

MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING

City Hall
Council Chambers

August 20, 2007
7:00 p.m.

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 and Executive Secretary Williams.

ABSENT: Alderman Wynn, Director of Planning and Development Dailey, City Treasurer Reynders.

CONSIDERATION AND APPROVAL OF THE AGENDA OF THE REGULAR BOARD OF ALDERMEN MEETING OF AUGUST 20, 2007

Motion was made by Alderwoman Clements, second by Alderman Cross to approve and adopt the Agenda of the Regular Board of Aldermen Meeting of August 20, 2007. All in favor none opposed.

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING OF JULY 16, 2007

Motion was made by Alderman Leahy, second by Alderwoman Clements to approve and adopt the Minutes of the Regular Board of Aldermen Meeting of July 16, 2007 as amended. All in favor none opposed.

Correction:

Page 3, second paragraph reads "Kurt" should read "Kerth".

PROCLAMATION HONORING MAYOR ED WRIGHT

Mayor Kelly stated that they are very excited to be presenting a proclamation to Mayor Ed Wright's family, but are very sad at the passing of Mayor Ed Wright. Alderwoman Krewson, a long time friend of Mayor Wright, would be reading the proclamation honoring Mayor Ed Wright. Not only was Lorraine a friend of Mayor Wright, but she was also an employee of the City under Mayor Wright.

Alderwoman Krewson stated that she not only had the pleasure of working with the Honorable Mayor Ed Wright but Ed Jr. was an Alderman as well. She read and presented the proclamation to Ed Wright Jr. who was representing the family.

Ed Wright Jr. extended his thanks and gratefulness on behalf of his family. He introduced family members who were in the audience. He stated that in one of the last poems his father wrote he talked about how important home was to him. He talked about his home on York Drive and what Brentwood meant to him and to their family. They will be celebrating their dad's life on Sunday, September 16th at Brentwood Recreation Center at 4:30 p.m. with the celebration starting at 5:00 p.m. In his dad's true spirit they will serve watermelon.

BIDS – NONE

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

Liz Turner – 15 Whitehall Court came before the Board to inform everyone that they have nominated trustees for Whitehall Court. They understand that legally the City has an obligation to subdivide that property and that has been fulfilled. She asked why would the City offer a boundary adjustment, which works to the advantage of the developer when the neighbors are very concerned with the traffic on McKnight Road. By adding two houses instead of one they are looking at two driveways, one being pushed closer to the front of their street. The other question that came up was if Whitehall Court is a private street how is the City allowed to offer an additional curb cut.

Mayor Kelly stated that he is not sure if a petition has been filed with the City for a boundary adjustment.

City Administrator Seemayer stated that it is not an official petition. The developer came and met with the ARB, discussed it, and showed a plan of what they wanted to do. At that time they had not recorded the subdivision because they are not allowed to until the house is removed. While they have to get legal advice from the attorney, they probably felt that rather than make a boundary adjustment, if they wanted to change the boundaries, they would have to go back and seek a new subdivision.

Mayor Kelly stated that with respect to the curb cut, they still follow the ordinances. If it meets the City's code then the permits can be issued. If there is an active subdivision and there are some restrictions within those laws then the applicant can be restricted.

Alderman Cross stated that she understands that the lot had to be subdivided. When it was subdivided it was a legally conforming lot size. They have come forward and asked for the boundary adjustment and are waiting for an answer on whether it will be approved or not. Does the City have to approve a boundary adjustment?

City Attorney Albrecht stated that he would have to look at the ordinance and see the specifics of it. He believes the ordinance is very specific as to the requirements of the boundary adjustment. He cannot say if it is something that is mandatory if they comply with the ordinance or if it is discretionary. It is primarily an administrative act as long as

the results are still within the minimum lot size requirements and setback requirements for improvements, etc.

Public Hearing – 7:15 p.m. – Setting of 2007 Property Tax Rate

Mayor Kelly announced a public hearing for the Setting of the 2007 Property Tax Rate would now be heard at 7:15 p.m.

City Administrator Seemayer stated that several years ago the State changed the way that cities are allowed to set the tax rate. They can subdivide out the residential portion of the rate versus the commercial. The proposed rate for residential is 51.7 cents per \$100 of assessed valuation, commercial is 62.9 cents per \$100 of assessed valuation. The residential rate is down 7.8 cents from 2006 and the commercial rate is down 9.4 from 2006. That is mainly due to mandated rollbacks because of the total assessed value of the City, which went up 26 percent. It has to be rolled back so the City does not gain any new revenue less what they are allowed for inflation or the consumer price index and for new construction. The tax rate is subdivided into four categories, which are the general fund, library fund, the police and firemen's pension fund and the debt service fund. The residential portion of the City's share will be set at zero. The remainder of the residential rate is comprised of the library, police and fire and a small amount of the pension fund. That waives \$232,000 from property taxes that otherwise would have to be paid by the residents. On the debt service, the City waived \$268,000, which would otherwise be paid by both residents and commercial. The total amount that was waived or that could have been assessed this year was \$498,000, which would have been an additional 14 cents on the residential and approximately 18 cents on the commercial.

Mayor Kelly asked if there were any comments from the audience. There were none.

Mayor Kelly stated that low taxes are something they try to do as a board every year and try to still maintain the quality of service they have which is a reflection of the dedicated City employees. Brentwood has one of, if not the lowest overall tax rate in of St. Louis County.

Alderman Marshall stated that when the residential and commercial rate was split there was talk about a lawsuit. He asked what was the status of the lawsuit.

