committed funds and that it include a provision that it can only be overturned by a super majority.

A roll call was taken for the motion with the following results:
Ayes – Dogan, Terbrock, Harder, Kerlagon. Nays – Finley, Fleming, Leahy. The motion passed by a vote of 4-3.

Special Events: City Administrator Kuntz said pursuant to the Board's suggestion, legislation was drafted to create standards for special events and to differentiate between community and neighborhood events. He met with Alderman Leahy, Police Chief Schicker and Assistant City Administrator Aiken, who communicated with the City Attorney, to draft legislation which he believes addresses all of the concerns expressed. It is in final form for your approval.

Alderman Leahy indicated the City of Ballwin will be covered on the vendor's insurance and this will protect the City in case something happens, unlike in the past. He mentioned that the larger

square footage of the tents will make it easier for people to have events in their backyards. He is satisfied with the draft.

City Attorney Jones reviewed changes made to the draft after the last meeting. There were additions made to the square footage of the tents and language was added to the application requirements so the applicant understands it is their responsibility to comply with the requirements of any other regulating authority. The last change was to Subsection G that ties into general penalty provisions of Section 1.6 of the Ballwin Code of Ordinance.

Mayor Pogue suggested adding a requirement to obtain a permit from St. Louis County Public Works and that the Fire Department has jurisdiction.

City Attorney Jones said he will make that change.

A motion was made by Alderman Fleming and seconded by Alderman Terbrock to finalize the draft ordinance as amended and place it as a Bill on the agenda for the next meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

Westglen Court Subdivision: City Administrator Kuntz talked about the request the City of Ballwin received from the developer of Westglen Court Subdivision. They are asking the Board to allow staff to issue a grading permit prior to the approval of the final site development plan in contradiction to the requirements of the ordinance. They did file a grading plan last week.

Assistant City Administrator Aiken indicated that he received an email today from MSD saying it is substantially satisfied with what's been presented and it is in the process of final approval, but that Ballwin has not yet received a copy of the approved plan. Mr. Aiken did however receive a copy of the State of Missouri issued land disturbance permit. The PSD regulations prohibit the issuance of a grading permit prior to approval of a final site development plan. Due to hearing notice requirements and meeting schedules, it is not possible for a final site plan to be approved prior to January 12, 2015. This would preclude the petitioner from beginning grading sooner than March due to winter weather limitations.

The Board had questions about the review process, the timing and impact to residents who live in the area. There was also discussion about past projects and challenges Ballwin faced.

Alderman Terbrock asked why this was being brought to the Board's attention since it cannot grant this request.

City Administrator Kuntz said the petitioner claims it has a hardship and didn't realize it. Mr. Kuntz explained that he could not waive provisions of the Ordinance administratively, but that he would bring the matter to the Board.

Mayor Pogue indicated that the Board can't disregard the regulations and ignore the Ordinance. There is nothing the Board can do.

STAFF REPORTS

Street Improvements: Director of Public Works Kramer briefly reviewed the Street Improvement Plan for the Board and referred to the material in the packet.

There were several questions asked of Director of Public Works Kramer about alternative methods used to improve streets and if he had looked into these methods or heard about new technology being developed. Mr. Kramer said that he is unaware of any substantive changes in technology or methodology relative to established technology, but he is ever vigilant to new approaches. A motion was made by Alderman Fleming and seconded by Alderman Terbrock to

accept the Street Improvement Plan for the 2015 Budget. A voice vote was taken with a unanimous affirmative result and the motion passed.

CITY ATTORNEY'S REPORT

Outdoor Displays: City Attorney Jones drafted an ordinance for outdoor displays and sale of merchandise. The ordinance is similar to one the Board looked at years ago. The main question he had in drafting this ordinance has to do with the presentation that was made showing rolling wire carts used for the display. He was not sure if the Board wanted to require a rolling cart and if it is okay with stacking merchandise.

Jim Nestor, General Manager of Five Below, 15341 Manchester Road, suggested replacing the word "cart" with "portable fixture." He indicated that a fixture has an intended use and is designed to hold certain items. He said that no shipping containers or anything that delivers product to a store should be used as a fixture to display items.

Mayor Pogue thanked Mr. Nestor for his input and for giving the Board additional information about the displays from his perspective.

City Attorney Jones indicated that he will make the recommended changes to the draft.

A motion was made by Alderman Kerlagon and seconded by Alderman Fleming to have City Attorney Jones draft legislation for the outdoor display. A voice vote was taken with a unanimous affirmative result and the motion passed.

Ameren Appeal: City Attorney Jones said the Public Service Commission denied the motion filed by O'Fallon and Ballwin to rehear the motion to dismiss. Ballwin now has the deadline of October 24, 2014 to file an appeal in the Missouri Court of Appeals Eastern District. Mr. Jones said he would need authorization to file an appeal. He suggested that such a motion be contingent on O'Fallon's participation.

