



MINUTES OF THE BOARD OF ALDERMEN MEETING
CITY OF BALLWIN – 300 PARK DRIVE

April 25, 2011

The meeting was called to order by Mayor Pogue at 7:00 p.m.

PRESENT

MAYOR TIM POGUE
ALDERMAN JIMMY TERBROCK
ALDERMAN MICHAEL FINLEY
ALDERMAN RON MARKLAND
ALDERMAN PAT McDERMOTT
ALDERMAN FRANK FLEMING
ALDERMAN JIM LEAHY
ALDERMAN RICHARD BOERNER
ALDERMAN KEN MELLOW
CITY ADMINISTRATOR ROBERT KUNTZ
CITY ATTORNEY ROBERT E. JONES

ABSENT

Alderman Terbrock (Out of town work seminar)

The Pledge of Allegiance was given.

MINUTES

The Minutes of the *April 11, 2011 Board of Aldermen meeting* were submitted for approval. Alderman Finley amended page 7, last full paragraph: Change to “Alderman Finley suggested priorities similar to how the streets are graded 1 thru 10.” A motion was made by Alderman Fleming and seconded by Alderman Boerner to approve the Minutes as amended. A voice vote was taken with a unanimous affirmative result and the motion passed.

OATH OF OFFICE

The Oath of Office was administered to Mayor Tim Pogue, Alderman Mark Harder, Alderman Jim Leahy, and Alderman Ken Mellow. The Oath of Office will be administered to Alderman Jimmy Terbrock at the next meeting.

ALDERMAN PAT McDERMOTT

Alderman McDermott congratulated Alderman-Elect Mark Harder. He said, “Mark, I think you will do a fine job. As an opponent in the campaign, based on what I know of you and how you ran your campaign, I believe you did a fantastic job. I believe you were honest. You didn’t stoop to the level that I think we had in some of the other races, and I appreciate that as an opponent. I encourage you to work together with all the Aldermen here. I can assure you that when I stepped on to the Board, I didn’t have an agenda, but I always dug very deep into things to find out that the Minutes and the things we were handed were honest and true. I found that to be the case in the past six months. I’ve been involved in the City for a long time and I intend to be involved with the city in the future. Mark, I encourage you to work with these guys, keep an open mind, represent the entire city, including Ward 2 especially, but make sure you really take time to listen to the residents of the entire city and not just one aspect or one component. Mark, I believe you will do a good job and I will support you. Thank you.”

SECOND ROLL CALL

PRESENT

MAYOR TIM POGUE
ALDERMAN MICHAEL FINLEY
ALDERMAN RON MARKLAND
ALDERMAN MARK HARDER
ALDERMAN FRANK FLEMING
ALDERMAN JIM LEAHY
ALDERMAN RICHARD BOERNER
ALDERMAN KEN MELLOW
CITY ADMINISTRATOR ROBERT KUNTZ
CITY ATTORNEY ROBERT E. JONES

ABSENT

PRESENTATION

None.

PENDING ISSUES

BILL # 3670: AN ORDINANCE IN THE CITY OF BALLWIN, MISSOURI, TO READOPT ORDINANCE No. 09-24 WHICH ESTABLISHED A PROCEDURE TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST AND SUBSTANTIAL INTEREST FOR CERTAIN MUNICIPAL OFFICIALS.

Bill 3670 had a first reading at the April 11, 2011 Board meeting.

City Attorney Jones said, the only change he made in the bill is in Section 3, paragraph C, paragraph 1.

The word employee was changed to employers. He said the financial interest statements that are required in Section 105.483 (11) are required unless the city passes such an ordinance. It's specifically approved if the city can do so in Section 105.485 (4). All of the sections of this ordinance are consistent with Missouri law. The one change was a typographical error.

Alderman Harder asked, "It refers to personal gain from a monetary standpoint, is there any information that needs to be inserted from a standpoint of information that someone would gain from either inside information or a bid process, that would be an informational value instead of a monetary value that someone would share with someone else?" City Attorney Jones said, "Section 2 is written broadly enough that it wouldn't be just a financial interest. If that member of the Board or Mayor had some inside knowledge or some relative that might gain as a result of it, it would be the obligation of that person to disclose it and disqualify himself."

Alderman Harder said, "You're saying that Section 2 would cover any conflict of interest on an informational matter." City Attorney Jones said he thinks it would.

A motion was made by Alderman Fleming and seconded by Alderman Boerner for a second reading of Bill No. 3670. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3670 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3670 with the following results:

Ayes – Fleming, Harder, Boerner, Leahy, Mellow, Finley, Markland. Nays – None. Bill No. 3670 was approved and became **Ordinance No. 11-14.**

CITIZEN COMMENTS

None.

PUBLIC HEARINGS

None.

NEW BUSINESS

LEGISLATION

BILL # 3671 - AN ORDINANCE AMENDING ORDINANCE 11-11 APPOINTING DAVID PORTA AS INTERIM PROSECUTING ATTORNEY FOR THE CITY OF BALLWIN AND CREATING A PROCESS FOR THE APPOINTMENT AND APPROVAL OF A PERMANENT PROSECUTING ATTORNEY AND A PROVISIONAL PROSECUTING ATTORNEY.

A motion was made by Alderman Fleming and seconded by Alderman Boerner for a first reading of Bill No. 3671. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3671 was read for the first time.

Alderman Finley amended the fourth paragraph, second sentence, by eliminating the second “and”.

A motion was made by Alderman Boerner and seconded by Alderman Fleming for a second reading of Bill No. 3671. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3671 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3671 with the following results:
Ayes – Boerner, Fleming, Markland, Finley, Leahy, Mellow, Harder. Nays – None. Bill No. 3671 was approved and became **Ordinance No. 11-15**.

BILL # 3672 - AN ORDINANCE ADOPTING A MANCHESTER ROAD REVITALIZATION OVERLAY DISTRICT FOR CERTAIN LAND COMMONLY KNOWN AS 14932-14940 MANCHESTER ROAD IN THE CITY OF BALLWIN AND CURRENTLY ZONED C-1 COMMERCIAL.

A motion was made by Alderman Fleming and seconded by Alderman Mellow for a first reading of Bill No. 3672. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3672 was read for the first time.

Alderman Boerner asked, “If we have a special, by our own ordinance, have adopted a Manchester Road Revitalization Overlay District, when we adopt the Great Streets project, how is that going to interface with it? Is the Great Streets project going to superimpose over this?” Assistant City Administrator Aiken said, “The Great Streets plan is being considered as an addendum to Ballwin’s 2007 Comprehensive Community Plan. It will therefore be advisory to the city and not law. It is the same situation as is the case with the comprehensive plan. The Great Streets plan is very consistent with the MRD regulations and its approach to development in the Manchester Rd. Corridor. No substantial problems or inconsistencies are foreseen at this time.”

A motion was made by Alderman Boerner and seconded by Alderman Mellow for a second reading of Bill No. 3672. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3672 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3672 with the following results:
Ayes – Boerner, Finley, Markland, Mellow, Fleming, Harder, Leahy. Nays – None. Bill No. 3672 was approved and became **Ordinance No. 11-16**.

Mayor Pogue explained to the audience that the property being discussed is the former Red Lobster property and the property to the west between the former Red Lobster and Schrader’s.

BILL # 3673 - AN ORDINANCE PROVIDING FOR THE APPROVAL OF A SUBDIVISION PLAT FOR CAP CARPET CONSOLIDATION SUBDIVISION AS PROVIDED IN CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN, MISSOURI.

A motion was made by Alderman Fleming and seconded by Alderman Boerner for a first reading of Bill No. 3673. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3673 was read for the first time.

A motion was made by Alderman Boerner and seconded by Alderman Fleming for a second reading of Bill No. 3673. A voice vote was taken with a unanimous affirmative result and the motion passed. Bill No. 3673 was read for the second time.

A roll call was taken for passage and approval of Bill No. 3673 with the following results: Ayes – Boerner, Markland, Harder, Mellow, Leahy, Finley, Fleming. Nays – None. Bill No. 3673 was approved and became **Ordinance No. 11-17**.

CONSENT ITEMS: (Budgeted items which are low bid and do not exceed expenditure estimates and/or items which have been previously approved in concept.)

