



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

November 25, 2013

(The Minutes are prepared in summary to reflect the overall discussions – not verbatim quotes.)

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

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
ALDERMAN MIKE BOLAND
CITY ADMINISTRATOR ROBERT KUNTZ
CITY ATTORNEY ROBERT E. JONES

ABSENT

Boy Scout Troop 631 from St. Mark's Presbyterian Church presented the colors lead the Pledge of Allegiance.

MINUTES

The Minutes of the *November 11, 2013 Board of Aldermen meeting and closed session* were submitted for approval. A motion was made by Alderman Fleming and seconded by Alderman Leahy to approve the Minutes. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

None.

PENDING ISSUES

None.

CITIZEN COMMENTS

None.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL # 3815 - AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN, MISSOURI, ON BEHALF OF THE CITY, TO EXECUTE AN AGREEMENT WITH ST. LOUIS COUNTY, REGARDING MAINTENANCE OF LANDSCAPED MEDIANS ON CLAYTON ROAD WITHIN THE CITY LIMITS.

A motion was made by Alderman Fleming and seconded by Alderman Boland for a first reading of Bill No. 3815. A voice vote was taken with a unanimous affirmative result, the motion passed and Bill No. 3815 was read for the first time.

City Attorney Jones said the major change in this legislation was the responsibility for the sidewalks. Ballwin will maintain the landscaped medians, irrigation, and sidewalks. The other revision is regarding the drainage facilities and fences. Those will not be the responsibility of the City of Ballwin. They will be the responsibility of St. Louis County.

Alderman Terbrock said he recalls that in the past, we didn't want to get involved in taking care of these things. City Administrator Kuntz said that what we wanted to avoid responsibility for was the insular improvements that were done when the road was built that never should be our responsibility. We never had a problem with the medians. The medians were built at our request. Similar requests were made regarding Big Bend. The medians in front of Olde Towne Plaza are on the State route, but are the responsibility of the City of Ballwin. We didn't want to make it global where we took on other parts of the project that we did not construct or have responsibility such as the fences and walls. He said thanks to City Attorney Jones, we do just the basics and nothing else.

A motion was made by Alderman Fleming and seconded by Alderman Harder for a second reading of Bill No. 3815. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3815 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3815 with the following results:
Ayes – Fleming, Harder, Kerlagon, Finley, Terbrock, Boland, Leahy, Dogan. Nays – None. Bill No. 3815 was approved and became **Ordinance No. 13-44**.

A RESOLUTION AUTHORIZING THE GREAT STREETS STEERING COMMITTEE TO DEVELOP A FINAL DRAFT OF A BILL TO BE SUBMITTED FOR LEGISLATION.

City Administrator Kuntz said a public open house was held at the Wildwood City Hall to display the conceptual plan. The Ballwin portion of the display will be set up in our Government Center lobby.

Alderman Harder asked if approving this resolution is giving authority to create a taxing district, and is this authorizing a fee or an extra property tax associated with Great Streets? City Attorney Jones said it could be either one. The idea was to allow a special taxing district to be set up. It's easier to create a taxing district that would be able to levy and collect its own taxes. A Great Streets district could have its own tax rate which would be authorized by legislation at the State level. Mayor Pogue said that if the State legislation allowed a district to levy a tax to be set up, it would also have to be approved by vote of the citizens.

Alderman Terbrock expressed concern about the district and how it can be allowed to collect taxes or fees. The way this is written, they have the ability to create a tax. This is another avenue for someone to create another tax at the State level. Alderman Boland said he agrees that this will give them power to create another tax.

Alderman Boland asked what is the purpose of this Resolution? Mayor Pogue said it shows local support for the pre-file this bill to area legislators to work through the legislative process, along with the Great

Streets Steering Committee. This Board will have to approve the legislation, before it receives any final action in Jefferson City.

Alderman Dogan asked if there is a new taxing district, would all the municipalities have to agree on it? Mayor Pogue said the legislation can be written different ways. With the Meramec Valley Greenway project, some counties didn't vote to enable that district to be formed. They were not included in it. When it comes to a final vote, it will have to be approved by the three cities.

