

## MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING

City Hall  
Council Chambers

October 1, 2007  
7:00 p.m.

PRESENT: Mayor Kelly, 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/Asst. City Administrator Dailey, Treasurer Reynders and Executive Secretary Williams.

ABSENT: Alderwoman Clements.

### **CONSIDERATION AND APPROVAL OF THE AGENDA OF THE REGULAR BOARD OF ALDERMEN MEETING OF OCTOBER 1, 2007**

Motion was made by Alderman Cross, second by Alderman Wynn to approve and adopt the Agenda of the Regular Board of Aldermen Meeting of October 1, 2007. Roll call: Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

### **CONSIDERATION AND APPROVAL OF THE MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING OF SEPTEMBER 17, 2007**

Motion was made by Alderman Leahy, second by Alderman Marshall to approve and adopt the Minutes of the Regular Board of Aldermen Meeting of September 17, 2007 as submitted. All in favor none opposed.

### **CONSIDERATION AND APPROVAL OF THE MINUTES OF THE SPECIAL BOARD OF ALDERMEN MEETING OF SEPTEMBER 20, 2007**

Motion was made by Alderman Leahy, second by Alderman Robertson to approve and adopt the Minutes of the Special Board of Aldermen Meeting of September 20, 2007 as submitted. All in favor none opposed.

### **PROCLAMATION – RON BLAIR, JR.**

Alderman Leahy stated that Ron Blair, Jr. of Troop 339 would be receiving his Eagle Scout Award tonight. In recognition of that, the City will be presenting him with a proclamation.

Motion was made by Alderman Marshall, second by Alderman Leahy to approve the proclamation for Ron Blair, Jr. by acclamation. There were no objections.

**BIDS** – None

**HEARING OF ANY MATTER OF PUBLIC INTEREST UPON REQUEST OF ANY PERSON PRESENT** – None

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

Mayor Kelly announced the public hearing to amend the sign code ordinance would now be continued at 7:30 p.m.

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

Director of Planning and Development Dailey requested the public hearing be continued to the October 15<sup>th</sup> meeting.

Mayor Kelly asked Director of Planning and Development Dailey to work with the city attorney about the size of the signs. Some other municipalities tried to adopt codes regulating signage for commercial properties and they were challenged and defeated in court. Since there are state regulations with respect to those sizes they need to check into it.

With no further comments, Mayor Kelly announced the public hearing would be continued to the next BOA meeting.

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

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

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

Mayor Kelly announced the public hearing would be continued to the October 15<sup>th</sup> meeting.

**INTRODUCTIONS, READINGS AND PASSAGE OF BILLS AND RESOLUTIONS**

First and Second Readings of Bills

Bill No. 5400 – No Parking Except by Permit

City Attorney Albrecht gave Bill No. 5400, AN ORDINANCE AMENDING CHAPTER 14 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF BRENTWOOD, MISSOURI BY ADDING A NEW PARAGRAPH TO SECTION 14-1038, SCHEDULE

LL, NO PARKING EXCEPT BY PERMIT; 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. 5400 as a Bill that creates residential parking only Thursday through Saturday, 4:00 p.m. till 6:00 a.m. on Bridgeport from Brentwood Blvd. to 8767 Bridgeport. This Bill was reviewed and approved by the Public Safety Committee.

Alderman Leahy stated in the section of the Bill that establishes the days and times as Thursday through Saturday, from 4:00 p.m. until 6:00 a.m., he believes that should run until Sunday morning. The way it reads implies that on Saturday you would start no parking at 4:00 p.m. and at midnight you would stop because you have nothing carrying you into Sunday morning. He believes the establishment is opened after midnight on Saturday.

City Administrator Seemayer stated that it reflects what the other signs on the opposite side of Brentwood Boulevard reads.

Alderman Kramer suggested the no parking except by permit signs could read from Thursday through Saturday, 4:00 – 6:00 a.m. and Sunday midnight until 6:00 a.m. It might indicate that it is 4:00 p.m. on Sunday until 6:00 a.m. on Monday.

City Administrator Seemayer stated that the Public Safety Committee wanted the signs to reflect what is on the opposite side of Brentwood Boulevard. Maybe that sign is incorrect.

Alderman Marshall asked City Attorney Albrecht for suggested wording.

