

MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING

City Hall
Council Chambers

March 5, 2007
7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor Kelly, Alderwoman Clements, Alderman Marshall, Alderman Leahy, Alderwoman Krewson, Alderman Kramer, Alderman Robertson, Alderman Wynn, Alderman Cross.

City Attorney Albrecht, City Clerk/Administrator Seemayer, Director of Planning and Development Dailey, City Treasurer Reynders and Executive Secretary Williams.

ABSENT: None.

CONSIDERATION AND APPROVAL OF THE AGENDA OF THE REGULAR BOARD OF ALDERMEN MEETING OF MARCH 5, 2007

Motion was made by Alderwoman Clements, second by Alderman Wynn to approve and adopt the Agenda of the Regular Board of Aldermen Meeting of March 5, 2007. All in favor none opposed.

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING OF FEBRUARY 5, 2007

Alderman Wynn stated that at the last Board of Aldermen meeting they discussed a pay raise for the aldermen and somewhere along the line he said it was a snowy night and maybe that wouldn't be a good time to pass the bill because it might look like they were trying to sneak something by. He stated that if anyone would have thought he meant that the Board was thinking anything ill, he apologizes. He just thought that the perception out there might be that.

Motion was made by Alderman Leahy, second by Alderman Wynn to approve and adopt the Minutes of the Regular Board of Aldermen Meeting of February 5, 2007 as presented. All in favor none opposed.

BIDS – None

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

Presentation – Bryan Kaemmerer/Public Defender

Bryan Kaemmerer – Public Defender for Brentwood came before the Board and stated that he is a Brentwood resident. Municipal court is held twice a month in Brentwood and he works in conjunction with the Prosecutor Mike Shelton. Judge Hill assigns various clients to him based upon what he perceives as a need for financial assistance. In other words, those individuals who cannot afford an attorney on their own that are in need of legal advice. Predominantly what he sees is people who have revoked or suspended driver's licenses. The goal is to get their license reinstated. At any given point in time 50% of his clients are Brentwood residents, so it is a valuable service to the citizens of the City of Brentwood.

Alderman Kramer asked Mr. Kaemmerer if his caseload has gone up, down or stayed about the same.

Mr. Kaemmerer stated it goes in waves and is unpredictable. At any given time he has about 15 people that he is providing legal assistance to. About 80% is traffic related.

Mayor Kelly stated that Mr. Kaemmerer does a great job and is an asset to the community.

INTRODUCTIONS, READINGS, AND PASSAGE OF BILLS AND RESOLUTIONS

Bill No. 5370 – Board of Aldermen Compensation

Alderman Kramer stated they originally requested Bill No. 5370 be placed on hold pending some more transparent information regarding the dispatching situation with the City of Rock Hill. They understand that is still pending and could be resolved this month, so they will request Bill No. 5370 remain on hold.

1st and 2nd Readings of Bills

Motion was made by Alderman Robertson, second by Alderwoman Clements to give Bills No. 5372, 5373, 5374 and 5375 first and second readings. All in favor none opposed.

Bill No. 5372 – Fire Safety Permit Requirement and Fee Establishment

City Attorney Albrecht gave Bill No. 5372, AN ORDINANCE AMENDING CHAPTER 9 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF BRENTWOOD, MISSOURI BY DELETING SECTION 9-2 IN ITS ENTIRETY; AND ENACTING IN LIEU THEREOF A NEW SECTION 9-2; AS IT RELATES TO FIRE SAFETY PERMIT REQUIREMENT AND FEE ESTABLISHMENT; 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, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5372 as a Bill that increases the fee's charged by the Fire Marshal for commercial inspections from \$10 to \$15 for the application, \$15 to \$30 for the inspection and \$1 per thousand for cost of construction to \$2 per thousand for cost of construction. This bill was reviewed and approved by the Ways & Means Committee.

Motion was made by Alderman Marshall, second by Alderman Leahy to approve and adopt Bill No. 5372. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5372 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4062.

Bill No. 5373 – Retainer Agreement for Telecommunication Purposes

City Attorney Albrecht gave Bill No. 5373, AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF BRENTWOOD, MISSOURI TO ENTER INTO A RETAINER AGREEMENT WITH JOHN F. MULLIGAN, JR. AND HOWARD PAPERNER AS LEAD SPECIAL COUNSEL AND KOREIN TILLERY, LLC AS ASSOCIATE SPECIAL COUNSEL FOR TELECOMMUNICATION PURPOSES; AND, PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5373 as a Bill that authorizes the Mayor to enter into an agreement for the purpose of providing the City Special Legal Counsel for telecommunication purposes with Attorneys Howard Papner, John Mulligan and Korein Tillery. This firm currently represents 50 cities that have either been named in the telecommunications lawsuit or have joined the suit. Brentwood's portion of the \$150,000 legal expense will be \$2,304. The Board of Aldermen approved joining the consortium several years ago but an ordinance was never adopted ratifying the agreement. The Special Counsel will seek back taxes owed to the City for the past five years from all cell phone companies plus interest and penalties and will defend the City of Brentwood in the lawsuit that Sprint/Nextel have filed seeking repayment of the taxes they paid since July 1st, 2006.