Mayor Kelly stated that they met with them once or twice after their threats to sue Brentwood and pointed out some things that they had not considered in their lawsuit. They did not think it was fair to set a residential rate of zero and still charge for the commercial. The City pointed out to them that it has a residential population of about 7,500 and a working population of close to 30,000 on any given day. The City has to provide services to all those people that are working in the community as well. They also pointed out that the total amount of revenue that they generate from the commercial property tax is not that high when you consider the commercial population and the impact it has on the community. In the end, they went away and the City never heard anything else from them.

Alderman Kramer stated that he was fortunate to be able to spend some time with the Board of Equalization talking about tax rates. His belief at the time, which he stated very clearly, was that they were overvalued and over assessed by the folks in St. Louis County. While he was there he happened to gain exposure to some of the other taxing districts and found out that in many situations Brentwood is exceedingly low on the rate despite the fact that their assessment is sky high. Tonight they are allowing that roll back to take place in light of the increased assessment. He encouraged those who may have missed appealing their taxes this year to look forward to that possibility next time around.

With no further comments, Mayor Kelly announced the public hearing closed at 7:23 p.m.

Presentation of 2006 Audit

Michael Williams, Partner with Hochschild, Bloom & Company came before the Board and gave an overview of the Comprehensive Annual Financial Report for the fiscal year ended December 31, 2006. He stated that the third paragraph of the Independent Auditor's Report states that in their opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the governmental activities, each major fund, and the aggregate remaining fund information as of December 31, 2006 and is in conformity with U.S. generally accepted accounting principles. There is no qualification there. It is also an unqualified report or clean opinion. A couple of financial highlights include the first paragraph that says the City's total liabilities exceeded the assets for the year. The second paragraph talks about the City having a negative amount due to tax increment revenue bonds totaling about \$46,000,000 at the end of the year. It also states that the City's total debt decreased by about \$591,000.

Mayor Kelly asked Mr. Williams to explain why the City's debt is so high. He knows it is because of the outstanding TIFs, which in prior years those were not carried on the municipality's books. A few years ago that was changed and now it has to be showed in the audit.

Mr. Williams stated that they changed the way it was shown. It has always been disclosed on the financial report, but recently the amount has been required to be shown as a liability on the statements of the City. You do not include the assets of the City of those types of economic development activities, but you do show the liability. They have checked that with various national regulatory agencies and that is what they require to be shown on the City's books.

Mayor Kelly stated that there are two significant things. One is that they are not able to show the assets from the investments on the books. The other is that technically the City is not liable for that debt. The taxes that are collected still have a timeframe involved but those do not go towards the City's credit.

Mr. Williams stated that was correct. You do not have an asset to offset the liability.

Alderman Marshall stated that they are not considered the City's liability. They are guaranteed by the project.

Mr. Williams stated that it is generally accepted governmental accounting principles that require them to record them on the financial statements this way even though they are guaranteed by the debt of the project not the City. The Compliance Section is supposed to inform the reader that when you do an audit you do more than just punch all the numbers in that come out of the accounting department. You look at policies, procedures, and compliance issues. If there were a material problem with that it would have to be recorded in the audit. It states that they did not identify any deficiencies that they consider a material weakness. Their tests disclose no instances of noncompliance that are required to be recorded.

Alderman Leahy stated that he is under the impression that they have a COP outstanding for the trash service trucks but he does not see it listed in the long-term debt.

City Administrator Seemayer stated that it might be because it is not long-term debt. It is listed as 2003B.

Alderman Kramer applauded the auditors for putting together the report with the extra addendum. It shows the number of employees and the top employers that are in the City of Brentwood. Alderman Kramer asked if the audit is on the website.

City Administrator Seemayer stated that once the City accepts the audit it will be placed on the website.

Alderman Kramer stated that one of the items he was concerned about in the past was the amount of unrestricted emergency reserve the City had on hand, which has gone up. It looks like it is going to continue to go up at a very nice level and he is very encouraged by that.

Alderman Marshall stated that the taxes that they waive to the residents that are paid out of general fund are also considered part of the reserve.

City Administrator Seemayer stated that the property taxes waived are \$498,000 and the utility taxes waived are approximately \$600,000. They waived the assessment of approximately \$1.1 million to the residents.

Public Hearing – 7:30 p.m. Amend Sign Code Ordinance

Mayor Kelly announced a public hearing for an amendment to the sign code ordinance would now be heard at 7:30 p.m.

Mayor Kelly stated that staff had made a recommendation to the Planning and Zoning Commission to make changes to the existing sign code. It gives a little more flexibility to P&Z in approving signs.

With no further comments, Mayor Kelly announced that the public hearing would be continued at the September 17th meeting.

Public Hearing – 7:45 p.m. Conditional Use Permit/8300 Eager Road

Mayor Kelly announced at 7:45 p.m. a public hearing for a Conditional Use Permit for 8300 Eager Road would now be heard.

City Administrator Seemayer stated that the public hearing was scheduled not knowing if they would be through the P&Z Commission process.

Chairman Geppert stated that during the process of looking at some amendments to DCM's plan, the question came up from the Planning and Zoning Commission whether they had to get a conditional use permit for the expansion with restaurants.

Mayor Kelly asked if there were any comments from the audience.

With no comments from the audience, Mayor Kelly announced the public hearing would be continued at the September 17th meeting.

INTRODUCTIONS, READINGS, AND PASSAGE OF BILLS AND RESOLUTIONS

1st and 2nd Readings of Bill No. 5392

Motion was made by Alderwoman Clements, second by Alderman Marshall to give Bill No. 5392 first and second readings. All in favor none opposed.