City Administrator Kuntz said that the kinds of expenditures that would be paid by such a tax may be small enough to be voted on as a budget item for each city. Mayor Pogue said he believes that forming this district is a good idea as a recommending body with an overview perspective to the three cities. This project is a benefit to west county as a whole.

Alderman Fleming said some of the large parcels that were part of the plan are now changed. Plunkett is gone and is a car dealership. Rothman is now a gas station. He said he expects anything they ask for to be moderate, and can be handled out of our budget. The safety net is there. If it's anything sizeable, it can be taken back to the voters.

City Attorney Jones said if the fees are going to be a shared cost within the district, it wouldn't be any different than the way we maintain the landscaped medians.

Alderman Finley said if there needed to be a tax proposal brought to the voters and the voters didn't pass it, what happens? Mayor Pogue said the maintenance costs would fall back on the three municipalities.

A motion was made by Alderman Fleming and seconded by Alderman Boland to adopt the Resolution. A voice vote was taken with the following result: Aye: Finley, Harder, Dogan, Leahy, Fleming, Kerlagon, Boland. Nay: Terbrock. The Resolution was approved by a vote of 7-1.

BILL # 3816 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO TOWER LOAN OF MISSOURI FOR OPERATION OF A FINANCIAL BUSINESS AT 15264 MANCHESTER ROAD.

A motion was made by Alderman Boland and seconded by Alderman Leahy for a first reading of Bill No. 3816. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3816 was read for the first time.

Alderman Finley said this company has been in business since 1936 and has branches in 5 states and headquartered in Mississippi. At the Planning & Zoning Commission meeting, the corporate representatives of Tower Loan (present at this meeting, Gene Kerr and Danny Glen) stated that this business is not a pay day or title loan company. Mr. Kerr said that is correct. Alderman Finley said upon reviewing various consumer websites, there were complaints from consumers obtaining a title loan from this company. Mr. Kerr said they use titles as collateral on certain loans, but it's not a requirement, and lending is credit based. He said they are not like Title Max. It's more credit based than collateral based. If someone has a car title, that doesn't mean they can get the loan. They are a traditional installment based lender. Title loans are under a different license. Tower Loan operates under License 367. Title loan companies operate under License 408.

Alderman Finley said that at the Planning & Zoning meeting, Commissioner Goetz inquired about the Better Business Bureau rating. He was told that the rating is "C". The Tower Loan company does not have BBB accreditation. Mr. Kerr said he was not aware of that. Alderman Finley said that a "C" rating, according to the BBB, is "a type of business that is likely to generate marketplace concerns or a high level of customer dissatisfaction because of the inherent nature of products and services offered." He said he has a concern about these things. On the Missouri Attorney General website, there are various complaints from consumers regarding Tower Loan of Missouri.

Danny Glen said the percentage of dissatisfaction is very small. He's not aware of any complaints for services, but there may be some regarding collections. He said at Tower Loan, they do not send their collection accounts to a collection agency. Accounts are serviced in the branches. There may be 30 complaints statewide. That percent is low compared to the thousands of customers that they have.

Alderman Boland said there is a financial institution in Ballwin that paid fines of probably up to 45 billion dollars for improper loan practices. If this is the case, we would have to go to the Bank of America and ask them to leave our city and other financial providers. He said until he did his research on this company, he thought it was another pay day loan and he was going to everything he could to prevent it from coming to Ballwin. Based on the business model that Mr. Kerr and Mr. Glen have presented and his own research, he does not see Tower Loan equivalent to pay day loan company. He believes that this business will present a valid approach for people who cannot or don't want to go to Bank of America or any other lending institution.

Alderman Harder said he spoke against Tower Loan at the Planning & Zoning meeting. If approved, this will be the seventh lending business in Ballwin located between Lowe's and A.S.A.P. Barbecue, that does short-term loans. He's very concerned about this in addition to people who answered the survey he e-mailed to them regarding another pay day loan possibly coming to Ballwin.

Mayor Pogue said that under State statute, this is not a pay day loan type of business. Alderman Harder said that at the P&Z meeting, Mr. Glen stated that they do have one product that is a pay day loan. Mr. Glen said that is false. They don't have any kind of pay day loan product. Alderman Harder said that Mr. Glen said this near the end of his testimony. Mr. Glen said they do not have a pay day loan product at all. Their loans are very similar to a bank, not a 2-4 week payback schedule. Their data is reported to credit bureaus, but pay day loans do not do this. There are many more differences between Tower Loan and pay day loans which confirm that this is not a pay day loan type of business.