City Attorney Albrecht stated that the no parking signs could read Thursday, Friday and Saturday, commencing at 4:00 p.m. through 6:00 a.m. of the following day.

Alderman Cross stated that she believes this mirrors what is exactly on the west side and they have not had a problem with it.

Mayor Kelly stated that the people parking there would understand the intent. He suggested passing the Bill as written and if they need to make an adjustment they could make it to all of the signs so that they are all the same.

Alderman Leahy stated that they are addressing a behavioral problem from the customers of the local establishment with a parking solution. Those streets are public streets paid for by general revenue for maintenance. They should remain public streets and if a vehicle is parked legally, as long as it is not blocking a driveway or interfering with a fire hydrant, they have every right to be there whether it is 2:00 a.m. or 2:00 p.m. The police

department needs to police the area and he knows that they have had officers stationed there. He does not think they are doing justice by correcting it with a parking solution.

Alderman Marshall stated that the request came from the residents and the establishment owner. They wanted something done because they were tired of coming out the following morning and finding beer bottles on their cars. They want to get that away from their houses. There is a substantial amount of parking to the north of the establishment. He is hoping that by blocking access to those streets it will force the patrons into the parking lot. The residents and the establishment owner were in favor of moving forward with putting up the resident only parking signs.

Alderman Cross echoed what Alderman Marshall said. She dealt with it for about a year and a half on the west side. She sat and watched on several Friday and Saturday nights and it was very loud and disturbing. If they have to enforce restricted parking to protect the residents she is in favor of it.

Motion was made by Alderman Marshall, second by Alderman Cross to approve and adopt Bill No. 5400. Roll call: Alderman Marshall, yes; Alderman Leahy, no; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5400 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4087.

Bill No. 5401 – Settlement Agreement with Verizon Wireless

City Attorney Albrecht gave Bill No. 5401, AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH VERIZON WIRELESS AND ASSIGNING A PERCENTAGE OF THE SETTLEMENT PROCEEDS TO THE CITY OF BRENTWOOD, MISSOURI, its first and second readings.

Alderman Kramer read a synopsis of Bill No. 5401 as a Bill that approves a settlement agreement with Verizon Wireless for two years of back taxes (\$131,194.21) for Municipal Gross Receipts and an agreement going forward that Verizon will collect and remit the tax to the City. The settlement also approves the City forwarding \$5,810.00 of the settlement amount to the St. Louis County Municipal League for their expenses in resolving this matter. No legal fees are to be paid by the City as part of the settlement agreement.

Alderman Marshall stated that when they first started talking about the issue they were going to pay a percentage of the settlement for legal fees.

City Administrator Seemayer stated that they hired a special counsel several years ago and as part of the settlement agreement they negotiated to be paid separately by the cell phone company for their fees. None of their expenses are coming out of the settlement amount. They will be paid directly by Verizon Wireless.

Alderman Leahy stated that he would recommend voting against the settlement request. The City will only be compensated for two of the nine years of past taxes. Next year they will be into the tenth year. As he understands it, the current legislation with the State of Missouri, there was a bill that was submitted but did not pass which was asking for the two-year acceptance. He believes that if they do not accept the settlement that further negotiations will yield a better resolve to the issue. If you are looking at the back taxes you are looking at about \$60,000 a year. Seven years of uncollected taxes would leave you with another \$420,000.

Mayor Kelly stated that having been involved with the issue from the Municipal League standpoint the reason the bill failed at the State level this year was mainly because of the work of the Municipal League. The bill did not have legal fees built into the agreement and there were not as many back taxes figured in for the two years, percentage wise, as they are getting with this agreement. It also reduced the amount of taxes that the City could charge for cell phones. The telecommunications lobbyists were pushing that bill and it was defeated primarily because of the work of the Municipal League both from the St. Louis County and the State level. He believes they have a very good settlement. To say that they will go out on their own and try to fight the large cellular companies and try to come up with a better agreement would be a joke. They would inundate the City with legal fees and it could go on for years and the difference the City may get by collecting those back taxes would not be off set by the additional legal fees the City would entail. He believes just for the Verizon settlement that Verizon is paying over \$6 million in legal fees to the special counsel.

Alderman Leahy asked how many different municipalities have been presented with the proposed settlement agreement.