A. None.

MAYOR'S REPORT

Aldermanic Committee Appointments: Mayor Pogue

Finance & Administration: Aldermen Harder, Boerner, Finley, and as Chairman, Alderman Fleming

Public Health & Safety: Aldermen Harder, Mellow, Finley, and as Chairman, Alderman Leahy

Parks & Recreation: Aldermen Markland, Boerner, Leahy, and as Chairman, Alderman Terbrock

Public Works: Aldermen Markland, Terbrock, Fleming, and as Chairman, Alderman Mellow

President of the Board: A motion was made by Alderman Finley and seconded by Alderman Leahy to re-appoint Alderman Fleming as President of the Board. A voice vote was taken with a unanimous affirmative result and the motion passed.

Planning & Zoning Representative: A motion was made by Alderman Finley and seconded by Alderman Leahy to appoint Alderman Fleming the Board representative to the Planning & Zoning Commission. A voice vote was taken with a unanimous affirmative result and the motion passed.

Closed Session: Mayor Pogue said that a closed session will be held after the next Board meeting for the annual performance review of the City Administrator.

Wildwood Legislation: Mayor Pogue said that the City of Wildwood has approved an ordinance regulating the sale of ephedrine, pseudoephedrine and related products. The ordinance requires a prescription for the distribution of these products. He said that Eureka has also approved similar legislation and Ellisville is considering this issue. He asked the Board to review the sample Wildwood ordinance. This legislation is important to help keep one of the main ingredients for the manufacture of methamphetamine off the streets and make it more difficult on those who are abusing this chemical. He asked that this be considered at the next Board meeting.

Alderman Fleming asked Chief of Police Schicker if he has any recommendations regarding this sample legislation. Police Chief Schicker said that this is a standard ordinance. Law enforcement has taken a back seat on making a recommendation to pass this law, waiting for the State Legislature to pass a statute that will be a model for municipalities and counties. That did not happen in the last legislative session and it does not look like it will happen in the current session. This is why a number of municipalities have passed this type of legislation. Law enforcement isn't opposed to this and is supporting it as much as possible.

Mayor Pogue said that he talked with the Wildwood Mayor and was informed that when Wildwood started the discussion, they received a letter from St. Louis County Police Chief Fitch endorsing the legislation that they had passed. He said that the City of Ellisville is currently considering the same legislation.

Alderman Boerner asked what kind of products are sold in the City of Ballwin that would be covered in this legislation. Mayor Pogue said anything containing pseudoephedrine or ephedrine, such as Sudafed and various sinus products. Police Chief Schicker said that similar legislation has been passed in towns in Franklin County and Jefferson County, where the activity of manufacturing methamphetamine is a problem. This legislation has been useful and beneficial to those communities.

Alderman Boerner said that he would like to see a list of products commonly sold in Ballwin that contain these compounds. If the legislation is passed in Ballwin, people needing the product for health reasons will go outside of Ballwin to purchase it.

Alderman Harder said there is significant opposition to this in certain areas. He is against these products getting into the hands of the wrong people, but there are some safeguards that are already being practiced by pharmacists. The amount they have to buy and the safeguards that are already in place, they are not going to get out of the store with more than one package. That's not enough to make any significant meth. I suggest that this needs further discussion.

Mayor Pogue said this will be added to the agenda for the next meeting.

Alderman Finley asked what groups are opposed to this legislation? Alderman Harder said that a lot of pharmacists and drug companies are opposed to this because it will limit the purchase of over-the-counter drugs. They feel that there are enough safeguards in logging and rationing. To do this would be double restrictions to the industry.

Alderman Leahy said that a child with a medical condition that requires Sudafed will now have to pay possibly a \$30 deductible fee for the medication.

CITY ADMINISTRATOR'S REPORT

Golf Course Fuel: City Administrator Kuntz said there was only one bid for the delivered product. Due to the nature of the use and limitation of our fuel storage capacity at the Golf Course, delivery on site is crucial. We had been using Sieveking. This is a market fluctuating price. The budgeted amount was \$11,700. It is recommended that the contract be re-awarded to Sieveking for the next fiscal period.

Alderman Harder asked why there was only one bid. Director of Parks & Recreation Bruer said that other vendors were contacted. One said that our purchase was not a large enough quantity to make it worthwhile for them to bid. Another company said that they were too busy to bid. Alderman Harder asked if Fuelman could be used at the Golf Course and Public Works. Director of Parks & Recreation Bruer said that Fuelman tanks are used at Public Works. The Golf Course tanks would have to be retrofitted because the Fuelman system has to be used because of the cards and tracking system. Alderman Harder asked if it's possible to use one vendor. Ms. Bruer said that we are currently paying 23 cents for unleaded and 25 cents for diesel. The competitive bid price is lower than what we are currently

paying. City Administrator Kuntz said a metered tracking system is used to unlock the tank. If Fuelman was to become the supplier for both locations, most likely they would assess a one-time fee to get us into their system so that the billing could all be the same. Mayor Pogue said that off-road fuel has a different additive, which is a different blend.

A motion was made by Alderman Fleming and seconded by Alderman Boerner to accept the staff recommendation for Golf Course fuel as submitted. A voice vote was taken with a unanimous affirmative result and the motion passed.

MoDOT Grants: City Administrator Kuntz said occasionally, MoDOT has short-time enforcement target grants to monitor certain conditions and report to the State. For the May 1 deadline, we can apply with reasonable expectation of receiving funds for a DUI Detection Grant in the amount of \$12,600, a hazardous moving violation overtime grant for \$6,000, and a click it or ticket occupant protection grant for \$8,000. If we are to capture this, Board authorization is required at this meeting because May 1 is the submission deadline. There is a reporting process and the funds are to be used only on an overtime basis, they cannot be used for regular time officers re-assigned to this activity. Police Chief Schicker said that some of the guidelines require extra enforcement during specific holidays. This is not a matching grant.

A motion was made by Alderman Markland and seconded by Alderman Leahy to authorize staff to apply for the grants. A voice vote was taken with a unanimous affirmative result and the motion passed.

STAFF REPORTS

2010 Department Reports:

Public Works: City Engineer Kramer gave the following report: The Department's final revised combined operating and capital budget for 2010 was \$5,914,834. The unaudited total actual expenditure was \$5,599,860. For comparison, the 2011 budget of \$6,233,055 is \$633,195 more than the actual 2010 expenditure. **Personnel:** The year 2010 ended with two maintenance workers fewer than there were in 2009, as the result of not replacing two retirees. These vacancies continued to remain unfilled in 2010 and will not be filled in 2011. In lieu of these two vacancies, two part-time laborers were hired for the construction season and continued through the curbside leaf program. Seven contractual temporary laborers were provided by a temporary manpower agency to supplement in order to maintain 7-8 vacuuming crews of four persons each for the leaf program. The personnel costs for 2010 were lower than budgeted. **Engineering & Inspections:** Commercial and residential site improvement plans are reviewed in-house for conformance with ordinances and engineering standards. MSD has jurisdiction regarding storm drainage design, including sewer system, detention basins, and water quality facilities. Contracted street work is inspected in-house. Excavation permits are issued to property owners, utilities, MSD, and anyone else that needs to dig or bore within the City's street right-of-way. In 2010, 235 permits were issued including nine for sewer lateral repairs. The permit fee is waived for sewer lateral work. Permit fees generated \$11,850 in revenue, which covers processing the permit application and field inspections to assure compliance with ordinances and engineering standards. **Sidewalk Program:** The Department maintains sidewalks along city streets an along Manchester Road and Clayton Road. **Pavement Program:** This program consists of replacement of deteriorated asphalt overlayment with selective concrete slabs, concrete slab replacement, asphalt overlay of concrete streets, microsurfacing, crack and joint sealing, curb and gutter replacement, reconstruction bringing streets to city standards, chip seal, street sweeping, traffic sign and signal maintenance. **Traffic Control Program:** This consists of new signs, repairs or replacement of old or faded signs, post replacements, barricade repairs and the ordering of sign materials and equipment. **Pest Control Program:** The City entered into a five-year contract with St. Louis County Health Department for mosquito fogging and larvaciding. The 2010 cost was \$3,798. **Snow & Ice Control Program:** Salt is ordered through the APWA salt coop and bids are solicited for salt through a secondary supplier. The purchase and delivery in early 2010 was \$1,500 tons through the coop, and 3,000 tons from a secondary supplier for a combined total of \$253,546. No additional salt was ordered for the 2010-2011 winter season. **Storm Drainage:** MSD owns and

maintains the storm sewer systems, but not for crossroad culverts or bridges. Creeks are on private property; therefore, City participation in stabilizing erosion is restricted to situations where a home is in immediate danger. **Leaf Collection Program:** Man-hours and roll-off containers for disposal totaled 6,976.5. Motor fuel consumption totaled 5,613 gallons. Allied Waste hauled 7,520 cubic yards of leaves to a composting site at no cost to the City. **Support Services Program:** Two designated mechanics service and repair City vehicles and heavy and small motorized equipment. Public Works services 75 vehicles (police, parks and recreation, and administration trucks, cars, and vans), one front-end wheel loader, one backhoe, five skidsteers, three self-propelled rollers, nine leaf vacuums, and an assortment of 77 small pieces of equipment.

