

**CITY OF BRENTWOOD, MISSOURI
BOARD OF ALDERMAN MEETING
JANUARY 5, 2015**

MEETING CALLED TO ORDER

Mayor Pat Kelly called the meeting to order at 7:00 pm, in the Council Room of City Hall located at 2348 S. Brentwood Blvd., Brentwood, MO 63144.

ROLL CALL

The following members were present

Alderman Harper	Present	Alderman Toohey	Present
Alderman Wynn	Present	Alderman Leahy	Present
Alderman Robertson	Present	Alderwoman Manestar	Present
Alderman Kramer	Present	Alderwoman Saunders	Present
Mayor Kelly	Present		

Members present constituted a quorum. Also present were City Clerk/Administrator Bola Akande, City Attorney Frank Albrecht, Planning Director Justin Wyse and Deputy City Clerk Octavia Pittman.

APPROVAL OF AGENDA

Board of Aldermen January 5, 2015

Alderman Leahy made a motion to approve the agenda as submitted. Motion seconded by Alderwoman Manestar. Unanimous vote in favor taken; **MOTION PASSED.**

CONSIDERATION AND APPROVAL OF THE MINUTES

Board of Aldermen Regular Meeting Minutes December 15, 2014

Alderman Leahy made a motion to approve meeting minutes as submitted. Motion seconded by Alderman Wynn. Unanimous vote in favor taken; **MOTION PASSED.**

PRESENTATION/RECOGNITION

None

PUBLIC HEARING

A Petition To Amend Chapter 19 Of The Brentwood Code Of Ordinances As It Pertains To Sign Regulations (Continued)

This public hearing is again continued to the next meeting for further review by Planning and Zoning.

A Petition For Conditional Use Permit And Site Plan Approval For A New Fast Food Restaurant With A Drive Thru At 8590 Eager Rd. (Chick-Fil-A, Inc) 7:03 p.m.

Director Wyse announced the petitioner proposal to construct a 4,876 square foot quick service restaurant with a drive-thru. The site is currently developed as a sit-down restaurant which would be demolished for construction of the new use. As the new restaurant includes a drive-thru use, a conditional use permit is required. Notification letters were sent out informing residents of the review by the Planning and Zoning Commission. Additional notices were sent notifying residents of the public hearing.

The subject site is zoned "PD" and is located within the Brentwood Pointe development. The site is 1.16 acres in size and fronts Eager Road with access provided off the entrance into the Brentwood Pointe development. The intersection of Eager Rd. and the Brentwood Pointe driveway is a signal controlled intersection. The city commissioned a traffic study for the proposed use and changes have been made to reflect recommendations within the study. Planning and Zoning have reviewed the request in light of the standards set forth in Section 400.670 of the City Code and made a recommendation by vote of 6-3.

There were no questions or comments from the public. Mayor Kelly closed the public hearing at 7:05 p.m.

BIDS

None

HEARING OF ANY MATTER OF PUBLIC INTEREST UPON REQUEST OF ANY PERSON PRESENT

None

INTRODUCTIONS, READINGS, AND PASSAGE OF BILLS AND RESOLUTIONS

Alderman Wynn made a motion to remove Bill #5919 from the agenda. Motion seconded by Alderman Leahy. Unanimous vote in favor taken; **MOTION PASSED.** (upon completion of review, a new bill will be introduced)

