

## MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING

City Hall  
Council Chambers

September 21, 2009  
7:00 p.m.

The Mayor led with the Pledge of Allegiance.

Roll call

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

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

Absent: Alderman Harper.

Alderman Wynn stated that his wife is at a Junior Varsity football game and they are playing the Brentwood High School football team. His son is serving with a contractor in Iraq, but unexpectedly came home and is at that football game as well. He had no idea he was coming home, so it's a wonderful surprise.

### CONSIDERATION AND APPROVAL OF THE AGENDA OF THE REGULAR BOARD OF ALDERMEN MEETING OF SEPTEMBER 21, 2009

Mayor Kelly requested that an item be added under Item B, Presentation to Laura Beckman.

Motion was made by Alderman Marshall, second by Alderman Leahy to amend the Agenda of the Regular Board of Aldermen meeting of September 21, 2009. All in favor none opposed.

Motion was made by Alderwoman Clements, second by Alderman Leahy to approve and adopt the Agenda of the Regular Board of Aldermen meeting of September 21, 2009 as amended. All in favor none opposed.

### CONSIDERATION AND APPROVAL OF THE MINUTES OF THE REGULAR BOARD OF ALDERMEN MEETING OF AUGUST 17, 2009

Correction:

Page 8, second paragraph, fifth line, reads "upload" should read "uphold".

Motion was made by Alderwoman Clements, second by Alderman Leahy to approve the Minutes of the Regular Board of Aldermen meeting of August 17, 2009 as amended. All in favor none opposed.

Presentation to Dispatcher Laura Beckman

Police Chief Disbennett came before the Board and stated that Laura Beckman is a dispatcher for the police and fire departments. Laura has been with the City for 30 years, which is quite an achievement. This is a tribute to her for all the things that she does. He doesn't think that people realize that when the calls come in she is the first person to get them and get the equipment started. When fire trucks are coming into town, police officers are coming in and staging at different areas, and for her to juggle all those things at the same time, plus take calls, and to stay claim, is an amazing ability. Chief Disbennett thanked Dispatcher Beckman and presented a plaque to her for 30 years of service to the City of Brentwood.

BIDS – None

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

Mayor Kelly stated that for the people that are here to make comments on the ice rink, there will be a presentation made by our consultants on the recommendation to the Board of Aldermen on the Recreation Center. Following that they will send it back to committee and have it reviewed by the Board before any action is taken. The public is more than welcome to come to those meetings.

Matt Saunders – 2326 Parkridge Avenue came before the Board and stated that he is still confused about the lawsuit in regards to the Strassner Road TDD. After reading the complaints sent to the attorney general by Alderman Kramer in regards to the Strassner Road TDD meeting of April 7<sup>th</sup> 2007, it showed that the City acted a little too casually. The attorney general sent back a letter with recommendations based on Alderman Kramer's letter. His understanding is that after the first meeting was held, the TDD held a second meeting and produced the same results. While all this started over two years ago and was settled recently, Mr. Saunders stated that please don't confuse dredging up the past with the tax payers of Brentwood deserving to know why they spent \$100,000 in legal fees. He is personally feeling, and other people are feeling that there is some constraint on the part of the mayor and aldermen of what really took place. He could only conclude that this has taken place and that you all need to work together in the future and speaking up could cause some friction on future decisions. What would be a real concern is if you are protecting your own. Has the City made the changes necessary to ensure that this problem will not happen again? With the attorney general's recommendations in hand on June 19<sup>th</sup> 2007 what outcome was Alderman Kramer looking for when the lawsuit was filed. What was Alderman Kramer hoping to stop, the purchase of the property, or a fine, or impeachment or embarrassment for the mayor? What specifically was the stated goal? His understanding was the maximum legal outcome possible with the Strassner Road TDD is an entity would have to pay \$5,000 fine to the state. If this is true, instead what they did was they used tax payer money to pay a legal fee of close to \$100,000 to come to that \$5,000. With the appraisal coming in at \$1,000,000 and the City paying \$1.6 million for the property, why the

higher price? Were they bidding against another party? His understanding was that the City was bidding against somebody else and the owner had another offer. Was there an alternate location the City should have explored? Please don't bring up today's weak real estate market and the appraisal value, this was in 2007. He is gullible but not quite that gullible. Here is what he believes to be true statements that as a tax payer he finds most disturbing. Alderman Kramer originally acted as his own attorney. When realizing he was out of his league, Alderman Kramer hired a lawyer to pursue the suit. Part of a lawyer's responsibility is to read a case to judge its merits, something that as an individual, Alderman Kramer was not required to do. His understanding is that in the final judgment letter part of the agreement was not to report or investigate Alderman Kramer's lawyer for allowing the lawsuit to go forward. In short, this screams out that the lawsuit was in fact frivolous and the only losers are the tax payers of Brentwood who lost \$100,000. Alderman Kramer's response that he dropped the suit for the greater good of the community is in dispute with what he understands the facts to be. Is the final judgment available for viewing? Before the lawsuit was even filed did the parties talk with one another to try to avoid the lawsuit for the benefit of the tax payers?

