

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI, JUNE 14, 2004**

The Board of Aldermen of the City of Branson, Missouri met in regular session in the Council Chambers of the City Hall on June 14, 2004 at 7:00 p.m. with the following members present:

Mayor Pro Tem Huff presiding, with Dick Gass, Stan Barker, Beverly Martin, and David Edie present. Absent: Mayor Lou Schaefer and Jack Purvis.

Also present from the City were City Administrator Terry Dody, City Attorney Dan Wichmer, City Clerk Sandra Williams, Assistant City Administrator Frank Shoneboom, Assistant City Attorney Russ Dempsey, Director of Engineering David Miller, Director of Public Works Larry VanGilder, Assistant Fire Chief Ted Martin, Director of Communications Jerry Adams, Finance Director Deanna Schlegel, Director of Planning and Zoning Don Stephens, and Police Chief Steve Mefford.

Mayor Pro Tem Huff called the meeting to order with the "Pledge of Allegiance" and Larry VanGilder gave the invocation.

Mayor Pro Tem Huff asked for any additions or corrections to the Minutes of the Work Session Meeting of May 10, 2004 and the Board of Aldermen Meeting and Public Comments Meeting of May 24, 2004. Receiving none, Mayor Pro Tem Huff entertained a motion to approve the Minutes stated. Alderman Barker moved to approve the Minutes as presented, seconded by Alderwoman Martin. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

**APPROVAL
OF MINUTES**

CONSENT AGENDA:

Mayor Pro Tem Huff asked the Clerk to read the items being considered on the Consent Agenda. City Clerk Williams read the following Consent Agenda items by title:

Receipt of the Minutes of the Planning and Zoning Commission meeting of May 4, 2004 and the Capital Improvements Committee meeting of April 12, 2004 was acknowledged within the Consent Agenda. Voting Aye: Gass, Barker, Martin, Huff, and Edie. Nays: None. Absent: Purvis.

**ACKNOWLEDGEMENT
OF MINUTES**

Final reading of Bill No. 2856 annexing property owned by Dennis and Anita L. Sheaffer into the City, was approved within the Consent Agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-079 was duly enacted.

**BILL NO. 2856
ANNEXING
DENNIS & ANITA
SHEAFFER
ORD. NO. 2004-079**

Final reading of Bill No. 2857 an ordinance enacting a Final Subdivision Plat of Summerwood Estates, 2nd Addition, located adjacent to Town and Country Drive in Branson Meadows, Branson, Missouri, was approved within the Consent Agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-080 was duly enacted.

**BILL NO. 2857
FINAL PLAT OF
SUBDIVISION
SUMMERWOOD
ESTATES
ORD. NO. 2004-080**

Final reading of Bill No. 2859 an ordinance approving zoning of “R-1” single-Family Residential for property owned by Glen and Jacqueline Pyle and located at 432 Dalton Drive, Branson, Missouri, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-081 was duly enacted.

**BILL NO. 2859
ZONING “R-1”
RESIDENTIAL
GLEN PYLE
ORD. NO. 2004-081**

Final Reading of Bill No. 2860 an ordinance approving zoning of “R-1” Single-Family Residential for property owned by Robert and Sharon Lepper and located at 430 Caudill Way, Branson, Missouri, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-082 was duly enacted.

**BILL NO. 2860
ZONING “R-1”
RESIDENTIAL
ROBERT LEPPER
ORD. NO. 2004-082**

Final Reading of Bill No. 2861 an ordinance approving zoning of “R-1” Single-Family Residential for property owned by Linda White and located at 227 Hunter Avenue, Branson, Missouri, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-083 was duly enacted.

**BILL NO. 2861
ZONING “R-1”
RESIDENTIAL
LINDA WHITE
ORD. NO. 2004-083**

Final Reading of Bill No. 2862 an ordinance approving zoning of “C” Commercial for property owned by Cooper Creek Resort and Campground, Inc. and Robert H. and Fritz B. Fletcher and located at 252 Cooper Creek Road and 417 Cooper Creek Road, Branson, Mo. was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-084 was duly enacted.