Alderman Leahy made a motion that Bill #5946 is considered by the Ways and Means Committee when reviewing employee pay scales, step plan proposals, contributions and compensation as a full package, versus review as an isolated incident. As requested by Alderman Toohey, it was clarified that this would be giving the same benefits as offered to full time employees and current spouse/dependents. Motion seconded by Alderman Wynn. Discussions were held regarding Aldermen comments. Alderman Leahy commented that the bill does not deal with marriage but rather the affirmation of and this will be adding an additional definition to the employee handbook. Alderwoman Saunders stated that it is a legal issue of whether or not to offer the benefits; this is already allowed in the police and fire pension and all plans should be consistent. Mayor Kelly added that the change was made to the pension plan to offset not having any future litigation and bring us in line with what will be the federal law. Alderman Leahy debated that the city could be challenged either way; the State of Missouri is currently wrestling with this type of issue and is taking it to the court of appeals. The issue will not go away but this does not benefit the city of Brentwood. Administrator Akande stated that the Attorney General declined to appeal the case so cities have begun providing this service (6 of the SLAIT members are participating). After speaking with SLAIT representatives, they have indicated that domestic partnership forms would be required. Alderman Leahy stated that elected officials were sworn to uphold the State of Missouri's constitution; this change in language establishes a domestic relationship that is not recognized. He added that there is enough confusion that it warrants further review. Attorney Albrecht stated his opinion that he does not think it is in violation of the state constitution or tampers with the definition of marriage or promoting a marriage; it is just defining a class of people who are entitled to benefits. **ROLL CALL:** Alderman Harper – no; Alderman Wynn – yes; Alderman Robertson – no; Alderman Kramer – no; Alderman Toohey – no; Alderman Leahy – yes; Alderwoman Manestar – no; Alderwoman Saunders – yes; **MOTION FAILED.**

Alderman Robertson made a motion for the 1st and 2nd Readings of Bills #5944, #5945, #5946. Motion seconded by Alderman Wynn. Unanimous vote in favor taken; **MOTION PASSED.**

Bill #5919, amended – (ON HOLD) An Ordinance Amending Chapter 19 Of The City Of Brentwood Municipal Code, Pertaining To The Regulation Of Signs, Providing For The Current Maintenance Of This Code; Providing For The Effective Date Of This Ordinance; And Providing For The Repeal Of All Conflicting Ordinances – 1st & 2nd Reading

This Bill was removed from the agenda and will be later reintroduced.

Bill #5944 – An Ordinance Granting Approval Of A Site Development Plan And Conditional Use Permit To Chick-Fil-A, Inc. For A Drive Thru Fast Food Restaurant At Property Numbered 8590 Eager Rd Which Permits Under The Provisions Of Title IV, Chapter 400 Of The Brentwood Code Of Ordinances The Development Of That Site; Providing The Conditions Of Such Development; And Providing For The Effective Date Of This Ordinance – 1st & 2nd Reading

Attorney Albrecht read Bill #5944 by title only. Alderman Kramer provided the synopsis “this Bill is for an ordinance granting approval for a Site Plan and Conditional Use Permit for a drive thru fast food restaurant at 8590 Eager Rd. (Case #14-15 Chick-fil-A, Inc.). The Planning and Zoning Commission recommends approval by a vote of 6-3”. (Kelly Stedman, Woolpert Engineering was available to answer any questions.) Alderman Leahy offered comments that the drive thru lane layout may cause confusion and complaints with traffic. Stedman responded that there is a dual drive thru, workers also request patrons names to eliminate some confusion and it was also suggested to erect an exit sign to direct traffic. Alderman Toohey questioned how the Brentwood location was chosen. Stedman responded that there are many factors for choosing a location, of which, the area offers a prime opportunity and they typically choose busy developments. There was also previous review of the home depot site on Hanley 1½ years ago, however; McDonald’s opposed.

Mayor Kelly addressed rumors of pressuring P&Z members by attending the meeting for this discussion. He clarified that the Mayor has a seat on the P&Z Commission and therefore can attend the meeting. He added that the members’ reason for denial was that it was not a good enough business for this site and we should have a better tenant. As Mayor, there was concern as it is not the responsibility to pick and choose businesses if they meet the qualifications of the zoning code. Mayor continued stating his attendance at P&Z was to explain the position that this is a good business for the city; many residents have expressed their anticipation of the opening. He expressed disagreement with comments that there are other places in Brentwood for them to locate, other areas may place them too close to residential properties; and, that vacancies don’t last long – it took 2 years to recruit Traders Joes and 8 years to recruit MicroCenter as attracting good businesses does not happen overnight. This particular location is designed for this type of business; they meet the 11 criteria in the zoning code and have done everything P&Z has asked. He continued stating that some information has been taken out of context. It is true that businesses coming to St. Louis look to move to either Chesterfield or Brentwood; Brentwood is a good community, the diversity of the businesses makes us better and Chick-fil-A is a quality business and would be an asset to the community.