Alderman Harder said he checked on a consumer affairs website. As of November 2013, there are over 40 complaints by people who have borrowed money from Tower Loan. They cite items such as predatory lending, not adhering to the disclosures, adding insurance and rental car agreements to their loans, pre-payment penalties, bait and switch, interest rates from 10% - 60%, harassing phone calls, unannounced house calls when someone was only a month behind on payments, etc.

Alderman Harder said he called the Washington, Missouri office and asked about a title loan. The employee said they will to a title loan and the interest rate would be between 10% and 60%. Mr. Glen said that there are times a car title is used to make a larger loan for the customer. He said they are simply using the title as collateral, not basing the loan decision on the vehicle. They follow all the rules and are careful in the collection process. This is an industry where people complain. Most likely 40 of the 40 complaints referred to are people who are behind on their loan. People don't usually express online how happy they are to have gotten a loan from Tower Loan. That's not what people do. If someone had to borrow \$7,000 for the kid to go to college, would you call a \$7,000 loan for 3 years a title loan on a used car? He said he doesn't think anybody would call it a title loan. All of the car title loans are subject to credit, stability, and the ability to repay the loan. They never make a car loan based on the value of the car.

Alderman Boland asked if they are subject to the regulations of the Consumer Finance Protection Bureau (CFPB). Mr. Kerr said they have not received any contact from the CFPB, and have been in business in Missouri since 2006. They are an alternative to a bank and are audited once or twice yearly by State auditors. They have received the highest rating given for the industry because they are concerned about compliance.

Mayor Pogue said he is now in favor of this business in Ballwin because after being educated on this compared to a pay day loan business, this is not the same type of business.

Alderman Fleming said this is a legal entity and has been approved by the Planning & Zoning Commission, and he recommended approval by the Board.

Alderman Finley said that when he campaigned for the office of Alderman, the number one concern of residents was pay day loan type of businesses in Ballwin. People said they don't want any more of these in Ballwin, and they wanted it regulated. There's no Better Business Bureau accreditation for a company that's been in existence since 1936. There's no detail of loans on their website, but there is on a bank website. We've heard that they are not a title loan company, but they use titles as collateral. He said that this still looks like a title loan situation.

Mayor Pogue cautioned the Board of describing this business with the terminology of title loan. If this petition is turned down because of this, there is a potential for litigation.

Alderman Finley said he's not labeling them as a title loan company. There are title loans being made when it was stated earlier that there weren't. He said considering all of his research, he believes this business would adversely affect the general welfare of the community and it is not consistent with good planning practice.

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a second reading of Bill No. 3816. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3816 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 is absent.

A roll call was taken for passage and approval of Bill No. 3816 with the following results: Ayes – Fleming, Terbrock, Dogan, Boland, Kerlagon, Leahy. Nays – Harder, Finley. Bill No. 3816 was approved by a vote of 6 – 2 and became **Ordinance No. 13-45**.

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. Audit Service Contract (for the annual audit)

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

MAYOR'S REPORT

Rockwood Drug-Free Coalition: Mayor Pogue said he received a letter from the Rockwood Drug-Free Coalition expressing thanks for helping to market the drug take-back program. There were 420 pounds of prescription drugs collected from approximately 146 residents. Community wide, over 1,800 pounds of medications was collected.

Great Streets: Mayor Pogue said the planning board are now on display and will be moved to the front lobby of the Government Center after this meeting.

CITY ADMINISTRATOR'S REPORT

2014 Financial Plan: City Administrator Kuntz presented the following overview:

The proposed operating plan for 2014 calls for total expenditures of \$18,285,799, compared with a revenue projection of \$17,937,755. As a result, it will once again be necessary to apply reserves (\$348,044) to achieve balance.

We applied \$610,000 from reserves to balance the 2013 Operating budget. When we close the books on December 31, we will have used only \$156,477 of the amount authorized. As a result of this limited application, we will actually start 2014 with an unencumbered reserve fund balance of \$8,082,610.

