

# MINUTES

## THE REGULAR MEETING OF THE BOARD OF ALDERMEN CITY OF BRANSON, MISSOURI June 26, 2006

### INTRODUCTORY

The Board of Aldermen of the City of Branson, Missouri met in regular session in the Council Chambers of the City Hall on June 26, 2006 at 7:00 p.m. with the following members present:

Mayor Schaefer presiding, Dick Gass, Stan Barker, Beverly Martin, Ron Huff, David Edie and Jack Purvis present. Absent: None.

Also present from the City were: City Administrator Terry Dody, Assistant City Administrator Frank Schoneboom, City Attorney Paul Link, Assistant City Attorney Matt Thompson, City Clerk Lisa Westfall, Director of Engineering David Miller, Director of Communications Jerry Adams, Director of Finance Deanna Schlegel, Director of Public Works Larry VanGilder, Police Chief Caroll McCullough, Director of Planning and Zoning Don Stephens and Joe Lauber of Gilmore and Bell.

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

### APPROVAL OF MINUTES

Mayor Schaefer asked for any additions or corrections to the Minutes of the Board of Aldermen Regular Meeting and Public Comments Meeting of June 12, 2006; and the Special Meeting of June 22, 2006. Receiving none, Mayor Schaefer asked for a motion approving the Minutes as presented. Alderman Purvis moved to approve as presented, seconded by Alderman Barker. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

### CONSENT AGENDA

Mayor Schaefer asked City Clerk Westfall to read the items being considered on the Consent Agenda. City Clerk Westfall read the following Consent Agenda items by title:

**BILL NO. 3267**      **Accepting the proposal to Logic Inc. to upgrade software for the lift station radio/computer monitoring and control system for the Public Works Department.**

Final reading of Bill No. 3267, an ordinance accepting the proposal to Logic Inc. to upgrade software for the lift station radio/computer monitoring and control system for the Public Works Department for the City of Branson, and authorizing the Mayor to execute the agreement. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3269**

**Accepting the proposal of bid award to Missouri Electric Motors & Controls LLC to provide materials and installation for four Variable Frequency Drives for the Public Works Department.**

Final reading of Bill No. 3269, an ordinance accepting the proposal of bid award to Missouri Electric Motors and Controls LLC to provide materials and installation for four Variable Frequency Drives for the Public Works Department for the City of Branson, and authorizing the Mayor to execute the agreement. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

Mayor Schaefer opened the floor for a motion to approve the Consent Agenda. Alderman Gass moved to approve, seconded by Alderman Huff. Voting aye: Gass, Barker, Martin, Edie and Purvis. Nays: none. Motion carried.

## **REGULAR AGENDA**

### **STATUS REPORT ON BRANSON LANDING AND CONVENTION CENTER**

Presentation of status report on Branson Landing and Convention Center Projects by Jim Martin of the Benham Company and Rick Huffman of HCW. Mr. Martin reported disbursements as follows: Request #76CC in the amount of \$1,390,227.50; #76MI in the amount of \$122,606.62; #76MI-BLB in the amount of \$578,042.51; #76MI-SS in the amount of \$235,722.85 and #76WF in the amount of \$716,378.44. Mayor Schaefer asked for a motion to accept the report. Alderman Purvis so moved to accept the report, seconded by Alderman Barker. John Logan 2277 Lakeshore Drive, Branson, MO, addressed the board. Discussion. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3270**

**Ord. No. 2006-094**

**Enacting a final subdivision plat of Club Welk Branson Villas Phase 1 located immediately north of the Welk Resort Branson, Missouri.**

Public Hearing and first reading of Bill No. 3270, an ordinance enacting a final subdivision plat of Club Welk Branson Villas Phase 1 located immediately north of the Welk Resort Branson, Missouri was read by title by City Clerk Westfall, and the staff report was presented by Don Stephens. Mayor Schaefer opened the public hearing and asked for anyone wishing to speak in favor or opposition of this matter. Hearing none, Mayor Schaefer closed the public hearing and asked for a motion approving the first reading of Bill No. 3270. Alderman Gass so moved, seconded by Alderwoman Martin. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. City Clerk Westfall read Bill No. 3270 by title for the final reading. Mayor Schaefer asked for a motion approving the final reading of Bill No. 3270. Alderman Gass moved to approve the final reading of Bill No. 3270 to facilitate development on the project, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. Ordinance No. 2006-094 was duly enacted.

