



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

May 13, 2013

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

PRESENT

ABSENT

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

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *April 22, 2013 Board of Aldermen meeting* were submitted for approval. Alderman Fleming amended page 18, paragraph 1, line 4, changing automatic pool to automatic pull. *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.

PRESENTATION

**2012 Annual Audit Report:** Rick Gratza, Audit partner with Kerber, Eck & Braeckel, presented the following overview of the 2012 audit:

**Summary of Auditors' Results:** Management's responsibility is preparation and presentation of the financial statements. The auditor's responsibility is to express opinions on the financial statements. The audit was performed in accordance with generally accepted auditing standards, government auditing standards, and OMB Circular A-133. An unmodified opinion was issued, which has no reservations concerning the financial statements. This is also known as a "clean opinion" meaning that the financial statements appear to be presented fairly. This is the best of three possible opinions that can be rendered as auditors.

Internal control over financial reporting: No material weaknesses were identified. There was found an opportunity to strengthen internal control regarding segregation of payroll duties. The recommendations are being implemented. There were no instances of noncompliance material to the financial statements.

The City's federal programs exceeded \$500,000 in expenditures, which required a single audit. As a result, the Highway Planning and Construction program was audited, which is the Kehrs Mill Road project. An unmodified opinion was issued. There were no internal weaknesses of internal control, nor significant deficiencies.

The City prepares financial statements in accordance with GAAP, and adopted GASB Statement No. 63, Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position. This changed the word net assets to net positions. There were no transactions that lacked authoritative

guidance or consensus. The financial statements include some accounting estimates. None of the estimates are particularly sensitive.

The City of Ballwin financial statements were consistent, neutral and clear. There were no difficulties encountered in performing the audit, and no disagreements with management. The police pension plan was terminated this year. Any assets were either distributed to the participants or used to buy credited services in the LAGERS plan.

Three adjustments were proposed to the accounting records, and as a result of the audit, were corrected by management. All representations were provided at the end of the audit in a letter dated May 6, 2013. No management consultations were made with other independent accountants.

Mr. Gratza said the City's policy is to maintain a minimum fund balance in the general fund equal to 25% of its prior year operating expenditures. As of December 31, 2012, the unassigned general fund balance was more than 50%. The City may want to consider assigning some of that excess fund balance to specific future projects that are to be undertaken.

Mr. Gratza thanked Finance Officer Denise Keller and her staff. He said they did a terrific job in preparing for the audit, which allowed the auditing to be very efficient.

Alderman Finley said, "We made an investment in new accounting software. How did that perform?" Mr. Gratza said, "I think it performed well. Reports that we've requested were easily obtained. It's best to talk to the users of the software to get a real sense of how it is working."

Alderman Boland said, "Operating grants and capital grants are more of a function of applying for said type of grants, and any increase or decrease is not a reflection of the performance of the City, but whether we were chosen. With general revenues, we are up slightly on taxes, but we had what looks to be a significant decline in investment income. Was that due to us having to use some of those financial assets?" City Administrator Kuntz said, "There was a significant decline in investment income. The market on the laddered maturities that were up has been weak; we looked at re-investments this afternoon. The shortest term was .05%. We're not making anything, but we have a very conservative investment policy that is followed to the letter in terms of preservation of principle. This sacrifices our rate of return. We also reduced the fund balance to pre-pay the debt issue."

City Administrator Kuntz said, "The fund balance is higher than we've ever had. It's an outstanding achievement to not only be debt free at the end of this year, but to have that degree of capital reserve. By instituting a restricted reserve fund for some of the excess, we would then carry that reserve with respect to funding of special projects, grants, and large purchasing opportunities. When you look historically, you would look to that individual category as opposed to the entire reserve, and that would take some of the spikes out. The auditor agreed that this would be prudent fiscal policy for the Board to consider moving forward in the next budget cycle."

City Administrator Kuntz said, "I want to compliment Finance Officer Denise Keller and our previous Finance Officer Glenda Loehr, who generated a lot of the data. Ms. Keller came on board at mid year. We have a strong financial team."

**Tree City Award:** City Administrator Kuntz said that on April 27, he attended the Arbor Day ceremony when the Tree City Awards were presented. Ballwin has a long history of being recognized as a Tree City, U.S.A. by the Arbor Day Foundation. He presented the award, after 22 years consecutively in the Tree City U.S.A. program, to Director of Parks and Recreation Linda Bruer.

**National Public Works Week:** City Administrator Kuntz said that National Public Works Week calls attention to the accomplishments that the Public Works officials do to sustain the quality of life and the infrastructure maintenance of communities such as Ballwin. A Proclamation recognizing May 19-25 was presented to Director of Public Works/City Engineer Gary Kramer for display in the department expressing appreciation for all of their hard work.

## **PENDING ISSUES**

None.

## **CITIZEN COMMENTS**

***Walt Young, 634 Lemonwood Drive:*** Mr. Young said that at 347 Village Creek Drive, there is a derelict car with expired plates that has been in the drive way and not moved for two years. There is a second derelict vehicle that has been there three or four months. Representatives from the Police Department have said that there's nothing that they can do about this. He said one car is in front of the building line. He asked if something can be done to improve this situation.

***Twigwood:*** Mr. Young said he is not being critical of the Public Works department and employees. They do an outstanding job. He spoke about the contractor that is being used for the work on Twigwood. He asked if the whole entrance and exit to Twigwood is being repaired, or just the wings. The problem has always been the center section. The heavy rain destroyed any concrete that was loose. There were holes as deep as 8 – 10 inches in the middle of the road. At this time, the wings are done, but nothing has been done on the center. Today, the contracting company was not working on the street. He said he thought the job would have been completed before going to the next project. He said it was his understanding that nothing is going to be repaired on the middle section. The wings were not deteriorated. He said he asked that the street be shut down on one side because the surface was in very bad condition. Alderman Kerlagon looked at the street and agreed that it was a problem. He suggested that a new process be used, by instructing the contractor where to work and not let him do only what he wants to do.

***Grass Cutting:*** Mr. Young said that last summer, an ordinance was passed regarding grass cutting. There is tall grass, 8 – 10 inches high, all through the City of Ballwin. He said if anyone is ill, elderly, or has problems and cannot cut their grass, he suggested that perhaps someone could offer to cut the grass for them. If people can be helped with these situations, it would be beneficial to these residents and the City.

## **PUBLIC HEARINGS**

None.

## **NEW BUSINESS**

### **LEGISLATION**

#### **BILL # 3786 - AN ORDINANCE PROVIDING FOR THE APPROVAL OF A SUBDIVISION PLAT FOR MOTZ ESTATES SUBDIVISION, AS PROVIDED IN CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN, MISSOURI.**

A motion was made by Alderman Terbrock and seconded by Alderman Leahy for a first reading of Bill No. 3786. A voice vote was taken with a unanimous affirmative result, the motion passed and Bill No. 3786 was read for the first time.

A motion was made by Alderman Fleming and seconded by Alderman Boland for a second reading of Bill No. 3786. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3786 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3786 with the following results: Ayes – Fleming, Boland, Finley, Kerlagon, Terbrock, Harder, Leahy, Dogan. Nays – None. Bill No. 3786 was approved and became **Ordinance No. 13-17.**

Alderman Boland asked, "When are you proposing development of this property?" Michael Boerding said, "We're going to go through several of the procedures such as getting a record plat, improvements, and a 'coming soon' sign, 30 – 60 days."

