



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

February 23, 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 7:03 p.m.

PRESENT

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

ABSENT

ALDERMAN JIM LEAHY
ALDERMAN MIKE BOLAND

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *February 9, 2015 Board of Aldermen meeting* 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

2014 Best of West – Best Civic Servant: Reporter and Representative of “*West Newsmagazine*” Jim Erickson said that “West Newsmagazine” has for many years conducted a “*Best of West*” category in the publication, recognizing various establishments and other parts of West County for their good service and good products, etc. This year, a new category was added to honor City Officials that were deemed to have contributed a great deal in the interest of public service to the citizens of West County. He said that in Ballwin, this honor goes to Marie Clark, former Ballwin City Clerk.

Mr. Erickson said that Marie Clark’s encyclopedic knowledge of the City of Ballwin and City Government, and her willingness to be helpful to people who always have questions about many things deserves recognition. He thanked Marie for the help that she has been to him in connection with his job with “West Newsmagazine”. Mr. Erickson presented a Certificate of Recognition in appreciation to Marie for exceptional dedication and service to the residents of Ballwin.

Marie Clark thanked Mr. Erickson for the honor of this special recognition. She also thanked City Administrator Kuntz, the Board of Aldermen, Mayor Pogue, City Attorney Jones, and the Department Heads for the privilege and enjoyment of working with them nearly 30 years in service to the residents of Ballwin. In taking a look back, she thanked Michael Herring, Chesterfield City Administrator, who was the Ballwin City Administrator when he hired her in July, 1985. At that time, Mr. Herring said that he hoped she would stay for at least 5 years. Marie said that she is glad that she has gone well beyond Mr. Herring’s expectations, and to still be serving in a part-time capacity for as long as needed.

PENDING ISSUES

BILL # 3866 - AN ORDINANCE AMENDING THE NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT APPROVED PER ORDINANCE 13-28 FOR CERTAIN LAND AT CLAYTON ROAD AND HENRY AVENUE IN THE CITY OF BALLWIN, COMMONLY KNOWN AS THE BALLWIN GROVE PLAZA.

William Buermann asked for another continuance on Bill 3866. He wants to consider further the concerns about parking.

Mayor Pogue asked what needs to be done regarding additional signs. Assistant City Administrator Aiken said that the sign code could be reviewed and perhaps a new classification could be added.

City Attorney Jones said that the Sign Code is not part of the Zoning Ordinance; therefore, it's not so simple as to go to the Board of Adjustment to ask for additional square footage. He said that unless it fits into an existing category, a legislative change would be necessary.

Mr. Buermann said he is also considering what options are available off-site.

Alderman Fleming said that this will only address the problems for CVS. It doesn't solve any other issues. He said he is not supporting this because it will take a problem and make it worse.

The Board agreed to hold over this legislation for further research and consideration.

CITIZEN COMMENTS

Jamie Komorek, owner of Mia Sorella: Mr. Komorek said that adding reserved parking spaces for CVS will take away parking spaces from the overall parking. He said that the tent patio enclosure is not well received. This will be a 20-foot by 40-foot tent off the back facing half million dollar homes in the area. He said this is not in the best interest of the area.

Doug & Mary Edmonson, 267 Oak Path: Mr. Edmonson said that there is a dangerous dead 200-year old tree that died in 2010. He sent the neighbor a letter asking him to remove the dead tree, but this has not been done. He is concerned that the tree will fall on his house or garage. He asked the Board of Aldermen to see if something can be done regarding the dangerous tree before it falls on his house.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL # 3870 - AN ORDINANCE AUTHORIZING THE CITY OF BALLWIN TO ENTER INTO AND EXECUTE A CONTRACT WITH ST. LOUIS COUNTY, MISSOURI, FOR THE MOSQUITO CONTROL SERVICE, AND AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR OF THE CITY OF BALLWIN TO ENTER INTO ON BEHALF OF SAID CITY, A CONTRACT WITH ST. LOUIS COUNTY, MISSOURI, FOR MOSQUITO CONTROL SERVICE

A motion was made by Alderman Fleming and seconded by Alderman Stallmann for a first reading of Bill No. 3870. A voice vote was taken with a unanimous affirmative result, the motion passed and Bill No. 3870 was read for the first time.