Previously, the Board authorized earmarking \$1,975,326 from reserves to partially fund the comprehensive mechanical systems upgrade at The Pointe. After making that deduction, plus the \$348,044 to achieve budget balance, we would have \$5,837,238, which equates to 32% of the new operating fiscal plan.

On the capital side, we are projecting total revenues of \$3,277,523 versus expenditures of \$3,481,923. To achieve balance, we intend to apply the \$236,163 surplus that was accumulated from prior years.

Although we had hoped that it would not have been necessary to apply any reserves to achieve balance, we are guardedly optimistic that we are heading in the right direction. Based on our conservative estimates, revenues are continuing to inch upward. If past experience is any indication, expenditures should come in under appropriation levels, and there is a good chance that we may not need all of the supplement.

Alderman Boland said the proposal for the reserves is using money we didn't use a year ago. City Administrator Kuntz said that is correct.

Alderman Harder asked about presenting a balanced budget. Can 2% be deleted from the budget? Mayor Pogue said we have a balanced budget through the utilization of reserves. Alderman Harder said that is a rainy day fund. City Administrator Kuntz said the only way to do this is to eliminate any salary adjustments or to freeze personnel related adjustments. Mayor Pogue asked if the Board wants to cut \$200,000 from the budget, what are they going to cut – picking up leaves? Alderman Harder said he wants the Board to understand that for the budget to be balanced, funds will have to be pulled from reserves. Mayor Pogue said that's correct, however it's not telling the department heads to spend the money. City Administrator Kuntz said the money is not going to be spent just because it's in the budget.

A motion was made by Alderman Fleming and seconded by Alderman Boland to draft legislation for approval. A voice vote was taken with a unanimous affirmative result and the motion passed.

Retreat: City Administrator Kuntz asked if the Board wants to participate in a planning retreat which is usually held in January or February, and if so, at what location? Mayor Pogue said the retreat should be held. The 4-hour timeline has been a bit crowded. He suggested extending the meeting into mid-afternoon.

Legal Compensation: City Administrator Kuntz said, in accordance with Mayor Pogue's suggestion and Board concurrence, he has calculated the cost impact of a supplemental compensation adjustment for Ballwin's legal team. He is looking for further direction from the Board to be effective on April 1.

City Attorney Jones said the retainer, which is \$2,200 per month, and the hourly rate of \$175 per hour, is less than some cities that are smaller than Ballwin are paying. City Attorney Jones said he would like to increase the retainer so that he does not lose money for the time he serves the City of Ballwin. He said

his hourly rate to other clients is \$210. The retainer amount represents 12 hours of his time. His preparation time for the meetings and his time during the meetings well exceeds 12 hours.

Alderman Finley said he is hesitant to give raises to the Prosecutor and Judge positions. Alderman Fleming said the only time the City Attorney's hourly rate applies is for court appearances or special projects, such as negotiating the contract with CTS for The Pointe hvac improvements, other contracts, personnel matters, consulting on day-to-day operations of the city or Sunshine Law requests. Any questions about the Board meeting agenda or prepared legislation is not billed on the hourly basis. This is covered by the retainer.

Alderman Fleming said he supports raising the retainer to \$3,000 per month because nobody knows our city better than City Attorney Jones and he has been very reliable and successful in our litigations. Alderman Boland said he agrees and is in favor of the increase.

Alderman Dogan said that City Attorney Jones does a great job. The current retainer is \$2,266. He said he feels that an increase to \$3,000 per month is unreasonable. A 2% increase would be \$2,311 and a 3½ % increase would be \$2,345. He said that \$3,000 would be an increase of 32% every month. A 32% pay raise is not realistic no matter how good of a job he is doing. There are only two other communities that are paying their City Attorney a retainer of more than \$3,000 per month. Town & County and Creve Coeur are paying their City Attorneys \$3,500 per month, which is irrationally high, when everyone else is paying between \$2,000 and \$2,500. He said a 3½ % increase would be more reasonable. There is no shortage of attorneys who would be willing to work for that type of a rate.

City Attorney Jones said he was presenting a report on the actual time that is spent on City of Ballwin meetings, etc. Alderman Finley asked if some cities pay only an hourly rate. City Attorney Jones said that some cities do that. In that way, they are paying only for the services received.

Alderman Terbrock said that even though there are many attorneys that would like to have this job, about 98% are not qualified to do what City Attorney Jones does. He should be paid fully for the job he does.