**BILL NO. 2862
ZONING “C”
COMMERCIAL
ROBERT H.
FLETCHER
ORD. NO. 2004-084**

Final Reading of Bill No. 2864 an ordinance authorizing the Mayor to execute an airspace agreement with the Missouri Highways and Transportation Commission, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-085 was duly enacted.

**BILL NO. 2864
AIRSPACE
AGREEMENT
ORD. NO. 2004-085**

Final Reading of Bill No. 2865 an ordinance approving an amendment to the Professional Engineering Services agreement with

**BILL NO. 2865
AMENDMENT TO**

E.T. Archer Corporation for the design of water line improvements and a water tower for the downtown area, and authorizing the Mayor to enter into the agreement, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-086 was duly enacted.

**ENGINEERING
AGREEMENT
E. T. ARCHER
ORD. NO. 2004-086**

Final Reading of Bill No. 2866 an ordinance authorizing the mortgaging of certain real property in connection with the financing of the Convention Center and related infrastructure improvements by the City; and authorizing and approving certain documents and actions in connection therewith, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-087 was duly enacted.

**BILL NO. 2866
MORTGAGING
FOR PROPERTY
CONVENTION
CENTER
ORD. NO. 2004-087**

Final Reading of Bill No. 2867 an ordinance accepting the proposal from Shafer, Kline & Warren, Inc. pertaining to improving the Branson 911 Emergency Address System and the development of the Site Address Data Management System Project, and authorizing the Mayor to enter into the contract, was approved within the consent agenda. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-088 was duly enacted.

**BILL NO. 2867
PROPOSAL
SHAFER, KLINE
& WARREN, INC.
911 ADDRESS
ORD. NO. 2004-088**

Mayor Pro Tem Huff asked for any corrections on the Consent Agenda as read. Receiving none, Mayor Pro Tem Huff entertained a motion to approve the Consent Agenda as read. Alderman Gass made the motion, seconded by Alderwoman Barker. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

REGULAR AGENDA:

Presentation of Petition for Consent to Annex property owned by Timothy and Janet Swope located at 214 Shady Drive in Rainbow Shoals Subdivision 1st Addition, Branson, Missouri, was read by title by City Clerk Williams, and Don Stephens provided the staff report. Mayor Pro Tem Huff entertained a motion to accept the petition for voluntary annexation. Alderman Edie made the motion, seconded by Alderwoman Martin. No discussion. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

**PETITION
CONSENT TO ANNEX
TIMOTHY AND JANET
SWOPE**

First reading of Bill No. 2870 an ordinance approving an agreement between the City of Branson and Thompson, Ventulett, Stainback & Associates, Inc. Architects (TVS), pertaining to design and construction of the Convention Center and parking

**BILL NO. 2870
AGREEMENT
DESIGN & CONSTRUCT
CONVENTION CENTER**

deck portion of the Branson Landing Project, and authorizing the Mayor to enter into the agreement, was read by title by City Clerk Williams, and Dan Wichmer provided the staff report.