Alderman Leahy stated that based on what is currently happening with the lawsuit he understands the expediency of getting the City officially on board with the firm. There are a few exceptions he would like to discuss with the attorneys as to how they are breaking out recuperation of fees. He requested that the City open discussions with them without postponing signing onto the bill. The way this is set up is there is a discrepancy as to what you constitute as being recouped settlement cost versus taxes that have been paid, but paid under protest or those that have been paid not under protest. All of these

would be lumped into one sum fee that they could collect against the City directly. There should be some discussion with the firm before they agree to that.

City Administrator Seemayer stated that they could go forward with the retainer and then discuss those points with the attorneys for clarification.

Mayor Kelly stated that the cellular companies are protesting the fact that it has been determined by the Missouri Supreme Court that they need to collect a sales tax for their services and then reimburse the local municipalities for that and it has been upheld at the Missouri Supreme Court. Their contention is that they do not have any physical product. They are using the airways and there should be no sales tax on that. Because other telephone companies use landlines with those types of equipment, they have a sales tax and the City is able to collect that sales tax. A number of the cellular companies have been collecting the taxes and paying the cities, so they are suing to get their money back. Some of them have not been paying, so they are suing so they do not have to pay.

Motion was made by Alderman Cross, second by Alderwoman Krewson to approve and adopt Bill No. 5373. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5373 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4063.

Bill No. 5374 – Plat for Subdivision

City Attorney Albrecht gave Bill No. 5374, AN ORDINANCE APPROVING A PLAT FOR SUBDIVISION OF A PARCEL LOCATED AT 1 WHITEHALL COURT INTO TWO (2) LOTS AND ESTABLISHING THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5374 as a Bill that would approve subdividing #1 Whitehall Ct. from one single family residential lot into two single family residential lots. The subdivision was reviewed and approved by the Planning & Zoning Commission.

Alderman Leahy asked how do the easements that are currently underground affect the placement and construction of the new homes.

Larry Wurm – Planning Consultant with James Engineering came before the Board and stated that the easements will stay as they are until they are vacated by the petitioner. They are in the process of vacating specifically on Lot A with Ameren UE an existing five-foot wide easement that encumbers a portion of the existing residence. They are in the process of pursuing the vacation of those easements so that they could open up the buildable lot area. They could build with those easements there but that would not be a lot suitable for the kind of homes that they are looking to build on those two lots.

Alderman Cross asked Mr. Wurm if they know what type of homes they are looking to build.

Mr. Wurm stated that he understands there is an ARB process that they have to go through. He can only mention that the estimated value of the new home construction is between \$600,000 and \$900,000 per home.

Alderman Cross asked if the City would have the right to deny a driveway off McKnight.

City Attorney Albrecht stated that he would have to get more specifics and look at the ordinances. He does not know if there are any curb cuts existing off McKnight.

Mr. Wurm stated that he has seen at least five or six curb cuts up and down McKnight Road that have been granted by the City for some time.

Alderman Cross asked City Attorney Albrecht to look into it and report back.

Alderman Leahy stated as a courtesy to the residents of the Whitehall area, is there an indenture agreement that is currently enforceable that needs to be addressed also in the subdivide.

Mayor Kelly stated that he has no idea what their indentures are.

Mr. Wurm stated that they have houses to build, so they will need the subdivision's support on what the houses are going to look like, etc.

Alderman Cross stated that it is not a matter of what they want, but it is something that they have to vote for because it is a legal subdivision. The City should not prevent this from happening because it will just invite litigation. However, to the residents that are in the audience and watching BTV 10, she and Alderman Kramer wrote the ARB legislation and she would encourage the residents to attend the ARB meetings because that is where their input can have some affect on what's going to be built.

Alderman Kramer stated that since this is a legally conforming subdivision is the property encumbered by an indenture that would preclude its subdivision as far as the indentures are concerned.

Mr. Wurm responded not as far as their review, otherwise he would not be before the Board tonight. It would be a waste of the City's time.