City Attorney Albrecht gave Bill No. 5392, AN ORDINANCE GRANTING APPROVAL OF A SITE DEVELOPMENT PLAN FOR A THREE-STORY OFFICE/RETAIL BUILDING (BUILDING #5) AND FOR ADDITIONAL SIGNAGE FOR THE MERIDIAN DEVELOPMENT LOCATED AT 8300 EAGER ROAD, WHICH PERMITS UNDER THE PROVISIONS OF CHAPTER 25, DIVISION 9 OF THE BRENTWOOD CITY CODE OF ORDINANCES, MODIFICATION OF THE DEVELOPMENT OF THAT SITE; PROVIDING THE CONDITIONS TO SUCH DEVELOPMENT; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Chairman Geppert came before the Board and stated that they have been working on this project for a long time. The final episode is Building #5, which is going to be on the southeast quadrant of the development. A ten-story garage will follow by a six-story garage to the east of that. In front of that on an out parcel will be the new Building #5. It

will be three stories total. The first story will be retail oriented, probably restaurant uses. The other two stories above that will be office type of occupants. The materials on the building will be very consistent with the tower. It will fit in nicely with the development and the site. The parking garage that is servicing Metro as well as the additional parking garage will have some retail users on the first level of it. As with any retail user they would like to be visible so there will be some button signage on the tower of the northwest quadrant of the parking garage. There is also the proposal that they would be allowed, on the face of the office tower, to have two office users identified in signage. The last aspect is a water feature and signage on the northeast face of the property as it looks towards Hanley and Highway 64/40.

Louis Vandeloecht, Project Manager from ACI Boland Architects came before the Board and went over the site plan.

Alderman Kramer stated that going back to the original plan for the adjacent parking garage that was going to be built without the office structure in front of it is there a change in the amount of overall parking spaces because of the adjustment.

Mr. Vandeloecht stated that they have pulled back the parking garage face to allow more lot area for Building #5. There is a slight decrease in parking with those approximately 100 spaces from what was on the original building proposal when the garage came through.

Alderman Kramer stated that one of the wonderful points about the first structure, from what he understands from folks who use the MetroLink to go back and forth to the airport, is that they can park on the top deck unrestricted. The curiosity level came up as the next structure is built will the top deck be used again for unrestricted parking.

Mr. Vandeloecht stated that Metro only has access to the first structure. The second structure is purely for the development itself.

Alderman Cross asked about the sign on the west elevation.

Mr. Vandeloecht stated that the intention is to keep the sign at the top for more of a one floor, two floor major building tenant. The lower sign is intended for a secondary tenant. It will be moved up a row.

Alderman Cross asked about the button signs on the garage and how will they be rolled out. Will each sign have the logo of the respective retailer?

Mr. Vandeloecht responded that each sign would have the retailer's logo. It could potentially be all different colors. The intention is as the tenant moves in and requests the sign; they would then put each sign up.

Alderman Cross asked if they would agree to put them up two at a time.

Mayor Kelly stated that if you see one sign it is only for the one business. You are not going to know that there is four store fronts over there.

Alderman Cross stated that one of the conditions in the Bill states that they might decide to change the monument sign from Hanley Road.

Mr. Vandeloecht stated that there was a water feature monument entry sign originally proposed off Hanley Road. They are proposing to move the sign to a more prominent position at the intersection of Hanley Road and Highway 64/40, which would be a scaled down version. The monument sign that is being referenced is a smaller sign for Building #5, but there was some discussion in Planning and Zoning Commission meeting about the location of it.

Mr. Geppert stated that the Planning and Zoning Commission encouraged them to consider moving it to the northeast quadrant to where it would face out to the intersection of Hanley and Highway 64/40 and it would be more prominent than the original plan of placing it at the Dale entrance.

Alderman Cross asked if there will an entrance sign at Dale and Hanley.

Mr. Vandeloecht stated that the potential is there for a monument sign for the tenant of Building #5. He stated that they have had to make some slight changes to the intersection based on St. Louis County requirements. To be able to get a sign of the quality that they had at Eager Road in that location was going to be tight. They discussed whether they wanted to be broadcasting the development more to the intersection of Hanley, Highway 64/40 and Eager Road than at the intersection of Dale and Hanley. The decision was made that they would get more impact for the development if they put it at the corner of Dale and Hanley.

Alderman Leahy stated other than the button signs to be put on the tower, what other methods were considered as proper signage for the businesses that would be inside the garage area.

Mr. Vandeloecht stated that they talked about several options including some kind of LED display. In terms of getting something that was partially visible from Highway 64/40, discussion came back that if they were going to do the signage that button signs would be the right thing to do. Button signs are not overpowering and they would be able to represent all the retail tenants in the space and would look like a complete billboard on the side of the garage.

Mayor Kelly asked if the intent is that the outlines will be square but the signs will be round.

Mr. Vandeloecht stated that it would depend on the tenant. The intention is to have an 8X8 center box that the tenants' logos would fit into.

Don Musick came before the Board and thanked everyone. He stated that it has been a long run and they have had a great relationship with the City, Mayor Kelly, the Board, Planning and Zoning Commission, and the staff, etc. It has been a great honor to live and work on the project. The development will be completed in November of 2008.

Alderman Kramer read a synopsis of Bill No. 5392 as a Bill that approves a site development plan for a three-story office retail building and signage at the Meridian Development. The building will contain two stories of office space that will house Missouri College and the first floor will consist of restaurant space. The Planning & Zoning Commission has reviewed and approved the site plan and sign package.

Motion was made by Alderman Leahy, second by Alderman Robertson to approve and adopt Bill No. 5392. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5392 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4082.