Mayor Kelly stated that they are not going to get into debates at the Board meeting. Following the last Board meeting, he asked the attorney that represented the TDD to attend tonight and give a synopsis under the "mayor's report" of what took place.

Betty Arens – 2602 Louis Avenue came before the Board and stated that she is very concerned about the ice rink. It has been a real plus for Brentwood. Many people admire it and use it. She feels that the city needs an ice rink. There are swimming pools at Brentwood Forest, the YMCA, the Brentwood Swim Club, Richmond Heights and Maplewood that they can use. At this time with the economic system like it is she doesn't think that people can afford a new facility. If a new facility will be built she thinks that the first thing that should go through should be the ice rink. She has heard people all over the state say that Brentwood has a beautiful, nice ice rink. She has had family members who use the rink and they have a lot of fun there.

Karen Smith – 8930 Harrison Avenue came before the Board and stated that if they are talking about the TDD she can also raise a question and maybe the lawyer can help explain this one as well. She thought that in a TDD the dollars were supposed to be used for transportation related projects. Her understanding was and the way that property was referenced in some of Mr. Saunders questions was that they were supposed to acquire the property of the previous public works facility for the straightening of Strassner. They have moved ahead with that. She understands that there were some circumstances related to that but they did not get Strassner straightened, so she is not sure they should have proceeded with that by the way that TDD was set up. They have this exchange of quite a bit of money that occurred with that. Her understanding is that the TDD doesn't own the property, so they put forth all that money but never really bought the property. It has gone to somebody else. She doesn't understand how that could have happened because usually when you are going to move something you would be buying the property. The TDD is like shadow government. It is very difficult to get any information on it. You don't really understand when the meetings are. She knows they are

posted. They don't have anything on the website anywhere, so it is really hard for what happens in a TDD to be transparent. There are a lot of dollars passing through these districts and expensive projects that are being handled through them and she's not really sure where the checks and balances are occurring inside the transportation development districts.

Terri Johnson – 8723 Rosalie Avenue came before the Board and stated that she had the pleasure of serving on the Recreation Center Committee. They need to build something because the current building has served its time. It is in ill repair. The building is shifting and they will lose it before they know it. They need to think positive and think to the future. They need to put great thought into what the city needs for the residents which includes a community center, either with an ice arena or a pool. She doesn't care. They just need a building where they can meet, have programs, meetings, etc., that they can be proud of.

#### Presentation of Recreation Center Study

Reed Voorhees – Cannon Design came before the Board and stated that it is a pleasure to be here tonight to present the final report from the planning study for the needs assessment comprehensive feasibility study for future community recreation for the city of Brentwood. It has been a long but thorough process that they have gone through. They have had a terrific steering committee leading the process. They came in and learned as much as they could about the background of the city and the community, the comprehensive plan that was developed a few years back and some of the previous planning studies that had been developed. From that ultimately developed a methodology to take the steering committee and the city through to do back findings and leads assessment to generate the tools that the City could then utilize to make informed decisions throughout this process. They started with a needs assessment. They held stakeholder meetings with various groups that were interested in the project from board members, school board members, chamber of commerce, civic groups, representatives of the ice rink, the YMCA, Brentwood Forest Condo Association and parks and recreation staff to gain as much information about needs, wants and desires and existing services as possible. They held some public meetings in the council chambers allowing citizens to participate in the process and give their input and thoughts on the state of current conditions, how and what they see for future needs. They also undertook a market analysis to understand existing service providers in the community and in communities around Brentwood. They did a demographic analysis of a primary service area and a secondary service area. The primary service area is that area essentially encompassing the city but a little bit further than that that would be the main area of draw to a facility in the city. Then they looked at a larger area that would be an area of citizens that weren't really well represented by facilities of this type, i.e. recreation facilities indoors. They did an analysis of the existing building and site. They looked at structural conditions of that facility which are in pretty poor shape at this point. Other issues are building code issues. The building was built in 1974, so compliance with the existing codes is fairly outdated. There are accessibility issues in that building. There are maintenance issues as far as the ice systems and roofing, etc. There are also some aesthetic

issues when you try to market your facility as a comparable to other communities around here that have newer, nicer facilities.