Alderman Markland asked about the street bond debit. He said, "You indicate that the last payment will be in 2012." City Engineer Kramer said, "It was a 20-year bond." Alderman Markland said, "We'll have \$700,000 to pay next year, and then nothing." City Engineer Kramer said yes. Alderman Markland said, "Theoretically, we will have \$1 million per year available for something." City Administrator Kuntz said, "It was the philosophy to draw down the reserve now in hopes that this can become the new bar once the debt is retired, and we can stay at the \$2 million maintenance level to keep us from slipping." Alderman Markland said the money will become available in 2013. City Engineer Kramer said yes.

Alderman Harder said that he would like to see a list of street repair projects and dates published on the website like they are published in the Newsletter. The list should also include updates and postponements. City Engineer Kramer said this will be published on the website.

Administration: Assistant City Administrator Aiken gave the following report: The Department of Administration is the smallest of the four departments from the perspectives of both budget and staffing. The final revised department budget for 2010 was \$2,790,822 with an unaudited year-end expenditure of approximately \$2,469,481. From the perspective of fiscal conservatism, this expenditure rate is welcome and furthermore, it compares favorably to the approved 2010 department budget of \$2,706,910. The Administration Department is also the most diverse of the four city departments in terms of the variety of its activities. Aside from the traditional city administrative functions such as management (the City Administrator's office), finance, information technology, and legislation (Board of Aldermen), the department also includes the functions of planning and zoning, building permits, inspections, code enforcement, and municipal court. **Planning and Zoning:** In 2010, there were 22 petitions, with a revenue of \$29,750. In 2009, there were 14 petitions with a revenue of \$16,500. **Inspections and Permits:** This is the largest program in the department due to expenditures and staffing. In 2010, there were 1,889 permits issued, primarily for building, plumbing, mechanical, electrical, and demolition permits. There were small numbers of permits for fences, signs, retaining walls, etc. The breakdown of permits issued in 2010 is as follows: Building permits, 308 (down from 327 in 2009); New commercial/Institutional, 9 (same as in 2009); Commercial remodeling, 31 (same as in 2009); New single family residential, 12 (compared to 32 in 2009); Single family remodeling, 135 (this was 25 more than 2009); Demolition permits, 13 (an increase of 10 from 2009); Decks and Garages, 74; Plumbing permits, 576 (compared to 550 in 2009); Mechanical Permits, 373 (253 in 2009); Electrical Permits, 377 (253 during the seven month period in 2009); Construction Inspections, 2,976; Occupancy Inspections, 864 for single-family housing (an increase of 11 above 2009); Multi-family Housing Inspections, 763 units (up 29% from 2009); Condominium Occupancy Inspections, 55 (50 in 2009); Commercial Occupancy Inspections, 36 (up 2.7% from 2009); Court Cases, 14; **Ballwin Municipal Court**, over 7,000 cases for violations.

City Administrator Kuntz said, Environmental standards related to developments regarding pervious pavement, pervious parking lots, will be on the next agenda with recommendations.

Assistant City Administrator Aiken said, "Energy efficient HVAC has been installed at the Golf Clubhouse. I received the Affidavit of Publication in the mail today for the bidding for the insulation of the Government Center and this building. This is related to the energy grant that we received. The projects should be finished by the end of the year. There is a loan application for a zero interest loan

through the State to install energy efficient windows in the Government Center.” City Administrator Kuntz said, “We continue to have dialog with Ameren regarding street lighting. The lighting institute wants to do another demonstration on convection lighting on part of our commercial corridor, in addition to the LED lighting experiment that we have in progress on Holloway Road in front of the Golf Course. This is a work in progress. Because of the rise in petroleum costs, we should look for conversion options to get away from traditional fuel. I don’t think energy efficiency is a one-time deal. This is a city-wide goal.”

Assistant City Administrator Aiken said, “We are constantly reviewing the codes and ordinances to look for ways to make them more efficient, quicker, and easier. Several years ago, we met with Metro West Fire District and made arrangements for people to come to the Government Center to schedule the fire department inspection at the same time as the Ballwin housing inspection. They don’t have to make a separate trip to Wildwood to do this. We’re always trying to find ways to do things better.”

Alderman Fleming said, “If we switch to a new financial system, the cost could be \$400,000 or more. Our current financial software is old and dated and unable to produce certain reports. There are several vendors that are being considered for this software. This is not reflected in any budget at this time, but will be in the future.”

Alderman Boerner said a document management system is also important with online approval, as opposed to having physical documents flow from one place to another.

Alderman Harder asked Alderman Fleming, “On the accounting system, from what you’ve seen, is that something that would be a one-time expense of \$400,000, or would it be phased in?” Alderman Fleming said there are options. The whole thing doesn’t have to be purchased all at once. You could just buy the portion that Finance Officer Loehr needs, and then budget in the future for the parts that deal with inspections or point of sale or inventory. I think we’ve decided to get what we need at this time and can be budgeted in steps over several years. When someone buys a lot of software, they never can implement everything the first year. The phase in approach is best.”

Parks & Recreation: Director of Parks & Recreation Bruer gave the following report: There are seven program areas: Parks, Building Systems, Ballwin Golf Course, Ballwin Golf Club, North Pointe Aquatic Center, The Pointe at Ballwin Commons, and the Ballwin Days Festival. **Parks and Building Systems:** There are 66 acres of parkland. There were 26 street trees planted along Old Ballwin Road, assisted with interior work of the original Ballwin Schoolhouse, Golf Club, and The Pointe. Additional projects were a large holding tank installed at The Pointe to replace a smaller one for the safe draining of the indoor pool; overhaul of the water feature at the Vlasik Park playground; removed all of the attic insulation as part of the Energy Efficiency Retrofit Grant from the Department of Natural Resources. **Ballwin Golf Club:** Rental and management of the banquet side of the building. There were 41 rentals in 2010. Ballwin Golf Course: In 2010, there were 32,004 total rounds (34,422 in 2009). Resident play was out-paced by non-resident play by 7,036 rounds. The total greens fee revenue was \$429,862, with resident usage accounting for \$133,939, and non-resident greens fee revenue was \$283,949. Tournament greens fees were \$11,976. Cart fees were \$118,238, and pull cart fees were \$5,085. **North Pointe Aquatic Center:** 2010 Pool Pass revenue was \$143,824 (\$148,715.16 in 2009); Concessions in 2010 \$42,811.32 (\$25,318.05 in 2009); Daily Admissions Revenue, \$295,701 (\$248,327 in 2009). **The Pointe at Ballwin Commons:** Total memberships, 1,987 (1,720 in 2009); Facility Rentals, 567, Revenue \$64,109 in 2010. Programming included various youth activities and summer day camp, Senior/Adult and Silver and Fit programs. **Ballwin Days Festival:** June 25-27, 2010. 2010 expenses \$55,144, revenue \$53,342 (In 2009, expenses were \$57,921, Revenue \$57,007). Since hot weather affected the attendance, the festival has been moved to the first weekend in June in 2011. Ballwin Days finished \$12,000 under budget, therefore, less was budgeted for 2011.

Director of Parks & Recreation Bruer said, “We are always looking for ways to offer programs that improve community health and wellness. We recently applied for a grant from the Missouri Foundation

for Health. It's a cooperative pilot program with the Rockwood School District to bring kids from Woerther Elementary and Selvidge after school for on-site fitness programs at The Pointe. It's a three-year program. It not only benefits the kids, but the Missouri Foundation of Health is interested in some of the statistics that we derive from working with kids on a regular basis to improve their health and wellness. There's no cost-share on the City's part. It's 100% funded."

Alderman Boerner asked, "In terms of this cooperative program, how is the individual student participation determined between the City and Rockwood?" Ms. Bruer said, "We would take registration and offer it to their students, and they would publicize it to their students. The registration would be with us, and the grant would pay for their participation, staff time, transportation. It will help cover some of our full-time staff cost."