**BILL NO. 3271**

**Ord. No. 2006-095**

**Enacting a final subdivision plat of Club Welk Branson Villas Phase 2 located immediately north of the Welk Resort Branson, Missouri.**

Public hearing and first reading of Bill No. 3271, an ordinance enacting a final subdivision plat of Club Welk Branson Villas Phase 2 located immediately north of the Welk Resort Branson, Missouri, was read by title by City Clerk Westfall and the staff report was presented by Don

Stephens. Mayor Schaefer opened the public hearing and asked for anyone wishing to speak in favor or opposition of this matter. Hearing none, Mayor Schaefer closed the public hearing and asked for a motion approving the first reading of Bill No. 3271. Alderman Gass so moved, seconded by Alderwoman Martin. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. City Clerk Westfall read Bill No. 3271 by title for the final reading. Mayor Schaefer asked for a motion approving the final reading of Bill No. 3271. Alderman Gass moved to approve the final reading of Bill No. 3271 to facilitate development on the project, seconded by Alderman Barker. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. Ordinance No. 2006-095 was duly enacted.

**BILL NO. 3272**                    **Approving “C” Commercial Zoning for property known as Heather Brooke Heights.**

Public hearing and first reading of Bill No. 3272, an ordinance approving “C” Commercial Zoning for property known as Heather Brooke Heights located along State Highway 165 Branson, Missouri and identified by Taney County ID 18-6.0-14-001-002-003.000, 18-6.0-14-001-003-006.000, 18-6.0-14-001-003-007.000, 18-6.0-14-001-003-008.000, 18-6.0-14-001-003-010.000, 18-6.0-14-001-003-012.000 and 18-6.0-14-001-003-013.000, was read by title by City Clerk Westfall and the staff report was presented by Don Stephens. Mayor Schaefer opened the public hearing and asked for anyone wishing to speak in favor or opposition of this matter. Hearing none, Mayor Schaefer closed the public hearing and asked for a motion approving the first reading of Bill No. 3272. Alderman Barker moved to approve the bill, seconded by Alderman Huff. Voting aye: Gass, Barker, Martin, Huff, and Purvis. Nays: Edie. Motion carried.

**BILL NO. 3273**                    **Amending the lot size requirements for “D” Downtown Zoning District.**

Public hearing and first reading of Bill No. 3273, an ordinance amending Appendix A, Chapter 410 of the Branson Municipal Code, Section 410.050(D)(4), amending the lot size requirements for “D” Downtown Zoning District was read by title by City Clerk Westfall and the staff report was presented by Don Stephens. Mayor Schaefer opened the public hearing and asked for anyone wishing to speak in favor or opposition of this matter. Hearing none, Mayor Schaefer closed the public hearing and asked for a motion approving the first reading of Bill No. 3273. Alderwoman Martin so moved, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3274**                    **Amending the definition of “Building Line”.**

Public hearing and first reading of Bill No. 3274, an ordinance amending Appendix A, Chapter 400 of the Branson Municipal Code, Section 400.040, amending the definition of Building Line, was read by title by City Clerk Westfall and the staff report was presented by Don Stephens. Mayor Schaefer opened the public hearing and asked for anyone wishing to speak in favor or opposition of this matter. Hearing none, Mayor Schaefer closed the public hearing and asked for a motion approving the first reading of Bill No. 3274. Alderwoman Martin so moved, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3275**

**Amending the Branson Municipal Code Chapter 86 – Traffic and Vehicles, Article X – Schedules: Stop Signs.**

First reading of Bill No. 3275, an ordinance amending the Branson Municipal Code Chapter 86 – Traffic and Vehicles, Article X – Schedules: Stop Signs by the addition of specified stop signs, was read by title by City Clerk Westfall and the staff report was presented by David Miller. Mayor Schaefer asked for a motion approving the first reading of Bill No. 3275. Alderman Barker moved to approve the bill, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3276**

**Authorizing a sanitary sewer line & filing of condemnation action.**

First reading of Bill No. 3276, an ordinance authorizing a sanitary sewer line across certain property owned by certain parties within five (5) miles of the City of Branson, Missouri, declaring the public necessity therefor and of condemning the property rights of the owners, and authorizing the filing of a condemnation action, was read by title by City Clerk Westfall and the staff report was presented by Larry VanGilder. Mayor Schaefer asked for a motion approving the first reading of Bill No. 3276. Alderman Purvis so moved, seconded by Alderwoman Martin. Discussion. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

**BILL NO. 3277**

**Ord. No. 2006-096**

**Approving the Cooperative Agreement among the Historic Downtown Branson Community Improvement District, the Downtown Branson Main Street Association and the City of Branson.**

First reading of Bill No. 3277, an ordinance of the Board of Aldermen of the City of Branson, Missouri, approving the Cooperative Agreement among the Historic Downtown Branson Community Improvement District, the Downtown Branson Main Street Association and the City of Branson, Missouri, was read by title by City Clerk Westfall. Mayor Schaefer asked for a motion approving the first reading of Bill No. 3277. Alderman Gass so moved, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. City Clerk Westfall read Bill No. 3277 by title for the final reading. Mayor Schaefer asked for a motion approving the final reading of Bill No. 3277. Alderman Purvis moved to approve the final reading of Bill No. 3277 so the DBMA can move forward on their grant applications and the completion of the transportation system plan, seconded by Alderman Barker. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. Ordinance No. 2006-096 was duly enacted.