Alderman Kramer asked if Director Wyse was familiar with a memo previously circulated by a former P&Z chairman regarding his issues with the application; Director Wyse was not. Kramer explained there was a statement made that the applicant was not willing to agree to the recommendation of CBB traffic study. Director Wyse responded that CBB had 2 recommendations that presented a range for improvements and thus CBB is satisfied. Lee Canon (CBB Engineer) also explained that he does not design sites he is a traffic engineer and there is a myriad of different issues, however, Kelly Stedman does design sites. In his evaluation he pointed out key changes to make the site function well (at minimum) and others if traffic was the only issue (at maximum). They were given the information, made a first revision and presented to P&Z who requested they were closer to the maximum, they then made a few more revisions. Yes, the site plan does not conform to the maximum version of the range set out but it did hit the salient point and was acceptable. The primary issue was

whether or not they would eliminate 5 parking stalls at the beginning of their driveway entrance but they gave up 3; they also shifted the building eastward to make the turning radius wider. They are a business that generates long lines so they have 20 spaces available in the drive thru; in general they should be able to keep drive thru lanes outside of the parking area. They actually need more parking than the code requires so it was recommended that they have a shared parking agreement with the center they are leasing from, such that the employees would have a space to park (similar to the Promenade) that would free up patron space on the site; this has been done. Alderman Kramer questioned a note that the site coverage on the proposed site exceeds what was allowed by code. Director Wyse responded that the district regulation has the maximum site coverage of 65%. But then there are provisions immediately following that saying if you provide high quality landscaping, low walls, earth sculptures or pedestrians facilities plazas you can request a bonus that would take you up to 80% and the current Macaroni Grill has that same bonus on the site; their coverage is right at 80%. The proposed Chick-fil-A comes in at 77%; they are actually reducing it slightly but are in need of that bonus and it does comply with code. To justify it, they have proposed their landscaping and will also be adding to the trees along Eager. Alderman Kramer also asked when a land owner has the need for another development or a possible solution for a vacancy if they come to the city and asked for request for proposals and asked that the development is co-written by the city and the property owner and Director Wyse replied that this was a developer driven request. Mayor Kelly clarified that no one has ever come the city and asked us to issue a RFP for an existing site; the only reason a land owner would come to the city is if they would be asking for some type of assistance otherwise the city would not be involved. Property owners have come to the city with request for assistant to recruit a business. Alderman Kramer stated there was some publicity that suggested that this was already going to happen. And Director Wyse stated that it was brought up at the Coffee with the Mayor and the application had already come to P&Z but there is no recollection of the presumption that this was a done deal.

After Toohey's request for clarity regarding the extra traffic (500 trips) expected, Canon responded that the study assumes a certain amount of traffic coming in and out; one car coming in is a trip and when they leave it is another. Historically Chick-fil-A does a high volume of business. The study considers the road capacity and if it can accommodate the cars that are there plus the new cars. The existing center was built with a 5 lane access and a signal; there is more than enough capacity to accommodate the forecasted number of trips plus more. County may need to adjust the signal timing as the road begins to get congested. Mayor Kelly added that Dierbergs also conducted their own traffic study and they are okay with the tenant being on this site. Canon added that is familiar with the area as CBB has also conducted the traffic study from when Eager Road was two lanes, for the Promenade, Dierbergs Pointe, the Meridian, Brentwood Square and when I-64 was redone with the new interchange; however on these jobs he was contracted through the developer but on this project he is contract through the City. Alderwoman Saunders questioned if the results of the traffic studies from the other developments turned out as expected; Canon replied yes. He added that it is their job to determine, assuming that the project would be approved and more traffic would be generated, what improvements would make it work. Alderwoman Saunders questioned, as there was a recommendation to remove from 0-5 spaces and Chick-fil-A chose to remove 3, what problem would have been caused by those spaces. Canon replied that as a vehicle comes southbound to turn in, the area would require that the vehicle crossed the middle of the lane, therefore it was suggested that they remark the 28ft isle with a 16ft inbound lane and 12ft outbound lane. It was also suggested that another option would be to take the driveway and shift it over a few feet, of which they did.