Bill No. 5393 – Increase Business License Fee

Alderman Marshall requested that Bill No. 5393 be placed on hold for further review by the Ways and Means Committee. If Bill No. 5393 is placed on hold tonight, it will not meet the deadline to be placed on the November ballot.

Alderman Kramer asked if it is placed on the April 2008 ballot could it be retroactive to January 1st if it was approved.

Mayor Kelly responded no, it would have to be the following year. He has concerns with the Bill as written. It is a drastic increase going from \$500.00 a year to \$12,500 a year, although the banks should pay more than they are paying now. The other concern is that credit unions should be treated differently than banks because they are non-profit.

Mayor Kelly suggested surveying other municipalities to see what they charge.

Motion was made by Alderman Marshall, second by Alderman Leahy to place Bill No. 5393 on hold. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, no; Alderman Robertson, yes; Alderman Cross, abstain.

1st and 2nd Readings of Bills

Motion was made by Alderwoman Clements, second by Alderman Robertson to give Bill No. 5394, 5395, 5396 and 5397 first and second readings. All in favor none opposed.

Bill No. 5394 – Impose a Local Use Tax

City Attorney Albrecht gave Bill No. 5394, AN ORDINANCE TO CALL AN ELECTION TO SUBMIT TO THE VOTERS OF THE CITY OF BRENTWOOD, MISSOURI, PROPOSITION “B” TO AUTHORIZE THE CITY TO IMPOSE A LOCAL USE TAX; AND, PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5394 as a Bill that would authorize an election to be held in November to ask the voters to consider imposing a Local Use Tax. The Local Use Tax imposes the current sales tax rate in place to products that are purchased out of state or through the Internet or catalogs. Individuals do not pay the Local Use Tax if their purchases do not exceed \$2,000 in a calendar year. A simple majority is required for approval. This will be placed on the ballot as proposition “B”. The Ways & Means Committee has reviewed and approved this ballot measure.

Alderman Marshall requested that a description of the proposition be distributed to the residents.

City Administrator Seemayer stated that they plan to put something in the newsletter regarding the proposition. He requested that the proposition title be changed from Proposition “B” to Proposition “A”, since Proposition “A” was put on hold.

Motion was made by Alderman Marshall, second by Alderwoman Clements to amend Bill No. 5394 by changing the proposition name from “B” to “A”. All in favor none opposed.

Mayor Kelly stated that the local use tax was tried countywide a number of years ago and it failed. A big part of that failure was that people do not understand what the use tax is.

Alderman Leahy asked about the local use tax in the way of matching the sales tax and if they are talking about the 7.375% or the sales tax with TDD in it.

City Administrator Seemayer stated that it does not include any additional sales tax such as a TDD or a CID. It is the local sales tax rate that is established for Brentwood, which is 7.375%.

Alderman Leahy asked about out of state sales of automobiles and if they are not already recorded when you register a car in the state, registering by zip code.

City Administrator Seemayer stated that automobiles are treated differently than everything else.

Motion was made by Alderman Robertson, second by Alderwoman Clements to approve and adopt Bill No. 5394 as amended. Roll call: Alderwoman Clements, yes; Alderman

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

The Mayor thereupon declared Bill No. 5394 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4083.

Bill No. 5395 – Compensation Public Defender

City Attorney Albrecht gave Bill No. 5395, AN ORDINANCE AMENDING CHAPTER 2 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF BRENTWOOD, MISSOURI BY DELETING SECTION 2-220 IN ITS ENTIRETY AND ENACTING IN LIEU THEREOF A NEW SECTION 2-220; AS IT RELATES TO THE COMPENSATION FOR THE PUBLIC DEFENDER; 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. 5395 as a Bill that would amend the Brentwood Code by changing the salary for the Public Defender from \$100.00 per month to \$750.00 per month. The City actually changed the salary in the budget two years ago but the section in the Code was never updated. The Ways & Means Committee reviewed and approved this Bill.

Motion was made by Alderwoman Clements, second by Alderman Marshall to approve and adopt Bill No. 5395. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5395 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4084.

Bill No. 5396 – Setting 2007 Property Tax Rate

City Attorney Albrecht gave Bill No. 5396, AN ORDINANCE TO CONFIRM, RATIFY AND APPROVE THE RATE OF TAX TO BE ASSESSED AND COLLECTED FOR EACH ONE HUNDRED DOLLARS (\$100) OF ASSESSED VALUATION FOR THE YEAR 2007 FOR: (A) GENERAL MUNICIPAL PURPOSES; (B) TO PAY PRINCIPAL AND INTEREST AS THE SAME MATURES ON INDEBTEDNESS OF THE CITY OF BRENTWOOD EVIDENCED BY BONDS; (C) TO PAY FOR THE MAINTENANCE OF THE PUBLIC LIBRARY; AND (D) TO PROVIDE THE ANNUAL CONTRIBUTION TO THE CITY OF BRENTWOOD'S POLICE AND FIREMEN'S RETIREMENT FUND; 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. 5396 as a Bill that establishes our real estate and personal property tax rates for 2007. This Bill requires a public hearing before consideration. The Ways & Means Committee reviewed and approved the tax rates for this Bill.

Alderman Kramer requested that the 2007 property tax rates be restated.

City Administrator Seemayer stated that the 2007 property tax rates are as follows: residential is 51.7 cents, down 7.8 cents and commercial is 62.9 cents, down 9.4 cents.

Motion was made by Alderman Marshall, second by Alderwoman Krewson to approve and adopt Bill No. 5396. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5396 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4085.