**BILL NO. 3278**

**Approving the proposal for asphaltic overlays on various streets in Branson.**

First reading of Bill No. 3278, an ordinance accepting the proposal for asphaltic overlays on various streets in Branson for the Public Works Department for the City of Branson, and authorizing the Mayor to execute the agreement, was read by title by City Clerk Westfall and the staff report was presented by Larry VanGilder. Mayor Schaefer asked for a motion approving the first reading of Bill No. 3278. Alderman Gass so moved, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

## **DISBURSEMENTS**

Mayor Schaefer stated the next item was review of disbursements, and asked if there were any questions regarding the disbursements. Alderman Huff moved to approve the disbursement statement as presented, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried.

## **OTHER BUSINESS**

Mayor Schaefer asked if there was any other business that a member of the Board of Alderman would like to introduce as an official agenda item for discussion and action by the Board. Mayor Schaefer then opened the floor for Aldermen reports.

Alderwoman Martin asked if a traffic light could be put at the location of Main Street and Commercial, which is currently a 4-way stop sign. Terry Dody stated he would look into it.

## **ALDERMEN/ADMINISTRATOR'S REPORTS**

Alderman Gass commented nice to have a parking problem at Branson Landing.

Alderman Barker pleasure to host Operation Homecoming Community for Veteran's.

Alderwoman Martin wishes everyone a happy July 4<sup>th</sup> celebration.

Alderman Edie commented it was nice to see traffic jam and gridlock at Branson Landing and hope it brings sales.

Alderman Purvis anxious to see the roundabout at the end of Lake Taneycomo bridge.

Terry Dody commented on the issue of adult movies being offered in hotels and read a letter written in 2005 concerning this matter into the record (see attached). He also commented on the selling of liquor at Branson Landing.

## **SPECIAL AGENDA ITEM**

At 8:01 pm a special meeting of the Board of Alderman and the Property Owners of the Branson Landing Transportation Development District was called to order jointly with the Board of Aldermen meeting. (see attached minutes)

The Property Owners meeting was adjourned at 8:09 pm.

## **RECESS OF BOARD OF ALDERMEN MEETING**

At 8:09 pm the Board of Aldermen meeting was recessed while a Branson Landing TDD Board meeting was held.

## **RECONVENED BOARD OF ALDERMEN MEETING**

At 8:14 pm the Board of Aldermen meeting was reconvened.

### **ADJOURN**

At this time Mayor Schaefer asked for a motion to adjourn. Alderman Huff so moved, seconded by Alderman Purvis. Voting aye: Gass, Barker, Martin, Huff, Edie and Purvis. Nays: none. Motion carried. Mayor Schaefer adjourned the meeting at 8:14 p.m.

## ATTACHMENT TO THE ALDERMEN/ADMINISTRATOR'S REPORTS:

Regarding your e-mail of June 10, 2005, I have reviewed the matter of adult movies in hotels with our legal counsel. They have informed me that there are no new opinions of the United States Supreme Court that would allow Branson to prohibit adult entertainment movies in hotel rooms. It is possible that certain titles might meet the Supreme Court test for illegal pornography, but the hotels have the right to show adult entertainment. If you have legal advice to the contrary I would be happy to look at it and forward it to our attorneys for review. Contrary to your informational source, allowing customers to purchase adult movies in their hotel rooms is not a violation of Federal, Missouri or local laws.

You noted that the city could have controlled this issue at the Hilton. That is not correct. The City has never been in negotiations with Hilton regarding the hotel or the management thereof. Hilton is a private business and we do not interfere with business practices and decisions as long as the law is not being violated.

The only "control" the city could arguably have is related to materials deemed pornographic under the test in *Miller v. California* 413 U.S. 15 (1973). The Miller ease held that the following material would be considered pornographic: the material (1) appeals to prurient interest, (2) depicts sexual conduct in a patently offensive way and (3) lacks serious literary, artistic, political or scientific value

The point is that it is the **material** that could possibly be illegal, not the mode of communication. The City cannot regulate media in homes or in the hotels. The only way to monitor the material is for someone to screen each movie. According to Federal law, there can be no prior restraint on such speech. Most communities have felt that it was impossible to view every individual video or show for pornographic content, in part because every possible violation has to go to a jury if challenged. The other reason is that the entire movie or show must be watched to determine if the context of the pornography, in conjunction with the entire movie or show, has any serious literary, artistic, political or scientific value. The costs and legal resources required could be enormous.

The city has adult entertainment legislation. The city even has a specific area where adult entertainment must be allowed. This was mandated by the court's ruling. It would be unlawful to have a blanket prohibition against adult entertainment in Branson hotels.