Alderman Harder asked, "Is the bus request still current?" Ms. Bruer said, "Yes. It would also be used for other programs as well. We call the program "Ballwin On The Move". We might be able to use it for other age groups also. It is a 25-passenger bus, similar to what is used at retirement centers. The bus would be owned by the City."

Alderman Markland said, "Last year, the summer concert series went over quite well. Is there a plan for this year?" Ms. Bruer said, "I have three concerts planned right now, and just received word that we received funding from the Missouri Art Council. There are plans for at least 3 more concerts this summer."

Police Department: Police Chief Schicker gave the following report: "In the crime statistics, the total police actions for 2010 were 36,211. This is an increase of 294 police actions, as compared to 2009. Our largest increase that we had seen is in the area of credit card fraud, forgery, identify theft, and robbery. We attribute this to the economic times. We also had an increase in arrests by 133, which is 20%. In 2009, there were 47 DWI arrests; in 2010, there were 82. Our largest crime segment is stealing over \$150. This is mainly because people are not locking their cars and leaving valuables in cars over night.

Management: We currently have a command structure of two captains. One is over field operations that deals with patrol functions, support services such as traffic and special operations, the school resource and business resource officers, and reserves. The captain over administration and operational support oversees criminal investigations, communications and records, COPS, DARE, research and planning, public relations, and professional responsibilities. **Field Operations** is the major contributor of police actions. In 2010, the officers made 70 felony arrests and 421 misdemeanor arrests. They conducted 1,657 traffic surveys. They issued 8,121 traffic citations and warnings. Our business resource officer had 2,263 contacts with businesses and the Chamber of Commerce. There were 1,464 foot patrols. The **Community Affairs Unit** handled 63 referrals dealing with everything from elderly people that don't have family or can't attend to their needs, or neighborhood disputes. They also put on 65 safety programs. **Communications** handled 32,237 calls for service. They observe the prisoners, enter warrants and teletypes, and monitor the R-U-O-K program. The **Detective Bureau** investigated 495 cases, which is up 2% from 2009. The **Planning and Research Unit** assisted in applying for 7 grants, in which we received \$27, 031.92, of which we had a matching fund amount of \$3,432. The grants included vests, light bars, overtime funding for special enforcement, and medical kits that were placed in all police vehicles. **Revenues** in 2010, there was approximately \$938,841, which included warrant fees, Communications contract with Manchester, SRO services with Rockwood in which we are reimbursed for the officer's presence at the school, records checks, permits and bond processing, court fines, grants, police training fee, notary fee, police reports, and fingerprinting charges.

Alderman Finley asked, "Is the school resource officer assigned full time to Selvidge?" Police Chief Schicker said, "He is assigned full time to Selvidge during the school year. When school is on summer break, that officer is assigned back to the Police Department and is used for fill in for vacation relief. Alderman Harder asked if it is anticipated that this program will continue. Police Chief Schicker said, "I think they are going to continue using a law enforcement aspect instead of private security. The school

resource officer is considered part of their staff for security and assisting in counseling troubled students, classroom teaching related to processing a crime scene.”

Alderman Harder asked, “What is Ballwin’s FBI ranking in crimes per thousand?” Police Chief Schicker said, “Those are generally about two years behind. I have not yet seen the 2009 report that will give the ranking.”

Outdoor Displays: Assistant City Administrator Aiken said, “The question was asked what are the City’s regulations regarding the outdoor display, sale and storage of merchandise? The limitation is in Article XVI, Section 22 of the Ballwin Zoning Ordinance, except as allowed in the ordinance. There are 4 categories that allow this type of use. The outdoor display of automobiles by factory franchise dealers, the storage of automobiles for auto service facilities, the outdoor storage and display of merchandise for nurseries and greenhouses, and generalized sales and display of residential lawn and gardening supplies or any kind of business that applies to the special use exception. These uses are all only allowed by special use exception under the Zoning Ordinance today. There’s no way you can legally outdoor display, sale, or storage of any merchandise except by special use exception. If it is determined that we need to loosen up on this and allow this type of display, it will be necessary to amend Section 22 of Article XVI.”

Assistant City Administrator Aiken said, “The question was asked at the last meeting, why do we have this ordinance on the books. This ordinance was part of the 1966 Zoning Ordinance that was adopted by the City and was contained in the ordinance at that time. Since that time, there hasn’t been any interest in changing it.”

Alderman Markland said, “It was brought to my attention when I went to QuikTrip. Is this ordinance hurting some businesses? Could this stop some new businesses moving to Ballwin? QuikTrip perhaps could have more sales with product on display outdoors. ADA requirements should not be violated and safe entrance to the store is important. Does anyone on the Board feel that there is a concern that would help the businesses in our area without deteriorating the look. I can’t see storing bags and bags of mulch in the front of the building as storage. If there were 10 bags at the front of the store for sale, that’s a different issue.”

Assistant City Administrator Aiken said, “Long term storage is a lot different than the product being there for the week or summer, instead of being a permanent fixture. At the time this ordinance was adopted in 1966, Manchester Road was two lanes. There may have been issues that were unsightly or inappropriate. Perhaps the ordinance should be refined so that it’s not so limiting.”

Alderman Markland suggested that this subject be reviewed and discussed either at the next meeting or at a future meeting to determine if there is a need to change the ordinance. Alderman Leahy said, “There is a business that has a video rental machine in front of their store. Would that be considered the same issue?” Assistant City Administrator Aiken said, “Probably this would be the same. We have not strictly enforced this in the last few years. There are businesses in Ballwin that have product on the sidewalk that are theoretically a violation. The ordinance could be rewritten.”

City Administrator Kuntz said, “It becomes a slippery slope if you try to make a list of items that can be displayed outdoors. Just set out a standard. The business will either meet the standard or not.

Alderman Harder said, “The items A – G in Mr. Aiken’s memo is a good starting point. I like the idea of merchandising items outdoors, but not to turn into storage because someone doesn’t have enough room inside the building. Assistant City Administrator Aiken said, “A designated area for outdoor product will most likely become a permanent area for storage. It will have something in it all the time. For some businesses, that area may always be a pile of charcoal, mulch or salt. It will be difficult to write an ordinance that will get around that issue without endless monitoring.”

Alderman Harder said, "The two big companies in Ballwin are Lowe's and QuikTrip. They do a good job of their exterior merchandising. At Lowe's, it's seasonal."

Alderman Finley said, "Other than the special uses described, if we compel the merchants to bring in their merchandise at the end of the shift, perhaps at 10:00 so that the Police don't have to go by all the time and check on it..." Assistant City Administrator Aiken said, "Some of the stores do that like Marshall's that have racks of clothing. You create another burden because the Code Enforcement Inspectors won't be on duty. At night, the responsibility will fall on the Police Department to observe and enforce the ordinance. When the Inspectors are back, the stores will be open and it will be legal. This will create an enforcement problem."

Alderman Finley said, "In my travels, I have seen gas stations that leave stacks of cases of soda outside. It's obvious that it has been there a long time because the color is faded on the package. This is not attractive for business. Has there been a lot of merchants requesting this?" City Administrator Kuntz said, "Not a lot, but it does come up often enough. There are new products that five years ago were not on the market. The rental movie box is a good example of this, which won't be brought in every night."

Alderman Harder said, "People tend to think that the City is clamping down on them if they are a business owner. That creates a not-so-friendly atmosphere between the City and the business, even if it's a small display. They then say that Ballwin is a hostile place for business. We should find the fine line in the legislation and language."

Alderman Markland said, "There isn't a sense of urgency that this has to be done by a certain date. It's a good topic for businesses and we should slowly proceed to make sure when we do write it up, if it goes in that direction, that it's enforceable, and we are not increasing the load on the Police Department every time someone borrows a gallon or two of windshield washer fluid."

Alderman Fleming suggested seeking input from the business community by the Business Resource Officer and from the Chamber of Commerce. Police Chief Schicker said that this could be done. City Administrator Kuntz said that he will consult the Chamber of Commerce at the meeting on Tuesday.

Alderman Harder asked, "Could the City Administrator ask to see if anyone would like to be on a focus group or a round-table discussion with Assistant City Administrator Aiken to talk about this in the future, and get five businesses that have a vested interest in this bill and a couple that don't." City Administrator Kuntz said this could be done.

CITY ATTORNEY'S REPORT

Candidate Certification: City Attorney Jones said, "This is regarding the memorandum that I prepared at the request of Alderman Fleming at the last meeting, which was adopted unanimously, regarding the declaration, verification, and certification of candidates for election in the City of Ballwin. I saw this as a request to identify what we are doing, why we're doing it, and what we should be doing in the future, not to focus on any particular candidate or complaint."