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon for a second reading of Bill No. 3870. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3870 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3870 with the following results: Ayes – Fleming, Kerlagon, Finley, Schwent, Terbrock, Stallmann. Nays – None. Bill No. 3870 was approved and became **Ordinance No. 15-11**.

BILL # 3871 - AN ORDINANCE AUTHORIZING THE CITY OF BALLWIN TO EXECUTE A CONTRACT RETAINING SPECIAL LEGAL COUNSEL FOR THE LIMITED PURPOSE OF PROVIDING ADVICE AND DIRECTION WITH RESPECT TO THE SALES TAX LITIGATION INITIATED BY THE CITY OF CHESTERFIELD.

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a first reading of Bill No. 3871. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3871 was read for the first time.

Alderman Finley asked if there have been any new developments. City Attorney Jones said that there has not yet been a new judge assigned. He has been told that Webster Groves will intervene, but this has not yet happened.

Mayor Pogue said that he encourages the Board to take action on this. He finds it ludicrous that Chesterfield uses tax revenue from non-Chesterfield citizens to pay for the improvements that were done in Chesterfield, to the amount of about \$70 million between the Levy District and the Federal Government to help pay for the Monarch Levy. He said the flood of 1993 wiped out all of the agricultural land in the valley, and there was very little commercial development at that point. They raised the height of the Monarch Levy to develop this property, and assessed \$72 million in TIF financing on the taxpayers' back to pay for it. Chesterfield wants to keep all of the sales tax that's generated there now. Mayor Pogue said he has no problem with looking at the sales tax structure, but re-negotiating it just to make more losers so they can have a windfall, he doesn't agree with that. He encouraged the Board to approve this ordinance and execute this contract.

Alderman Stallmann said that he agrees that it is important that what Chesterfield is asking does not occur.

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a second reading of Bill No. 3871. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3871 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3871 with the following results: Ayes – Fleming, Terbrock, Finley, Kerlagon, Stallmann, Schwent. Nays – None. Bill No. 3871 was approved and became **Ordinance No. 15-12**.

BILL # 3872 - AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN, MISSOURI, ON BEHALF OF THE CITY, TO EXECUTE AN AGREEMENT WITH THE EMERGENCY COMMUNICATIONS COMMISSION FOR DISPATCH EQUIPMENT.

A motion was made by Alderman Finley and seconded by Alderman Fleming for a first reading of Bill No. 3872. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3872 was read for the first time.

Alderman Finley asked about the use of this equipment. Police Chief Steve Schicker said that the ECC contract is an arrangement that goes beyond the mobile in-car radios. This is for the base station radio and the backups for the Communications Center, as well as the accompanying furniture fixtures to accommodate the new equipment.

A motion was made by Alderman Kerlagon and seconded by Alderman Fleming for a second reading of Bill No. 3872. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3872 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3872 with the following results: Ayes – Kerlagon, Fleming, Terbrock, Stallmann, Schwent, Finley. Nays – None. Bill No. 3872 was approved and became **Ordinance No. 15-13**.

BILL # 3873 - AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH REGARD TO CONCEALED WEAPONS.

A motion was made by Alderman Stallmann and seconded by Alderman Fleming for a first reading of Bill No. 3873. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3873 was read for the first time.

Alderman Finley asked if this matches the State Statute. City Attorney Jones said that is correct. The former section in the City's code was deleted, which precluded carrying concealed a knife with a blade in excess of 2½ inches.

A motion was made by Alderman Finley and seconded by Alderman Fleming for a second reading of Bill No. 3873. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3873 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3873 with the following results: Ayes – Finley, Fleming, Kerlagon, Terbrock, Stallmann, Schwent. Nays – None. Bill No. 3873 was approved and became **Ordinance No. 15-14**.

