



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

February 10, 2014

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

The meeting was called to order by Mayor Pogue at 7:03 p.m.

PRESENT

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

ABSENT

ALDERMAN SHAMED DOGAN

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *January 27, 2014 Board of Aldermen meeting* were submitted for approval. A *motion* was made by Alderman Finley to amended page 4, third paragraph, last sentence: Add: “because the potentially disease causing mosquitos would be handled by the larvaciding, he is in favor of continuing with St. Louis County to do the larvaciding”. The motion was seconded by Alderman Harder. A voice vote was taken with a unanimous affirmative result and the motion passed.

Alderman Harder asked why are the Minutes not prepared with verbatim statements as it had been done in the past. The Minutes are now in a brief format. Mayor Pogue said that the Minutes are never expected to be a verbatim record. City Clerk Marie Clark stated that the previous recording/transcribing equipment enabled more detail to be included in preparation of the Minutes. The new recording/transcribing program is not compatible with the previous method of preparing the Minutes. All cities prepare Minutes in a summary format.

A *motion was made* by Alderman Fleming and seconded by Alderman Kerlagon to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

PRESENTATION

None.

PENDING ISSUES

None.

CITIZEN COMMENTS

Eileen Tyrrell : Ms. Tyrrell said she is a candidate for the Rockwood School Board in the April 8 election. She said the fate of the Rockwood School District is dependent on the Ballwin residents that make up the district. The fate of Ballwin depends on the quality of education provided by the district.

We're all in this together. We all want a community with the highest standard of living and the highest standard of education for our children. She said she is bringing the citizen representation to the Board because she believes that the cities and the district should work closer together.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A LEASE PURCHASE AGREEMENT WITH U.S. BANCORP FOR THE POINTE MECHANICAL SYSTEMS.

A motion was made by Alderman Fleming and seconded by Alderman Terbrock to adopt the Resolution. A voice vote was taken with a unanimous affirmative result and the motion passed.

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. Slab / Sidewalk Replacement
- B. Asphalt
- C. Asphalt Overlays
- D. Street Sweeping
- E. Pool Chemicals
- F. North Pointe Slide
- G. Vlasis Park Electric
- H. North Pointe Passes

Mayor Pogue requested that Item G be removed for further discussion.

Alderman Harder requested that Items A and E be removed for further discussion.

Alderman Fleming requested that Item D be removed for further discussion.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to accept the Consent Items B, C, F, and H. A voice vote was taken with a unanimous affirmative result and the motion passed.

MAYOR'S REPORT

Historical Commission: Mayor Pogue recommended that Verna Arnold be appointed as Honorary Lifetime Member of the Historical Commission, and appoint Carol Stafford in Verna's position with a term expiration of 12/31/15.

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to appoint Verna Arnold as Honorary Lifetime Member of the Historical Commission. A voice vote was taken with a unanimous affirmative result and the motion passed.

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to appoint Carol Stafford to the Historical Commission with a term expiration of 12/31/15.

CITY ADMINISTRATOR'S REPORT

Slab / Sidewalk Replacement: City Administrator Kuntz said that this is an annual contract and the low bidder is recommended for acceptance.

City Engineer Kramer said that until the old asphalt is removed, the required work is not known. Sometimes more concrete has to be removed than anticipated.

A motion was made by Alderman Leahy and seconded by Alderman Finley to award the contract to M&H Concrete Contractors, Inc. A voice vote was taken with a unanimous affirmative result and the motion passed.

Street Sweeping: Alderman Fleming asked if MSD has ever audited Ballwin against the storm water permit requirement. City Engineer Kramer said that MSD is the coordinating council for compliance. MSD reports all information to DNR. City Administrator Kuntz said that this week, a mixture of sand and salt had to be applied to streets in order to extend the amount of salt on hand for the streets. The sand will be vacuumed up as soon as possible.

Alderman Leahy said that a couple of weeks ago, he saw a crew on his street sweeping and putting sweet gum balls in the back of city trucks. City Engineer Kramer said he doesn't know anything about this.

