

**CITY OF BRENTWOOD, MISSOURI  
REGULAR BOARD OF ALDERMEN MEETING  
MINUTES**

**City Hall  
Council Chambers**

**October 4, 2010  
7:00 pm**

Mayor Kelly called the meeting to order and led with the Pledge of Allegiance. Roll call was taken with the following members present: Alderwoman Clements, Alderman Marshall, Alderman Leahy, Alderwoman Krewson, Alderman Kramer, Alderman Robertson, Alderman Wynn, and Alderman Harper.

The following member(s) was absent: None.

Staff present: City Attorney Albrecht, City Clerk/Administrator Seemayer, Director of Planning and Development/Asst. City Administrator Rottjakob, Executive Secretary Williams and City Treasurer Reynders.

**CONSIDERATION AND APPROVAL OF THE OCTOBER 4, 2010 AGENDA**

Motion was made by Alderwoman Clements, second by Alderman Leahy to approve the October 4, 2010 meeting agenda. All in favor none opposed.

**CONSIDERATION AND APPROVAL OF THE SEPTEMBER 20, 2010 MINUTES**

Motion was made by Alderman Leahy, second by Alderman Wynn to approve the September 20, 2010 meeting minutes. All in favor none opposed

**BIDS** – None

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

Bob Loynd, resident at 9365 Parkside Drive came before the Board and asked about the timetable for the paving of their streets. He stated that the streets are dusty and muddy when it rains. The park is full of rocks with sharp edges and it is not safe for children.

Mayor Kelly stated that Bates Contracting left and when the City notified MSD, they were surprised as well. He believes the paving will start next Monday. The rock situation in the park will be taken care of as well.

City Administrator Seemayer stated that the paving would take three days.

Dennis Moss, resident at 9372 Parkside Drive came before the Board and thanked them for everything they do. He stated that he has been a resident of Brentwood since 1975 and bought his house for the beautiful oak trees in McKnight Park. It once was a very beautiful park; today there are rocks, etc. He is also concerned about the streets. As far as the trees in McKnight Park, they are worried that they might lose one or two trees during the next couple of years because of soil compaction in front of the trees. Before and after photos of the streets have been taken if anyone would like to see them.

Alderman Clements stated that she and Mr. Moss have had several conversations. She has passed along the concerns about the trees to the City's arborist and to the public works department about the compaction of the soil and machinery that has been sitting in the park most of the summer. They will keep an eye on the situation and will try to get a grant for deep feeding the trees to try to revitalize them.

Mary Moss, resident at 9372 Parkside came before the Board and stated that it has been a nine-month project from November to August. They noticed that Tilles Park had been sodded and new curbs and concrete had been put in. They do not know if they will get new curbs around the park. The park is a mess. There is also a board still blocking one of the new sewers on Parkside. They would like to get their pretty street back the way it should be and enjoy their park again.

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

#### **Bill No. 5574 – Agreement with GBA Architects and Engineers**

Mayor Kelly stated that he would like Bill No. 5574 to be placed on hold and sent to the Ways and Means Committee for further review. Director of Parks and Recreation Frankowski interviewed the companies for the project. She planned to attend the meeting tonight, but had a family situation and could not attend.

Motion was made by Alderman Wynn, second by Alderman Marshall to place Bill No. 5574 on hold for committee review. All in favor none opposed.

Alderman Leahy stated that there are items in the agreement that he thinks the City's building inspector and/or fire marshal could accomplish at a cheaper rate. He asked if the agreement could be looked at to see if the City could be preemptive and reduce the total cost of the services.

Alderman Kramer read a synopsis of Bill No. 5574 as a Bill that would authorize the Mayor to enter into an agreement with GBA Architects & Engineers to perform an evaluation of the existing Recreation Center. The study would include the following:

- Identify what must be brought into compliance with federal, state or local laws & codes
- Identify aspects of the complex that require repair or replacement
- Develop cost estimates for the improvements identified
- Develop phases for the improvements based upon financial & operational efficiencies
- Determine expansion capabilities in terms of square footage and spatial arrangements

The fee for this service shall not exceed \$79,800. This item has been budgeted for 2010. If approved it is anticipated the assessment would be completed by January 2011.

### **ACCOUNTS AGAINST THE CITY**

Motion was made by Alderman Marshall, second by Alderman Clements to approve the warrant dated 10/4/10. All in favor none opposed.