City Attorney Jones said, "I found it to be unclear what the responsibility of the city and its employees is. I found it interesting that the St. Louis County Election Board provides a declaration form that refers to a statute that is in a sub-section, which by its terms does not apply to municipal elections. The language in the statutes is internally inconsistent and my conclusion was that the City Clerk should continue to require a declaration form from a potential candidate that states that the person possesses the qualifications for that office, in particular timing for the filing, the residency qualifications, and that the candidate is not in arrears for any unpaid city taxes or municipal user fees. The last of those qualifications is perhaps the most difficult one because we don't have city personal property taxes or city real estate taxes so we have to rely upon the records of another agency, in particular the St. Louis County Assessor who posts information from records assembled by the Collector of Revenue of St. Louis County. Sometimes that

information is dated, or incorrect, or sometimes correct. That is a difficult thing for our City Clerk to have to do when it comes to certifying candidates. I caution, in my opinion, that the City should think carefully about placing additional burdens on the City Clerk because if a candidate is not certified as a result of a declaration and not placed on the ballot, that could perhaps result in the cost of litigation, or a civil rights case. At a minimum, if the City is going to refuse to certify a candidate who has turned in a timely declaration, I'm adamant that we would need to give that person notice and an opportunity to be heard, and that would place additional burden on City staff to schedule a quasi hearing of some kind and to determine if the result of that process is that the candidate should not be certified. If we decide that the City wishes to require additional acts from the staff when certifying candidates, we should do that in an ordinance. We should make the process clear and then we should talk about it as a Board and adopt it as legislation. I'm available to answer questions about the research that I conducted and the preparation of the memorandum."

Alderman Fleming said, "Obviously the intent is to have candidates that meet certain minimum qualifications. If we're not responsible for doing this, and the Election Board says they are not responsible, someone should be. Could we require someone to submit proof of age, which is a driver's license or birth certificate; proof of residency, which would be a utility bill; and proof of payment of taxes, which is a receipt? Maybe we're not going to use this as a basis to deny them candidacy, but if we find any one of those things lacking, we can notify the Election Board when the list of candidates is sent in. Will that then put the responsibility on them to further investigate, or would they not do that?"

City Attorney Jones said, "I think they are going to take the position that they don't do anything other than count the votes and then report the results of the vote count to the election authority in the City. I think some of it is self-policing. Chapter 115 has a series of different election contest procedures which allow a contestant to file a lawsuit for declaratory judgment, for a recount, for a contest of the qualifications of another candidate. There is a provision in Chapter 115 as well for a complaint to the Department of Revenue, but it's found in the same sub-chapter which, by its terms, does not apply to municipal elections. A question is whether that really is a legitimate way to police the process. Requiring proof of those three things, Alderman Fleming, would be a step toward making the candidate more responsible for providing that information. I think it is difficult to require the City of Ballwin to check a third party source to determine whether not our fees and taxes are paid. The only thing that could possibly qualify for municipal tax or user fees would be our sewer lateral. It's collected by another agency and remitted to us, so we have to rely upon their records. It would be different if our City Clerk, City Administrator, or Finance Officer could walk down a hall and consult a directory and see on our own records if the fees have been paid. We don't have dog licenses or city stickers for automobiles like we used to have, which would be easy to verify."

Alderman Finley said, "I'm trying to get a handle on when Section 115 refers to municipalities, and it also mentions the primary partisan election, candidates from municipal office. Would this be something applicable to, for example the City of St. Louis, in which their candidates for Aldermen run in partisan elections. Would the section not then be applicable to our City?" City Attorney Jones said, "I don't think Section 115.349, which sets forth the requirements for declaration would apply to city elections, township, city, town or village offices because it's found in the sub-chapter that begins at Section 115.305. The only reason I conclude that Section 115.346 applies is because it states, not only in the title but in the body of the section itself, that it specifically requires disqualification of a person that's delinquent in unpaid city taxes or municipal user fees. Then the inconsistency is further complicated by the fact that Chapter 79.250, which is the fourth class city statutes, the ones that generally govern our class of municipality, has been interpreted by a very old case and a series of other cases up through the Grimshaw case that I cited, that the requirement is measured at the time of election. The time of election, according to the courts, is when the polls close on election day. It makes it very difficult for the city to adequately decide how and when to make this determination. Since we start the declaration process in mid December, at that time, the personal property taxes and real estate taxes for that year aren't due yet. When the candidate makes a declaration, that's what I pointed out in September, 2010 when I rendered my previous opinion. I don't know what the answer is. I really don't."

Alderman Boerner asked, "Did you refer to Chapter 71.005 in your analysis?" City Attorney Jones said, "I did." Alderman Boerner said, "That refers directly to 115.346." City Attorney Jones said, "Yes. I stated in my opinion that it applies to the requirements of 115.346 to all candidates. I stated in my opinion that I believe that was intended to include...."

Alderman Boerner said, "I have a question about the document that was submitted. Have you considered this in your analysis?" City Attorney Jones said, "Yes. I'm familiar with the form." Alderman Boerner asked, "Where does this form originate?" City Clerk Clark said, "It came from the Election Board." Alderman Boerner asked, "Who is the ultimate authority with respect to the elections where there is a commission?" City Attorney Jones said, "The Board of Election Commissioners." Alderman Boerner said, "So, this form comes from the Board of Elections. They are, to some extent, determining how we do our process. I think Alderman Markland said in his e-mail that he went to the Board of Elections and asked the question as to who is supposed to certify, and they said the City Clerk was supposed to do that. Does the term attestation and certify have any special meaning?" City Attorney Jones said, "The term certification is the only term used in the statute. Attestation means that someone is verifying the authenticity of what they are saying." Alderman Boerner said, "It says, the certified candidate possesses all required qualifications and no candidate's taxes are in arrears according to 346. There is some confusing language. If we use the direction from the Election Board, if they direct us to do this, and we do it in accordance with their direction, what's the problem with that? My declaration and tax certification says that I'm not in arrears for any unpaid city or county taxes or municipal user fees. I understand that under Missouri law, failing to pay such taxes and/or fees precludes me from being certified as a candidate and prevents my name from being placed on the ballot. I agreed to that when I announced my candidacy. That was my tax certification. If the Election Commission says that this is what you have to do, in my way of thinking, if I certify something, I have an accounting background, and if I'm going to attest to or certify something by accepting their word that something is this way, I don't just ask if the financial statements represent your operations, and they say yes they do, and I sign off on it. That's not what's happening here. If we're relying upon, I think I understand the spirit of the law, that if you don't pay your taxes, you should not be serving the public. I think this is the bottom line. Did you talk to the Election Commission at all as to what the intent of this form is?" City Attorney Jones said, "No. I placed two different calls to the person that the Election Commission, whose name I was given by the City Clerk, and she didn't return my call." Alderman Boerner asked, "Did you go down there and talk to them?" City Attorney Jones said, "No. I didn't feel it was necessary for what I was doing. The question to me is, what does the law say, what are we doing, and what should we be doing." Alderman Boerner said, "If by law, the Election Commission is in charge with calculating the election, and they provide us with this form, and that we attest and put the City of Ballwin seal on it, it's signed by City Clerk and signed by the City Administrator, if it's an attestation and certification, it should have meaning. The case that you cited, Thomas v. Neely, is this a transcript of that case?" City Attorney Jones said, "It looks like it's the same parties. Yes it is." Alderman Boerner asked, "Are you suggesting that a City Clerk has nothing other than administrative duties as it relates to an election?" City Attorney Jones said, "That's what that case says, Yes."

Mayor Pogue said, "Why did the St. Louis County Circuit Court recently deem this State statute unconstitutional?" City Attorney Jones said, "The case that I referred to on the second page of the opinion is Legends Bank and John Cleva v. The State of Missouri, and it was specifically directed toward Senate Bill 844, which enacted changes in Chapter 105, Chapter 115, and Chapter 130. It was deemed to be unconstitutional because it combined too many things in one law. You're supposed to try to limit each law to a particular class and not combine a lot of things. Most of the areas that it was determined were unconstitutional are in Chapter 130, which is Ethics Commission. There are some in Chapter 105 and Chapter 115. The one we are focusing on here is Section 115.346. It is the one we need to be concerned with." Mayor Pogue said, "I'm on the Missouri Municipal League's website and they say that 115.346 is the one that was ruled unconstitutional. It refers to the filing of candidates and the role of the City Clerk. In the opinion released by the office of the Attorney General, it's the County Clerk that placed on the ballot, the name of a candidate." City Attorney Jones said, "I didn't see reference to 115.346 in this decision in the Cleva case. The Circuit Court decision does not necessarily have precedential value."