**& PARKING DECK
TVS ARCHITECTS**

Mayor Pro Tem Huff entertained a motion to approve the first reading of Bill No. 2870. Alderman Barker moved to approve the bill on first reading, seconded by Alderwoman Martin. Also addressing the Board were Sherman Botts with Lathrope and Gage; Mike Lazell with TVS; and Harold Allen with Benham Group. Sherman Botts from Lathrope and Gage, who negotiated the contract on behalf of the City addressed the Board. Mr. Botts indicated he was asked to review the form of the architect agreement that was proposed by the developer; to develop a contract that was tailored to the unique circumstances that we have for this project; to create a contract that was fair and reasonable; one that attended to a control element over cost; one that has a safety valve in it so that for whatever reason the project was abandoned the contract could be terminated for convenience. He stated he had conducted a substantial amount of negotiations involving Mr. Ezell, Harold Allen of Benham Group and the construction consultant for the City, as well as the City. They have developed an agreement that follows very typically the pattern that you see in the industry for architect agreements. It contains a scope whereby the contract recognizes that this project for the convention center, parking facility, and parking deck is part of a much larger project, and the architect under this agreement is charged with coordinating his activities so that they coordinate with the overall project itself. Mr. Botts said they had identified a scope of work that is pretty elaborate in detail, among many things, and are asking the architect to make sure that the work conforms with the contract documents. If there is a defect in the drawings themselves the architect will be responsible for those aspects to correct that design, and the architect is to participate in an eleven month walk around of the project to look for certain defects that may not be seen on the day you open the doors, but may be seen during the eleven months period. The contract contemplates that the architect will be compensated by paying a percentage fee based upon the construction costs, plus reimbursement for certain expenses. We have identified in Exhibit "I" a chart of reimbursable costs that are created on a cash flow or monthly basis throughout the term of the project, said Mr. Botts. Discussion was held regarding (1) having a method where the costs for the public portion will be kept completely separate from the costs incurred for the private side; (2) that the architect fees will be by a percentage of 6.25% based upon the estimated construction costs and it will be spread out over the life of the project; (3) the role Benham Group will play as the City's construction consultant. Hearing no additional discussion Mayor Pro Tem Huff called for the vote on the first reading of Bill No. 2870. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

First reading of Bill No. 2871 an ordinance approving a ground lease agreement between Empire District Electric Company and the City of Branson, and authorizing the Mayor to enter into the agreement, was ready by title by City Clerk Williams, and Dan Wichmer provided the staff report. Mayor Pro Tem Huff entertained a motion to approve the first reading of Bill No. 2871.

**BILL NO. 2871
AGREEMENT
EMPIRE ELECTRIC
GROUND LEASE
ORD. NO. 2004-089**

Alderman Gass made the motion, seconded by Alderman Barker. Discussion. Addressing the Board from the audience was John Logan, 2277 Lake Shore Drive, Branson, Missouri addressed the Board inquiring what the leased land will be used for, and who are we leasing it back to. City Attorney Dan Wichmer explained that Empire Electric controls most of the lake front in Branson, and has leased it to the City for a nominal fee for many years. However, with this new lease there are three parcels, #1 is the largest parcel and that basically encompasses North Beach Park which will remain a park. The second parcel is where HCW has identified they are putting in private improvements, and parcel #3 is an abandoned 60 foot utility easement that we believe was there when Power Site Dam was built, which runs through the middle of the project. Empire will lease Parcels #1 and #3 to the City for a one dollar fee for each parcel. Empire has carved out that area that HCW has identified as where they are putting private improvements consisting of 18,000 square feet. Empire took that 18,000 fee over the 63 acres leased, getting a percentage and then multiplied that percentage by the \$450,000 per year lease payment that HCW must pay the City to determine the lease payment the City must pay to Empire. It comes out to roughly three percent (3%). Mr. Logan asked if the citizenry knew what the private improvements section will be. Rick Huff of HCW replied that on Parcel #2 is a portion of a 36,000 square foot building will overlap diagonally, and there will be retail shops on the majority, and a small piece of a corner will be a restaurant. Mr. Logan then asked if we knew specifically what businesses, and Mr. Huffman answered he did not at this time. Mr. Logan then stated he strongly objected to second readings and emergency readings, and believed it is a result of rushed up, poor planning, requested the Board not to have so many emergency readings. Upon receiving no additional discussion, Mayor Pro Tem Huff called for a vote. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Alderman Barker moved to read the bill a second time by emergency due to the need for expediting the FERC application and 404 processes, and the motion was seconded by Alderman Gass. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. City Clerk Williams read Bill No. 2871 by title again. Mayor Pro Tem Huff entertained a motion to approve the final reading of Bill No. 2871. Alderwoman Martin made the motion, seconded by Alderman Barker. No discussion. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried. Ordinance No. 2004-089 was duly enacted.