Alderman Kramer asked if the software update by Acumen Consulting is a one-time update.

City Administrator Seemayer responded yes.

**REPORTS OF COMMITTEES AND DEPARTMENT HEADS:**

Mayor's Report

Mayor Kelly stated that Nordstrom Rack is open and they had an outstanding first weekend. The Arby's restaurant will open on October 12<sup>th</sup>. Asst. Fire Chief Kurtz was going to attend the meeting tonight but he was ill. He did provide everyone with an updated schedule for the new fire station. The concrete aprons in front of the fire department will be poured tomorrow and the contractor is finishing the painting and the electrical on the inside of the building. If things go as planned, the firefighters will probably start the transition of moving into the new fire station the first part of November. The contractor would like to keep all vehicles off the aprons for at least 30 days. Given the sizes and weight of the trucks that are going to be using it, they want to make sure it is 100% cured.

Alderman Marshall asked about the leak in the tower.

City Administrator Seemayer stated that they believe it is fixed and it will be tested later this week with the fire hose.

Mayor Kelly announced executive session/personnel matters would be held following the regular meeting.

Public Safety Committee – No further 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/Buck's Good Eats

City Administrator Seemayer stated that the City received an application for a Special Use Permit for Buck's Good Eats. The applicant would like to put a vending cart in the Brentwood Promenade. The application was briefly discussed in the Ways and Means Committee meeting, but it had to come before the Board for approval.

Brady Toliver – President of Buck's Good Eats, LLC came before the Board and stated that he is interested in putting a New York style food-vending cart in Brentwood Promenade to serve patrons and

employees in the area. Mr. Toliver said that he has the full support of DDR and Sansone Management Property Group.

Mayor Kelly asked Mr. Toliver if it would be a full time stand.

Mr. Toliver stated that they would start with Saturdays and Sundays to see if it is a good fit and operate from 10:00 am to 4:00 pm.

Alderman Marshall stated that one of the concerns he has is with the location of the cart, which is on the east side of the development by Trader Joe's.

Mr. Toliver stated that it would be located in between Trader Joe's and Beauty First.

Alderman Marshall stated that one of his concerns is the narrow lane and it is frequently very congested, with people turning in and out of the aisles. It is a great idea and he understands why Mr. Toliver wants to be located in that area but his concern is people stopping for food on the curbside, further blocking traffic. Alderman Marshall asked if there is a more appropriate place to put the cart.

Mr. Toliver responded that he does not think his small cart will make that area any more congested. There are strict policies in his operation manual that employees are not allowed to curb serve because of the safety of pedestrians as well as traffic flow. He said that a sign could be posted that indicates that people have to park their vehicle in order to be served. Alderman Marshall stated that he would not have a problem with it if they could operate the cart on a trial basis.

City Administrator Seemayer stated that the Special Use Permit application has a 90-day period.

Alderman Leahy asked Mr. Toliver what does he have from DDR and the Sansone Group that allows him to operate the cart on the property.

Mr. Toliver stated that he has signed a lease with DDR and the Sansone Group and has a health and food permit from St. Louis County.

Alderman Leahy asked if the agreement that Mr. Toliver has with the property owner establishes the location in front of Trader Joe's and if Trader Joe's agreed that they would appreciate having Mr. Toliver's cart in front of their store.

Mr. Toliver responded that he has never seen any business ask another business if they could open and conduct business in a free enterprise. However, DDR and the Sansone Group have gone out with him, talked to the local businesses and informed them that they will be opening. DDR, which is the owner of the property, has given him full consent for that location because of the market research. Just like any other business, he has conducted a market research to find out the best place to serve the community.

Alderman Leahy stated that he could see why the property owner and Mr. Toliver chose that location because Mr. Toliver would be competing against the Target store that has a food service area in it and thus putting Mr. Toliver on the other side of the complex is better. He can foresee Trader Joe's saying that they may not want Mr. Toliver's cart in front of their store conducting business.

Mr. Toliver stated that technically, they would not be located in front of Trader Joe's and will not impede the progress of anybody walking into Trader Joe's building. They are more to the side of Beauty First. After going into Trader Joe's, he saw that they do not have readymade food, so there is no competition there. If people are going to purchase something to cook, they will not come to his cart. His cart is a valuable option for individuals working in the area or somebody who has limited time.

Alderman Leahy asked if the cart comes with an umbrella and is electricity required.