Based on the information from the needs assessment, they developed a list of questions and worked with the City to help come up with the questions of what they thought would be appropriate. They then administered a professional community wide survey with a random sampling of looking at 2,000 households. With a minimum response of 400 responses, they received 644 responses. For a community of this size that is outstanding when you look at a lot of national surveys. It was well represented with about a 95% level of confidence and about a 3.9% margin of error plus or minus. 89% of the citizens in the community use the existing facility between zero and nine times a year. From the survey responses they took the information and started to develop space programs. They went through different options. They looked at facilities that were large, small, and tried to associate cost to those different facilities but to try and understand what the community wanted and needed based on the survey. They came up with quite a few different options but ultimately had to look at the financial and cost side to make sure they were looking at something that could be achieved within this community. They also looked at different sites around the city in more areas than specific sites because they didn't want to identify specific pieces of property. In addition to the existing community center site they looked at the Hanley Industrial Court area, an area on the southeast corner of Manchester and Brentwood, just to think of places a building could go and how that could tie to the comprehensive plan and the community, park systems and access from the community point of view.

Ultimately they defined and did operational analysis for the program looking at the cost that it would take to run the facility, depending on the program that they had and the pieces that were in there and how much revenue the City could expect to generate from those different programs. They looked at facilities that had indoor pools, ice, and a program that had everything in it. These are all tools in getting to a recommendation. Working with the steering committee, they looked at a facility in two phases. They are focusing on the first phase at this point which would be a new facility highlighting the fitness components, having multi-purpose fitness rooms for aerobics, dance, martial arts and things of that nature. They looked at a high tech fitness space that would have amenities to which the younger generation is more accustomed. They looked at cardio circuit free weight areas which were a very high interest on the survey. Also, an interesting component was looking at a multi-purpose activity court which is like a basketball gym but designed with a little bit more durability, so that it can be used for roller hockey or indoor soccer, etc., so it would be a very flexible, usable space, which frankly he doesn't think that any municipal facility has that kind of space in this region. Also, multi-purpose rooms for meetings and babysitting facility in the building with additional support space totaling about 41,500 square feet for the phase 1 facility. For Phase 2, they are considering an 18,000 square foot addition with an indoor leisure pool and associated components tied to that. They looked at it as a total project. Based on the cost of the project the steering committee felt that progressing with Phase 1 as a smaller component would be in the best interest of the community. Ultimately the recommendation is to build this facility on

the existing community center site. They looked at the existing facility and renovating that building, taking pieces of it down and recommended that it would be more expensive to get into that building and try to renovate it. They have come across this multiple times before without the structural issues, but then there are structural issues which compound that, so renovating the existing facility does not seem to be a viable solution based on the program elements that they are discussing here. The recommendation is to remove that building, build a new building on the existing site which is a terrific site. It reflects the core of the community. It has great access to the residential neighborhoods and the community as a whole. There is high visibility. There is a potential for putting a building on that site which would be located closer to Brentwood Boulevard.

They talked a lot with the committee about sustainability and there was a strong desire to have a facility that reflects sustainable principles, a very environmentally friendly, energy efficient building, a building that uses materials that are recycled and recyclable and so forth. There are no facilities in this area that have that emphasis and it seems like a great thing to have in a community. The recommendation was to take the base program on the existing site and look towards April of 2010 for a bond issue to try and raise capital to construct such a facility.

Alderman Marshall stated that he knows there are some questions that he and other board members have. He knows that what they are proposing is not what they originally looked at. In looking at the cost it is very high and they hadn't even found a location for the facility and he didn't think it could support a bond issue. It was one of his concerns and he thinks several people on the committee felt the same way. The whole process was revisited and scaled back.

Alderman Kramer stated that there is a pretty good amount of activity and reporting on the issues that were discussed on the website.

Alderman Robertson asked Mr. Voorhees to clarify Phase 1 and 2 and how they situate on the site.