**BILL # 3787 - AN ORDINANCE APPROVING THE FINAL R-4 DEVELOPMENT PLAN FOR ESSEN PLACE SUBDIVISION.**

A motion was made by Alderman Fleming and seconded by Alderman Terbrock for a first reading of Bill No. 3787. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3787 was read for the first time.

Alderman Harder asked, "If this passes, what is the timeline for this project to begin?" Jeannie Aumiller, McBride & Son, said, "If this passes, the next step in the process is to get the record plat approved, subdividing the lots and, along with that, the actual improvement plans for the infrastructure approved by the City. I'm hoping this can be done this summer. We will probably start development activity in the fall, such as infrastructure and earth moving activities; sooner if we can." Alderman Harder asked if spec homes will be built? Ms. Aumiller said, "We will most likely build a display and some spec homes in late fall. We would be open for sales before we actually have a display built. We would use a trailer for sales. We usually have a big grand opening with a lot of customers on that weekend. While we're getting their houses ready to build, we would also be building a display." Alderman Harder asked about price. Ms. Aumiller said, "We anticipate starting in the mid 2s, but the average would probably be low to mid 3s, and probably go up to \$400,000."

Alderman Kerlagon said, "That's a wide range going from \$200,000 to \$400,000. Is that typical?" Ms. Aumiller said, "This is typical and the sign would reflect this range. This is base pricing. People will add options. There are 6 or 7 different types of houses. By the time people add options, the average will be in the low to mid 3s."

A motion was made by Alderman Fleming and seconded by Alderman Boland for a second reading of Bill No. 3787. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3787 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3787 with the following results: Ayes – Fleming, Boland, Terbrock, Leahy, Kerlagon, Harder, Dogan, Finley. Nays – None. Bill No. 3787 was approved and became **Ordinance No. 13-18**.

**BILL # 3788 - AN ORDINANCE GRANTING AN AMENDED SPECIAL USE EXCEPTION TO LOWE'S FOR A SITE PLAN AMENDMENT.**

A motion was made by Alderman Harder and seconded by Alderman Leahy for a first reading of Bill No. 3788. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3788 was read for the first time.

Alderman Harder said, "You're asking to use more space on the parking lot for gardening supplies. Don't you already have items in these areas?" Eric Parker, Lowe's store manager, said, "We do. I recently became the store manager at this location, and realized that we had been operating illegally on this issue, beyond what the initial S.U.E. allowed. Our plan is not to do anything additional from what we've already established. We're trying to bring what we already have displayed into compliance with the ordinance. Nothing else will be changed in the store operation."

Alderman Harder asked, "Is the alleyway big enough for fire trucks and other emergency vehicles?" Mr. Parker said, "Yes. We're committed to maintain the curb driveway on the east side of the building, at 27 feet wide, all the way through to the back of the building. That's the way it is right now. This is for seasonal, only gardening supplies only in the area. On the east side of this driveway, materials will only be stored from March 15 – July 5. That's the portion of the lot that's visible from Ries Road. The west side of the east driveway is not visible from Ries Road. After the July 4 holiday, we'll move all product back to the holding area and clean off the east side completely." Alderman Harder asked about the area

by the front door, which is being used for lawn mowers and barbeque pits. Mr. Parker said, "Currently, I'm not using any space by the front door. The P&Z Commission asked me about this. We did some produce there, but that's been removed. We're not asking to put product in front of the entrance door. Nothing would be placed west of the propane cages that are under the awning."

Alderman Boland asked about the screening. Mr. Parker said, "I was going to request an amendment to Ordinance 00-14 from March 13, 2000."

Alderman Boland said, "There is a fence with a fabric material. The wind sometimes rips off the fabric. It was suggested that slats be used." Mr. Parker said, "They are called vinyl privacy slats that are black. There is a question whether the fence can tolerate the slats. If there's any way to change the language to allow the opaque screening fabric or black vinyl slats, but not a combination of both. It adds 75% wind load when slats are used."

Mayor Pogue said, "This was a discussion that the Commission had after the recommendation was made and voted upon. They seemed open to allow that."

*A motion was made* by Alderman Boland and seconded by Alderman Terbrock to amend Bill 3788 by adding paragraph 5 to Exhibit 1 to allow the petitioner to either use the opaque fabric or vinyl fence slats on the chain link fencing on the side and rear of the building. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Terbrock asked, "The trailer that hauls away the appliances, does it stay there?" Mr. Parker said, "They bring an empty trailer and take the full one. A trailer is filled once each week."

A motion was made by Alderman Finley and seconded by Alderman Boland for a second reading of Bill No. 3788, *as amended*. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3788 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. 3788 with the following results:  
Ayes – Finley, Harder, Kerlagon, Terbrock, Fleming, Boland, Leahy, Dogan. Nays – None. Bill No. 3788 was approved and became **Ordinance No. 13-19**.

**BILL # 3789 - AN ORDINANCE GRANTING A SPECIAL USE EXCEPTION TO JUSTIN MAXSON, dba JIMMY JOHN'S, FOR FRONT YARD PARKING AND OPERATION OF A RESTAURANT WITH CARRY-OUT AND A DRIVE-THROUGH SERVICE WINDOW.**

A motion was made by Alderman Boland and seconded by Alderman Fleming for a first reading of Bill No. 3789. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3789 was read for the first time.

Alderman Harder said, "Your plan is to direct people around the hair care business to access the drive through in the year. The dumpster that is currently in the rear of the store would be moved to another location?" "Do you plan on redoing the building, making it more like a Jimmy John's at other locations?" Bill Bierman said, "It will be re-branded; you'll know it's a Jimmy John's." Mr. Bierman reviewed the Planning & Zoning discussion. He said that an island will be placed to meet MoDOT's requirement to

allow only right in / right out traffic at the eastern curb cut. Since there won't be full access from Manchester Road, it was proposed to reserve the right to tie into Shirley Lane, which will get back to two full access points. The way the draft ordinance is written right now, it says "shall" tie in to Shirley. He said this should be discretionary because there's not a lot of room for this curb cut on the site due to existing improvements.

Alderman Harder said, "Adding a Shirley Lane curb cut would lose 2 or 3 parking spaces. Is that going to change the ratios on parking?" Mr. Bierman said, "I believe the site is over parked. We're at 31 right now. The ordinance requires 24. With the changes shown on Shirley lane, we would still have adequate parking. The hair care business has been a very good tenant and we don't want to harm her business. We're confident that parking will not be an issue."

Alderman Harder said, "The other change is the location of the trash dumpster." Mr. Bierman said, "It will be moved to the northwest corner of the site."

Alderman Harder said, "If this is approved tonight, when do you think you will start this?" Mr. Bierman said, "The way their lease is written, we have 120 day notice period. Construction will probably take another 120 days."

Alderman Harder asked, "Are you planning on using the building the way it is?" Mr. Bierman said, "It will be painted and some cosmetic improvements will be made. I haven't seen the whole plan. They will re-brand it." Alderman Harder asked, "Do you have a franchisee lined up for this?" Mr. Bierman said yes.

Alderman Kerlagon asked, "Are you saying that the ice cream business is going away and Jimmy John's is going into that space?" Mr. Bierman said yes. Alderman Kerlagon said "There will be traffic on Shirley Lane because of the church. Do you see any problems with that?" Mr. Bierman said, "No. The traffic from Jimmy John's should coincide with the church traffic."

Alderman Boland said, "The issue with the curb cut on Shirley is not so much doing it, but because of the relocation of the light." Mr. Bierman said, "It's not a big deal. There's an existing light pole there right now. Alderman Kerlagon asked where would you put the light pole? Mr. Bierman said it would have to be moved over out of the way of the curb cut."