Alderman Kramer stated that he did not know if they were considering challenging that.

Mr. Wurm stated that they prefer not to challenge.

Alderwoman Clements stated that she would like to go on record that she feels exactly the same way as Alderman Cross.

Elizabeth McCain – owner of the home at #14 Whitehall came before the Board and stated that she had talked to many of her neighbors and all of them are against it and she can understand it fully. She would like some understanding between all of them that this could be done in the right way.

Mayor Kelly stated that is one of the reasons the aldermen worked so hard to establish the ARB process. The situation the City is in is that as far as the actual lot subdivision, it conforms to all of their laws and they do not have any legal recourse to deny it. The City would be sued and the applicant would win. Brentwood laws state that you can divide the lot as long as it meets the requirements of size and those lots do. As they move forward with the process they have to take it to the ARB to be reviewed. The residents have an opportunity to attend and give input on the types of houses, building materials and so forth to try to make sure they fit into the conformity with the neighborhoods.

Alderwoman Krewson asked if the residents of Whitehall would be notified of the ARB meeting.

Mayor Kelly responded yes, everybody within 300 feet, and the subdivision association would be notified.

Motion was made by Alderman Leahy, second by Alderman Marshall to approve and adopt Bill No. 5374. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5374 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4064.

Bill No. 5375 – Modification Site Development Plan

City Attorney Albrecht gave Bill No. 5375, AN ORDINANCE GRANTING APPROVAL OF A MODIFICATION TO THE SITE DEVELOPMENT PLAN FOR DEVELOPMENT OF PHASE 2 OF THE MERIDIAN, A REDEVELOPMENT PROJECT LOCATED AT 8300 EAGER ROAD, WHICH PERMITS UNDER THE PROVISIONS OF CHAPTER 25, SECTION 126 OF THE BRENTWOOD CITY CODE, THE DEVELOPMENT OF A HIGH RISE OFFICE BUILDING AS WELL AS THE EAST PARKING GARAGE ON THAT SITE; PROVIDING THE CONDITIONS TO SUCH DEVELOPMENT; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5375 as a Bill that grants a modification to the site plan for the Meridian Development by permitting a pedestrian bridge linking the west garage to the office space located above the Sports Authority and Best Buy Stores.

The pedestrian bridge is to be used exclusively by the BJC employees for entrance into their office space. This modification was reviewed and approved by the Planning & Zoning Commission.

Alderman Marshall stated with the Eager Road entrance to Hanley Road up in the air as far as possibly using the road around the Meridian, one of his concerns is the amount of traffic that is going to be on there. Will the bridge only be accessible to the BJC employees or will it be accessible to the building itself.

Alan Skop – DCM Development/Eager Road Associates came before the Board and stated that the bridge is only accessible to the BJC employees from their space to the garage. The Best Buy and Sports Authority spaces cannot be reached from that side except through their own underground garage where they have elevators.

Alderman Marshall stated that he is concerned about the amount of traffic going in for other tenants into that building.

Mayor Kelly stated the second building would have its own parking garage and bridge.

Alderman Leahy asked if they would be changing parking spaces where the bridge comes into the garage for handicap accessibility.

Mr. Skop stated that there would be handicap spaces there.

Alderman Kramer thanked the petitioner for his patience and thanked the Planning and Zoning Commission. He watched on BTV 10 a lot of the give and take that went back and forth, not including the site plan review meetings. As is often the case, they did an outstanding job.

Motion was made Alderman Cross, second by Alderman Wynn to approve and adopt Bill No. 5375. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5375 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4065.

Mr. Skop stated that the first phase, which has Best Buy, Sports Authority and Men's Warehouse, which opened last August is up and running and 100% leased. The office space above it is 100% leased to BJC. Building 3 has two spaces of 7,200 feet each and it is occupied by Barnes and Ever Bank. The ten story pre-cast garage will be completed around June 7th. All of the buses will go to the loop road and queue up under the canopy. In addition the bridge will be in place and the tenants will be able to park on the garage levels. All of those will happen by the middle of June. Once that happens, they will be able to take all the parking that is being used by Metro and his tenant in the space on Hanley Road and will be able to start building. The first phase garage has about 9,000

feet of retail in it that faces the road. The second garage will have the same. They have signed a letter of intent for 18,000 square feet with Starbucks. As far as phase two is concerned they have two or three office tenants that are interested and some retail tenants. The numbers for Metro riders are at or better than what they projected. They have not come to him about taking space in the second garage but they are going to look at the situation as they go forward.

Alderman Kramer asked if the parking is always to remain free once garage two is built.