The next item was a presentation by HCW regarding wrap-up insurance BRANSON insurance for the Branson Landing Project. Rick Huffman of HCW LANDING addressed the Board saying that in the redevelopment agreement it INSURANCE is required that HCW consult with an insurance executive to look at different insurance possibilities, prices, bids, and coverage for the project. Mr. Huffman indicated they hired Connell Insurers to go through the bidding process with insurance companies to obtain insurance bids for the project, and this has been done, and then turned the floor over to Pat Connell of Connell Insurers. Mr. Connell indicated he has worked with the city attorney, Terry Dody, Steve Mueller with Benham, as well as the people from HCW, to review the project and look at the different types of insurance available and all of the options. They went out in the market place and identified some of the large writers of projects of this size and then had three of them make presentations which were Gallagher a large national broker; Lockton another large national broker, as well as, Turner. What we

came back with and are recommending is a construction wrap-up program where they wrap the coverage for liability and workers compensation with one company. Most projects have a contractor, and then he has subs, and then each one of those subs has their own insurance company they deal with. But for projects of this size a wrap-up makes a more sense because you have only one insurance company to cover the whole project. With a wrap-up you have one insurance company, and so it expedites all the claims, and consolidates the coverage under one carrier where there are no gaps in coverage. The benefits are (1) you avoid litigation of stacking or several insurance companies fighting about who is going to pay a particular claim; (2) it provides broader coverage and enables you to have higher limits of liability. Mr. Connell said they were recommending a \$200-million dollar umbrella and that is very difficult for a sub-contractor to buy if not impossible. So you can buy more coverage, higher coverage and higher limits, and guarantees to cover the local sub-contractors.

Discussion was held by the aldermen and members of the audience regarding (1) who bears the cost of the insurance; (2) why the limits should be high; (3) the advantages of wrap-up coverage; (4) how the costs for the sub-contractors will be determined; (5) the safety training required; (6) how the boundaries will be determined for the coverage and who will be covered; (7) how the worker's compensation portion will work for the sub-contractors; (8) how the premiums will be prorated on each payment request; (9) what the premium percentage is and how it was determined; (10) how the sub-contractors would handle their present workers compensation policy while on this project; (11) how the contractors and sub-contractors will reimburse the City for their portion of the premium and who would be doing the policing of that; (12) how the percentage was determined and what it was based upon; (13) definition of hard costs; and (14) how insurance certificates will be issued to contractors and sub-contractors that will show that the worker's comp is being paid on this project.

Upon receiving no further comments or questions, Mayor Pro Tem Huff entertained a motion to accept this presentation report. Alderman Edie made the motion, seconded by Alderman Barker. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

BID AWARDS:

First reading of Bill No. 2872 an ordinance accepting the proposal of bid award to Vermont Systems Incorporated for the purchase of recreation software for the City of Branson, authorizing the preparation of a contract in accordance with the terms of the proposal, and authorizing the Mayor to execute the agreement, was read by title by City Clerk Williams, and Cindy Shook provided the staff report. Mayor Pro Tem Huff entertained a motion approving the first reading of Bill No. 2872. Alderman Gass made the motion, seconded by Alderwoman Martin. No discussion. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

DISBURSEMENTS:

Mayor Pro Tem Huff stated the next item was review of DISBURSEMENTS the disbursements, and asked if there were any questions regarding the disbursements. Hearing none, Mayor Pro Tem Huff entertained a motion to approve the disbursements. Alderman Gass made the motion, seconded by Alderwoman Martin. No discussion. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: none. Absent: Purvis. Motion carried.

OTHER BUSINESS:

Mayor Pro Tem Huff asked if there was any other business that a member of the Board of Aldermen would like to introduce as an official agenda item for discussion and action by the Board. Hearing none, Mayor Pro Tem Huff opened the floor for Aldermen and Administrator's Reports.

ALDERMEN/ADMINISTRATOR'S REPORTS

Mayor Pro Tem Huff indicated the Mayor was doing great and will be back very soon. HUFF

THERE WERE NO OTHER REPORTS AT THIS TIME.

ADJOURN:

At this time, Mayor Pro Tem Huff entertained a motion to adjourn. Alderwoman Martin made the motion, seconded by Alderman Barker. Voting aye: Gass, Barker, Martin, Huff, and Edie. Nays: None. Absent: Purvis. Motion carried. Meeting was adjourned at 8:30 p.m.