BILL # 3874 - AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH REGARD TO ADMINISTRATIVE SEARCH WARRANTS.

A motion was made by Alderman Fleming and seconded by Alderman Finley for a first reading of Bill No. 3874. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3874 was read for the first time.

Mayor Pogue said that City Attorney Jones does not believe this bill will cover the dangerous tree that Mr. Edmonson spoke about. There would most likely have to be a change in the ordinance in Section 29. It would be covered if the tree was in the right-of-way, but not on private property. He said that Wildwood has a dangerous tree ordinance, and possibly Chesterfield. He suggested that City Attorney Jones draft an ordinance that would be covered under Section 29 of the Ballwin Code of Ordinances.

City Attorney Jones said that to amend Chapter 29 to add dangerous trees as a sub-section of the nuisance code, the warrant scope could be broadened to include dangerous trees. He said it's a two-step process.

Alderman Terbrock said he understands the purpose and the need for this, but he does not approve of Ballwin employees going on private property as provided in this ordinance. He said that intentions behind passing this law may be good, but it opens the door for more warrants for other issues, and perhaps right into someone's house. He said he will not vote for this bill.

Alderman Fleming said that this is driven by tall grass, and that's not worth intruding on someone's property rights. The dangerous tree issue could be addressed with this bill, if used properly. It could later be used for a gutter falling off the side of a house, or siding that needs repair. He is not in favor of administrative search warrants at this time.

Alderman Terbrock said that when someone complains about a neighbor's tall grass, they should allow the inspector to view the violation from their property without going onto the violator's yard. The same thing applies to the dangerous tree situation. He said he is not in favor of a judge saying that an inspector can go onto someone's property for these potential violations. He said nothing said in this meeting leads him to believe that this legislation is necessary.

A motion was made by Alderman Stallmann and seconded by Alderman Fleming to *table Bill 3874* until the next meeting for further consideration, also due to the fact that two Aldermen are absent at this time. A voice vote was taken with the following result: Aye: Finley, Stallmann, Schwent, Fleming, Kerlagon. Nay: Terbrock. The motion to table Bill 3874 until the next Board meeting was approved by a vote of 5-1.

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. 2015 Salary Adjustments
- B. Tree and Stump Removal

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

MAYOR'S REPORT

None.

CITY ADMINISTRATOR'S REPORT

Golf Course Irrigation: City Administrator Kuntz said this project was made possible as a result of a successful grant application funded through the County Park Tax. This project was the largest single award of any that was granted for 2015, and will be funded entirely through the grant. This will be a substantial improvement in the irrigation of the golf course. Staff recommends awarding the contract to Midwest Irrigation.

A motion was made by Alderman Fleming and seconded by Alderman Stallmann to accept staff recommendation for the golf course irrigation. A voice vote was taken with a unanimous affirmative result and the motion passed.

Kehrs Mill Drainage: City Administrator Kuntz said this work is on a flat section of Kehrs Mill. It is due to the original roadway design and the placement of the catch basins. The gutter is too flat. Thirteen requests were sent out, and there were two responses. Krupp Construction submitted the lowest bid.

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

Sales Tax Monitoring: City Administrator Kuntz said this is a request to enter into an agreement with several neighboring point-of-sales cities to engage the services of The Rhoads Company, that will monitor the ongoing sales tax bills that are being introduced in the Senate and House of Representatives in Jefferson City. If further action is necessary, up-to-date information will have been provided. This is separate from the Chesterfield sales tax issue. This will be for the remainder of the legislative term. This is not for a large contractual obligation.

Alderman Stallmann said he agrees that Ballwin needs to be involved and monitoring legislative actions. He said he attended the Missouri Municipal League Legislative Conference. There are various sales tax law changes that have been proposed to redo the formula. None of these provisions are good for the City of Ballwin. They are all detrimental to Ballwin's current situation. He said The Rhoads Company has done this type of monitoring previously and have done a good job.

Alderman Terbrock said that our own Representatives are working against Ballwin. This should be remembered when it comes time to vote in upcoming elections.