Mr. Voorhees stated that the site is fairly small. That's one of the things that they have identified in the report. The existing facility is about 40,000 square feet from the footprint. The total building that has come out of this study is about a 60,000 square foot building. The footprint of that will be similar to the existing facility because they would anticipate stacking the building on the existing site. They believe that the building fits. The issue is the parking. It is a small site. Ideally if you wanted to put a building of this size with parking you want to look at adjacent property. They understand that there are some abilities to park on adjacent properties. Some arrangements have been made for overflow parking etc. That would certainly be a part of this process to make sure that it was understood and in place. As far as the building, they had discussed and recommended trying to put the building towards Brentwood Boulevard because there is a real marketability, visibility and there is an image that is gained. It would be terrific for the community rather than trying to put a building on the back portion of the site. They looked at some footprints to make sure that this concept in area

would sit on the site. They really didn't get into the design of the building per say. That would be something that would come down the road and when the project moves forward.

Mayor Kelly requested that the recreation facility issue be sent to the public works committee. He stated that meeting will be scheduled and any resident interested in attending the meeting should send an email to Mr. Seemayer or to him and notices will be sent out.

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

### 1<sup>st</sup> and 2<sup>nd</sup> Readings of Bills

Motion was made by Alderman Wynn, second by Alderman Leahy to give Bills No. 5520 and 5521 first and second readings. All in favor none opposed.

### Bill No. 5520 – First Supplemental Trust Indenture – 8300 Eager Road Project Phase 1

City Attorney Albrecht gave Bill No. 5520, AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL TRUST INDENTURE RELATING TO THE CITY'S VARIABLE RATE DEMAND TAX INCREMENT REFUNDING REVENUE BONDS, SERIES 2007A (8300 EAGER ROAD PROJECT - PHASE 1) AND VARIABLE RATE DEMAND TAX INCREMENT IMPROVEMENT REVENUE BONDS, SERIES 2007B (8300 EAGER ROAD PROJECT – PHASE 2), its first and second readings.

Alderman Kramer reading a synopsis of Bill No. 5520 as a Bill that amends the original trust indenture relating to the TIF Bonds for the Meridian. The amendment allows Compass Bank to be paid their fee from the capitalized interest fund. Compass Bank is the agency that guaranteed payment of the TIF Bonds through a letter of credit. The original trust indenture was ambiguous as to whether Compass Bank could be paid from the capitalized interest fund. The City's bond counsel, Gilmore & Bell has stated that it was intended to allow Compass Bank to be paid from this specific TIF account. They have reviewed and approved this Bill.

City Administrator Seemayer stated that when a TIF is set up or bonds are issued funds are put into various accounts because the money goes out for the public improvements, etc., right away but the TIF revenues aren't generated for some period of time. Those accounts are set up to make payments to the bond holders until the revenues flow. One of the accounts is called the capitalized interest account. It is an account set up and held by UMB Bank as a trustee who pays the bond holders that makes interest payments on the TIF bonds until the TIF funds are all flowing. The Meridian had two phases of TIF bonds issued, Series 2007A and B. Series 2007A were refunding or refinancing bonds that went back to the original TIF issued in 2001. The interest on those bonds was also intended to be paid from this capitalized interest account, but it was erroneously omitted from the original trust indenture. Not only will it pay the bank agents fee, it will also pay interest on the Series 2007A TIF bonds.

Alderman Leahy asked for clarification on if by agreeing to allow them to clarify this issue as to who gets paid from which fund are they or are they not changing the level of indebtedness.

City Administrator Seemayer responded that they are not. There is money sitting in that account that right now cannot be used for its intended purpose.

Motion was made by Alderman Leahy, second by Alderwoman Krewson to approve and adopt Bill No. 5520. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes.

The Mayor thereupon declared Bill No. 5520 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4204.

#### Bill No. 5521 – Eighth Amendment Redevelopment Agreement

City Attorney Albrecht gave Bill No. 5521, AN ORDINANCE AUTHORIZING THE EXECUTION OF AN EIGHTH AMENDMENT TO REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF BRENTWOOD AND EAGER ROAD ASSOCIATES, L.L.C., its first and second readings.

Alderman Kramer read a synopsis of Bill no. 5521 as a Bill which authorizes the eight amendment to the redevelopment agreement between the City and the Meridian development. The original agreement required the developer to have leased at least 65% of the retail portion of the parking structure and the retail portion of the seven story office building by November 1<sup>st</sup>, 2009. Due to economic conditions the developer is requesting that the date be extended to September 30<sup>th</sup>, 2010. The developer has currently leased 90% of the office portion of the development and 16.5% of the retail area in Phase 2. The lease extension would have to be approved by the City and Compass Bank. The City's bond counsel has reviewed and approved this amendment.

Alderman Leahy stated that the City is willing to consider extending their leasing deadlines. How does that affect the payments coming in against the TIF if it is only at 16.5% where it should be at 65%? Are they going to push towards the 23 year payoff versus the 15/16 year payoff?