City Administrator Seemayer stated every city in the state of Missouri.

Alderman Leahy asked City Administrator Seemayer if he has any idea of how many cities have currently accepted the settlement agreement.

City Administrator Seemayer stated that Brentwood received it early last week. As part of the settlement agreement it has to be adopted with signed paperwork by a date in November. All the cities are in the process of presenting it to their councils. There are two options where a city could take it to the council for approval or get a letter from the city attorney stating that the city will abide by the terms of the settlement. The councils will be provided with more of these settlement agreements from the other cellular companies. He suspects that most of the cities will sign on to the agreement. In the settlement agreement Verizon Wireless agrees, as will the other companies, to not attempt at any legislation to restrict the cities' abilities to collect the taxes for a period of five years.

Alderman Robertson stated that since Cingular/AT&T is one of the larger cell phone companies would it be two years for them also and therefore a much larger settlement

amount than Verizon.

City Administrator Seemayer stated that it would be two years for all of the cellular companies. It is based strictly on those amounts that were generated in each of the cities those years. Of the approximately \$131,000, the City has received about \$23,000 under protest. All of the companies started paying the taxes under protest. The City will get about \$107,000 because of the already received \$23,000.

Alderman Kramer asked if the word “putative” in the first paragraph of Bill No. 5401 is the correct word.

City Attorney Albrecht responded yes.

Mayor Kelly stated that the other thing the settlement guarantees the cell tower fees. The other part of the settlement, which is important, will go to the St. Louis County Municipal League. During this entire process with all of their lobbying efforts they helped to defeat some of the legislation of the last couple of years. They also provided key information for the lawsuit, etc. It is a good thing that the Municipal League will get some of those funds to continue these efforts.

Alderman Cross asked if the dollar amount has to be paid by a certain time.

City Administrator Seemayer stated that it has to be paid by the end of February.

Alderman Kramer asked if a portion of the funds could be placed into the City’s reserve.

Mayor Kelly responded that they are hoping to do that with the majority of the funds.

Motion was made by Alderman Robertson, second by Alderman Marshall to approve and adopt Bill No. 5401. Roll call: Alderman Marshall, yes; Alderman Leahy, no; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Cross, yes.

The Mayor thereupon declared Bill No. 5401 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4088.

### **ACCOUNTS AGAINST THE CITY**

Alderman Marshall asked about the cost of scanning documents for the financing department.

City Administrator Seemayer stated that part of it is for the finance department but the biggest majority of it is for the construction drawings in the housing department.

Alderman Marshall asked if it would be better to look into purchasing or leasing equipment to do the scanning.

City Administrator Seemayer stated that it would be good to look into equipment for regular size documents but for construction drawings/blue prints they may want to still consider using the service. The City retains all of those plans and there is not enough space to keep the physical plans.

Motion was made by Alderman Marshall, second by Alderman Cross to approve the warrant list dated 10/01/07. All in favor none opposed.

**REPORTS OF COMMITTEES AND DEPARTMENT HEADS:**

Mayor's Report

Mayor Kelly announced the executive session would not be needed this evening.

Mayor Kelly stated that he has had a couple of comments from aldermen about the difficulty of scheduling meetings. He stated that he would like to add one more alderman to each of the committees. He requested that if anybody has interest in serving on the other committees to let him know. He requested that Alderwoman Krewson be appointed to the Public Safety Committee.

Motion was made by Alderman Marshall, second by Alderman Robertson to approve the appointment of Alderwoman Krewson to the Public Safety Committee.

Mayor Kelly stated that he would like to bring to the Board a resolution to start the process of taking over Manchester Road from the State. They do not maintain it but when the City wants to do something the State is very difficult to deal with. There are many problems with the Truman Bank project at the corner of Hanley and Manchester Roads. They are telling people that they do not know what they will need to do in front of that property, that they may need 25 feet more of the right of way, etc. The developer of the project at the property at 8750 Manchester Road, the old Syms lot, requested a permit from MoDOT to remove the sidewalks and install new sidewalks and landscaping along Manchester Road and they were told that they would not issue the permit unless MoDOT is allowed to review the plans and move the curb cuts and eliminate one of them. He would like to start the process of what it will entail to take over Manchester Road.