Bill No. 5397 – Financial Interest Statement

City Attorney Albrecht gave Bill No. 5397, AN ORDINANCE READOPTING ORDINANCE NO. 3153, SECTION 2-471 OF CHAPTER 2 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF BRENTWOOD FOR 1987; PROVIDING FOR THE CURRENT MAINTENANCE OF THIS CODE; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5397 as a Bill that readopts the requirements for submitting Financial Disclosure Statements to the Missouri Ethics Commission for elected officials, candidates seeking public office and certain appointed officials. This Bill is required to be adopted every other year by cities with budgets exceeding one million dollars.

Motion was made by Alderman Cross, second by Alderman Robertson to approve and adopt Bill No. 5397. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5397 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4086.

ACCOUNTS AGAINST THE CITY

Motion was made by Alderman Marshall, second by Alderwoman Clements to amend the warrant list dated 8/20/07 by removing the amount of \$5,161.50, which is on the report twice, for a total of \$541,393.30. All in favor none opposed.

REPORTS OF COMMITTEES AND DEPARTMENT HEADS:

Mayor's Report

Committee Appointment

Mayor Kelly requested the appointment of Chuck Sanders to the Board of Adjustment.

Motion was made by Alderwoman Clements, second by Alderman Leahy to approve the appointment of Chuck Sanders to the Board of Adjustment. All in favor none opposed.

Recreation Planning Committee

Mayor Kelly stated that he would formally like to form a committee called the Recreation Planning Committee. He requested that all the BOA members, a school district member, Terry Johnson and a representative from St. Mary Magdalen Athletic Association be appointed to the Committee.

Motion was made by Alderman Marshall, second by Alderman Leahy to accept the Recreation Planning Committee as stated. All in favor none opposed.

Update on Water Feature Brentwood Promenade

Mayor Kelly stated that the issue with the waterfall at the Promenade has been going on for a number of years. When the water fountain was installed they had problems with the operation of it. There was a period when it was not on at all. It is his understanding that Alderman Kramer asked at that time that Jerry Wolf direct a letter to the owners of the Promenade requesting, per the redevelopment agreement, that they maintain the water fountain and get it working properly. They met with staff after receiving the letter from Mr. Wolf and submitted a new concept for the waterfall. They obtained bids on repairing it. They wanted to make it one waterfall, which is what is currently there now, instead of the three that were there originally. They also added some additional landscaping to it. Staff at that time which was Mr. Seemayer, Mr. Wolf and Mrs. Denton thought that it was fine and gave permission for them to proceed with the project. They finished the plantings within the last month. It has been an ongoing issue and a concern for Alderman Kramer because he would like to see it back to its original state. Part of the concern that he has from the City's standpoint is that the City's agreement with the developer says that they would have a water feature. The original fountain was never approved by anybody from the City. It did not go before the Planning and Zoning Commission or the Board of Aldermen to be approved. As long as they are maintaining the water feature in some form, they are complying with the redevelopment agreement. His question to the Board is what do they want to do.

Alderman Kramer stated that he has put together some information concerning the water feature, which he distributed to the Board. He referenced a copy of a letter dated June

2006 from Building Official Wolf that was sent to a member of the Sansone Group to take care of an item that had been out of operation for almost a year going back to the summer of 2005. He also referenced a rationale from the Planning and Zoning Commission at the time the water feature was approved. The applicant was asking for an extra 15% of site coverage from 65% to 80%, which is allowable under Brentwood's Code. As it says in #7 of the rationale, due to the extensive landscaping described as Exhibit 4, it is recommended the "site coverage" as defined in Chapter 25 be as great as eighty (80%). While Exhibit 4 is not detailed in terms of the exact size of the water feature, schematic layout of the water feature, it is his opinion that Chairman Geppert who was on the P&Z Commission at that time received a representation from the developer, Sansone/DDR Development that they would provide an extensive amount of landscaping as is required by our Code in order to receive that site coverage. One of the portions of that extensive landscaping was this water feature which while it's not specifically enumerated in the exhibit was represented orally and that was his opinion to the P&Z Commission at that time who agreed based upon that oral representation to go ahead and recommend approval to the BOA. Since the issue was brought to the attention of the Sansone Group in the letter of June 2006, there was a meeting with staff and a proposal with a picture for the water feature was presented to the City by Sansone Group of how to remedy the situation. Since that time Asst. City Administrator Dailey has been following up, along with the code enforcer, to try to get them to live up to their proposal and get the issue resolved. It is the opinion of City Administrator Seemayer and Asst. City Administrator Dailey that they have come close, but have not lived up to what they had proposed. Alderman Kramer stated that City Administrator Seemayer suggested having a meeting with representatives from Sansone/DDR, as well as City Administrator Seemayer, himself, Alderwoman Krewson and John Geppert to get things completed. He would like the Board's permission to have the meeting with Sansone/DDR.

Alderwoman Krewson asked when was the proposal by Sansone/DDR submitted.

City Administrator Seemayer stated that he thinks the actual list/proposal came in the last 6 to 8 weeks. When staff approved that change it was just from the rendering and no detail.

Mayor Kelly stated that City staff can ask Sansone/DDR anything they want but the question is what does the City have a right to force them to do.

City Administrator Seemayer suggested that the City's arborist look at the area to see what has been planted.

Alderman Leahy stated that he does not see any problem with having the meeting.

Mayor Kelly stated that if Alderman Kramer wants to have a meeting with representatives from Sansone/DDR to see if they are going to do something additional that is fine. He just thinks that they should be very careful that things of that meeting are not idle threats and that they are taking this to them to see if something better can be done.

