

MINUTES OF THE REGULAR MEETING OF THE BOARD OF ALDERMEN  
OF THE CITY OF OSAGE BEACH, MISSOURI

February 7, 2013

The Board of Aldermen of the City of Osage Beach, Missouri, met to conduct a regular meeting on Thursday, February 7, 2013, at 6:30 p.m. at City Hall. The following were present: Mayor Penny Lyons, Alderman Fred Catcott, Alderman Lois Farmer, Alderman John Olivarri, Alderman Kevin Rucker and Alderman Ron Schmitt. Alderman Steve Kahrs was absent. Deputy City Clerk Dorothy Urlicks was present in the absence of the City Clerk and performed the duties of that office.

**Mayor's Communications.**

Mayor Lyons thanked staff for the nice Employee Appreciation Dinner. She reported that a three part series on economic development sponsored by the Lake of the Ozarks Council of Local Governments. The first part will be held on February 14<sup>th</sup> from 9-11 at the Resort at Port Arrowhead. All are invited and encouraged to attend.

Last week was the annual Lake of the Ozarks Regional Economic Development meeting. Representing Osage Beach, Mayor Lyons reported that a lot of the almost \$18 million in building permits issued in 2012 will be completed in 2013.

Mayor Lyons also reported the following:

On the East side 18 businesses have either renovated or moved into vacant buildings. On the West side there are several projects providing additional housing for the area. There are two upscale duplex projects, one new subdivision with Lake Front and the recent request on the agenda tonight to renovate the Williamsburg Inn into 22 studio apartments.

Evers & Co are doing a major renovation on the vacant building near the airport for a large office complex with some additional commercial spaces to lease.

The Camdenton School is looking to build a new Osage Beach Elementary School on the west side. A no tax increase bond issue will be on the April ballot. All of these developments will increase traffic and the need for other service on the west side.

Last year the extension of Nichols Road into the State Park was completed. This will allow safe, direct access from the expressway to the park for boaters and park recreation.

A study to improve Nichols Road has been completed, property purchased and the area will be widened to accommodate the increased traffic and provide safe access to Lake Regional Hospital, our largest employer.

Several groups are working to present voluntary annexations on the west side to the City.

Year to date sales tax is up 11.8%.

Dierberg's ribbon cutting is set for April 16, 2013.

2013 Building Permits already doubled in January. 2013 is set to be a very busy year for staff with all the new development.

**Citizens Communications.**

Mark Beeler discussed what he read in the Business Journal regarding the decision to move forward with the outer road. He feels professional advice should be considered regarding options at Key Largo. Mr. Beeler desired additional time to find an amicable solution and questioned the cost of a full interchange. He added there are not sufficient facts to make a good business decision.

Nelson Hediger, who owns frontage property on Key Largo said he had discussed with the City Planner the possibility of rezoning the property to commercial. Mr. Hediger said he would like to see the cost of an interchange and he stated that David Silvester of MoDOT said an interchange was a long term goal.

Kim Lochr said she also spoke with David Silvester and if traffic doubled in 10 years, it would justify the cost of an interchange. Alderman Olivarri said he was not sure if everyone wants to wait 10 years. Ms. Lochr agreed.

Discussion continued regarding the cost of an interchange and the problem is that it would be a 50/50 split.

Bill Bennett said the outer road is a waste of money. He was present during the conversation with David Silvester regarding the long range goal of interchange and he said the 50/50 split was not mentioned.

Bill Paul who is not a resident but works in Osage Beach said the outer road and round about is not a solution to get traffic on Osage Beach Parkway west. He said he is concerned for his job because of the lack of enough traffic anymore. How said immediate relief is needed. Mr. Paul said that installing a stop light at Key Largo is an easy quick fix and agrees new signs are needed before Memorial Day. He suggested that the City lessen restrictions on signage on Osage Beach Parkway and the Expressway to help get business on the west side.

Norm Bechting said he knows the demographics and traffic and is surprised the Key Largo intersection is still being discussed. If an outer road is constructed he questioned whether there will there be enough lighting and signage for businesses. Mr. Bechting said retail business cannot advertise on the green signs, only restaurants and hotels. He said more signs would help.