Mr. Skop stated their intent is to keep the parking free.

Resolution No. 942 – Policy Against Harassment

Mayor Kelly stated that the personnel attorney has suggested that they adopt and update the harassment policy for the City. The attorney recommended the changes that were made to them.

Alderman Leahy stated that he has a problem with the resolution. In the language throughout the entire process there is no recourse if after all reviews the allegation made proves to be false. That is unfair to the person that has been falsely accused of having no recourse on any of this. He asked if the city attorney could look with the personnel attorney to see if there is something that can be done about that. Both parties should at least have a way of filing a grievance.

Mayor Kelly stated that if someone makes an allegation that turns out to be false that person would have the right to file their own lawsuit for slanders, etc. He does not see how you could build that into your own personnel policy for your employees.

City Attorney Albrecht stated that without doing some research the first thing that comes to mind is prior restraint of speech. It is counter productive to encourage the recording of harassment which frequently incurs between two people and then at the same time say if it is determined that there is not sufficient evidence to proceed we're going to discipline you. Certainly if the evidence develops some type of fraudulent or malicious action, there are several remedies available for that.

Alderman Marshall stated it is what Mr. Hesse does for a living, which is dealing with personnel issues. It is to their advantage to listen to what he has to say and when he makes recommendations for the city's employee manual as far as things that need to be changed, it is money well spent to make the changes.

Alderman Wynn stated that our world changes every day. We all might go back a few years and think this is not the way to do it. They have to do it in the light of where they are today.

Motion was made by Alderman Robertson, second by Alderman Marshall to adopt Resolution No. 942. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes;

Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

ACCOUNTS AGAINST THE CITY

Motion was made by Alderman Marshall, second by Alderwoman Clements to accept the revised warrant list dated 3/5/07. All in favor none opposed.

REPORTS OF COMMITTEES AND DEPARTMENT HEADS:

Mayor's Report

Mayor Kelly stated that the Container Store had its grand opening this past Saturday and Sunday. The store did almost 200% of their goal on Saturday. The activity on Sunday was just as heavy as it was on Saturday. The St. Louis store is the first one in Missouri.

Public Safety Committee

Mayor Kelly stated that he believes a number of them received an email from a Ward 1 resident with concern of traffic on Pine Avenue requesting a stop sign at Kentland and Hatton. There is a machine that you can put out on the streets that is a sensor device. There is no strip attached to the pavement where people can see it and slow down on approach. When the cars go by it monitors the traffic, documents the time, speed, direction, etc. so that you can have some documents that gives you all the averages. The machine costs about \$3,500. It would be well worth the investment for the City to purchase one or two and have them available to monitor some of the traffic on residential streets. People will not know when they are being monitored and you get a true picture of what is happening on the streets.

Alderman Marshall stated it is no secret how he feels about stop signs. He would rather not see anymore go up in Brentwood. He is all for the radar, but the City just put two new police officers in the wards. They should give them a chance to do their jobs instead of putting up a stop sign right away.

Public Works Committee – No report

Director of Planning and Development – No report

Ways and Means Committee – No report

City Attorney – No report

City Clerk/Administrator – No report

Excise Commissioner – No report

Library – No report

Municipal League – No report

Communication – No report

Insurance Committee – No report

Historical Society – No report

UNFINISHED BUSINESS

Update

City Administrator Seemayer stated that they have just completed the bid document specifications for the Helen Avenue project phase 2. It is getting ready to go out to bid. The phase 1 portion of that is 95% complete.

The Eulalie/Rosalie project bid has been awarded to Bommarito Utilities. They have done very good work in the city in the past for MSD.

NEW BUSINESS

Meeting

Ward 3 meeting will be held on Tuesday, March 27th at 7:00 p.m. in the Council Chambers.

Recess

The meeting was recessed at 7:56 p.m. for an Executive Session/Real Estate Matter.

Executive Session

Motion was made by Alderwoman Clements, second by Alderman Wynn to reconvene the meeting at 8:03 p.m. All in favor none opposed.

Motion was made by Alderman Wynn, second by Alderman Marshall to enter into Executive Session on a Real Estate Matter at 8:04 p.m. All in favor none opposed.

After discussion, motion was made by Alderman Wynn, second by Alderman Leahy to return to open session at 9:16 p.m. All in favor none opposed.

ADJOURNMENT

Regular Board of Aldermen Meeting Minutes
March 5, 2007

Motion was made by Alderman Leahy, second by Alderman Marshall to adjourn the meeting at 9:17 p.m. All in favor none opposed.

Pat Kelly, Mayor

Attest:

Chris Seemayer, City Clerk