Alderwoman Saunders stated that she had explained that conditional use are administrative processes and if you meet the criteria, it doesn't matter if whether I like them or not, then we have to approve them. She announced her concern that when giving suggestions to help with the traffic, what safe guards to we have if the traffic turns out to be a lot more than

anticipated, where does the traffic go if it exceeds and do we have a backup plan. Canon explained as an example, Olive Road and Manchester in the Chesterfield Valley has 5 lanes with traffic signals and carries 35-40,000 cars a day. Eager has an advantage because it only has 3 way intersections; the capacity of Eager is way exceeded the current volume. Saunders added that she wanted to make sure these points were considered as we have other areas that have traffic congestion in other areas such as the Starbucks on Brentwood. Canon clarified that a traffic study was not conducted for that development and Mayor Kelly added this is what prompted the requirement to have a traffic study. Canon added that it is his opinion that traffic issues on the public road system will not create a problem and parking is sufficient particularly with the addition of the agreement for potentially moving employee. Alderwoman Saunders stated that she had not seen a copy of the RFP to know the intention of the developer and if it specified a sit down restaurant; if not, it is not fair to the owner to say this is what we wanted. Mayor Kelly clarified that the original RFP issued when Dierbergs was selected had a square that said restaurant and did not specify. He reminded that the previous development was built to the city's code. The alternative, we could change the requirement and make spaces bigger but then you would have less and you may have to eliminate one of the businesses to meet the requirements.

Alderman Kramer questioned if the aesthetic appearance will be comparable to the location in Des Peres and it was clarified that they are different prototypes. He added that the language in Bill 5944 states that there are criteria to be considered which includes high quality aesthetics as done with Bonefish Grill. This is what the residents are looking for and deserve. He stated that he cannot vote for items that are not in compliance with the comprehensive plan. A lot of planning went into placement of Macaroni Grill and each alderman has a vote. It should not be as simple to say that anyone has vote one way or the other as the language is broad and this building may not necessarily comply with the comp plan.

Alderwoman Saunders stated her previous request for a legal opinion from the P&Z attorney that she had not received. She also asked Alderman Kramer what the aesthetic vision is for this area. Alderman Kramer replied that the Des Peres location is substantially more upscale that those being presented; the exterior appearance is a step back from what was previously there.

Alderman Wynn commented that it is a clean building and built well, it should provide jobs for kids and many will go there.

Alderman Toohey stated his agreement that the aesthetic don't match and he has an issue with the drive thru. The CUP speaks to preservation of character and this is a down grade. He added that he continuously sees citizens social media posts about Bonefish and doubts that this will be likely with Chick-fil-A. He also stated that in regards to fast foods, Chick-fil-A is a better place. He questioned what happens next because nothing lasts forever; are we setting a standard for future businesses. Mayor responded that the only standard being set is in the denial of application; telling the world of developments that Brentwood is not a welcoming community. Even if they were to go away, the new applicant would have to go through the process. Elected officials should take the recommendations of staff, in the case it is that the meet the criteria in the conditional use permit.

Alderman Robertson commented that we are trying to make aesthetic judgments that have no bearing. Brick building are better than painted buildings and voting it down would be inviting a law suit.

Alderman Leahy reminded that the last two CUP passed, without any of this discussion, were Arbys and Fort Taco both with drive thru windows. He offered additional comments of the different locations and added that Arbys was projected to have similar traffic and does not have a traffic light as at Chick-Fil-A which benefits the citizens.