Alderman Kramer stated that there was talk by Alderman Leahy about the Manchester Road Community Improvement District that was separate from the 8750 Manchester Road project with a number of the business owners along that area. Is that still being talked about or is it off the table entirely.

Alderman Leahy responded that currently they do not have a majority of the property owners in agreement to create such a district. Thus they cannot go much further.

Alderman Kramer asked if that concept would have helped at all with the taking over of

Manchester Road and did the folks who are proposing the project on Manchester Road talk to MoDOT before they made their proposal.

Mayor Kelly stated that they had not talked to MoDOT because they were not planning to change the curb cuts. If the City were going to be running into these kinds of things when trying to do improvements to Manchester Road, it would be best for the City to be in control of that curb cut than MoDOT. The process would be to adopt a resolution supporting it from the Board of Aldermen level and a letter would be written to the area engineer requesting that the City take ownership of Manchester Road. The engineer would then take it to Jefferson City and the City would start those negotiations. He is sure they would not give the City control until after the Highway 40 project but it may take that long to get it done.

Alderman Leahy asked if there would be a way of establishing what the anticipated cost would be in order to make this action happen by surveying the property, adjusting current updates to bring the sidewalks into code compliance for the City, etc.

Mayor Kelly stated that they can do that but they are not going to bring it up to the City's standards in order to turn it over to the City. That is probably one of the reasons they would turn it over because they do not have the means or the desire to bring it up to the City's standards. There will be cost to the City over a period of time but the long term benefits will be better if the City has control over that corridor instead of MoDOT.

Public Safety Committee – No report

Public Works Committee – No report

Director of Planning and Development – No report

Ways and Means Committee

A Ways and Means Committee meeting will be held on Tuesday, October 9<sup>th</sup> at 12:00 noon.

City Attorney – No report

City Clerk/Administrator – Special Use Permit/Smartphone, LLC

City Administrator Seemayer stated that Sprint/Nextel just moved into the property at 2605 S. Brentwood Boulevard and they would like to have a grand opening event, which would include a 10x10 tent for one day on October 5<sup>th</sup>.

Alderman Leahy asked if the tent would go along the north side of the building because he had a complaint from the resident that lives to the south that the sign that is there creates a blind spot for her exiting her driveway onto Brentwood Boulevard. He

requested that if a tent will be put up to make sure it is not blocking the Brentwood Boulevard side.

Motion was made by Alderman Leahy, second by Alderman Marshall to approve the Special Use Permit for Smartphone, LLC. All in favor none opposed.

Excise Commissioner – No report

Library – No report

Municipal League – No report

Communication – No report

Insurance Committee – No report

Historical Society – No report

UNFINISHED BUSINESS

Swim Club Road

City Administrator Seemayer stated that at the last Public Works Committee meeting they discussed the Swim Club Road study that Mr. Beimdiek had performed. He believes it was Alderman Leahy that requested a quiet title. He has distributed the procedure to the Board regarding what would be involved in the quiet title.

Don Beimdiek came before the Board and stated that if the City was looking for a permanent record of its right having been established it would be necessary to have a quiet title case and an opinion. The quiet title suit is something you file if the abutting owners disagree with the conclusion that he reached and the position that he assumes the City is ready to take that the public has acquired ownership rights by virtue of the adverse use. In the email he has outlined the procedure that he thinks could be taken. The short-cut way would be to prepare easement deeds to be given to all the owners requesting that they confirm that the public has established easement rights on the right of way. If they refuse to do that then file the action. It could even be as general as the deed just saying wherever the right of way is on the property they confirm easement rights as established in the public rather than having an engineering meets and bounds. However, if it was necessary to go to court a court cannot issue a quiet title opinion based on a vague legal description. They have to have a meets and bounds decision.

Alderman Cross stated that this came about because Mrs. Ferguson has asked the City to vacate 25 feet.

Mr. Beimdiek stated that the request was to vacate Dorothy Avenue as it was dedicated to the City and as it abuts her property.

Alderman Cross stated that if the Board decides to vacate the 25 feet or not to vacate what do they need to do.

Mr. Beimdiek responded that if the Board does not want to do it then nobody introduces a bill to vacate it. If you want to do it then an ordinance can be enacted that would vacate Dorothy Avenue as dedicated in reference to the dedication document that goes back in the chronology and you would have to put boundaries in the vacation. Either you do the entire Dorothy dedication from one end to the other or you can do it in segments from Rosalie to White Avenue, etc. What that would do is correct the Barnes property on White Avenue, which the City had deeded, which he stated in his opinion, was an invalid act. There is another issue concerning utility lines.