Alderman Marshall stated that his concern is that staff already gave permission to them to make the changes that they have made. He does not think it would be in the City's best interest to go back and say that staff had a change of heart and that they want something different. He agrees that the landscaping is lacking quite a bit from the picture/proposal they submitted. As far as he is concerned they have met the water feature but they still have some work to do on the safety issues and with the landscaping.

Alderman Kramer stated that there was a time when he thought that they should have gone back and reinstated the original feature. He understands that they have made a proposal and staff has agreed to their proposal and he is just trying to get them to fully live up to it. He believes that they will and have responded well to their letters back and forth, but it has taken those letters to get them to this point.

City Administrator Seemayer stated that staff could meet with them and there are certain things the City can do within the parameters of what they submitted. Jerry Wolf's letter mentioned a conditional use permit, but he doesn't believe that the Promenade ever had a conditional use permit because there is nothing there that would require one, no restaurant, drive thru, etc. The bank itself would have had to have one and Dobbs later, but he does not think the Promenade was required to have one.

Mayor Kelly stated that he would schedule the meeting.

Strassner Road

Alderman Kramer stated that constituents have come forward upset to a certain extent about the length of time they have had to wait to use Strassner as a cut through to Hanley Road. They have also been asking him about the approval process for that and the ability for them to keep that closed and use it for a staging area.

Mayor Kelly stated that as far as the development of the project they are within the time frame. They technically own the property. They gave the City their best guess as to when it was going to be opened. The goal is to open Strassner Road within the next six to eight weeks. Their logic all along was that they do not want to open the road and have their cranes lifting up pieces of the trusses for the condominiums.

City Administrator Seemayer stated that immediately when the road is opened it would just be one lane each way on the north side because of the construction equipment.

Mayor Kelly stated that they own the road and have not turned it over to the City as of yet. They will dedicate the road back to the City. The developer will be taking their proposal back to the TIF Commission. They need to do some readjustments of their TIF and TDD notes. They want to lower their TDD amount and increase the TIF amount. The overall amount of the two assistances is not changing. They will be taking that recommendation to the TIF Commission to try to get that process done before the end of the year. They have only been collecting TDD funds from Houlihan's, and the furniture

store just opened, so they have been funding it up to this point. The adjustments will be a benefit to the City because the TIF side will pay off sooner.

Alderman Leahy asked if they changed the allocation of the number of condominiums versus apartments and then brought the hotel in wouldn't that have already forced the dictation of reevaluating the TIF notes.

Mayor Kelly stated that it is not actually reevaluating the TIF notes. They have done two amendments to that redevelopment agreement. Whenever the last amendment was done there was no adjustment made to include Strassner Road on the Hanley Industrial Court side as part of their TDD funds, so they cannot expend money on that portion of the roadway. They want to change the structure to increase their TIF amount and lower their TDD amount so that they could use those funds to help fund that portion of Strassner Road.

Alderman Leahy asked if there is a formula the City uses to establish what that TIF maximum would be based on the revenues generated.

Mayor Kelly responded yes. It is his understanding that in the second amendment to the redevelopment agreement there was a paragraph that reduced the flexibility that they could use in the distribution of TDD funds. They did not have enough TDD eligible costs to spend the TDD money. They are asking that the TDD amount be lowered and the TIF amount increased.

Public Safety Committee – No report

Public Works Committee – No report

Director of Planning and Development – No report

Ways and Means Committee – No further report

City Attorney – No report

City Clerk/Administrator

Special Use Permit – Brentwood Chamber of Commerce

City Administrator Seemayer stated that the Brentwood Chamber of Commerce is requesting a Special Use Permit to serve beer and wine at two upcoming events, a business expo and networking event on November 15th at the Recreation Center from 5 pm to 8 pm and the annual holiday party on December 6th at the Recreation Center from 5 pm to 8 pm.

Motion was made by Alderman Kramer, second by Alderman Leahy to approve the Special Use Permit to serve beer and wine at the Brentwood Recreation Center events

sponsored by Brentwood Chamber on November 15th and December 6th. All in favor none opposed.

Excise Commissioner

Temporary Liquor License Request – OB Clark’s

Deputy Excise Commissioner Cross stated that OB Clark’s is requesting a temporary liquor license request to serve beer at the Brentwood Days event on September 14th and 15th at Brentwood Park.

Motion was made by Alderman Cross, second by Alderman Leahy to approve the request for the temporary liquor license for OB Clark’s. All in favor none opposed.

Library – No report

Municipal League – No report

Communication – No further report

Insurance Committee – No report

Historical Society – No report

UNFINISHED BUSINESS

Presentation by Don Beimdiek

Don Beimdiek, Attorney at Law came before the Board and stated that he believes the Board has received a written opinion from him regarding the Swim Club issue, together with a chronology, which was a road map of documents that were provided to him. Not all of the items listed in the chronology are necessarily relevant to the conclusions he has reached.

Mr. Beimdiek stated that what they are dealing with in terms of legal property rights is based on the law of easements. Easements are an interest in land that one person owns that establishes their right to use someone else’s ground either underground or above the ground for a specific limited purpose such as easements that are created when you approve subdivision plats and there are roadways platted out on that property. The title under that road is owned by the abutting neighbors, but the easement rights are established for the public to comply with whatever use may be stipulated. The power, telephone, cable lines are on property that you own but those utilities have the easement rights to traverse your property.

Alderman Marshall stated that one of the concerns he has when referring to the sewer easements that, for instance, goes through his backyard is he pays taxes on that, unlike

pool road, which you are saying belongs to abutting property owners and they are not paying property taxes on that property.