Attorney Albrecht read Bill #5944 by title only. Alderman Leahy made a motion to perfect bill #5944 into ordinance form. A brief discussion was also held regarding the developer including patio seating and extending the sidewalk for pedestrian. Motion seconded by Alderman Wynn. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Kramer – no; Alderman Toohey – no; Alderman Leahy – yes; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

BILL #5944 IS HEREBY PASSED AND NOW BECOMES ORDINANCE #4602

Bill #5945 – An Ordinance Amending Title VI Of The Revised Code Of Ordinances Of Brentwood, Missouri By Deleting Article XIII In Its Entirety, And By Adding In Lieu Thereof A New Article XIII As It Relates To Mobile Food Vendors; Providing For The Effective Date Of This Ordinance; Providing For The Current Maintenance Of This Code; And Providing For The Repeal Of All Conflicting Ordinances – 1st & 2nd Reading

Attorney Albrecht read Bill #5945 by title only. Alderman Kramer provided the synopsis, “The Board of Aldermen approved Ordinance #4471 in November of 2013, which allowed a pilot program for mobile food vendors to operate in the City of Brentwood under the criteria established in the ordinance. Following the approval of this ordinance, the Board of Aldermen asked staff to review the pilot program in a year and report whether to continue the program. The Planning and Zoning Commission reviewed the impact of the pilot program and have recommended the regulations be continued in the form approved in Ordinance #4471 by a vote of 9-0”. Attorney Albrecht read Bill #5945 by title only. Alderman Robertson made a motion to perfect Bill #5945 into ordinance form. Motion seconded by Alderman Harper. **ROLL CALL:** Alderman Harper – yes; Alderman Wynn – yes; Alderman Robertson – yes; Alderman Kramer – yes; Alderman Toohey – yes; Alderman Leahy – yes; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

BILL #5945 IS HEREBY PASSED AND NOW BECOMES ORDINANCE #4603

Bill #5946 – An Ordinance Authorizing The Amendment Of The City Of Brentwood’s Current Employee Handbook Providing For Recognition Of Same-Sex Marriages And Domestic Partnerships In Relation To Employee Benefits And To Update The Equal Employment Opportunity Policies – 1st & 2nd Reading

Attorney Albrecht read Bill #5946 by title only. Alderman Kramer provided the synopsis, “This bill is for an ordinance authorizing the amendment of the City of Brentwood’s current employee handbook providing for recognition of same-sex marriages and domestic partnerships in relation to employee benefits (health, dental, vision, annual life, short-term disability, and long-term disability) and to update the equal employment opportunity policies”. Attorney Albrecht read Bill #5946 by title only. Alderman Wynn commented that he opposes this Bill as it conflicts with his religious beliefs. Alderman Kramer made a motion to perfect Bill #5946 into ordinance form. Motion seconded by Alderman Toohey. Alderwoman Saunders commented that we don’t need to get into the recognition of same sex marriages as it is not recognized in Missouri. Administrator Akande clarified that individuals are qualified if they are married in a state that does recognize same sex marriages and then come to Missouri. There are 6 cities currently participating; Hazelwood, Webster Groves, Kirkwood, Clayton, Olivette, Blue Springs, and University City. After additional questions, Attorney Albrecht added that he does not believe it conflicts with state statute. Alderman Leahy commented that the confusion comes from Judge Young’s ruling that the state needs to recognize prior marriages in other states of same sex. Attorney General Chris Kostner did file an appeal and has asked the 8th Circuit Court of Appeals to review. Alderman Leahy stated that there are 7 cases waiting to get through the Supreme Court to help clarify this and that he does not believe that it is so clear cut to see it as a benefit of the city to take this action at this time; perhaps it should be reviewed and addressed with the entire compensation packet. Mayor Kelly stated his opinion that waiting would just be delaying action that the city would later be required to take; recommendations from the Pension Fund attorney were that we wanted to be ahead of the action to prevent any lawsuits, as with the personnel attorney. Discussion continued with Alderman opinions of whether or not to delay and roll was taken. **ROLL CALL:** Alderman