City Administrator Seemayer stated that they had the east 25 feet checked and there were no utility lines.

Mr. Beimdiek stated that if the utility company does not have a granted easement the City has the right to say they will vacate the street, take the utility lines out and put it someplace else. Normally that is not done, but the City has the legal right to do that.

Mayor Kelly asked what happens if the City vacates Dorothy Avenue and the property owners do not want it.

Mr. Beimdiek stated that he does not think the City needs the property owners' consent. The approval of the property he was talking about was to validate the title that the public acquired by adverse use of the 50-foot streetcar right of way. That was not dedicated to the City.

Alderman Wynn asked Mr. Beimdiek what would be the cost to the City.

Mr. Beimdiek stated that if everyone confirms that the public has established easement rights in the public service right of way, it is just a matter of collecting the deeds and recording them. If one person says no, then the City would have to file a lawsuit and it is difficult to say what lawsuits cost, unless you could tell him what the defendants will do and what issues they will raise. It is possible also that the lawsuit could be filed, people would be served and then they default. In which event the court would enter a default judgment.

Alderman Cross asked if the next logical step would be, before they take any action, to have the Board vote whether they were or were not interested in doing it.

Mr. Beimdiek responded yes and if he is to be involved his agreement could be extended or a new one could be done. The first step might be to convene a meeting of all the people on the list and state what the City's rights are and see what kind of reaction you get. He would not just file a lawsuit without an advance meeting with the property owners. The City could also let it go until there is a need to do something.

Alderman Leahy stated that the suggestion that Mrs. Ferguson brought to the Public Works Committee was that there was an action in these rights of ways in the late to mid 90's in which the City was a partner to it and their actions were deemed by the courts as not proper and they had to take actions to correct what they were doing.

City Administrator Seemayer stated that if it happened in the 1990's it did not happen. When the trails were put in between Rosalie and Manchester a person that lived either on Henrietta or Joseph, he is not sure which street, tried to lay claim to the property. The City did it and that person never took any further action. If it was before 1992, it is possible.

Mr. Beimdiek stated that he did not check all of the litigation filed. He had asked Mrs. Ferguson's lawyer to provide any information that he might have that would be relative to what he was doing and he did not respond. Some years ago the property owners got together and came to the City in which they were prepared to confirm that the public had the rights to the 50-foot streetcar right of way. The tradeoff for them giving that deed is they said they will do that and they wanted the City to vacate both Mary and Dorothy Avenues. At that time there was no action. The last event was the city attorney advised the Board that the City already had the right because of the adverse use, so the City does not need the deed, and apparently there was no reason to vacate Mary or Dorothy Avenues.

Motion was made by Alderman Leahy that the City hosts a meeting with the thirteen property owners to discuss its conclusion.

There was no second to Alderman Leahy's motion.

Alderman Marshall stated that their priority is to take care of Mrs. Barnes. She had a boundary issue on her property and the City helped her out because they were not about to tell her that she was going to have to vacate property that she had already built on. Regarding Mrs. Ferguson, they are sending a message to anybody who abuts any of the City's parklands or roadway that it is okay to come to the City and the City will give them a piece of land. He does not think it would be in the City's best interest to start doing that. Alderman Marshall stated that he is not willing to spend the money that it will take to file a lawsuit.

Mr. Beimdiek stated that if there was someone who had evidence to support that this was not adversely used by the City they would have heard about it.

Alderman Marshall asked what do they need to do to take care of Mrs. Barnes.

Mr. Beimdiek responded vacate the street. If you vacate a part of a street between two intersecting streets you have effectively cut off your ability to ever accept it and open it up as a street.

Mayor Kelly stated that in order for her to access her garage she needed that ability to go on that public right of way. There is a big difference between when somebody is using parkland as opposed to what could be their land but it is controlled by the City because of a right of way or easement. The City has set precedence in the past by vacating property.

Mr. Beimdiek stated that once you go north of the south line of Brentwood Swim Club the City only has 25 feet of abandoned right of way. If it wanted to make a street all the way up to Strassner Road it would have to take that 25 feet and add another segment of property from Memorial Park between Black Creek and the right of way in order to make a through road.