Alderman Boland asked why is street sweeping required for our State storm water permit. City Engineer Kramer said the State storm water permit is to keep the streets and streams clean. If the debris goes into the sewers, it then goes into the streams.

Alderman Finley asked about street sweeping in December. City Administrator Kuntz said that normally, we sweep streets immediately after the last leaf collection pickup so that the streets are clean. In December, two snowfalls quickly occurred and didn't allow for sweeping. Alderman Fleming said if the streets have to be swept to keep the sewers clear, then we definitely have to continue the leaf collection program to protect the sewers.

A motion was made by Alderman Boland and seconded by Alderman Terbrock to award the contract to Crowns & Curbs, Inc. A voice vote was taken with the following result: Aye: Terbrock, Finley, Harder, Leahy, Boland, Kerlagon. Nay: Fleming. The motion passed by a vote of 6-1.

Pool Chemicals: Alderman Harder asked if this is a good time to switch to a salt water situation instead of the contemporary pool chemicals. Director of Parks & Recreation Linda Bruer said she has spoken to Westport Pools with regard to this possibility in the past and they indicated that it works for residential use but not yet for commercial or public pools but that she would check into it again. Alderman Harder asked for a report on this for consideration.

A motion was made by Alderman Finley and seconded by Alderman Fleming to award the contract to Hawkins, Inc.. A voice vote was taken with a unanimous affirmative result and the motion passed.

Vlasis Park Electric: City Administrator Kuntz said this was the third bid attempt on this project. Mayor Pogue said he is concerned about Reinhold Electric because they have recently had seven violations with OSHA. On two different occasions, one of the violations was wiring design and protection and two violations on wiring methods, components, and equipment for general use. This is a great concern because this project is on the ground level of our public parks.

Mayor Pogue said he couldn't find any information on the second low bidder. He searched the website for Hauser Electric. The only information found was a phone number. He called the number and there

was no affiliation with Hauser Electric. He checked the union website for contractor listings, and the phone number on that list is the same as on other websites, with no connection or a private number. He asked several project managers that he had word on with different projects, and they were surprised that Hauser would bid on our project because they usually run conduit for cell towers, sign replacements, or residential projects.

Mayor Pogue said that Reinhold is listed on the union website. He said he checked on Kay-Bee and this company is clean with OSHA. There were no safety violations in the past 8 years. They started in business in 1948 and are a reputable contractor.

Mayor Pogue said his recommendation at this time is to take the savings made on the slide and apply it toward a different contractor that has a proven safety record.

Alderman Finley if it would be appropriate to allow Reinhold and Hauser to provide an explanation of their record. Mayor Pogue provided a copy of the violations that he found on the OSHA website. City Attorney Jones said that more information can be requested. Mayor Pogue said the open and closed status on the website only shows whether or not they are disputing with OSHA. In all of these cases, they have closed the case with OSHA and have nearly \$10,000 in fines. These are violations that are going on during the construction process.

Alderman Terbrock said he agrees with Mayor Pogue. Something at ground level in the park where children will be playing needs to be completely safe.

Alderman Fleming said it sounds like the process was not closely watched by inspectors. Alderman Terbrock said that the Inspectors cannot be watching constantly throughout the whole construction process. Mayor Pogue said that violations were found on both planned inspections and random inspections. It's possible that they could make the violations and the Inspectors wouldn't know it.

Alderman Leahy said that the work should be done by someone who will do it right and we can trust without constantly watching.

Alderman Boland said it appears that we are going out of our way to look at one or two contractors. Everyone should be given an equal chance to defend themselves. If we decide not to use the lowest bidder, and base the decision on OSHA violations, we need to be careful not to be setting ourselves up for problems in the future.

City Attorney Jones said that he's not aware of any future problems as a result of this analysis. The request for bids is written in a way that allows us to reject any and all bids and negotiate with contractors. We look for debarment on the State site automatically. The OSHA violations are a different level of scrutiny, but is important. There's no problem from the City's standpoint in choosing a different contractor because of OSHA violations.