Alderman Boland asked, "Is there an ordinance requirement that if one is taken down, it has to be moved to a different spot?" Assistant City Administrator Aiken said, "The regulations are flexibility as to the location of light fixtures."

Alderman Boland said, "Regarding the cross access easement, how should this be worded related to re-development?" Assistant City Administrator Aiken said, "The easement is granted to the City of Ballwin. If something happens next door, we can require the interconnection. It's a parking lot interconnection and cross access easement. We hold the right to require it to be done when the adjoining property comes available. We got one from Nissan when they opened their new facility, and when Hertz went in next door, we were able to require Hertz to interconnect with Nissan. This wasn't discussed at the Planning & Zoning meeting, but it's in the staff report."

Alderman Boland asked, "Is this property owned by the same owner as the bank property?" Mr. Bierman said, "No. I don't know who owns the bank property."

Alderman Terbrock asked, "Did you say that the discussion regarding right in / right out took place after the Planning & Zoning meeting?" Mr. Bierman said, "No. The discussion focused mainly on the size of the entry. The entrance is 30 feet wide." Alderman Terbrock said, "I'm not a big fan of the right in / right out on Manchester Road, especially right after the congested intersection at Holloway and Manchester. I live on Ramsey Lane and this will make a difficult situation at that location. It's too tight to install an island on the street."

Alderman Fleming said, "We had this problem with Schnucks, and we have it tonight with the Lowe's request and this. Subjects are discussed at Planning & Zoning and we don't yet have the Minutes of the meeting. I suggest a better description of what Planning & Zoning discussed, even though we can't have the Minutes at this time. I've heard that you'd like the ordinance to say 'may' instead of 'shall', and something was in the staff report but not discussed with the Commission. We're trying to make adjustments on the fly."

City Attorney Jones said, "Paragraph 17 would say a new curb cut may be installed instead of shall be installed. This is the way it was first drafted, but because we didn't have the Minutes, we were trying to determine what Planning & Zoning had recommended. This change could be made in paragraph 17. Paragraph 18 would read that a cross access easement to the property would be east and shall be granted to the City of Ballwin."

Alderman Fleming said, "Was the end result 'shall' or 'may' in the wording?" Alderman Boland said, "That didn't come up. When this was presented, the recommendation from Assistant City Administrator Aiken and staff was that we get rid of the two curb cuts and make one curb cut. The discussion was about what made sense from a business perspective and traffic coming in and out of Ramsey Lane. We didn't get into the 'may' or 'shall' on the Shirley Lane curb cut. The cross access easement also did not come up in the conversation that night."

***A motion was made*** by Alderman Fleming and seconded by Alderman Boland to amend #17 that the word be changed from shall to may, and to include #18 to read 'a cross access easement to the property immediately east of the subject shall be granted to the City of Ballwin. A voice vote was taken with a unanimous affirmative result and ***the motion passed***.

Alderman Harder said, "Regarding the island, which is 9 feet x 19 feet, in the 30-foot wide entrance." Mr. Bierman said, "We're trying to avoid having to move the curbs on either side." Mayor Pogue said, "The purpose is to restrict movement of people turning left from the center lane into the property while people are driving westbound, turning into the center lane to turn left on to Ramsey. The recommendation of the removal of the two existing curb cuts was to align the single curb cut. This way you would not have traffic coming eastbound on the center lane to turn left into the Jimmy John's location, creating conflict with those making a left onto Ramsey."

Alderman Terbrock said, "That's not going to fix the issue of people coming out of Shirley or the other side to go the other way." Mayor Pogue said, "It spreads it out." Alderman Boland said, "The issue was mainly about people coming out of Ramsey." Alderman Terbrock said, "If someone is trying to turn left from Ramsey Lane at noon, that's not going to be possible. I don't see a need for this. Cars are going to be damaged. It's not going to solve the problem."

City Attorney Jones said, "The easement won't be used until there's a redevelopment of the eastern property. This would involve some reconfiguration." Mayor Pogue said, "At that point, one of the recommendations would be to eliminate a curb cut."

Alderman Finley asked, "What is the estimated cost of building the island?" Mr. Bierman said, "\$5,000. There's concern that this might not work. I recognize the concern and we'll try to do our part. If you think it won't work, I understand this."

Alderman Harder said, "Since we're divided on this, could we wait and see if there is a problem before requiring the pork chop island?" Mr. Bierman said, "This came up." Alderman Boland said, "I don't like the idea of let's see what happens."

Mr. Bierman said, "Since this is a Special Use permit, does Ballwin have the ability to say put this in within 60 days or you're in violation of the Special Use?" City Attorney Jones said, "Yes." Mr. Bierman said, "What we're here for tonight is seeking a Special Use permit to which there are conditions that allow us to have our Special Use, one of which could be that we'll leave it as is today, but if over the course of time, the curb cut island is needed, Ballwin can require its construction."

City Attorney Jones said, "The problem I have with that is that there is no criteria for asking that it be installed at a later date. The only way I would be comfortable recommending that is if it's completely at the City's option." Alderman Boland said, "I think it might be helpful because we do not know what kind of traffic volumes and congestion will result from a Jimmy John's at this location."

Alderman Boland said, "The pork chop came up as a reasonable compromise." Mr. Bierman said, "I would be comfortable with this, but it would be up to the City. You would have to get MoDOT approval."

Alderman Terbrock said, "What is your opinion on this?" Assistant City Administrator Aiken said, "This is a tough piece of Manchester Road. There's a lot of traffic, a lot of curb cuts, a busy center turn lane directly across from this property. We don't know how much traffic this use is going to generate. I didn't think it would generate enough to recommend that they prepare a traffic study like what was done when Wendy's and the gas station were being considered. My recommendation was to consolidate into a single curb cut that's directly opposite Ramsey. At least that's a logical intersection. Drivers will be seeing cars following conventional driving patterns. The way this is now, there's a lot of overlapping left turn movements. People that are eastbound on Manchester Road turning into Jimmy John's will have to drive past Ramsey to make the turn. They're already thinking about moving to the center lane to get ready to make the turn. Simultaneously, westbound traffic is getting ready to turn onto Ramsey Lane is moving to the center lane in preparation for making their left turn. The lane is being shared at that point in both directions. A single curb cut eliminates that problem. Parallel to that is that anyone making a left turn out of Shirley or the western curb cut, is turning out into the center lane directly into the path of people making left turns out of Ramsey. That's not going to go away. By going to the pork chop island, which would eliminate or reduce the left turn movement, would help with at least that part of the conflict. This is just one piece of what is a very complicated section of roadway. Ideally, if there's another development with another curb cut, my recommendation was also to connect into Shirley so it would give them a second out, but moved further west away from Ramsey Lane. The idea is to spread out the traffic, either get it right together so that people see each other, or moved apart so that there's less conflict. There are other curb cuts with close proximity. Several were closed in front of ELCO Chevrolet, which has helped with the situation. It's an incremental process to try to gradually get improvements to achieve access management along all of Manchester Road."

Alderman Terbrock asked Police Chief Schicker for his opinion. Chief Schicker said, "Assistant City Administrator Aiken and I discussed this and I concur with his report." Alderman Terbrock said, "I was at a Jimmy John's on Olive Blvd., east of 170. That location is like a circus trying to figure out how to get in and out. This isn't the same situation, but the nearest Jimmy John's is at 141 and Manchester Road. I'm concerned that this is going to cause a bigger issue, at least for the first month, than solve the problem."