Alderman Boerner said, “What does this mean, “on appeal we review the grant of a writ of mandamus under abuse of discretion standard”? In looking at the Thomas v. Neeley case, it appears that the City Clerk has something other than administrative function. One of the things she did in the Thomas v. Neeley case, I think part of this arose from the fact that the guy was pro-active in business. He gave \$16,000 to a presumably losing candidate, and he was unhappy with the finances of the City of Branson. He claimed to have a hotel as his place of residence. The City Clerk went over there and actually looked inside his hotel room to see if there were any clothes, and she also looked at his tax records. Unlike St. Louis County, Taney County has the County Clerk as the authority. They don’t have a Board of Elections. If she did these things and the Judge didn’t take any exception to that, and he also quoted 346. She said “It was determined that although Thomas was not in arrears for any paid monies or fees to the City of Branson, there was no way she could certify Thomas because of the one-year residency.” The judge even cites 346 in this case and affirms that. I think the real key here is what the Election Commission thinks we should be doing. If this is their form and an attestation and certification, then we are certifying something that’s not true. Are we going to certify with the seal of the City of Ballwin something that’s not true? It doesn’t say that they filed the paperwork. It says they are not in arrears. This is the second year in a row that we’ve had some issues related to this. I think it would behoove us to come out with a solution that is in the spirit of the law, as well as the letter of the law. As you pointed out, the letter of the law is confusing. In terms of the spirit of the law, that’s not confusing. We still don’t know what the Election Commission expects of us in terms of the City. We know what this form says, and we know that when we file that form with respect to the incident here in Ballwin, that was false at the time it was filed on the 19th. We know that for sure.”

City Attorney Jones said, “I have to respectfully disagree, because the certification says that the candidate’s taxes are not in arrears pursuant to section 115.346. The question is, when do we determine that arrearage? Do you determine this when the declaration is signed, when the certification or attestation is made, or at some point up to and including the close of the polls on election day?” Alderman Boerner said, “I’m talking about when this form was signed. The form was signed on the 19th.” City Attorney Jones said, “In arrears is not a vacuum, in arrears pursuant to 115.346. When you say pursuant to a particular statute, it takes on all the baggage that comes along with the citation to the particular part of the statute.” Alderman Boerner said, “We probably need to look to the Election Commission as to what their interpretation of the law is.” City Attorney Jones said, “Absolutely”. Alderman Boerner said, “We should seek direction from them what we should be doing.”

Alderman Markland said, “I believe on the form that the candidate signed, it had as of January 18, 2011. The closing period of candidacy, which they go on to say January 18, 2011. If you go to 346, it ends up by saying, on the last day to file a declaration of candidacy for the office. They pretty firmly tie it to a date. It’s not speculative. Somebody that signs the form in December is attesting that on January 18, they were current. That’s not unclear.” City Attorney Jones said, “Alderman Markland is correct. The form that you signed, Alderman Boerner, is somewhat different than the ones signed this year, although not dramatically. It says, “I certify that I am not in arrears for any unpaid city taxes or municipal user fees on the last day filing the declaration of candidacy, which will be January 18, 2011. 346 says “will not be in arrears for any unpaid city taxes or user fees on the last day to file a declaration of candidacy for the office.” Alderman Boerner asked, “So, that’s what 346 says?” City Attorney Jones said yes.

Alderman Boerner said, “It says willfully falsely making any certificate, affidavit, or a statement required to be made per provisions of Section 115.001 and 115.641 of which 115.346 is a part, and says, including but not limited to statements required to be made under penalty of perjury, such individual shall be guilty of class C felony. If someone makes false statements on any declarations related to anything related to 115.001, 346 is a part of that. What I’m trying to do is to get understanding of what we’re talking about and what we should be doing.”

City Attorney Jones said, “Willfully and falsely, to the extent that it becomes a criminal offense is to be determined by the prosecuting authority and a judge or jury. You can’t just make the leap to a particular set of facts and say.....” Alderman Boerner said, “I’m not trying to do that. What I’m saying is that it’s a serious thing what we’re doing and needs to be taken seriously in terms of doing what we need to be

doing. What I've stated here raises enough questions, and especially the form that we get from the Election Commission and what the intent of that form is."

Mayor Pogue said, "It sounds like we need an interpretation from the Board of Elections on what they want us to do." City Attorney Jones said, "I don't think they are going to give it to us." Alderman Boerner asked, "Why wouldn't they? They gave us the form and say that we're responsible for certifying it." City Attorney Jones said, "Their declaration form isn't the statutory reference of 115.349, which does not apply to city elections; it applies to partisan primary elections." Alderman Boerner said, "But, this is 346 that is on this form." City Attorney Jones said, "The blank declaration form that comes in the packet from the Board of Election Commissioners, is not the one we used. We made the form more user friendly because it now tracks the language of 115.346. It says, "I will not be in arrears as of the last day for filing, which is January 18, 2011."

Alderman Markland said, "I'm not sure that I agree with that. I'm looking at the Ballwin Declaration of Candidacy form. It says election on April 5, 2011. Section 115.346 of the Missouri Revised Statutes states, and states more, and then January 18, 2011. Whether this piece of paper is what someone signed, and this piece of paper is what we attested to, and we're not bringing in all of the other issues, if somebody wants to file a complaint and say that this is against their constitutional rights, that's one thing, but at this point, I think all we have been asked to do is sign a form if you agree with it, and attest that the form is correct. All of bringing in various statutes doesn't do anything other than muddy the water. We're attesting these pages." Alderman Boerner said, "If we're not supposed to be doing this, then we should not be submitting this form."

Alderman Boerner asked, "When was the ordinance passed that set up the sewer lateral that we define as a tax?" City Attorney Jones said, 1999. Alderman Boerner said, "We define it as a tax." City Attorney Jones said yes. Alderman Boerner said, "So, we have the option to either collect it ourselves or to have someone else collect it, right?" City Attorney Jones said yes. Alderman Boerner asked, "Do we have an agreement that allows the County to collect the tax?" City Administrator Kuntz said, "Yes. It is authorized by ordinance by this Board and submitted to St. Louis County." Alderman Boerner asked, "Would you define that as a principle agency relationship where they are acting as our agent to collect that tax? Didn't we authorize them to act as our agent to collect that tax?" City Attorney Jones said yes. Alderman Boerner said, "If an agent is collecting the tax, that's just like we are collecting it ourselves. Is that correct? It's an agency relationship, right?" City Attorney Jones said yes. City Attorney Jones said, "My point is the difficulty in relying on someone else's records to determine if a candidate is compliant or not." Alderman Boerner said, "We legally granted them that authority. As of the last day to file, if there is an issue, what's the deadline to submit this attestation?" City Attorney Jones said, "This year, it was January 25, 2011." Alderman Boerner said, "We did it on the 19th. In the absence of any other information, I'm assuming, because it's dated the 19th that we actually signed and submitted it on the 19th. Do you agree with that?" City Attorney Jones said, "That's the date that appears on it." City Clerk Clark said, "It was signed and mailed on the 19th so that it would be delivered to the Election Board via Certified - Return Receipt mail by the deadline." Alderman Boerner said, "If we have until the 25th, we have time to talk to the candidate and remind them that they have not paid their taxes and ask if they have a receipt. In the *Thomas v. Neeley*, the Judge didn't have any problem with what the City Clerk did. There was no problem with her going to his hotel room and looking to see if it was a residency and any evidence that he was living there. The Judge didn't have any problem with that. The Judge had a problem with her overstepping her bounds. He said that he did establish residency. She overstepped her bounds in saying that he didn't." City Attorney Jones said, "That's not the way I read it."