Harper – yes; Alderman Wynn – no; Alderman Robertson – yes; Alderman Kramer – yes; Alderman Toohey – yes; Alderman Leahy – no; Alderwoman Manestar – yes; Alderwoman Saunders – yes; **MOTION PASSED.**

BILL #5946 IS HEREBY PASSED AND NOW BECOMES ORDINANCE #4604

ACCOUNTS AGAINST THE CITY

Alderman Kramer announced the warrant list in the amount of \$370,065.09, including \$34,151.67 grant pass thru and made a motion for approval. Motion seconded by Alderman Leahy. Unanimous vote in favor taken; **MOTION PASSED.**

REPORTS OF COMMITTEES AND DEPARTMENT HEADS

Mayor Kelly announced that a bill was submitted to the State Senate, although it is believed not to get much traction, for a vote to eliminate all villages within St. Louis County; the goal is to eliminate smaller cities and work their way up. If interpreted correctly, other cities are unable to incorporate them, they would remain unincorporated St. Louis County. The Better Together Group has also announced that they are reviewing police departments to for efficiencies. He added that we need to be aware of the efforts to eliminate municipalities in St. Louis County and the direction they are looking to go.

Public Safety Committee, Alderman Wynn had no new report.

Public Works Committee, Alderman Robertson had no new report.

Director of Planning & Development:

Update on the Brentwood Comprehensive Master Plan Review Process

Director Wyse reported that flyers had been distributed announced next week workshops which are the next steps in data gathering; 1/13 @ 12pm for business owners and 1/13 @ 7pm for community and a special workshop with planning and zoning on 1/12.

Ways and Means Committee Alderman Kramer reported that the next meeting is scheduled for January 13th and there is hope to move the meeting time back to allow attendance at the comprehensive plan workshop that same day. Once finalized, the meeting time will be posted on the website.

City Attorney Albrecht had no new report.

City Clerk/Administrator had no new report.

Excise Commissioner Report

None

Library, Alderman Wynn had no new report.

Municipal League, Mayor Kelly offered a reminder the upcoming conference in Jefferson City for those that are interested in attending.

Historical Society, Alderman Wynn had no new report.

Closed Meeting

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Alderman Leahy announced the next Ward 3 meeting on Tuesday, January 27th at 7pm and all are invited.

Alderman Kramer requested an update on the Chesterfield lawsuit against the state regarding sales taxes; Mayor stated that it may take a while but the reality is that eliminating sales tax pool would be detrimental on those municipalities that share and count on that revenue. Alderman Kramer also requested a update of the vacant furniture store in Promenade (Thomasville); staff will research and provide an update.

HEARING OF ANY MATTER OF PUBLIC INTEREST UPON REQUEST OF ANY PERSON PRESENT

David Demitt 9401 Pine, addressed the Chick-fil-A CUP. He commented that he was a no vote at the P&Z member and it had nothing to do with him not liking the company but he looked at the 11 factors for approval but did not think all were satisfied; there were no specific findings of fact and the process is highly subjective.

Susan Ryan Pine, commented that there is a lot of inconsistency across the board on examples of how to vote. She agreed that there is a lot of subjectivity and a lot of discretion. To say that we must approve an application is confusing based on previous information; saying that we can't be arbitrary and pick and choose a business, we can't discuss personal preference (perhaps Boys Hope Girls Hope was different) but from an audience everyone was giving their personal preference. Hopefully, when discussing the comprehensive plan, there is some vision on what is really wanted as a characteristic of our neighborhood and that there is integrity in all decisions going forward.

ADJOURNMENT

Alderman Wynn made a motion to adjourn the meeting at 8:48 pm. Motion seconded by Alderwoman Saunders. Unanimous vote in favor taken; **MOTION PASSED.**

Approved as submitted on the 2nd day of February, 2015.

Attest:

Pat Kelly, Mayor

Bola Akande, City Clerk/Administrator