Mr. Beimdiek stated that is a matter for the assessor of St. Louis County and his maps are not necessarily accurate. He has found several discrepancies on them. Frequently if there are roads abutting property, those roads are not assessed separately but the benefits of those roads bring in the way of access are assessed to the individual owners. Technically the County could measure the ground and then subtract the value that is lost because someone else has the right to go across that property as an easement right.

Alderman Marshall stated that he was given a survey when he purchased his house. He asked if the people that abut pool road were given surveys.

Mr. Beimdiek stated that he asked for the surveys and he did not receive any. A surveyor would not necessarily show the property rights he will talk about because they usually confine themselves to the platted lines that are drawn on the approved plats. The property rights are under the street and are not usable to the exclusion of whoever owns the easement rights. The surveyor does not show reversion rights. If the right of way is totally abandoned so that there is no surface use whatsoever then the abutting owners reversion rights move onto that property and they can add and build on it. The public has easement rights that benefit the entire community who use the roads and streets. Easements can be created many different ways. They can be created by a grant of an easement, someone giving a deed for an easement. Utility companies usually get an easement deed. Many easements are created on the plats. Many of the utility rights are in the roadways. Another way that an easement is created is what they call a prescriptive easement. This is where an easement right is created by law because there is an open adverse and continuous use of property for a particular purpose for more than ten years which is the minimum time in Missouri, at which time the descriptive easement rights are established in the public or whoever is using it. The issue that was the beginning event for his assignment was when the St. Louis/Kirkwood Railroad Company acquired a 50-foot right of way from the City of Ferguson to the City of Kirkwood that came through Brentwood. This occurred about 1899. There was another railroad created which has created some of the confusion. This other railroad line ran from the end of the Forest Park line on Dale Avenue in Richmond Heights that ran through the western part of Richmond Heights, across part of Maplewood and then into Brentwood, ended south of Manchester, and intersected the Kirkwood/Ferguson line. That was called the Brentwood line. In doing early research on it, some people transposed the Brentwood line with the Kirkwood/Ferguson line but they were actually two different lines. Brentwood was first established and incorporated in 1919, so when the City was incorporated this railroad line was already in place.

Alderman Kramer asked Mr. Beimdiek who gave the St. Louis/Kirkwood Railroad Company permission to establish the railroad line.

Mr. Beimdiek responded multiple owners. They were given the right of way by deed.

Mr. Beimdiek pointed out on maps the location of some streets, the Swim Club, right of way, railroad line, etc. The St. Louis/Kirkwood Railroad Company property was acquired by St. Louis Public Service Company and they then operated all of the various streetcars. When the Summit subdivision was first created in 1923 there was a dedication of Mary and Dorothy streets to the public. The City of Brentwood has never accepted those dedications. Those dedications are out there to be either accepted or vacated and there is no time limit. They were set aside for public use because the developer at that time may have needed those streets for people to access their properties if the railroad tracks remained in place. The streetcar operations stopped in 1949 and by July of 1950 there were public references to the fact that all of the rails, poles, and the wires themselves had been removed.

In May of 1962 the Brentwood Swim Club came before the Board of Aldermen and requested approval of the right to pave the right of way, which the City granted. In his opinion, that request to the City was a recognition by the Swim Club that the public rights had been established in that road and that the City who is the representative of the public had the right to give them permission which it did. In 1969, after the Swim Club paved the road the abutting owners on either side of the right of way approached the City and suggested that the Mary and Dorothy streets be vacated in exchange for which the abutting owners would give the City an easement deed to confirm the rights that had been established by adverse use. The City did not accept that offer. The city attorney at that time made a study of some of the same material that he looked at and the attorney advised the Board that in his opinion the City and public had established a right to the public service right of way by adverse use for more than ten years. The offer that the owners were making that in exchange for vacating the two side streets that they would give their approval if the City could maintain the Swim Club Road was not necessary because they already had the rights. In 1994 the Brentwood Swim Club members opposed the possible vacation of Dorothy and Mary streets.

The ultimate opinion of this is that the Swim Club rights are not superior to the public rights in the road. Swim Club has a right as a member of the public to use the road. As an abutting owner they need it for access, but the Swim Club rights are subordinate to the public rights. In 2001 the owner of the property at 8662 White discovered that somewhere along the way the prior owner had built a garage in the Dorothy Avenue right of way, which was discovered when a survey was made. The garage is sitting in the dedicated, but not accepted right of way for Dorothy Avenue. The City at the request of the owner authorized a quitclaim deed to give to that owner whatever rights the City may have in Dorothy Avenue. In his opinion that was an invalid act by the City because the City cannot take a piece of a right of way and give it to an owner. The City can vacate the entire Dorothy Avenue totally so it is no longer available for opening as a public right of way, but it is illegal to take a piece out of the right of way and give it to someone. That does not mean anything has to happen with that action. It just means that if the City were to decide that they wanted to have a 100-foot wide right of way or if they wanted to make a 75-foot wide road they could have precedence and that deed would not block any intent of the City to maintain it.

The City in his opinion, as custodian for the public, has the right to insist upon the Swim Club Road being kept open as a public thoroughfare for the right of anyone who wants to use it. It does not have an obligation to pave, improve because the Board has never voted to accept Swim Club Road for public maintenance. That does not mean it is not a road. That just means that there is no obligation on the City to fix the road.

Alderman Leahy asked if the City could authorize the removal of the speed bumps as a safety issue on a roadway that the City still claims may not be its responsibility.

Mr. Beimdiek stated that people could not interfere with the right of the public to use the street. The bumps do not interfere with your right to use the road for passage. It just slows you down.

Alderman Leahy asked if the City would be able to go in and remove the speed bumps at its expense without claiming responsibility for the road.