City Administrator Seemayer stated that is going to happen with or without this legislation being passed. The clock on that started in the year 2000. Phase 2 of the development is just now starting to be leased, at least the retail portion of it. They are making payments because they have completed building the entire project and are receiving property taxes. The fact that it was not leased sooner will cause it to go to the full term.

Alderman Leahy stated that if the City chooses not to extend this leasing option what penalties invoke if any.

City Administrator Seemayer stated that the one thing that could happen, but it's unlikely, is that bond holders are guaranteed payment on this project no matter what happens. If you bought bonds you are guaranteed to be paid your timely principal and interest. Compass Bank is the one that made that guaranty through what's called a letter of credit. They could call the letter of credit but they have to make the payment to the bond holders.

Alderman Leahy stated that they could come up with the money out of their pockets and they don't want to do that. They would prefer it to come out of the revenue of the retail sales, etc. It is in the City's best interest to extend them the lease option.

City Administrator Seemayer stated yes.

Motion was made by Alderman Robertson, second by Alderman Marshall to approve and adopt Bill No. 5521. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes.

The Mayor thereupon declared Bill No. 5521 duly passed and signed same into approval thereof. Said Bill was given Ordinance No. 4205.

#### Resolution No. 959 – Reimbursement of Capital Expenditures for Fire Department

Alderman Kramer read a synopsis of Resolution No. 959 that would allow the City to reimburse the general fund for any expenditures already incurred for the fire station project. The reimbursement funds would come from the Certificate of Participation Revenue Bonds that the City expects to issue in November of this year. To date the City has incurred expenses of approximately \$200,000.

Mayor Kelly stated that when the bonds are issued, in order for the City to be reimbursed, the resolution has to be in place.

Motion was made by Alderman Marshall, second by Alderman Wynn to adopt Resolution No. 959. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes.

#### ACCOUNTS AGAINST THE CITY

Motion was made by Alderman Marshall, second by Alderwoman Clements to approve the warrant list dated 9/21/09.

Alderman Kramer asked about the status of the expenditure regarding the "legal defense for

McDonald vs. Kurtz”.

City Administrator Seemayer stated that it is not finished. He knows that they have gone before the judge and they have taken depositions on all parties.

Mayor Kelly stated that it is his understanding that they have asked the judge to dismiss the case and that won't be done until sometime in October.

Alderman Kramer stated then this is not likely to be the last payment.

City Administrator Seemayer responded that's correct.

Alderman Kramer asked about the expenditure for Envirotech, Inc. and if it is part of the \$200,000 they just spoke of.

City Administrator Seemayer responded yes.

Alderman Leahy asked for clarification on the expenditure for Lightforce in the amount of \$2,262.28.

City Administrator Seemayer stated that the expenditure was for the radios and light equipment for the Asst. Chief and Fire Chief's new cars.

All in favor none opposed.

#### REPORTS OF COMMITTEES AND DEPARTMENT HEADS:

##### Mayor's Report

Mayor Kelly stated that the TDD's are pseudo-government operations dealing with tax dollars. The Strassner Road TDD specifically was actually the first district to be approved by a general election in the state of Missouri. It was very specific what those funds could be used for. It was in the ballot language. It paid for the Metrolink bridge over Strassner Road, park trails, and improvements to the entrance to Brentwood Forest, the flowers and the sign as you enter Brentwood Forest off of Wrenwood, and relocation of the public works facility to help facilitate improvements to Strassner Road. They previously owned the property in Hanley Industrial Court. They have plans for improvements to Strassner Road and they have those funds in place. It has not been fully designed yet because they needed to wait and thought it was in the best interest of the City and the community not to start the improvements to Strassner Road until after Highway 40 is completed and opened up. Those funds weren't part of the TDD. He believes the ballot language stated the relocation of the public works facility to help facilitate those improvements. The TDD's only meet on an as needed basis. This one specifically, was for statutory requirements on an annual basis and to allocate funds for specific projects that were

in the ballot language. It is pretty much administrative from that standpoint. At one of those meetings was the contention of this lawsuit.

Matt Ray with Armstrong Teasdale, a law firm based in downtown St. Louis, came before the Board and stated that he had the privilege and the honor of representing Mayor Kelly and City Administrator Seemayer as well as some other individuals named John Noce, Hugh Scott and Scott Stinson. He also had the honor of representing the Brentwood/Strassner Road TDD. He represented all those individuals in the TDD in connection with the lawsuit that was brought by Mr. Kramer. He stated that he would breakdown his remarks into two parts tonight. He will first give a background on the lawsuit itself, giving a little bit of factual information and secondly, giving an update and a brief summary on the ultimate disposition of the lawsuit. He hopes along the way to answer many of the questions that Mr. Saunders had earlier tonight as well as any lingering questions that the Board may have.