A motion was made by Alderman Finley to send certified letters to Reinhold and Hauser to explain the violations. If they don't give an acceptable explanation, we should eliminate them in awarding the contract. *The motion died for lack of a second.*

A motion was made by Alderman Terbrock and seconded by Alderman Fleming to reject the Reinhold and Hauser bids and award the contract to Kay-Bee for the park project. A voice vote was taken with a unanimous affirmative result and the motion passed.

Crushed Rock: City Administrator Kuntz said this is a combination bid for crushed rock and asphalt debris. If a product is purchased from a company, such as crushed rock from Weber, they are willing to provide the disposal. The Weber bid includes disposal of the asphalt debris at no additional cost, making it the lowest and best bid.

City Engineer Kramer said that Simpson Construction will take the concrete for a fee. Alderman Terbrock said there is a company that will pay us for them to take the concrete, provided it's clean and no dirt or mud. We would have to haul the concrete to their location, and they could reject the load if they found any dirt or mud on the concrete.

A motion was made by Alderman Fleming and seconded by Alderman Kerlagon to accept the Fred Weber Inc. bid for the project. A voice vote was taken with a unanimous affirmative result and the motion passed.

Concrete: City Administrator Kuntz said the one bid is from Valley Material Company and is slightly over budget.

A motion was made by Alderman Fleming and seconded by Alderman Leahy to accept the bid from Valley Material Company. A voice vote was taken with a unanimous affirmative result and the motion passed.

Culvert Testing: City Administrator Kuntz said this is a materials testing that is required for federally funded projects. Of the costs, 80% will be federally reimbursed. Both received bids are within our budget.

A motion was made by Alderman Fleming and seconded by Alderman Finley to accept the bid from SCI Engineering. A voice vote was taken with a unanimously affirmative result and the motion passed.

MoDOT Authorization: City Administrator Kuntz said this is authorization for Police Chief Schicker to apply for traffic enforcement and other grants through MoDOT as funds become available in the Missouri Highway Safety Program.

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

50th Anniversary of the Ballwin Police Department: City Administrator Kuntz said that in April, the Ballwin Police Department will celebrate the 50th anniversary of its formation. Prior to Chief of Police, the position was a Marshal and was an elected position.

Police Chief Schicker said last year, Ballwin was designated as the 47th safest City in America, based on populations of 25,000 or more. This year, Ballwin has been designated as the 9th safest City in America. He said he is very proud of his staff and the diligent efforts they make to keep the City of Ballwin a safe place to live.

STAFF REPORTS

None.

CITY ATTORNEY'S REPORT

Street Lighting: City Attorney Jones said that at the January meeting there was a brief discussion about Ballwin street lighting and the October 2013 tariff that was adopted by the Public Service Commission with regard to customer owned facilities and the charges for Ameren to provide illumination energy and maintenance service with regard to those poles. A report shows that the most recent street light bill from Ameren to the City of Ballwin using the most popular street light in Ballwin, which is the 9500 Post Top. Ballwin has 1,917 of those lights, which is approximately \$42,000 per month on the Ameren bill. Tariff sheet #58 shows the tariff rate for Ameren when they own the facility on a monthly

basis. Our rate is \$21.85 per month. The tariff from October 2013, which lists the energy and maintenance costs when the customer owns the facility and Ameren supplies the energy and maintenance. That rate is \$3.43 per month.

City Attorney Jones said that the summary sheet on the first page shows that at that rate, the annual cost to the City would be \$78,903, as opposed to \$502,000, which is the current annual cost for these facilities, which could result in an annual savings to Ballwin of \$423,734. He said that Ameren refuses to tell us what they would charge to sell us the poles. He said he was asked if there are other cities that are interested in this issue. The City of O'Fallon, Missouri is interested in this and is on the threshold of filing a complaint with the Public Service Commission either for a full hearing or an arbitration proceeding. It will be extremely valuable to have another large customer, like the City of Ballwin, involved in this proceeding. Especially considering the amount of money that could be saved, even if we don't convert to LED facilities and continued to illuminate the poles in the same way as currently.