Mr. Bierman said, "The engineer just said that we should go ahead and do the pork chop and get MoDOT's approval. If MoDOT says this can be installed but have to widen it, that could kill the whole deal."

Alderman Fleming said, "A trash truck probably couldn't get out through the pork chop." Mr. Bierman said, "They wouldn't be able to come in on the pork chop side, so they would probably go around to another entrance. We're trying to avoid a situation like Lion's Choice." Alderman Fleming said, "If everyone's big concern is how it affects Manchester Road, it's better to be inconvenienced on a little piece of property than on Manchester Road."

Mayor Pogue said the pork chop doesn't solve the left turn by eastbound traffic.

Mr. Bierman said, "The only way you can compel us to do that at this point is because we're here for the Special Use permit." City Attorney Jones said, "The only way I could recommend this is to simply add to paragraph 16, which is discussing the eastern most curb cut, is to add the words 'at the sole discretion of the City of Ballwin'. That way, there's no traffic study and don't have to talk with Chief Schicker about accidents. We don't have to prove necessity. That's the only way I can see doing this."



City Administrator Kuntz said, "How are you going to deal with subject to MoDOT approval if that hasn't been raised?" City Attorney Jones said, "We've had that issue before. If MoDOT won't approve it, then we just ignore it. We don't try to revoke the S.U.E." City Administrator Kuntz said, "If MoDOT doesn't approve it, do you then want to insist on a secondary access point, or just say that since MoDOT didn't approve of it, we have to live with the one."

Mr. Bierman said, "Asked that they are given adequate time to go through the approval process with MoDOT. In that case, 30 days may not be enough time." City Administrator Kuntz said, "If MoDOT says no, would you be willing to provide the secondary?" Mayor Pogue said, "If MoDOT declined the request to install the pork chop, would you consider putting in the connection on Shirley?" City Administrator Kuntz said, "Otherwise, you will only have one curb cut."

*A motion was made* by Alderman Fleming and seconded by Alderman Harder that on point #16 at the end of the sentence, to include the words 'at the sole discretion of the City of Ballwin'. Point 16 will read in completion as "The easternmost curb cut on Manchester Road shall be limited to right turn in and right turn out turning movements by installation of a device to prevent left turns at the sole discretion of the City of Ballwin. A voice vote was taken with a unanimous affirmative result and the amendment was accepted.

Mr. Bierman said, "The way I understand this is that the pork chop is discretionary by the City of Ballwin, and the granting of the easement on the eastern side."

Alderman Finley said, "Leaving it to the discretion of the City, who is going to make that call?" Mayor Pogue said, "If there have been a number of accidents caused by this movement, staff will have the discretion to tell the petitioner."

Mike Wind, Chairman of the Planning & Zoning Commission said, "My understanding was that the Chief of Police recommended a single in and out. We tried to work with the developer in order to make things equal on every side. I am very worried about safety of the people going in and out of that area. There are three very close entrances and exits, including Shirley Lane and the two curb cuts. What does \$5,000 mean in building a pork chop that could prevent one or two accidents? Think of the accident costs, personal injury. This Board has spent more time on this tonight than we did in the Planning & Zoning Commission meeting. I don't understand why you are arguing over such a very moot point. If the pork chop is installed, which will allow a left turn off of Manchester into the entrance way. We also allowed for a left in." Mayor Pogue said, "Right in, right out only".

Alderman Terbrock said, "What would be the purpose of putting in the pork chop if it was a left in?" Mr. Wind said, "It could be a left in, a right in, and right out only. It won't allow for a left out." Alderman Terbrock said, "This will still clog up Ramsey Lane. I live on Ramsey Lane. I know exactly what goes on there. I would not be in favor of that at all. There would be traffic backing up to make a left turn. You'd never get out of Ramsey that way."

Mr. Wind said, "If you allow a left in at both entrance ways, two cars could turn simultaneously." Mayor Pogue said, "The opening is not wide enough to allow for an island to restrict that type of movement. You would be defeating the purpose of what it's there for." Mr. Wind said, "That's not true. What you're preventing is a left out. One of the arguments was that we don't have the Minutes of the meeting, so we can't agree or disagree on what the Commission agreed to." City Attorney Jones said, "I'm sure the recommendation was right in / right out. We talked about right in / right out, left in as one of the options. That was not the recommendation. I'm sure of that." Alderman Boland said, "That's my understanding too. The resolution or compromise was that we do the pork chop with right in / right out." Mr. Wind said, "If you put that in, it could increase the safety of our citizens. That's my most important point."

Alderman Fleming said, "The reason we are taking so long to discuss this is that it was unclear without the benefit of having the Minutes from the meeting. We're trying to do the best we can to satisfy the

business community, developer, and safety of the citizens. Maybe there is something better we can do as a follow up to the Planning & Zoning meetings. If the Planning & Zoning Commission recommends to approve something, this Board should be hard pressed to go against their recommendation, especially if their recommendation is unanimous. In this case, there seem to be some gaps in what the discussion was. We're making the best of it as we can. If there's anything we can do in the future to make sure we have the recommendation nailed down, it should then be an easy matter for this Board." City Administrator Kuntz said, "Having the Minutes would have been very helpful for the Board." Alderman Fleming said, "Even if just bullet points of what the approval was will be helpful. The rest of the dialog can be added later to the Minutes."

**A motion was made** by Alderman Harder and seconded by Alderman Boland for a second reading of Bill No. 3789, **as amended**. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3789 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. 3789 with the following results: Ayes – Harder, Boland, Terbrock, Fleming, Dogan, Finley, Kerlagon, Leahy. Nays – None. Bill No. 3789 was approved and became **Ordinance No. 13-20**.

#### **BILL # 3790 - AN ORDINANCE RENAMING A SECTION OF KEHRS MILL ROAD.**

A motion was made by Alderman Kerlagon and seconded by Alderman Boland for a first reading of Bill No. 3790. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3790 was read for the first time.

A motion was made by Alderman Harder and seconded by Alderman Boland for a second reading of Bill No. 3790. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3790 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3790 with the following results: Ayes – Harder, Finley, Boland, Leahy, Dogan, Terbrock, Fleming, Kerlagon. Nays – None. Bill No. 3790 was approved and became **Ordinance No. 13-21**.

#### **BILL # 3791 - AN ORDINANCE AMENDING SECTIONS 14-29, 14-150, 14-211, 14-235, 14-254 AND 14-274 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN WITH RESPECT TO VIOLATIONS AND PENALTIES FOR NON-PAYMENT OF TAXES AND FEES.**

A motion was made by Alderman Boland and seconded by Alderman Leahy for a first reading of Bill No. 3791. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3791 was read for the first time.

Alderman Finley asked, "Is the purpose of this legislation to match State statute?" City Attorney Jones said that is correct.

Alderman Harder asked, "Where were we out of compliance?" City Attorney Jones said, "The penalty we had was 10%. Now it's 5% per month up to a maximum of 25%. Also, there are different penalties that apply based upon whether the failure to pay the fees are negligent, intentional, or fraudulent, which are three different mental states. The penalties are different based upon those three under State law. We

changed the number to bring it in line, and added those three determinations of the tax payer's culpability." Alderman Harder asked, "Is there a grace period? If it's due on January 1, is there a grace period before the penalties kick in?" City Attorney Jones said, "One month, 30 days net, then delinquent." City Administrator Kuntz said, "We don't necessarily embrace these changes of determining competency, but the State apparently thinks it's appropriate. As a city of the fourth class, we have to be consistent. It's a roll back. We don't have an option to impose a greater penalty than the State permits, nor to generically call them delinquent if they've specifically made determinations as to culpability. We're just getting on board with what we have to do to be consistent; or, we will be subject to appeal, and then we wouldn't have any standing if we wanted to challenge it." City Attorney Jones said, "That's correct. We still have the ability to take someone to municipal court. We've left in the penalty that attaches with a complaint in municipal court which would be a fine of up to \$1,000 or jail. That's a different process. It's not an administrative penalty added to the tax burden. It's actually filing a suit in municipal court."