Mayor Pogue suggested further evaluation of the Prosecutor, Judge, and City Attorney and then make a decision about the increases, which could be in March.

New Ballwin Park Flag Pole: City Administrator Kuntz said In the course of the approval process, it was agreed that a 50-foot flag pole would be erected at this location. Subsequent staff analysis has determined that this height would be disproportionate and out of character with the neighborhood. The flag pole at Woerther Elementary is 35 feet tall, while the one at the Peace Memorial in Vlasis Park is only about 30 feet. Subject to Board approval, we would like to lower the height to achieve a similar visual impact.

A motion was made by Alderman Boland and seconded by Alderman Kerlagon to accept the compromise of 35 feet for the New Ballwin Park flag pole. A voice vote was taken with a unanimous affirmative result and the motion passed.

Meeting Room Request: City Administrator Kuntz said the Ballwin Athletic Association has requested free use of the Golf Clubhouse on March 1 for their annual manager's meeting. This fee waiver would require Board approval. The fee for a 4-hour Saturday rental would be \$600 at the resident rate. This request is for the hours between 10:00 a.m. and 5:00 p.m., thereby precluding the potential for a Saturday night rental.

Alderman Terbrock said that BAA has withdrawn its request in order to make changes in the meeting time and agenda.

Mayor Pogue asked if the room was going to be rented to another customer that evening, what time would staff have to start preparing for the event? Director of Parks & Recreation Bruer said that preparation would typically begin no later than 2:00 p.m.

Network Data Switches: City Administrator Kuntz said that Information Systems Manager Paula Reeds stated that it was proposed in the 2013 IT budget that the City's existing data network switches be replaced. The existing switches are antiquated and no longer meet the performance standards of today's data traffic demands. The increased bandwidth needs in applications, internet, access levels, number of devices, and number of users are all factors in this decision. The new data switches must be Enterprise level, Layer 3, with advanced manageability with upgradability. Based on this research and evaluation of multiple configurations proposed, it is recommended that we purchase 10 data switches with related accessories from World Wide Technology, who submitted the Brocade bid of \$31,386.83 under State contract. This is a budgeted upgrade.

A motion was made by Alderman Kerlagon and seconded by Alderman Finley to accept the purchase under State bid. A voice vote was taken with a unanimous affirmative result and the motion passed.

STAFF REPORTS

None.

CITY ATTORNEY'S REPORT

None.

ALDERMANIC COMMENTS

Better Together Organization: Alderman Dogan said this organization would like to have a discussion about the City / County merger and ways that the City and County can consolidate services. He suggested having a representative from that group talk to this Board about what this would mean for Ballwin. The discussions will be about public finance, economic development, health and safety, parks & recreation, and general administration across our region, what sort of consolidations could be made in these areas. He suggested consideration before the discussions begin.

Mayor Pogue said that they will be holding meetings starting now through November, 2016. There are three options: A merger of St. Louis City and the County; the Re-entry, which is St. Louis City coming in as another municipality within St. Louis County, and the consolidation of all of them called Unigov. He said he would be against a Unigov. There are some cities that have successfully done this, but he would not be in favor of this. City Administrator Kuntz said that more information will be forthcoming.

City Planning: Alderman Finley said that perhaps city planning should be discussed at the retreat. The debate about a specific business coming into Ballwin and other issues could be considered. Aldermen Harder and Boland agreed since the same issues will be discussed in the future.

Leaf Collection: Alderman Boland said that the Public Works Department has done a great job on the leaf collection program.

Bid Form: Alderman Fleming said that the Consent Item form should be used for items in that section on the agenda. Use of this form would have been beneficial for the Audit Service Contract to simplify the details of the bid.

Tree Lighting on December 7: Alderman Fleming said this will be held from 5:00 – 6:00 p.m., with food items being collected by the Circle of Concern.

Ballwin Race Series: Alderman Terbrock said that \$45,588 was generated from the 2013 Ballwin Race Series. Alderman Fleming said he participated in the Midnight Howl and it ran like clockwork. It was a well-organized event and everyone had a good time.

Adjourn: A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to adjourn. The motion passed unanimously and the meeting was adjourned at 9:29 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

November 25, 2013