A motion was made by Alderman Fleming and seconded by Alderman Finley to file an appeal, contingent on O'Fallon's continued participation. A voice vote was taken with a unanimous affirmative result and the motion passed.

ALDERMANIC COMMENTS

High Grass: Alderman Harder brought up a situation for discussion that he was alerted to regarding high grass.

Charles and Jennifer Spohr, 503 Windsor Mill Drive and David May, 510 Windsor Mill Drive, spoke to the Board about receiving a bill from the City of Ballwin for lawn mowing services. Both residents claimed they were not notified of being in violation for tall grass, only for tall weeds, which they feel was taken care of in a timely manner. They are asking the Board to waive the \$100 Administration fee due to the circumstances in this situation. They don't feel they owe the Administration fee for a service they didn't request, especially since they took care of the items brought to their attention.

Mayor Pogue said the initial violation for 503 Windsor Mill Drive listed hillside and guardrail issues were to be addressed. He asked Assistant City Administrator Aiken to explain the process.

Assistant City Administrator Aiken said the process is fairly straightforward. The inspectors go out, usually on Mondays and Tuesdays, during heavy weed season and look for violations or follow-up on complaints that have been received. If the inspector verifies there is a violation,

they post a sign on the property and then follow-up a week later per Ordinance. If it has been mitigated, that is the end of it. If there is still a violation, the inspector calls the company on contract with the City of Ballwin for mowing. The mowers usually go out a day or so after they receive the request.

When asked if there was a specific request, Alderman Harder replied that he wanted to hear both sides of the story and let the Board know what was going on. The residents admitted the grass was long and are willing to pay for the grass cutting. Alderman Harder feels they've done their due diligence and believes in this case the administration fee is a bit steep and should be waived in both cases.

Mayor Pogue said he didn't think the Board had the authority to waive the administration fee on a violation by either State Statute or Ordinance.

City Attorney Jones explained the law to the Board. He feels we are setting a dangerous precedent if we begin waiving administration fees that staff has collected on a routine basis.

Alderman Fleming asked City Attorney Jones if the Board has the authority to waive the fees.

City Attorney Jones indicated that he doesn't think the Board has the authority to waive it, but thinks staff would have the authority to waive it because it's an administration cost. He said there is an appeal process and residents have a right to a hearing, but they didn't do that in this case.

A motion was made by Alderman Harder and seconded by Alderman Fleming to request Administration staff waive the administration fee for both residents. A voice vote was taken with a unanimous affirmative result and the motion passed.

Body cameras: Alderman Dogan brought up for discussion the issue of body cameras. He talked about some of the recent events in St. Louis and possible events to come. He also reviewed some of the challenges with the technology and other issues with the cameras. He suggested Ballwin implement a body camera system for the Police Department. He said the City should look at purchasing three to four cameras for officers as a test program for those incidents and to protect its officers.

Alderman Terbrock said he agreed that Ballwin needs the technology, but there are so many unknowns with this. He asked Police Chief Schicker how many cities in the metropolitan area are currently using the body cameras.

Police Chief Schicker said Ellisville is the only city he knows of. He indicated that he talked with the Ellisville Police Chief and it was too soon to know if their cameras have captured anything and indicated that the technology just isn't there yet.

Alderman Fleming said he feels that it is not yet time for the technology. There is still more work to be done. Privacy issues haven't been addressed at all and there is so much to consider like how long we are required to keep the video. There is so much we haven't thought through yet. He suggested that by the middle of next year we can talk about this again.

Alderman Finley said he agreed with Alderman Fleming and Alderman Terbrock's comments and thanked Alderman Dogan for starting this discussion and also thanked Police Chief Schicker for all of the work he has done. He is concerned about due process and evidentiary issues. He asked City Attorney Jones if there is an immunity statute about this for the officers.

City Attorney Jones indicated they would enjoy immunity. He said he reviewed these issues for Police Chief Schicker and prepared a memorandum. He indicated it would be on a case by

case basis relating to other statutes and laws affecting the use of the cameras. He said we don't know the answers to all of the questions yet.

Mayor Pogue said he doesn't feel there is anybody on the Board that opposes the cameras, but there are still too many unknowns that cannot be answered. He doesn't think the technology or legal answers are available yet.

City Administrator Kuntz said staff will continue to research this topic.

Adjourn: A motion was made by Alderman Fleming and seconded by Alderman Terbrock to adjourn. The motion passed unanimously and the meeting was adjourned at 9:37 p.m.

Tim Pogue, Mayor

ATTEST:

Robert A. Kuntz, City Administrator

CE