Alderman Harder said, "Under this, if they are delinquent 30 days, they would get a notice, and then at that point, these penalties kick in. By three months later, they finally pay the back penalty and their tax owed at that point." City Attorney Jones said that's correct. Alderman Harder said, "We wouldn't take them to court at that point, it would just be a ticket in fines, and then, when would it go to court?" City Attorney Jones said, "I'm not sure we've ever taken anybody to court for failure to pay taxes."

Finance Officer Keller said, "I think we have, but it's been quite a while ago." City Administrator Kuntz said, "It's at least after 90 days. There's a series of more serious reminders or notices." Alderman Harder said, "If this passes, will there be some communication to the business community that this has changed?" City Administrator Kuntz said, "The only people it would affect would be the 1% that's delinquent. The first notice would say something like, in accordance with State Statute, etc., we would incorporate that language. We would do the ordinance citation, and reference the fact that this is the procedure we're following that is State statute." City Attorney Jones said, "It really is a relaxation of the code."

*A motion was made* by Alderman Harder and seconded by Alderman Boland for a second reading of Bill No. 3791. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3791 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3791 with the following results:  
Ayes – Harder, Boland, Kerlagon, Finley, Fleming, Dogan, Terbrock, Leahy. Nays – None. Bill No. 3791 was approved and became **Ordinance No. 13-22**.

**BILL # 3792 - AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 1 BY THE ADDITION OF A REVISED SECTION 2-7 AMENDING ADMINISTRATIVE POLICIES FOR THE CITY OF BALLWIN.**

A motion was made by Alderman Finley and seconded by Alderman Boland for a first reading of Bill No. 3792. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3792 was read for the first time.

Alderman Finley said, "Is there a reason that we chose this list of counties, or the personal checks will only be accepted from those?" Finance Officer Keller said, "That language is in place from when the original ordinance in 2000 was passed. We didn't modify it. I'm not sure why those were chosen at that time." City Administrator Kuntz said, "The history, as I recall it, had to do with the ability to make contact through law enforcement and the proximity. It was supposed to be confined to the geographical area for follow up purpose." Police Chief Schicker said, "It has to do with our ability to investigate within reasonable distances and the cost of investigative and extradition travel cost. Statewide extradition increases this cost factor beyond reasonable boundaries."

Alderman Finley asked, "Could we add Lincoln County? I had thought about the counties in Illinois." City Administrator Kuntz said this could be added.

*A motion was made* by Alderman Kerlagon and seconded by Alderman Boland for a second reading of Bill No. 3792. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3792 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3792 with the following results:  
Ayes – Kerlagon, Leahy, Terbrock, Fleming, Harder, Boland, Finley, Dogan. Nays – None. Bill No. 3792 was approved and became **Ordinance No. 13-23**.

**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. Dental Insurance:

Alderman Fleming asked, “Is the dental all employee paid or the same mix as the medical?” City Administrator Kuntz said, “The dental is all employer paid for the employee, which is premium 100% coverage. All of the other coverages are optional and paid by the employee, if so chosen.”

*A motion was made* by Alderman Fleming and seconded by Alderman Boland to approve the recommendation of staff for the renewal of dental insurance coverage. A voice vote was taken with a unanimous affirmative result and the motion passed.

## **MAYOR’S REPORT**

**President of the Board:** Mayor Pogue recommended approval for Alderman Frank Fleming to be President of the Board.

*A motion was made* by Alderman Terbrock and seconded by Alderman Kerlagon to accept this appointment. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Committees:** Mayor Pogue said

Finance & Administration: Aldermen Finley, Dogan, Kerlagon, Fleming (Chairman)

Parks & Recreation: Aldermen Dogan, Leahy, Boland, Terbrock (Chairman)

Public Health & Safety: Aldermen Finley, Harder, Boland, Leahy (Chairman)

Public Works: Alderman Terbrock, Harder, Fleming, Kerlagon (Chairman)

**Board of Adjustment Reappointment:** Lori Willis (Chairman) 5-year Term expiration: 2018

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

**Commission Vacancies:** Mayor Pogue

**Planning & Zoning:** Chris Wright 5/13/13 2017 (4-year terms)  
John Schwent  
Mark Weaver  
Frank Karr

*A motion was made* by Alderman Kerlagon and seconded by Alderman Fleming to accept the Planning & Zoning appointments. A voice vote was taken with a unanimous affirmative result and the motion passed.

**Future Meetings:** The May 27 Board of Aldermen meeting has been cancelled for the Memorial Day holiday.  
The Board of Aldermen meetings will be held on **June 17, July 15, and August 19 at 7:00 p.m., all at The Pointe At Ballwin Commons.**

**Great Streets:** Mayor Pogue said there will be a presentation at the **Wildwood Council Chambers on May 22 at 6:00 p.m.** The Great Streets steering committee would like to consider entering into an agreement with North Star in regard to a branding proposal for the Great Streets project. All of the councils are invited, as well as the public.

City Administrator Kuntz said, “North Star is a company that specializes in working with municipalities, specifically to enhance their brand. This is the central thrust of the Great Streets program, which is to revitalize the corridor. The gentleman who will be speaking is very knowledgeable and it will be very informative, as well as somewhat entertaining. He has good stories about what they have done in other communities. It’s well worth the time to attend and learn what branding is all about. A lot of cities are getting involved in this. It’s intended to do what corporations have been doing for a long time, which is to put on our best face and try to recapture a lot of the retail excitement that has leaked out of the area.”

Mayor Pogue said, “The steering committee reviewed proposals from three different corporations. The steering committee chose North Star as a possible candidate. There would be cost sharing with the three cities to pay for this effort if it is agreed upon by the three Boards. I encourage the Board to attend.”

### **CITY ADMINISTRATOR’S REPORT**

**Board Room Audio/Visual:** City Administrator Kuntz said, “Jon Emert, with JEMA, will provide the follow up that was requested by the Board. They have dug deeper into the three proposals and attempted to obtain additional information from each, and supplemental data that will hopefully be sufficient to permit the Board to make the recommendation of an award. Wednesday of this week, we intend to clear the room, and Thursday of next week, the general contractor will start the process of demolition. That part is on track, and hopefully audio / visual can follow.

Mr. Emert said, “At the April 22 meeting, we presented the audio / visual bids that we received for the scope of this room renovation. The three bidders were Innovative Technology Group, TSI, and Communitronics. Based on the completeness of the bids, we recommended ITG. We were asked by the Board to provide additional information that was missing from the original bids. Subsequent to that, we followed up with each of the bidders and obtained that information. Specifically from Communitronics, they did not provide financials initially with their bid. They have since provided those financials. We also asked all three bidders to confirm the certifications that were requested as part of the original bid specs. They all responded to that request and provided conformation of certifications. Specifically Communitronics obtained confirmation of CTS-D certification, cresteron certification, and an additional biamp certification.”