Mr. Toliver responded that the cart is equipped with an umbrella and three-compartment sinks to wash utensils and hands. No electricity is required.

Alderman Leahy asked if the cart employee would have limited cash access.

Mr. Toliver responded yes.

Alderman Leahy asked if there are currently any codes that prevent them from approving the application.

City Administrator Seemayer responded no, that is why the applicant is before the Board.

Mayor Kelly stated that the City already has a similar vendor in Memorial Park.

Alderman Leahy stated that the City has a signed contract with the vendor for the space in Memorial Park.

Mayor Kelly stated that the City has the contract because the City is the property owner. Mr. Toliver has a contract with DDR to do the same thing. The City is not Mr. Toliver's landlord. Mayor Kelly said that he is just making a point that there is a similar type of operation in the community and it has been successful, if given the right location.

Mr. Toliver stated that he believes the closest article addressing sidewalk vendors would be Article 13 of the Municipal Code.

City Administrator Seemayer stated that Director of Planning and Development Rottjakob has researched it and this is the procedure that is allowed by the Code.

Mrs. Rottjakob stated that the only way it is allowed is by a Special Use Permit.

Alderman Kramer stated that the topic came up in the Ways and Means Committee meeting. It was brought up as an informational topic. It did not get a positive response at that time. Mr. Kramer stated that he is not against free enterprise whatsoever, and he applauds Mr. Toliver's entrepreneurship. However, he is disappointed in DDR and the parent company, basically putting the tenants that are paying an extreme amount of rent in a situation where they are going to have an enterprise such as Mr. Toliver's in their midst. Currently, the Promenade has places where you can grab something to eat quickly and inexpensively. The Target store is one of those places and it is across the parking lot. However, he recognizes that the Galleria has many kiosks on the inside of their shopping center. What he had hoped in this particular situation was what happened with Home Depot, where it was negotiated

with the owner to go inside the building rather than have it located on the street. He thinks it is unfair to the tenants that have been there for a long time. He is concerned about them and the lack of comment that they have from Trader Joe's. They do a tremendous amount of business. It is a very busy area. Parking is an issue as well, just to go to Trader Joe's, let alone to Mr. Toliver's establishment. For that reason, he is probably going to vote against it.

Alderman Marshall stated that on Mr. Toliver's behalf, Target has written into their lease that they do not want any carts in front of their store. He would think that if Target were able to put that in their lease then the other stores would be able to do so as well. The fact is that Trader Joe's does not have prepared food to eat, so he does not think it is a big issue and it will not take much away from the development.

Mayor Kelly stated that his experience is that the national retailers are very efficient in making their leases and if they had a concern about sidewalk vendors, they probably would have put those concerns in their leases. In an extreme case, the City has been held back by landing a very good tenant in the Meridian project because of the exact reason. When Best Buy had the final say whether they would allow Red Robin to go into that site, which was approved by the P&Z Commission, and Red Robin had applied for all of their permits and were ready for construction, Best Buy decided that they would not let them into the building. The cart vendor is a different operation. He agrees with Alderman Marshall in that this is prepared food and somebody running in to pick up some groceries on their lunch hour may grab a hot dog on the way out back to work. Trader Joe's does not sell those types of prepared foods in their store. The SUP is on a ninety-day trial. The goal is to go after the foot traffic and that is why the vendor wants to be located there because it is the busiest foot traffic in the entire Promenade. The vendor should be given a chance and they will see if there are any problems with parking and those kinds of things.

Alderman Wynn asked since the cart will be outside what months it will be in operation.

Mr. Toliver responded that they work year round. They work no matter what the weather, as long as there is no downpour or snowstorm. They also have a cart in front of City Hall in downtown St. Louis and in the past three years, they have logged over 300 days yearly.

Alderman Marshall asked if the cart would remain there day and night.

Mr. Toliver responded that they remove it when they leave. There is normally a break in traffic between 4:00 and 6:00 pm, which gives them the opportunity to push the cart off the sidewalk, hock it and then leave.

Alderman Kramer stated that if for some reason the SUP passed this evening and the applicant came back for renewal, it would be helpful if the applicant would bring a letter from Trader Joe's stating that they are okay with him being out there.

Mr. Toliver asked Alderman Kramer why is he concerned about Trader Joe's when they looked at each business there and their leases and the only one that had anything in their lease about a sidewalk vendor or somebody selling food was Target store. That is why DDR, the property owner said they must respect that lease and move across the parking lot. There is nothing in Trader Joe's lease about sidewalk

vendors. He does not know of a time when Burger King asked McDonald's if they can open, etc., so he does not see the business necessity there.