Mr. Kramer filed his lawsuit in April of 2008. It was filed in the Circuit Court of St. Louis County which is located in downtown Clayton. Mr. Kramer represented himself in filing the lawsuit and he did that for several months. Several months down the line he retained his own counsel. That attorney's name is Paul Rechenberg. Mr. Rechenberg represented Mr. Kramer through the conclusion of the case. The basic gist of the lawsuit was that all of the individuals who made up the Brentwood/Strassner TDD as well as the TDD itself had violated the Sunshine Law. In particular, that the Sunshine Law had been violated in connection with a meeting of April 12, 2007. There were a whole slew of different allegations about the purported violations that took place. He doesn't have the time to walk through each one of those but he thought he would give a brief laundry list of some of those things. One of the allegations was that there was a notice posted for a meeting related to April 12<sup>th</sup> 2007 which was replaced by another notice and that the second notice was not posted in time to provide the public with 24 hours notice of the meeting on April 12<sup>th</sup> 2007. Those were allegations on behalf of the TDD that they had denied. There were also allegations that this notice, regardless of whether it was an original notice or some kind of second notice, had failed to comply with the Sunshine Law in that it did not list a specific location of the meeting of the TDD. The notice had indicated that the meeting of the TDD was to take place here in city hall but it did not indicate where specifically in city hall that was supposed to take place. It was alleged that was a violation of the Sunshine Law. There were also some allegations about the manner in which the meeting was conducted. The meeting took place in Mayor Kelly's office. There were allegations that the Mayor's office was of insufficient size to host a meeting of the TDD. That there were not enough chairs in the Mayor's office to host the meeting of the TDD and that the door to the meeting was closed, and also locked. There were also some allegations that the manner in which the minutes of the meeting of the TDD were prepared violated the Sunshine Law. The allegation was that in certain ways because people were not designated as having attended by phone instead of having attended in person that that violated the law. There was an allegation that failing to identify certain members of the public who had attended the meeting was a violation of the Sunshine Law. These were all of the allegations that they dealt with in connection with this lawsuit. There was a point during the lawsuit that they engaged in what

they call discovery, and part of discovery in a civil lawsuit involves taking depositions. In connection with the case they did depose Mr. Kramer and just before his deposition they invited him to dismiss the lawsuit and to dismiss it with prejudice. To dismiss a lawsuit with prejudice means to dismiss it forever and ever, that the lawsuit is going to go away and will never come back. That was something that he declined to do. Based on that they went forward with the deposition but they also decided that they needed to defend the case vigorously because they had no choice. They had gone ahead and done what they thought they needed to do to try to get the matter dismissed without having to incur a lot of expenses and without having the TDD to have to pay money to them to represent it and its board members. They weren't able to get the case dismissed so they ended up going to trial. Cases in St. Louis County usually take about 18 to 24 months to be disposed of. They didn't want to wait that long for the case to be disposed of so they moved the court to set the case on an expedited trial setting. The court accommodated them in that request and set the case for trial in May of this year which was about 13 months after it was originally filed. They tried the case on May 18<sup>th</sup> 2009. On the first day of the trial which was a bench trial, which means it was heard only by a judge and not heard by a jury, Mr. Kramer testified for a couple of hours. He cross-examined Mr. Kramer for probably an hour or hour and a half. Charlie Dooley who was also a defendant in Mr. Kramer's lawsuit testified, Mayor Kelly also testified. At the end of the first day of the trial, the judge sent them home and asked them to come back the next day so that they could move forward towards the conclusion. Before they started trial that second morning, he approached Mr. Kramer's attorney and told him in his opinion he thought that things had gone very well for all of his clients and that things had gone very poorly for his case and invited him again to dismiss the case at that point, so that they did not have to continue on with the trial. That discussion led to further discussions with his attorney and that morning in the court house they worked out basically a structure, a skeleton, for getting the case resolved. The ultimate disposition of the case broke down into four or five important items. The settlement involved a dismissal of the case that Mr. Kramer brought with prejudice. It also involved a full release of any potential liability by Mr. Kramer for his claims against each of the individuals, the Mayor and Mr. Seemayer included, as well as the TDD. It involved a provision that there would be no admission of any liability by anybody associated with the TDD including the TDD. In addition there were a couple of provisions that the individuals that he represented, Mr. Kelly and Mr. Seemayer included and the TDD itself agreed to release Mr. Kramer from liability in connection with the lawsuit that he brought. In other words, they all agreed that they would not sue Mr. Kramer for having brought the lawsuit for any kind of claim like abuse of process, or malicious prosecution. In addition to that each of the dependents, Mr. Kelly and Mr. Seemayer included, agreed to a limited release of certain issues in connection with Mr. Kramer's lawyer. He would imagine that not all of you are familiar with the rules of civil procedure for a lawsuit, so he will give a little bit of an explanation of Rule 55.03. Rule 55.03 is a rule that governs all of them as lawyers and it states that by signing your name on a pleading and by prosecuting a lawsuit against somebody you are making an affirmative representation to the court, to the judge, to the public that the action that you are bringing is something that is supported by existing law or that a modification of existing law is in order. It is also an assertion by signing your name on those pleadings and prosecuting your action that you have facts to support your claim or