Alderman Marshall stated that if the City vacates the property on the east side of Swim Club Road what happens when people on the west side of Swim Club Road say they want some property too.

Mr. Beimdiek stated that is at the discretion of the Board.

Alderman Marshall asked how could you say no to one and yes to the other.

Mr. Beimdiek responded because you have different plans, you do not have to balance the rights.

Alderman Cross stated that with regards to the Barnes property it was her understanding that it was just a setback issue.

Mr. Beimdiek stated that a portion of the garage actually sits in the right of way. He believes the driveway is in Dorothy Avenue.

Mayor Kelly stated that her title company would not let her close when they discovered that a portion of her garage was in the right of way. That is why the City did the deed to resolve that issue for her.

Mr. Beimdiek stated that the City responded compassionately but the deed was the wrong thing to do. The City cannot deed away public rights to one person.

Alderman Cross asked if this Board decided that they did not want to vacate the 25 feet to take care of Mrs. Barnes problem, could the resident go to the Board of Adjustment and get a variance.

Mr. Beimdiek stated that the Board could only vary the setbacks. They cannot vary the easement rights. By her using the property she cannot establish adverse rights against the public. If the City decided it wanted to have a 100-foot road going from Rosalie to Swim Club it could force her to remove her encroaching property, whatever is in the way and she would have no claim against the City for damages.

Alderman Cross asked what would happen if Mrs. Barnes put her house up for sale.

Mr. Beimdiek stated that a new purchaser might look into it and discover that it is an issue. It would create a problem for her selling the house if she had an informed purchaser.

Alderman Cross asked if the only way to fix the problem with the Barnes is to vacate the 25 feet or tell her that she would have to take her garage down.

Mr. Beimdiek responded yes or just let it ride until the City decides to open Dorothy Avenue for some purpose. Time does not run against the public. There is no rush for the City to do anything.

Alderman Kramer stated that assuming they don't take any action with regards to Mrs. Ferguson's request, going back to the Barnes topic, is there any legal liability for the City now in not doing anything or would it be prudent not to do anything until at such time as Mrs. Barnes needed to sell, or the City needed to take that property for the purposes of the road. Does the City need to record anything with regards to her property that would help the City in the future?

Mr. Beimdiek stated that the City enjoys the special status of public officials in sovereign immunity. You are immune from having made a legitimate mistake by authorizing a deed. He thinks they would be immune for not taking any action as long as nobody is being impacted by it. He stated that the City could enact an ordinance revoking the deed and saying that the City made a mistake and put it back to neutral ground.

Alderman Marshall stated that in speaking with Mrs. Barnes she would like the matter resolved. She does not want to wait until she sells her house.

Motion was made by Alderman Marshall to vacate the property for Mrs. Barnes.

Alderman Marshall rescinded his motion.

Mayor Kelly suggested that the Board consider vacating the Dorothy Avenue right of way from Rosalie Avenue to the north. The question the Board needs to ask is if the City is going to be in a situation in the future where it needs 100 feet of right of way for a new road. They already have 50 feet of roadway, which is wider than any of the residential streets in Brentwood. They also have an additional 75 feet on the west side that they are using for a public path.

Mayor Kelly stated if the Board decides they will never need it they could allow the people that have requested it to have it so everybody can move on. They should also remove the speed bumps and fix the potholes on Swim Club Road.

Alderman Marshall stated that if they vacate the property for Mrs. Ferguson then they would have problems up and down Swim Club Road. He is completely against it.

Alderman Cross asked Alderman Marshall if he wants just a section for Mrs. Barnes, which Mr. Beimdiek says could not be done.

Mr. Beimdiek responded that it can be done, but the effect of vacating a segment of a road is that if you ever decided to use the rights you have retained in the other segments you will have to come back and condemn a right of way. He stated that it would not be prudent to vacate just one piece of a road. On reflection the Board has that discretion. It does not make sense because you either want to preserve the right of way for some future use or you say there is no reason to do it.

Alderman Cross asked if the City went wrong by not vacating it.

Mr. Beimdiek responded that the City did a deed. The court specifies that public bodies cannot deed public rights to an abutting neighbor. You can vacate it and abandon it for the public but you cannot give it to the neighbor.