Alderman Fleming said, "My only desire is to try to see if we can do anything better for future elections. It's not definitive from the City Attorney's position as to what to do. I would like to see some verification. It's a very serious thing to deny someone the opportunity to put their name on a ballot. You will end up with a civil rights violation and lawsuit against you if you make a mistake in your verification. To do this verification, we are relying on records that aren't ours, and we don't have full access to those records. It would be a very serious thing for us to do that. Even this *Thomas v. Neeley* case that you cited, as I read it, it seems to contradict itself several times in the opinion. The end result is

one big sentence that says, “The trial Judge stated that the statutes were ambiguous and the ambiguity must be resolved in favor of Thomas.” In other words, when in doubt, we certify the candidate, is what I’m taking from this. It’s going to be December before another candidate filing begins. I’d like to see us continue working on this with an eye towards doing it better in the future. The next logical step is to ask the Board of Elections what do they consider to be our responsibility. All we can do is ask. If the don’t give us an answer, then we decide where to go from there. They are getting their authority from somebody. My suggestion is that we ask the City Attorney to draft a letter to the Board of Elections posing our question so that we can get feedback from them.”

City Attorney Jones said, “This has been discussed among the City Attorneys because this is a question in other municipalities as well. The question has been raised whether or not the Legislature can even impose such a duty on the cities and their personnel, the City Clerks and City Administrators, or is it an unfunded mandate under the Hancock amendment. St. Louis County delayed for over a year in implementing the conceal and carry licenses because the challenge was an unfunded mandate that they were supposed to go through the back ground check, but yet no tax dollars were ever set aside for paying for the services. The question is, can the legislature make the City and the City Clerk go through these various background checks or to verify this information without the right funding source for payment.”

Alderman Boerner asked, “How long would it take to check the County website?” City Attorney Jones said, “If that’s what you are going to do and base your decision on that information, I would be very hesitant to ever advise our City Clerk to refuse to certify a candidate, based upon something that is found on the Assessor’s website, based on the Collector’s records. I would be very very hesitant to do that. That’s why I’m saying that you need to provide notice and an opportunity to be heard with an administrative hearing.” Alderman Boerner said, “This year, we would have had seven days.” City Attorney Jones said, “That’s when it comes down to how much time and money do you want city staff to spend going through that? Maybe it’s a considerable amount, but that’s a decision of this Board.”

Alderman Finley said, “I echo the statements of Alderman Fleming, and the question is where do we go from here? I think a good starting point would be to get some kind of guidance from the County Election Board. From what I’m gathering is that they are taking the laissez faire approach, and we will have to take this upon ourselves. We could ask their legal counsel.” City Attorney Jones said, “We can try. If this Board is directing me to inquire of the St. Louis County Election Board, I will direct my letter to their legal counsel. Their staff, to date, has not been willing, either formally or informally, to say precisely what they believe the City’s responsibility is.” Alderman Finley asked, “If we’re not satisfied with this, how about contacting the Missouri Secretary of State’s Election Division?” City Attorney Jones said, “I called the Council for the Ethics Commission, and also received a lukewarm response as to how they anticipate enforcing Chapter 130, which is the Ethics Commission statute. Basically, I was told that if a candidate is in compliance or corrects the deficiency, they are not going to concern themselves. That doesn’t give us a whole lot of assistance in trying to decide what to do.”

Alderman Markland said, “I can answer that question because this last Wednesday, I went to the Board of Election Commission at their meeting. I participated in the public portion of it. I asked those questions. I was told that we decided whether a person was certified or not. They were not the election police. All they were going to do was to certify that a certain number of votes were cast per candidate. That’s all they did. It’s up to us to determine the qualifications. In this case, we were in error. I asked had we corrected that error, they said they would have modified accordingly. If you wait until the last moment and it’s already on the ballot, that’s one thing. If we would have come early and said we made a mistake, they would have adjusted. What’s on this piece of paper is what they expect us to do. We had candidates on the ballot that technically should not have been there. We knew that and still did not correct it. We have more problems than what we will do for next year. We have a problem of what we have done this past two or three months. There’s an error.”

Alderman Fleming said, “I understand you went there last, but I don’t know if that response came from their attorney or staff. I would still like to get their position in writing.” Alderman Markland said, “It came from their attorney. It was a very informal meeting. There were two people there for the public

meeting. I was one of the two.” Alderman Fleming said, “I still would like to formally ask this in writing, and for the City Attorney to include a few of the different scenarios that were mentioned tonight. Could we re-write our form to say a driver’s license must be provided showing proof of age, etc. I want to find the best way to do this for the next election.”

Alderman Boerner said, “I don’t think we can definitely say that we are in error on this. I disagree with that. I think that it’s a matter of getting the information. We can’t definitely say that we erred.”

A motion was made by Alderman Fleming and seconded by Alderman Boerner to instruct the City Attorney to formally request an opinion from the Board of Elections on how to handle this matter for future elections. A voice vote was taken with a unanimous affirmative result and the motion passed.

Food Truck / Trailers: City Attorney Jones said, “I also prepared, at the request of the Board, an ordinance for discussion regarding trailers. Initially I thought I would propose allowing trailers of a certain size in the commercial district behind the building line. I began seeing the interplay with other ordinances and questioned if we wanted to give that kind of blanket authority. The draft in the packet amends the special use exception portion of our zoning ordinance. It will allow someone with a trailer no more than 24 feet in length in the C-1 zoning district, if the trailer is owned and utilized by the holder of a Ballwin business license, and the licensee is operating the business on the same site and the same property where the trailer is going to be stored. We would then go through the same special use exception process that you’re used to. It would first go to the Planning & Zoning Commission for a recommendation and then to the Board. You can grant it, but you will consider the usual findings and being in the best interest of the City of Ballwin. I think this will be a process that will get you where you want to be without having trailers all over the place. If this is something that you are interested in, it can be on the next agenda for legislation.”

Alderman Harder said, “I sat down with the owners of Carnival Foods last week to find out about their operations. I learned that the landlord of that facility is also the landlord for the next property immediately to the east. He has been courting them to try to move Carnival Foods to the tanning spa location at the end of the building on the other property, which would double their space and possibly give them the opportunity to have a drive-up window. If they did that, they would incorporate into that new location a cooker that is currently in the trailer, and it would be part of the building. They wouldn’t need the trailer at that point. They have one more year left on their current lease location. If their business continues to grow, they might be able to speed up the process and break their lease. The landlord has already told them that they could break their lease if they move to another location that he manages. Maybe this will solve itself if we grant them a temporary variance to do what they are doing for 6 months and then revisit this with the idea that we will let them do this activity, but in the near future we want them to be in a different location that will accommodate more of a restaurant than to have both of these.”

City Attorney Jones said, “Unfortunately, there’s no way to grant that kind of a variance. It can’t be done administratively and can’t be done by the Board of Adjustment. The only way to allow them to continue what they are doing is to change the ordinance.” Alderman Harder asked, “Would it have to be general for everyone, and not just specific for their operation? That’s why I was thinking about a general variance or a temporary use situation instead of having to change the laws.” City Attorney Jones said, “No, there is no way to have special legislation like that. Going through the special use exception process gives the Planning & Zoning Commission and the Board a chance to look at it. Hopefully you’ll end up with good situations instead of bad situations.”

Alderman Harder asked, “Under our current zoning, there’s nothing we can say that will grant this, even though it’s against our current law to have this trailer. We could say they could have the trailer there for 6 more months, but after that they can’t.” City Attorney Jones said, “No, there’s no way to do that.”

Alderman Markland asked, "Could you write an ordinance with a sunset date?" City Attorney Jones said, "Yes. We have done that with others. We could do it with this one also. I cautioned the City from taking such a dramatic step solely based on one business. We want to help this business and others as well. I think we can do it with something like this."

Alderman Fleming asked for one more explanation of the solution to this issue. City Attorney Jones said, "You start with the proposition that you have which is the C-1 commercial district ordinance, which has a lot of uses. Our ordinances are permissive, so any use that is not listed is not allowed. A special use exception expands on that. It says these things that are otherwise not allowed uses will be allowed with this additional administrative procedure, which starts with the Planning & Zoning Commission, garners a recommendation, then comes here. You hold an administrative hearing on the issue for the special use exception. The Mayor reads the findings. What I'm proposing is adding section 31, which lists things that are allowed by special use exception in the C-1 zoning district. The uses would be allowed only because it's granted a special use exception. "

Alderman Fleming said, "They would have to come and ask for this each time." City Attorney Jones said yes, like a special use exception for front yard parking. Alderman Fleming said, "The Board has not decided that we want this kind of thing up and down Manchester Road." City Attorney Jones said, "That's why I put in the language that it has to be owned and utilized by the holder of the business license, operating the business on the same parcel of real estate. This will significantly reduce the number of requests."

Alderman Leahy asked, "Could we mandate that they put it in the back for 6 months until they move to a new building, or are you saying that that's where the trailer will go from the very beginning once the ordinance is passed?" City Attorney Jones said, "It will have to be parked behind the building in order to be granted a special use exception."