alternatively that after investigation you will be able to find facts that supports your claim. As part of the settlement agreement that was reached between all of the parties, Mr. Kelly, Mr. Seemayer and all the other individuals and the TDD itself agreed not to ask the judge to sanction Mr. Rechenberg, Mr. Kramer's lawyer for any kind of violations of Rule 55.03 and that is a specific provision that's laid out in the settlement. Lastly in terms of the settlement he would like to point out that there was no money that was paid, no money changed hands. In the lawsuit that Mr. Kramer filed he was asking for certain kinds of specific relief. He wanted to have the court impose some civil penalties on each of his clients, Mr. Kelly and Mr. Seemayer included. To his understanding those civil penalties could have ranged up to \$5,000. Mr. Saunders asked earlier if the lawsuit was all over \$5,000. The answer is that it is a matter of argument and a matter of dispute between the lawyers. It is possible that for all of the alleged violations only a single \$5,000 civil penalty could be imposed. There is also an argument that a civil penalty of \$5,000 could be imposed on each individual for each specific alleged violation of the Sunshine Law, so if you have eight defendants and you have hypothetically ten alleged violations of the Sunshine Law and you have \$5,000 per alleged violation you could be looking at civil penalties potentially up to \$400,000. Again that's a matter of dispute between the lawyers. One of the other avenues of relief that Mr. Kramer was seeking was to set aside all of the actions that the TDD took during its meeting of April 12<sup>th</sup> 2007. One of the issues that was on the agenda that day was the approval of providing funds by the TDD to the City of Brentwood in connection with its acquisition of the property that he believes was the subject of some other questions here tonight. None of that relief was granted by virtue of this settlement. In other words no civil penalties were assessed and nothing that was done by the TDD on April 12<sup>th</sup> 2007 was set aside. From his perspective, he was very gratified and thought that they had gotten a very good result for Mr. Seemayer, Mr. Kelly and for all the other people that he represented. He did not bring certain things with him tonight that he has referenced to you. He did not bring a copy of the suit papers or the transcript of the trial. Both of these things are available to you. They are a matter of public record. If you wanted to go to the court house in Clayton, you could go to the clerk's office on the 5<sup>th</sup> floor and ask them to see the file Thomas Kramer vs. Pat Kelly, et al. You could see the suit papers there and everything else that they filed. You could see a transcript of the proceedings, all of the different questions that were asked of Mr. Kramer and the others. There was a settlement agreement that was prepared and it was executed by everyone who was a party to the lawsuit. It was prepared and signed to memorialize what he is telling you here tonight. That is something he did not bring with him tonight but it is also available to you if you make that request of the TDD.

Alderman Leahy stated that for clarification, Mr. Ray stated that no money changed hands. He asked Mr. Ray if in that statement he is including attorneys' fees.

Mr. Ray responded no.

Alderman Leahy stated that Mr. Saunders raised the issue that it is his opinion that the bill that the TDD incurred was about \$100,000. That bill has been paid, whatever the value of the bill is.

Mr. Ray responded correct.

Alderman Leahy asked if the money came out of the TDD or somewhere else.

Mr. Ray stated that he believes it came from the TDD and when he said that no money has changed hands he did not refer to those attorneys' fees. What he was saying is simply none of the defendants made any kind of direct payment to Mr. Kramer for purposes of settling the case.

Alderman Kramer stated in reference to some comments that he made regarding this topic at the August 17<sup>th</sup> 2009 Aldermanic meeting, he stands behind those comments.