Alderman Leahy stated that he is back to the motion he made earlier. As the Mayor pointed out they have been through this issue four times through different boards. It is the City's best course of action to meet with the owners and get everybody on the same page before they take further action on any type of vacation.

Alderman Robertson stated that he disagrees. Either they decide to keep the right or give it away.

Alderman Leahy stated that you are making a decision on vacating the right of the eastern roadway based on an opinion that the center 50 feet does belong to the public. He believes you should get those owners to agree with that decision before you give away something.

Mayor Kelly stated that if somebody wants to contest the City's right to maintain that road let them contest it and then the City will get into those legal expenses.

Alderman Leahy stated that it is their obligation to inform the citizens where they are and what they are doing.

Mayor Kelly stated that the City has the right to the property and unless somebody is going to tell the City that it does not then it is fine.

Motion was made by Alderman Marshall to vacate the property right of way for Mrs. Barnes.

There was no second to Alderman Marshall's motion.

City Administrator Seemayer stated that you could not vacate property without having an ordinance.

Mayor Kelly stated that he just wanted to know what direction the Board wants to go.

Motion was made by Alderman Marshall to go in the direction of vacating the property right of way for Mrs. Barnes and vote on it at the next meeting. There was no second to the motion.

Alderman Kramer stated that the special counsel could put together some proposed language for the bill and they could vote on it either way. There could be different versions of the bill.

Mr. Beimdiek stated that City Attorney Albrecht could do the vacation bills.

Alderman Wynn stated that as long as nobody is going to court, he believes they should leave it like it is until something comes up. They should not do anything unless they are forced to do so. They cannot be responsible for what previous boards did.

Alderman Marshall stated that he would like them to have legislation that states it is a public right of way for the City.

Mr. Beimdiek stated that the appropriate action would be to accept the right of way for public maintenance. Accept it as a public road. It is already established for public use but in order to expend City money on the road you accept the road from point A to point B.

Mayor Kelly directed City Attorney Albrecht to draft three bills for the next meeting.

Alderman Leahy requested that City Administrator Seemayer bring them up to date prior to making any action on the status of the bridge along Swim Club Road. If they take on the maintenance that bridge might need major repairs.

#### NEW BUSINESS

Alderman Kramer asked for an update on the Strassner Road extension timeframe.

City Administrator Seemayer stated that there is no specific timeframe for the completion of the road. The entire project for which the road is a part of has a timetable. It is his belief that it would be October of 2009 for the completion of the entire project. Mark Grimm with Gilmore & Bell is researching that to make sure it is correct.

Alderman Kramer asked if it is possible that was an oversight.

Mayor Kelly stated that he does not think it was an oversight. From the inception of the project, they built the road first knowing that they would have to use that for staging for most of their equipment. They knew that going into the project. They are doing their best to get one side of it open, which is anytime now. When this project was first approved a redevelopment agreement amendment had to be done in order for them to do

the second half of the roadway. That was not part of the original project. Normally the roads are not dedicated until a project is completely finished because they do not want to take the responsibility for them while the projects are going on.

Alderman Kramer stated that the reason it continues to come up is that more and more traffic is going through Hanley Industrial Court and they are being informed that it is a transportation development district and people are purchasing things within that district providing funds for the project. They see a road that they could have access to by moving a few things, but it is closed every day. They want to know if the developer could give them a timetable that he is willing to live up to, instead of constantly moving it forward. Alderman Kramer asked if they could get a more concrete answer from the developer on the date of opening by the next BOA meeting.

Alderman Leahy asked what is the status of the red light camera.

City Administrator Seemayer responded that they are currently waiting on a letter from the Missouri Society for the Blind located at Manchester Road and Brentwood Boulevard because ATS has to put one of their poles with a camera on their property. The Society for the Blind has verbally agreed to do so. ATS stated that they are waiting on the letter. At the same time he believes they could be working on some of the other intersections where there is not an issue of getting permission from a private property owner.

Alderman Leahy requested that City Administrator Seemayer communicate to ATS that he is very dissatisfied with their performance to date based on promises made.

Alderman Leahy stated that he received a request from one of the secretaries in the parks department concerning the cross parking and the cross access to Walgreen/Face and Body and the Recreation Center that he would like the Public Safety Committee to look at.