City Attorney Jones said that O'Fallon has an annual cost of over \$1 million for street lighting. Their possible savings could be about \$800,000. He said the filing with the Public Service Commission will happen very shortly. He said we don't have a current contract with Ameren for street lights because it expired in 2012. We haven't signed a new contract because they were unable to answer our questions about the cost of purchasing the facilities and purchasing energy from Ameren. We are currently getting the discounted municipal rate.

City Attorney Jones said he recommends that if this is something the Board wants to pursue, this is the time to do this when there's another large player interested in this type of action. He said his firm could represent both parties at the same time. Lee Curtis has been handling these kinds of matters in the past. He would suggest billing O'Fallon and Ballwin on a pro-rata basis based on the number of poles that were involved so that there would be a significant savings, as opposed to doing this on our own.

Mayor Pogue said that SIUE recently bought their entire electrical system from Ameren Illinois for \$600,000. They are expecting to save over \$700,000 per year. He said he is trying to contact someone at SIUE for more information.

City Attorney Jones said that Ameren has been asked for the price for us to buy the poles, and Ameren won't tell us. They have corresponded with us and said no, they are not going to give us a price for selling these facilities. The legal recourse we have to compel them to provide answers to our questions would be conducted in the complaint with the Public Service Commission.

City Administrator Kuntz said that some of the infrastructure is 30 years old or more, and is totally depreciated. Some are new and have been erected over the last 5 – 10 years by subdivision developers and turned over new to Ameren. It's a blended system with old fixtures and new. City Attorney Jones said that right now, their byline seems to be that if we want to abandon these facilities, they will take them out and we can rebuild them, which is ridiculous. They won't give us a number to sell them in place. Alderman Fleming said we should join the City of O'Fallon in pursuing this issue.

Alderman Harder said it looks like they are not including the underground electrical system. City Attorney Jones said that is correct. Alderman Harder said the City of Kirkwood provide their own public utilities. Do they own the poles? People come to the City Hall and pay their electric bills. City Attorney Jones said that they do own the poles. City Administrator Kuntz said they have their own electric utility and they buy some of the power from Ameren, but it's all city staffed.

A motion was made by Alderman Terbrock and seconded by Alderman Leahy to authorize City Attorney Jones to draft and file a complaint on behalf of the City of Ballwin with the Public Service Commission. A voice vote was taken with a unanimous affirmative result and the motion passed.

ALDERMANIC COMMENTS

Better Together Merge: Alderman Terbrock said that there is an article in the “Post-Dispatch” about the Better Together program. He attended a meeting and there was no analysis or recommendations. A law firm was hired to see if the County would have to assume the City’s debt if there is a merge. Mayor Pogue said the twitter posting today said that STL explains financial benefits of city-count merger. Alderman Harder said that there is a financial picture of all of the municipalities on which they collected the data.

Cell Towers: Alderman Harder said that the Missouri Senate and House are debating two different bills. Senate Bill 650 and House Bill 1454 deals with zoning related to cell phone towers. The legislation that’s being proposed is such that it would take our zoning and other cities jurisdiction away from the cell phone towers and from that equipment. The cell phone companies would have to do minor accommodations and are to be given approval to put a tower wherever they want to put it. It’s like doing state-wide zoning for this one issue. It would take this out of the control of all zoning boards. It’s an overreach of this type of legislation. It will be coming to a vote in the next 7 – 10 days. He asked people to call their Representatives and tell them to vote no on this legislation and the Senate Bill, which is a mirrored bill, which has already passed out of the Senate. It’s moving on a fast track. The Missouri Municipal League cities are trying to fight this issue this week. Mayor Pogue said this this legislation takes away local control from the municipalities.

Adjourn: A motion was made by Alderman Fleming and seconded by Alderman Terbrock to adjourn. The motion passed unanimously and the meeting was adjourned at 8:24 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

February 10, 2014