Mr. Emert said, “We also followed up with each of the bidders to confirm references. Communitronics did not provide any references initially. They followed up with three references. We contacted two out of the three. The third reference they provided was an incorrect phone number. The two additional references that they provided check out, and they received very good references from those two.”

Mr. Emert said, “Based on that information, the information we’ve received post-bid satisfies the bid specs and requirements. From a system design standpoint, they meet the design per the drawings and specifications. With the information provided, post-bid, they have met the bid requirements.”

Mr. Emert said, “In addition to this information, we asked that each bidder provide deducts for two items on the list. These were the document camera and the speaker notification function. Those deducts were provided and the numbers were provided in the spread sheet that was included with the packet. A subsequent revised bid number at the end of the spread sheet was included. Only including the deduct #2. It was our understanding that the document camera would be part of the scope of the project. Mr. Emert said, “Based on those numbers, Communitronics remained the low bidder for the project.”

Mayor Pogue said, "At the last meeting, we received a spread sheet that showed an alternate for TSI. What is the difference in the alternate they provided in relation to the base bid?" Mr. Emert said, "The alternate from TSI changed some of the functionality of the system. That was a voluntary alternate that they provided. We evaluated the bids on an apples to apples basis per the design in the specifications. That was a voluntary alternate that they said they could explain further if we requested that information." Mayor Pogue asked, "What did this entail?" Mr. Emert said, "It was a replacement of some specific equipment. It was my understanding that it changed some of the interface between the video components and the functionality at the dais. It changed the functionality of the way the system was designed."

Mayor Pogue asked, "Do you have any explanation as to why there was such a wide spread on the values for deduct #2?" Mr. Emert said, "We specifically followed up with each of the bidders to that point. They confirmed that they understood the scope of the deduct and that was their number. Communitronics said that they bid the job very tight and that was their number and they understood what needed to come out as far as the scope for that specific item, and that was the credit they are providing."

City Administrator Kuntz asked, "In view of Communitronics' reluctance or inability to provide references and financial information, and absence of the bid bond, do you have reasonable assurance that they can provide a performance bond if they were successful on this contract?" Mr. Emert said, "Yes. I had that conversation with the Communitronics controller today. They verified that they would be able to provide a performance bond if they were awarded the project. I had that same conversation with TSI and ITG. All three bidders verified that they would be able to provide the performance bond." City Administrator Kuntz said, "We cannot and will not award this contract without a performance bond." Mr. Emert said, "I relayed that to each of the bidders and they all confirmed that they would be able to get bonded."

Alderman Harder said, "My concern is the same as Mayor Pogue. I look at deduct #2. We go from \$150 to \$9,500, and they are supposed to do the same thing. I'm concerned that if we pick #1, maybe it wasn't adjusted right, or if we picked #3, what are we getting for \$9,000? The same thing is with the scanner. We go from \$550 up to \$2,800. Is one better than the other?" Mr. Emert said, "In the case of the document camera, it's very specific on what piece of equipment would not be provided. What we did was confirm what was included in each of those functionalities."

Alderman Finley said, "You mentioned earlier that Communitronics provided three references. The memo shows six." Mr. Emert said, "Three projects with specific references. The references they initially provided were credit references and bank references. We asked for project references. I tried to contact 3. I was able to contact two."

Alderman Fleming said, "Regarding the document camera, you said it was very specific. What do you mean by that?" Mr. Emert said, "It is a specific piece of equipment. It's a specific manufacturer. They could bid a specific piece of equipment or provide an alternate that met the same specification. Listed within each bid was the document camera that was initially designated in the specifications."

Mayor Pogue said, "I have concerns with Communitronics because they couldn't give us the correct information on one of the references, they didn't understand what was required on the initial bid and give us credit references rather than project references, finally today they agreed that they could do the bid bond after this has been out and discussed for a month and a half, and the bid opening was two months ago. It took until today to get to that point."

City Administrator Kuntz said, "TSI has stronger references from a local standpoint. Both TSI and Innovative Technology have relevant experiences. Even though Innovative Technology is the highest, they are in full compliance. Both are national companies. They've done big projects. If there's any uncertainty, it's perhaps safer in this direction. The Board has always tried to go with the lowest and best. That's why we're having this discussion."

Alderman Kerlagon asked, "What is a bid bond?" Mr. Emert said, "There are bid bonds and performance bonds. A bid bond is an insurance that if selected, the contractor will carry through with the work, based on their provided bid. If they weren't able to enter into a contract with the City, they would then incur the cost between the next highest bidder. A performance bond is a bond that is entered into with the City. When construction starts, it's basically an insurance policy that if they went out of business or couldn't complete the work, they are insured to cover the cost of bringing on a new contractor to complete the work."

Alderman Kerlagon said, "TSI gave verbal confirmation, but didn't provide any information on paper." Mr. Emert said, "That's correct. As a follow up, all three bidders have assured that they would be able to provide a performance bond if selected for the work." Alderman Kerlagon asked, "Why is there so much difference between the value of the speaker notification system on Innovative and TSI?" Mr. Emert said, "I can speculate, but we went back to them and they assured that they had the scope that was provided. The only thing that I can speculate is that ITG was high bid, Communitronics was low bid, and they had more room to come down. Communitronics didn't have much wiggle room in their original bid. That's all that I can speculate."

Alderman Boland said, "All three have said that they can get a performance bond. As far as the financial information provided, this was the latest, most recent financials they could provide to us." Mr. Emert said yes. Alderman Boland said, "This is like making a decision based on what happened 15 months ago. Communitronics grew the business by borrowing from a stockholder, borrowing from a related party and maxing out on their bank line of credit. We are charged with finding the lowest bidder, but also we're charged with finding the lowest and best, which means they can complete the job. I don't have a level of comfort with Communitronics, based on the varied financial data they provided."

Alderman Fleming said, "My thoughts are similar. If we vote to accept one tonight, we're essentially voting on the revised bid including deduct #2. We're taking the speaker notification off the table. I share Alderman Boland's feelings. How ITG got its revised bid down to now be second or how they play with the numbers, I don't know. However, they were the only ones who have been in full compliance with the bid specifications that we sent out." Mayor Pogue said, "We sent out, per that they wrote." Alderman Fleming said, "One of the things was a certification. Maybe the certification for TSI isn't the important one, but they had references that checked out, they were able to provide financials right away, and this exercise has brought them down to be at least the second place rather than highest bid. That's the way I'm probably leaning unless someone can change my mind."

Alderman Terbrock said, "On the Innovative Technology Group references, there are six. Are these job references or finances." Mr. Emert said, "These are clients that they worked with." Alderman Terbrock said, "I agree with Alderman Boland about Communitronics. Looking at the performance references; TSI is doing the Scottrade Center, Busch Stadium, and Target Field. At the same time, I'm not the least bit comfortable with the disparagement of these numbers. I can't comprehend how there could be a \$9,500 drop vs. a \$1,600 drop. I think that TSI is a better bid to begin with because it was probably right there. I can assume that ITG was really pumping it up, and after listening to us, they cut it down tremendously. That's a safe assumption." Mr. Emert said, "The number provided by ITG was provided prior to the last council meeting. The two deduct numbers were included in the previous meeting." Alderman Terbrock said, "Regarding jobs done and references given, TSI can handle renovation of this room."