Alderman Leahy asked if there is any new information on the St. Louis and the State of Missouri's intention to do an overpass at the Hanley/Manchester Road intersection.

Mayor Kelly stated that last Friday he met with representatives from St. Louis County and the mayors from Maplewood and Richmond Heights. They have been supportive of the project and they want to form a transportation development district with the businesses along that corridor, including the Promenade. With the current design of the Hanley/Eager improvements of Highway 40 project, Eager Road will dead end at Hanley Road. There will be no access except on Eager Road that would enable you to go south on Hanley. None of the Hanley Road traffic will have access to Eager Road. Meaning that any of the patrons that want to get to the Promenade and Dierbergs would have to go through what would be the new road for the Meridian project to Eager Road, northbound and southbound traffic. There is no way that road is designed or was ever designed to handle that kind of traffic and there is no way that patrons would want to do that. They have a design that they are calling a panhandle loop. Northbound Hanley traffic would be able to make a right turn, like a cloverleaf ramp, turn off northbound Hanley, go down, around, and underneath the new Hanley Road and go straight into Eager Road, so you

would have access to Eager Road on northbound Hanley Road. If you were on Eager Road you would be able to go underneath Hanley Road, make that right turn, and go north on Eager returning traffic. The southbound traffic on Hanley would still have to go through the Meridian project. St. Louis County is working with the Highway 40 contractors to build that during the Highway 40 project. They met with engineers from the project and were informed that one of the ramps for the overpass is now eight feet from Big Bob's Carpets front door. Mayor Kelly said he communicated in the meeting that they needed to take that building and then build something new after the project is over and they said they would do that. Since then they have said that they are not going to take the building and that they will build it with the ramp there because they do not have the money to do that.

One of the biggest concerns with the project is access to Litzsinger Road and the need to have a full intersection there. They are trying to work out an arrangement with Sunnen to realign Litzsinger. St. Louis County has decided to put a median from Manchester to the entrance of Hanley Industrial Court which means that they will cut off all access for northbound traffic to the businesses on the Brentwood side of the roadway and Litzsinger would be right in and right out only. St. Louis County Highway Department can do whatever they want but they are trying to pass a TDD for about \$18-\$19 million of which over \$14 million is going to come from Brentwood businesses and the businesses along that corridor. Mayor Kelly stated that if you are a property owner and you were asked to support a TDD but access to your business was going to be taken away, you would vote against it. The outcome of the meeting was that County Highway would put the design on hold for two weeks and the City has to bring back what they would like to see happen along the corridor. It is going to be done in conjunction with Maplewood. County Highway is trying to put six lanes of traffic on Hanley Road. His suggestion is to build the overpass for the future expansion of having the lanes that they need. From the overpass north and south they leave Hanley Road the way it is, except for improvements to the curbs and sidewalks, but still have two lanes north and south and have the left turn lanes in the places that they are needed in order to get in or out of those businesses. Over a period of time if that area were redeveloped then they would have the ability to widen the roadway for future development.

Alderman Leahy asked what type of work are they doing to the bridge on Manchester at Hanley Roads.

Mayor Kelly stated that they are widening it to put a dedicated right turn lane in there, so that once they close Highway 40 the people traveling on Manchester Road will have a free right turn to go south on Hanley Road.

Ward 3 meeting will be held on Tuesday, October 30<sup>th</sup> at 7:00 p.m.

Alderman Marshall asked what do they need to do to issue an RFP for the Rec Center study.

City Administrator Seemayer stated that you do not need to do anything. When securing grants sometimes they require approval to issue an RFP. The Board can certainly be asked to hire a consultant. The Recreation Center Committee could have the RFP issued.

Mayor Kelly asked if any of the Board members had a problem with issuing the RFP. None of the Board members voiced a problem with it.

Mayor Kelly stated that there are planning grants available through St. Louis County Parks to hire consultants.

Motion was made by Alderman Leahy, second by Alderman Marshall to appoint Emily Wynn to the Recreation Center Committee. All in favor none opposed.

ADJOURNMENT

Motion was made by Alderman Robertson, second by Alderman Wynn to adjourn the meeting at 8:57 p.m. All in favor none opposed.

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Pat Kelly, Mayor

Attest:

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Chris Seemayer, City Clerk