Alderman Fleming noted that on Page 2, in Section 2 of the agreement, "A-Cities agrees to make payment to TRC for services rendered under a new agreement, negotiated and signed by both parties" means to him that if legislation is filed, Ballwin has to go with this firm to continue representing Ballwin. He said it doesn't leave any room to change firms if so desired. City Administrator Kuntz said that this agreement can be executed without that statement.

City Attorney Jones said that his interpretation is that either party can decide not to enter into a new agreement; however, it can be made more precise.

A motion was made by Alderman Stallmann and seconded by Alderman Fleming to authorize entering into this consulting agreement, with removal of the sentence at the top of Page 2 in Section 2. A voice vote was taken with a unanimous affirmative result and the motion passed.

Policy Manual Change: City Administrator Kuntz said this is a change in the Board Policy Manual. Any changes or amendments in the Manual requires 6 votes. There's nothing controversial to this change, which reflects the intent and the language of the ordinance that was approved at the last Board meeting. Alderman Fleming said he is in favor of holding over this topic until the next meeting.

A motion was made by Alderman Fleming and seconded by Alderman Schwent to table the Policy Manual change to the next meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

STAFF REPORTS

None.

CITY ATTORNEY'S REPORT

Court Disturbances: City Attorney Jones said that Missouri Revised Statutes, Section 575.250.2 deals with disrupting a judicial proceeding. It was requested by Municipal Judge Virginia Nye that the Board be requested to enact this legislation in the City of Ballwin. It is a concern over protests and demonstrations that disrupts the court proceedings and makes it impossible to hold court. This actually happened on February 5 in Pine Lawn. This Statute was relied upon to issue State charges, but they didn't have a municipal charge. To be pro-active, Judge Nye asked for this to be considered.

City Attorney Jones said a new State law will go into effect on January 1, 2017, which changed a couple of words but does not change the meaning of the statute in any way. He said he can provide both sections and will be exactly the same as the State statutes. One would be effective until December 31, 2016, and the other would become effective automatically on January 1, 2017, with the State statute.

Alderman Fleming said that his interpretation is to prevent people from disturbing a judicial proceeding or intimidate a judge or attorney about the matter that's going on. He asked if someone comes into the room, quietly holding up a sign which is unrelated to the judicial proceeding being discussed, how will this be affected to not prohibit free speech?

City Attorney Jones said that a silent protest with someone in the back of a court room with a sign would not be actionable under this section because it has an element of intent. It has to be with the purpose of intimidating a judge, attorney, or juror with regard to that judicial proceeding. The scenario described by Alderman Fleming would not be an infraction under the City's ordinance if the Board decides to pass such ordinance. He said he prefers using the State statute word-for-word, or not do this at all.

Alderman Finley asked if the Ballwin Municipal Judge has the authority to remove individuals from certain protests? City Attorney Jones said she would have the ability to remove those individuals.

A motion was made by Alderman Fleming and seconded by Alderman Finley to draft legislation for consideration at the next meeting. A voice vote was taken with a unanimous affirmative result and the motion passed.

Ameren/UE Litigation: City Attorney Jones said that today, both the Public Service Commission and Ameren filed their briefs in opposition to the appeal that was filed by the City of Ballwin in the street light case. The same issues are addressed about whether that relief is available in this proceeding. This is the main point that's being briefed. He said the other matter, which Ballwin has intervened, which is the big rate case being litigated by Ameren UE at this time, the hearings begin next Monday. City Administrator Kuntz is going to testify next Thursday, along with Steve Bender from the City of O'Fallon, Missouri, with regard to the street light issues. He said this is going very well because there have been some partial settlements, negotiations, and they are trying to talk about the street light issues in the rate case, which is what is hoped would happen because this is on a short time table. It's possible that the street light issues can be looked at within the confines of the rate case.

ALDERMANIC COMMENTS

None.

Adjourn: A motion was made by Alderman Terbrock and seconded by Alderman Fleming to adjourn. The motion passed unanimously and the meeting was adjourned at 8:01 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

February 23, 2015