Alderman Dogan said, "I think there is mixed data. Now that we have the financials from all the companies, it's interesting to compare apples to apples. Alderman Boland had mentioned that the data from the balance sheets are concerning because it might be outdated. The Communitronics' balance sheets and financial reports they provided are from 2011 and 2012. TSI's only go up to 2011 and 2010. For ITG, I'm concerned because they don't have a balance sheet or income statement for their company. I think what we were given was that information for Color Art, which is the parent company. There's no breakdown of what ITG is. Those two companies are much bigger companies. ITG is part of a huge group. TSI has more revenues, more business, has done more impressive jobs. We're looking at a small business, Communitronics, vs the big business who typically get this kind of contract. I think at the first

stage of this when ITG was writing the specs, everything was done in their favor. They probably didn't think that the other companies would come close to their numbers, so they added in a lot of expenses. That sounds like a formula for cost over-runs. When the have to scramble back at the end of the process and get the number down, it ends up pretty similar to the other ones. I'd be more inclined to take them at their word for what they sent up front. I think they're going to come out a lot higher than the competitors in this situation. If we're going on cost, and now that we have seen Communitronics' numbers, and we've heard that two of their three references did check out positively, they had good things to say, they are able to provide the performance bond, I don't see any reason why not to give it to them if they are the low bid by a pretty good amount. It would be one thing if we were talking about \$2,000 or \$3,000 out of \$9,600. We're talking about almost \$10,000 difference between their number and TSI's number, and with ITG, I don't trust that. I think that's going to end up being higher than that, given that their deduct is so high. My inclination is to support Communitronics. I haven't seen any information saying that they are an unstable company or that they aren't doing good work."

**A motion was made** by Alderman Terbrock and seconded by Alderman Kerlagon to accept TSI's bid for the audio visual. A voice vote was taken with the following result: Aye: Terbrock, Kerlagon, Leahy, Finley, Boland Nay: Harder, Fleming, Dogan. **The motion passed** by a vote of 5-3.

**Clarification:** City Administrator Kuntz said, "That award is with the document camera included, but not the speaker notification option." Mayor Pogue said, "It's my understanding that this is the acceptance of the revised bid including deduct #2."

**Health Insurance:** City Administrator Kuntz said this is regarding the renewal with United Healthcare through the consortium that bases a large portion of our premium on claims experience. He said, "From what I'm hearing from other carriers that are providing coverage to separate municipalities or other entities, the 6% is better than it could have been. Staff is recommending, in light of the 6%, and that the budget did not factor for the rate adjustment, we're recommending that the 6%, based on the current formula of cost sharing, which is the employee pays a portion and the city pays a portion, that each of the two entities, employee and employer, pay their share of the 6% increase proportionately, and that we not change the current participation formula at this time. The shortfall on the City's budget side will be \$5,000 or less. In the past, we have asked that the entire rate adjustment be absorbed by the City, but in light of the financial commitment made to the 2013 pay plan, we thought that this would be a more equitable proposal, and that is to share the increase between the City and the employee."

Alderman Harder asked, "Are you suggesting 3% and 3%?" City Administrator Kuntz said, "It's a breakdown. If the City portion is \$379.80 for monthly, then the employee would pay 6% of their proportion and the City would pay 6% on theirs, leaving the distribution the way it is. The breakdown is established historically. This is the percentage breakdown that we have been applying for a number of years. I'm not proposing that we change it, but simply that the total that the employee pays, be increased by 6%. Whatever the City was paying for the coverage, that be increased by 6% to keep everything whole."

Alderman Dogan asked, "Does the budget usually factor in an increase in health insurance?" City Administrator Kuntz said, "The last couple of years, we have not. Because we're on a July 1 renewal date, historically, we've had enough turnover where there's gaps in time when a position is not filled. There's been some captured budgetary savings. We haven't had the luxury of being able to budget for a pay increase and increase in health insurance. The last couple of years, because of turnover, we've been able to come at this point and say that there's sufficient funds left in the budget moving forward to adjust it. I can't honestly say that with the 6% increase this year, so, it's going to be a shortfall of about \$5,000 for the rest of the 6 months that the City would be absorbing if you approve this recommendation. The option would be something that we haven't done for a while, and that's to put the entire rate hike on the employees. That's not consistent with what you've done in the past."



Alderman Dogan said, "In the future, why shouldn't we just assume premium increases and build that into the budget. Health insurance goes up every year." City Administrator Kuntz said, "That's right and a good point. Historically, we budget for 100% participation. Historically, we do not have 100% of the positions filled for the entire 12-month period. We've been very conservative. If that's the position of the Board, I certainly would like to do that, and not have this conversation every May." Alderman Dogan said, "Whatever our percentage of fulfillment of staff positions, that fluctuates from year to year. You may save a little bit or have more staff filling open positions than normal. I guess that's where the fluctuation is. Given the base line, whatever the percentage of full employment we're at every year, my assumption would be to take that and add on an increase to that." City Administrator Kuntz said, "That's great. I'm happy to hear that."

Alderman Boland asked, "What has been the percent of participation?" City Administrator Kuntz said, "We budget for 100% participation, and then someone leaves, and a single person comes in when it was budgeted for a family. There are various changes. Depending on the economy and turnover, we're not adding new positions. We're filling vacancies. We don't even always do that. There may have been 3 or 4 this year in the first six months. With the economy as it is, there's not a lot of turnover."

City Administrator Kuntz said, "This seems equitable because we're both sharing, the beneficiary and the City. We're not putting it all on the employees."

Alderman Boland said, "The premium part that the employee pays, is that all done pre-tax?" City Administrator Kuntz said yes.

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

**Concrete Slabs:** City Administrator Kuntz said, "Last year we resurfaced Del Ebro in Ward 2. This involved scraping off the asphalt. When we scrape off asphalt, we don't know what's underneath in terms of slab conditions. If we don't take care of the slab condition, we can't just cover it back up. When we did Del Ebro, the field recommendation was over 50% of the slabs were deteriorated. Instead of covering the street with asphalt, we re-directed the funds to replace all the slabs to create a concrete street, which in the long term, is better because you still maintain a positive drainage and don't lose the gutter capacity. We came back, as we said we would, to the continuation of Del Ebro by including Golfview and Camargo, which is one street that changes names two more times. We are now all the way through asphalt exposure. On Golfview, all the slabs have to be replaced. On Camargo, we have to replace about 50% of the slabs. To do the job right, we have unit price bids. We know what the asphalt is per ton, and we know what the slabs are per slab. We're recommending a change in the source of appropriation. We're recommending we replace the rest of the slabs, make the whole connection concrete. That will add about \$42,500 to the project. We have that money available, but it's not available in that category. You have bid those quantities, so we don't have to go back. We just amend the unit prices based on who is already awarded. This discussion is necessary tonight and is beyond the scope of administration, because I can't wait until June 15 to either get that street back or to cover it up. This is our opportunity or dilemma. I'm asking for authorization to not add more dollars to the street program, but to reapply the dollars to get a full complete concrete street on these three designations."

City Administrator Kuntz said, "We became aware of this on Friday. On Friday, all of the slabs were exposed, we looked at the three sections, and it made no sense to cover it back up since we already have half of it in concrete. We're trying to look at this more from a value engineering standpoint than we ever did before, instead of going with how it was budgeted and move on."

Alderman Harder asked, "Where will the \$42,500 come from?" City Engineer Kramer said, "It's in the milling portion of the budget. The milling, slabs, and overlay are put together. There's enough left in the budget to cover this." City Administrator Kuntz said, "We didn't budget for just the one project. We have a total number of tonnage for asphalt, slabs, millage, for all the streets. Based on our bid awards,

we've got an available balance that would cover the \$42,500. It's not in the right category. It may be in milling or another category. It will have to be transferred."