Alderman Harder said, "This will be used as a kitchen. There's no electric or water hookup at the rear of the building, just parking spaces. To use it effectively, they would need to install an outlet. This is more than just parking a vehicle. They are also getting certified through the County health inspection. They will also be trying to get a separate business license. Perhaps this request could be granted for a short period of time." Alderman Leahy suggested further discussion at the next meeting.

Alderman Markland said, "Since we are essentially trying to write the legislation so that all of the trailers would consist of one it applies to. Is it possible to see if this would work with them, and if they say they can't do this, why go through the trouble of writing an ordinance that six months or a year from now we might regret. If this works for them, we can go through with it. I can't see having an ordinance that we're not going to use."

Alderman Fleming said, "I think we are trying to solve a problem that exists for only one person at this time. It might work itself out on its own before too long." Alderman Harder said, "I think what's going to happen is the money they are making from the trailer is going to help them decide if it is profitable or not, and if they will be able to move to a bigger location, or stay at the 500 sq. ft. store they have right now."

Mayor Pogue said this item will be held over to the next meeting for further discussion.

Legal Issues and Updates:

Greenburg Case: City Attorney Jones said he and Mayor Pogue will be attending a pre-briefing settlement conference in the Greenburg appeal on May 5.

Aldermanic Candidates: City Attorney Jones said, "Today I received a fax from Raj Sajid, which is a petitioner's request for judicial review and a stay of Alderman Terbrock's alderman seat placement, or the swearing in of Alderman Terbrock. I called Dr. Sajid today when I received this. He told me that this

lawsuit had not been filed as of today in the St. Louis County Circuit Court. I don't know if it will be, at least at this point, we have received a courtesy copy of a lawsuit. The City of Ballwin is not a party. It's styled, Dr. Sajid vs. Alderman James Terbrock."

ALDERMANIC COMMENTS

Candidate Certification: Alderman Markland said, "One year ago at this meeting, I was sworn into office. My promise to the voters was to bring transparency to the activities of Ballwin Government. Sadly, I have to, once again, bring up a topic that I feel is of major concern. There seems to be a rampant problem in Ballwin Government regarding the non-payment of taxes. Last April, the individual who formerly held my position was identified as having failed to pay her personal property tax for 2009. When this was brought to the City's attention by Robert Klein, nothing was done until he brought it up a second time, and by then, that person had been appointed to the Board of Adjustment. As of April 22, 2011, she is still delinquent on her personal property taxes, however, this time, for 2010.

"With the filing for office of Alderman and Mayor in the April 5th election, two of the sitting aldermen running for re-election were not current, one in his real estate taxes, and the other had not paid his personal property tax. The one who had failed to pay the real estate taxes, had failed to pay both the 2009 and 2010 taxes. Both years were ultimately paid on January 21, 2010, per St. Louis County records. These taxes were due on December 31 of 2009 and 2010. The actual date of payment was after the closing date for candidacy. The one who had failed to pay personal property tax for 2010 waited until April 12, 2011 to pay the tax."

"When filing for office, the official candidacy form states: "Notwithstanding any other provisions of law to the contrary, no person shall be certified as a candidate for a municipal office, nor shall such person's name appear on the ballot as a candidate for such office, who shall be in arrears for any unpaid city taxes, or municipal user fee on the last day to file a Declaration of Candidacy for the office. I certify that I am not in arrears for any unpaid city taxes or municipal user fees on the last day of candidacy, which will be January 18, 2011."

"Since the Ballwin Sewer Lateral tax is incorporated into the Real Estate tax billing by St. Louis County, it seems to me that if you have not paid your real estate tax, you have not paid your Ballwin sewer lateral tax."

"When the city was advised of this failure and asked to remove the unqualified candidate from the ballot, City Hall first said that the sewer tax was not a tax. However, Ordinance 99-18 authorized the imposition of a tax for the repair of sewer laterals. The City also stated that they do not collect the sewer lateral fee. Note that they now refer to it as a fee, not a tax. It is collected by St. Louis County and not Ballwin. We might not collect it, but somehow, it ends up on our coffers and we disperse it."

"The Minutes of the April 10, 2010 City Attorney's report under the topic of Sewer Lateral Tax, uses the word tax four times, and states that it is collected by the St. Louis County Collector of Revenue as part of the real estate tax that each resident pays. As a result, a candidate was allowed to remain on the ballot when it appears that from the above, they should not have been. Am I correct in believing that one who fails to pay their Real Estate tax is also failing to pay their sewer lateral tax, which is a municipal tax?"

"The next excuse was that it was not the job of the city to determine if a candidate was in compliance. While past practice, I believe, was to accept the candidate's statement, should the residents not expect that when an error is called to the City's attention, that they are duty-bound to correct the error? I was also advised that it was the Board of Election's responsibility to certify the vote and candidates. As an end result, a candidate was allowed to remain on the ballot, when it appears that, based upon the above, they should not have been."

“This past week, I attended the Board of Election’s meeting, and was advised by them that they do not certify the qualifications of a candidate, that it’s up to the municipality. Had they been advised that a candidate was placed on the ballot as the result of an error, they would have taken that into consideration. They also advised me that they were not the election police, but only had the responsibility of certifying the number of votes that each candidate received, and nothing more than that. This in my opinion appears to confirm that once the city knew, they should have advised.”

“The other candidate had failed to pay his personal property tax. This is covered by other sections of the Revised Statutes of Missouri, and it could be argued to be not covered by this certification. This, however, asks the question, Do the residents of Ballwin want the elected and appointed officers to pay their taxes like the majority of the residents do or not? Elected and appointed officials should be expected to follow a much more strict interpretation of the laws. They should not be allowed to find some loophole to allow them to ignore the payment of taxes. The residents of Ballwin do not have that loophole and should not allow others to avoid timely payment of their taxes.”

“The City Attorney has concerns that if the City should verify that a candidate is conforming with taxes, that this may become an expensive and time consuming effort for City staff, and also that there are many legal questions involved. Looking into qualifications should be considered carefully.”

“I can see no reason for any party working in an elected or appointed position to be permitted to make decisions which affect the tax paying public, when they themselves have failed to pay any of those taxes. It is very easy to check out the status of any individual by going to the St. Louis County Revenue office website.”

“Perhaps I’ve gotten involved in an issue that no one else cares about. That is why I have brought it up this evening. From this point onward, I believe it is up to the public to decide whether the paying of taxes is an option. I had first asked that a special meeting be held to consider this matter; that did not happen. I then asked that this topic be placed on tonight’s agenda as an agenda item. Instead of it having an official position on the agenda, listed as ‘discussion of candidates meeting the tax payments’, it was placed instead in the unnamed category of Aldermanic comments.”

“I hope the citizens of Ballwin will consider whether this is an important issue, and if to, let the Mayor, myself and others become aware of that concern. Should an elected or appointed official for any reason not be current in their tax payments, they always have the option of resigning their position. They also have the option of not filing for office when they are aware that they are delinquent in their tax payments. To continue on with the position while failing to make their tax payments is a mockery, and should never be allowed.”

Mayor Pogue said, “There were two candidates that filed that were in arrears on their real estate tax. Not just one.” Alderman Markland said, “No, there was not. I backed Mr. Sajid, just like you backed Mr. Terbrock. The law states that you shall not be delinquent on the residence that you use to file as a candidate. Dr. Sajid is presently in a dissolution of marriage, he is living in one location, he filed from that location, he owes no taxes from that location. The fact that his wife and he own another home that he does not reside in, apparently is not to be considered.” Mayor Pogue said, “That depends on which statute you look at.” Alderman Markland said, “I took one year of business law in college, so I’m probably pretty qualified.”

Alderman Fleming said, “This is specifically why I asked the City Attorney to look at this for future elections. There is another statute that says when a deficiency is found, someone has 30 days to remedy the problem. The taxes have now been paid, the election was held, a winner was determined, the vote has been certified by the Board of Elections, and there’s nothing more specific that can be done. The best thing is to ask the Election Board for guidance.”

Alderman Boerner said, “That’s the only solution.”

Adjourn: A motion was made by Alderman Fleming and seconded by Alderman Boerner to adjourn. The motion passed unanimously and the meeting was adjourned at 10:40 p.m.

TIM POGUE, MAYOR

ATTEST:

ROBERT A. KUNTZ, CITY ADMINISTRATOR

MC

Approved May 9, 2011

April 25, 2011