Mr. Beimdiek responded yes. Mrs. Ferguson at the corner of Rosalie and Dorothy has planted her property. There is nothing wrong with doing that because it is not being used for a roadway. However, the law of Missouri is that anybody who uses City rights, she owns the property under Dorothy and under the right of way, any use that she makes of it does not establish in her the adverse use rights that the City or the public got by adversely using the Swim Club right of way. The public cannot adversely acquire title to public rights. The same reason the public cannot give property away. An owner cannot acquire rights against the eventual use. If in the future the City would decide that they wanted to accept Dorothy and Mary for public maintenance, they could request any impediments to that be removed. The City's rights to the west half of the public service right of way are clear and Mary and Dorothy did not go into Memorial Park. They stopped at the bottom of the Swim Club property.

Alderman Marshall asked about the maintenance of the paths.

Mr. Beimdiek stated that it is at the City's discretion. If the money is not there, nobody can insist that you have to fix those things.

Alderman Leahy stated that this is a legal opinion. The only way this becomes a fact is by a court ruling.

Mr. Beimdiek stated that the nature of the action is called a quiet title action. Anyone who has an interest in this including the City, abutting property owners, could do that. His opinion is based on facts as he has found them.

Alderman Leahy stated in the establishment of the adverse condition would an action taken by an abutting property owner at that time in which the police department or somebody from the City acting as the official came in and said that you can't block this off, you have to remove the gate and they did comply, would that be enough evidence from their side to say I did this but I was told I couldn't, so I had to be conforming.

Mr. Beimdick responded no. It would have to be a formal permissive use. The neighbors could have organized and said that they will give the City permission to use it so they can protect their rights. They still own the ground under it, subject to the right of the public to use the Swim Club roadway as defined and the right of the public to at some future time improve and maintain the two streets on either side.

Alderman Kramer stated that the abutting owner has the ownership out to the centerline and he plants out to and near the centerline but that does not change the use that was set forth by the original easement agreement.

Mr. Beimdick stated that he did not see evidence of any abutting owners planting to the centerline of the streetcar right of way. They could have moved their gardens to the center of the Public Service Company right of way. The rights in the streetcar right of way acquired by the public were adversely acquired. The rights that the City has on Dorothy are by dedication to the City. That is the only part of the right of way that the abutting owner cannot acquire adverse rights against the City. The public acquired the railroad right of way rights and the City represents the public by adverse use for the first ten years after it was vacated. Had the abutting owners at that time taken collective action to block it then that road would not have acquired a public status. They could not block Dorothy and Mary.

Mayor Kelly stated that even if they have one resident request that the City vacate the easement for Dorothy, they could not do it for that one property owner. They have to either do it for the entire strip or keep it.

Mr. Beimdick stated that he thinks the City has the discretion to vacate a part of the total vacation of a part of the street. You do not deed it away. You have to vacate it.

Alderman Leahy stated that they could if they choose to, as a Board, start at Rosalie and vacate what would be Dorothy Avenue on the east side of Swim Club Road going north to Strassner and then they would not be in violation of state law.

Mr. Beimdick responded no, because the City would vacate it and would be saying publicly that they are not going to ever accept this. It has no public use and they have an adequate 50-foot wide roadway to take care of the north/south needs and the isolated Swim Club property.

Alderman Marshall requested that the information that was submitted to them by Mr. Beimdick be bound and put into the library and a copy sent to the Historical Society, so that there is an official record.

Alderman Leahy asked about referring the issue to a committee.

Mayor Kelly directed the Public Works Committee to review the information submitted by Mr. Beimdick to determine if there is any action necessary.

Alderman Leahy stated that there is an open issue that he would like resolved because they agreed to go from Rosalie all the way to Strassner. The question is the bridge that is there and the trail over the bridge. That bridge may be in a questionable status for City safety and public usage. That is why he wants it reviewed in committee. They may have an exposed liability of doing something with the bridge since the trail is the City's.

Mr. Beimdiek stated that the City Engineer is well aware of the conditions. It is adequate to handle the pedestrian and bicycle traffic but it is deteriorating.

Mayor Kelly stated that the reason the City closed the bridge was because the City determined that it was unsafe for vehicular traffic.

Alderman Marshall stated that Mrs. Ferguson had requested a portion of the right of way and they are waiting for a legal opinion. He requested that the Public Works Committee review Mrs. Ferguson's request in light of the opinion from Mr. Beimdiek.

Mayor Kelly stated that the report clarified many things with the difference between Swim Club Road, Dorothy and Mary, etc.

Alderman Marshall stated that it is important to point out that it is called Swim Club Road but the right of way is all one piece, which goes from Manchester to Strassner.

Mr. Beimdiek stated that the County Assessment records still calls it Central Avenue, not Swim Club Lane. When the dust settles, someone needs to educate the County Assessor's Office. One way to do it is to have them do a plat of the area, depending on what you do with Dorothy and Mary, and record a plat of what the City contends and not necessarily establish Swim Club Road as a public responsibility, but at least define it as a public road.

The full report is attached to the official minutes.

NEW BUSINESS

Ward 3 meeting is Tuesday, August 28th at 7:00 p.m. in the Council Chambers

Brentwood Days is September 14th and 15th at Brentwood Park.

Mayor Ed Wright reception will be held on September 16th at the Recreation Center at 4:30 p.m.

ADJOURNMENT

Motion was made by Alderman Leahy, second by Alderman Marshall to adjourn the meeting at 10:25 p.m. All in favor none opposed.

Regular Board of Aldermen Meeting Minutes
August 20, 2007

Pat Kelly, Mayor

Attest:

Chris Seemayer, City Clerk