City Engineer Kramer said, "If we are going to take off the asphalt, that money would go to taking out slabs. Instead of spending it on asphalt, we would spend it on concrete. There's money in the budget to cover this."

***A motion was made*** by Alderman Harder and seconded by Alderman Fleming to accept staff recommendation that we move \$42,500 from asphalt overlay to slab replacement to fund the full concrete replacement of Del Ebro and Golfview. A voice vote was taken with a unanimous affirmative result and ***the motion passed.***

**July 4 and 5:** City Administrator Kuntz said that recommended that City offices (Public Works, Government Center and Police Administration) be closed on Friday, July 5. The affected employees would take accumulated personal leave. This will not be an additional holiday. This is on a one-time basis. There will be no additional cost to the City. The clerical staff is down one person, which is 25%.

***A motion was made*** by Alderman Fleming and seconded by Alderman Boland to accept the recommendation for July 5. A voice vote was taken with a unanimous affirmative result and ***the motion passed.***

## **STAFF REPORTS**

None.

## **CITY ATTORNEY'S REPORT**

**Kimball Class Action / Internet Funds:** City Attorney Jones said, "A group of cities, of which Ballwin is a member, filed an answer and a motion to dismiss on May 1. Our group of cities and another 30 cities also filed motions to dismiss. The other 200 cities did not, although they may do so at a later date."

**Walter Adam Young Case – 74 Breezeview:** City Attorney Jones said, "The brief from Mr. Young was due today. He has again requested additional time to file a brief. I didn't oppose it or consent to it. We'll see what the Court says about it. I received a phone call from the attorney that filed the record on appeal on his behalf, indicating that he wants to talk about a resolution of the case. Hopefully there will be more information to present at the next Board meeting for consideration."

Alderman Finley asked, "Is the case still before Judge Clifford?" City Attorney Jones said, "No. It's in the Court of Appeals. Their brief was due today."

## **ALDERMANIC COMMENTS**

**Twigwood:** Alderman Finley said, "What is the update on Twigwood? It seems to make sense to me that the slabs are being replaced. Is it going to be an all-slab concrete street?" City Administrator Kuntz said, "No. Unfortunately, there's so much scarring that the only way to make it work that way would be to take out even good slabs. The problem is that in the first section coming from New Ballwin, is relatively rotten concrete, in the sense that there are a lot of bad slabs. As you move farther east, the slabs are much better. City Engineer Kramer and I have been there on numerous occasions since Mr. Young complained about potholes. We put temporary patching in, using asphalt millings, which is what they grind up to get to the concrete. Since this is a temporary fix, we are using this less expensive material. Unfortunately, the heavy rains will sometimes wash this material out."

City Engineer Kramer said, "The contractor is working on two streets at a time. While he's waiting for some concrete cure, so that traffic can be opened up, he's working on another street. There are center

portions on Twigwood that will be coming out. Driving will have to be done on the parking lane in some cases.” City Administrator Kuntz said, “People also park on that street. The center has to be worked on last because the only working lanes are on the gutter lanes. Until we push the traffic to the gutter side, then people will be inconvenienced with no parking in front of their house, and some have very short driveways. The end result is going to be an asphalt overlay. The tipping point is about 50 or 60%. If it’s under that, we’re leaving too much on the table to make it a concrete street. It’s not cost effective.”

City Administrator Kuntz said, “Toward Lemonwood, the slabs are more solid. Those are more salvageable. We don’t know what we’re going to find as work moves towards the pool. They should be good. Until we get there next year, we’re looking at an asphalt overlay. It’s too long of a street and too expensive to use all concrete.”

City Administrator Kuntz said, “We’ve had our own crews patching holes.” City Engineer Kramer said, “We don’t want to spend a lot of money on patching because they will have to turn around and take them out.” City Administrator Kuntz said, “We’re using millings instead of asphalt because they will come out.”

Alderman Kerlagon said, “I appreciate both of you being involved in this. The citizen was lifted by knowing that something was going to be done. We can’t control the weather and can’t do the whole project at one time.”

**Audio / Visual:** Alderman Terbrock said, “ITG did give the numbers that they report here the \$9,518 and \$2,890. What’s interesting is their bid last time with those proposed savings was about \$3,000 less than what they came back with tonight. Their bid with the savings actually went up rather than down like the rest of them did. They are at \$99,332. Last time, it was \$96,442.” Mayor Pogue said, “Their bid also included moving both deducts, #1 and #2, the scanner and cueing system on the first bid. The second bid has the scanner back in it. That’s the difference.” Alderman Terbrock said, “The number still went up and the others went down.”

**Sales Tax Holiday:** Alderman Fleming said, “At the last meeting, I asked for information about the Sales Tax Holiday; not the green tax holiday on appliances. This is an opt out on the local portion of the tax. We’ve decided that we’re collecting the tax on that weekend. We decided that in 2004 and have been doing this ever since that time. I think we should decide this on an annual basis. The legislation says ‘after the 2005 sales tax holiday, any political subdivision may adopt an ordinance to prohibit future annual sales tax holidays’. All the other communities around us, Ellisville, Manchester, Town & Country, all opted out last year like we did. I don’t think we made a really good case that this will negatively impact our sales tax revenues. On that weekend, sales tax is not collected on certain items. When people go to the store and buy something that’s not on that list, they will pay sales tax on those items that we might not have gotten it otherwise, because on that day, they decided to shop. The Sales Tax Holiday is the first weekend in August. We have to decide 45 days ahead of time, which is mid June. I don’t want to have to decide this tonight, because to meet that deadline, that’s what we would have to do. In the future, I believe this should be on our annual agenda to decide. Perhaps this could be decided at the April meeting to either opt in or opt out for that year. We can also consider the green sales tax holiday each year.”

Alderman Leahy asked, “Is June 17 too late to opt in?” Alderman Fleming said, “It says 45 days prior to the first weekend in August. I didn’t do the math, but it’s probably right on the line.”

City Attorney Jones said, “We do need an ordinance. The Green Sales Tax Holiday is an opt in, and the back to school is an opt out.” City Administrator Kuntz said, “We opted out. We have to opt in if you want in. They changed it from an ordinance to opt in to an ordinance to opt out.” City Attorney Jones said, “If the consensus is to participate, the motion can be to participate.”

**A motion was made** by Alderman Leahy and seconded by Alderman Fleming to draft legislation to opt in, if the timeline is correct. If the timeline is not correct for a June 17 vote, City Attorney Jones will notify us at that point. A voice vote was taken with a unanimous affirmative result and **the motion passed**.

Alderman Harder said, “Chesterfield was the only city in the area that opted in last year. If this stayed the same for 2013, anybody that wanted school supplies and not pay tax would have to go to Chesterfield, and stay out of Manchester, Des Peres, Ellisville, Ballwin, Fenton, etc. The Missouri tax goes away anyway. It’s just the Ballwin tax that we have to decide either way.”

Alderman Fleming said, “The historical argument was that we are heavily reliant on sales tax and we couldn’t afford to participate. That’s a valid point. I feel differently. We wouldn’t be losing that much that weekend because people will be buying other things while in the stores that the tax will apply to. I prefer people coming to Ballwin to shop regardless.”

Alderman Terbrock said, “I agree. At that time, we had to make decisions to keep every bit of sales tax that we could. I think this is worth reconsidering.”

**Adjourn:** A motion was made by Alderman Fleming and seconded by Alderman Boland to adjourn. The motion passed unanimously and the meeting was adjourned at 9:55p.m.

---

TIM POGUE, MAYOR

ATTEST:

---

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

**May 13, 2013**