Mayor Kelly stated that they are still working with the YMCA and the Villas of Brentwood on the dog park. He is happy to say that he had in his possession a \$4,000 check from the owner of the Villas at Brentwood. He has made that donation to the City to help facilitate the construction of the dog park. They had bids on the fence from fence companies and they have a low bidder. They need to meet and decide on the final design, get some agreements between the YMCA, the City and the Villas as far as maintenance goes but they are still proceeding and hopefully in a short time they will have that completed.

Mayor Kelly stated that they had a little bit of rain on the Saturday of Brentwood Days but he thinks everybody had a great day. The staff did an outstanding job. It went off without a hitch this year with no incidences of any kind.

Public Safety Committee – No report

Public Works Committee – No report

Director of Planning and Development – No report

Ways and Means Committee – No report

City Attorney – No report

City Clerk/Administrator

City Administrator Seemayer stated that the CodeRed neighborhood emergency alert system is now fully operational. Individuals can go on Brentwood's website and register.

Excise Commissioner – No report

Library – No report

Municipal League – No report

Communication

Alderman Marshall asked if it is possible to put links to the TDD minutes on our website.

Mayor Kelly stated that the City doesn't control those TDDs. The only TDD that the City is a part of is the Strassner Road TDD. The other ones are separate entities even from the City. The reason they are a part of that one is the way that it was approved by the voters. By statute, on a multi-jurisdictional TDD, the mayor represents the city on that TDD. Mayor Kelly suggested that if anybody wants copies of the minutes they should contact the representatives or the legal counsel for those TDDs.

Alderman Marshall asked if there is any way they could post those contacts on the website.

City Administrator Seemayer responded yes.

Alderman Leahy asked if the recent action of consolidating the five TDDs into the Hanley Road Corridor arrangement will make it a little bit easier to chase down the TDD because it will all be in one place now.

Mayor Kelly stated that the Dierbergs TDD will not go away. Kenilworth and Strassner Road, and two in Maplewood will go away as well.

Historical Society – No report

Recreation Center Committee – No report

UNFINISHED BUSINESS

Alderman Marshall stated that he thinks there is confusion among the Board members as to what they can and can't talk about regarding the lawsuit Alderman Kramer filed against the TDD. Now that it is public if somebody approaches him with questions is it okay to speak to them without any worries that he is violating some law.

Mayor Kelly responded that it is public record now and as Attorney Matt Ray indicated all the records are available for anybody that would like to see them. As far as he is concerned the suit is over and they should just try move forward as a community.

Alderman Leahy stated that last month he requested some updated numbers on the red light camera activity.

City Administrator Seemayer stated that there are two locations with red light cameras, Brentwood and Manchester and southbound Brentwood at Rose Avenue. Those two combined are averaging about 12 citations per month. It is a lot fewer than any of the other locations in St. Louis County. It was much higher when they did their initial study. Part of the reason is that it was the first one that was placed on a county maintained road and St. Louis County had some different rules and regulations, like much larger warning signs. They also changed the timing on the yellow signal by extending it. Their goal on all that was to reduce the number of accidents that occur at those intersections, so if they are only having that smaller number of violations then it is achieving that goal.

Alderman Leahy asked where they stood with the State of Missouri's interest with the red light camera enforcements. Is there anything that's coming their way that may affect the City of Brentwood's activity?

City Administrator Seemayer stated that legislators filed some bills the last couple of years trying to change the way those are operated to either do away with them totally or have the revenue from the citations go to some other entity, but nothing ever passed. He would be surprised if there were no bills filed that tried to change or amend the way that the programs work.

Alderman Robertson asked if there is any information on tickets issued on a red light violation at those intersections that are not done by the camera but by an officer.

City Administrator Seemayer stated that he will get that information.

#### NEW BUSINESS

Mayor Kelly recognized Chuck Sanders, a former alderman in the City of Brentwood who over the years has served on numerous committees, including the Planning and Zoning Commission and Board of Adjustment. Last Tuesday evening, Chuck passed away in his sleep. It was a very sad moment for his wife Kay and their three daughters. Mayor Kelly requested a moment of prayer for the family.

Alderman Leahy announced a Ward 3 meeting would be held on Tuesday, September 29<sup>th</sup> in the Council Chambers.

#### ADJOURNMENT

Motion was made by Alderman Wynn, second by Alderman Leahy to adjourn the meeting at 8:15 pm. All in favor none opposed.

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Mike Marshall, Mayor Pro Tem

Attest:

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Chris Seemayer, City Clerk