Alderman Kramer stated that if they do not have prepackaged food then ideally they would not have any problem with him being there. They are providing a traffic source for Mr. Toliver to use for his business, so to him, it would only be amenable to both parties to have some sort of affirmation in place.

Mr. Toliver stated that if that is the case, then he should come back with letters Beauty First, Shane Co., UMB Bank, Target, etc.

Alderman Kramer responded but the cart will be located next to Trader Joe's.

Mr. Toliver responded that he would be located next to Beauty First too.

Alderman Kramer stated that maybe Mr. Toliver should submit a letter from both Trader Joe's and Beauty First.

Mr. Toliver stated that after he serves the patrons in that area he will bring a petition from them because it is supposed to be about the people in Brentwood. He picked Brentwood because its mission statement states that Brentwood is a progressive town and if it is a progressive town, the people who are on the go need to be served fast.

Alderman Kramer responded that if they were going to be located on a public right of way on a regular street it would be different but Mr. Toliver is in a shopping center where the tenants are paying a lot of money to be there.

Mr. Toliver stated that is correct, but DDR, the owner of the property says it is okay for him to be there.

Alderman Robertson stated that DDR did not get to be a huge billion-dollar enterprise by screwing around with their tenants. They know this is a good idea for their center and that is why they are doing it and that it is a good idea for the people of Brentwood and the customers. He stated that he would like to move forward with a motion.

Motion was made by Alderman Robertson, second by Alderman Harper to approve the Special Use Permit application for Buck's Good Eats. Roll call: Alderwoman Clements, yes; Alderman Marshall, yes; Alderman Leahy, no; Alderwoman Krewson, no; Alderman Kramer, no; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Harper, yes.

Excise Commissioner – No report

Library – No report

Municipal League – No report

Communication – No report

Historical Society – No report

UNFINISHED BUSINESS – None

NEW BUSINESS

Alderman Leahy stated that Robert Reynolds from Troop 361 would be receiving his Eagle Award. He asked permission from the Board to present him with a proclamation.

Motion was made by Alderman Marshall, second by Alderman Wynn to approve the proclamation for Robert Reynolds, Eagle Scout from Troop 361. All in favor none opposed.

Alderman Leahy stated that the Boy Scouts of America would be sponsoring the Scouting for Food Program in November. In the past, the fire department has been kind enough to allow them to use the fire station as a collection site. The food will be collected on November 20<sup>th</sup>. They have spoken with Fire Chief Niemeyer and he has granted them use of the space with Board approval. The collection site will be at the old fire station.

Motion was made by Alderwoman Clements, second by Alderman Marshall to grant the Boy Scouts of America use of the old fire station as a collection site for the Scouting for Food Program on November 20<sup>th</sup>. All in favor none opposed.

Recess

Motion was made by Alderman Wynn, second by Alderman Leahy to recess the meeting at 7:40 pm. All in favor none opposed.

Reconvene

Motion was made by Alderman Wynn, second by Alderman Leahy reconvene the meeting at 7:55 pm. All in favor none opposed.

Executive Session

Motion was made by Alderman Leahy, second by Alderwoman Clements to enter into executive session/personnel matter at 7:56 pm. All in favor none opposed.

Present for executive session: Mayor Kelly, all board members, City Attorney Albrecht, City Labor Attorney Hesse, City Administrator Seemayer, and Asst. City Administrator Rottjakob.

Discussion took place that a reorganization of personnel was needed to address the 2011 budget. After discussion, motion was made by Alderman Leahy, second by Alderman Marshall to accept the reorganization plan proposed by the City Administrator. Roll call: Alderwoman Clements, abstain; Alderman Marshall, yes; Alderman Leahy, yes; Alderwoman Krewson, yes; Alderman Kramer, yes; Alderman Robertson, yes; Alderman Wynn, yes; Alderman Harper, yes.

Motion was made by Alderwoman Clements, second by Alderman Harper to return to open session at 8:40 pm. All in favor none opposed.

Adjournment

Motion was made by Alderwoman Clements, second by Alderman Harper to adjourn the meeting at 8:41 pm. All in favor none opposed.

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Pat Kelly, Mayor

Attest:

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Chris Seemayer, City Clerk