**Consent Agenda.**

Alderman Schmitt moved to approve the consent agenda which includes minutes of the regular meeting held on January 17, 2013, and the bill list as submitted. Alderman Farmer seconded the motion which was voted on and passed.

**Unfinished Business.**

**Discussion on PACE/Missouri Solar Applications.**

The City Administrator explained that staff is waiting for direction from the Board of Alderman regarding preparing an Ordinance.

Alderman Olivarri said he likes the idea of the PACE Program, but he expressed his concern about what he has seen and answers that were provided to the questions that were asked. He favored

waiting for the group to prove themselves since there have been no loans to date or service requests in a two year time period.

Alderman Rucker would like to assist business people to provide relief on their energy bill, however he is concerned as Alderman Olivarri mentioned. He added that he did not see the negative in providing the opportunity for individuals to apply for the loans.

Alderman Schmitt agreed with Alderman Rucker stating that any company with an energy saving program could apply and all the City would do is provide the opportunity.

Alderman Olivarri said he is concerned that representatives from Missouri Solar, once ordinance is passed, would give the impression that the City is in favor and would be tagged as a green community. He added that he wants the businesses to have an opportunity to make the decision.

Discussion followed on what it means to be a green community. City Planner stated that green communities have a substantial impact on construction and it could restrict construction. He said the City should strongly consider the result of restricting construction before adopting an ordinance.

Following further discussion, Alderman Rucker moved to instruct staff to proceed with an ordinance on the PACE program. There was no second to the motion; therefore, the motion did not pass.

#### **Discussion of Key Largo Intersection/Extension of Osage Beach Parkway to Y Road.**

Mayor Lyons stated she received letters from Senator Kehoe, Senator Brown, and Representative Miller and she also spoke with David Silvester of MoDOT. She said it is the Board's decision on how to proceed.

Alderman Rucker said he asked this item to be placed on the agenda to continue the dialogue however; making a decision tonight was not his intent.

There was a lengthy discussion regarding the options from MoDOT and costs involved with the outer road, the roundabout and the interchange.

Alderman Olivarri moved to proceed with the outer road. There was no second to the motion therefore, the motion did not pass.

#### **New Business.**

**Public Hearing.** Special Use Case No. 362. Special Use Permit to allow extended stay rental units in a commercial district.

#### **Department Comments:**

**Applicant:** Midwest Hotel and Lodging, LLC

**Location:** Approximately 200 feet east of the intersection of KK and Osage Beach Parkway, on the north side of Osage Beach Parkway (Williamsburg Inn).

**Petition:** Special Use Permit to allow extended stay rental units in a Commercial District.

**Existing Use:** Commercial Lodging

**Zoning:** C-1 General Commercial

**Lot Size:** 29,993 square feet

**Surrounding Zoning:**

**Surrounding Land Use:**

**North:** C-1 General Commercial

Vacant

**South:** C-1 General Commercial

Commercial

**East:** C-1 General Commercial

Vacant (New KK ROW)

**West:** C-1 General Commercial

Commercial (Zip Stop)

**The Osage Beach Comprehensive Plan  
Designates this area as appropriate for:**

Heavy Traffic Commercial

**Rezoning History**

**Case #**

**Date**

Citywide

May 1984

**Utilities**

**Water:** City

**Gas:**

None

**Electricity:** Ameren

**Sewer:**

City

**Access:** Property has approximately 90 feet of frontage on Osage Beach Parkway

**Analysis:**

1. The property in question is a platted commercial tract. The property is home to the Williamsburg Inn, which offers 22 rooms for overnight stays. The request is being made by the owner of the property on behalf of prospective buyer of the property. As is somewhat common, there is a contract pending for the sale of the subject property that is contingent on this request being approved.
2. The applicants have submitted a request to convert the existing building into residential units intended for long term stay (greater than 30 days). The proposed building changes will include reformatting the existing units into apartments that will include the normal layout including a kitchen and bedroom space. These changes will be required to meet the current building codes enforced by the City of Osage Beach.
3. A Special Use Permit was approved for the Williamsburg property in 1999 that allowed the construction of two four unit apartment buildings. The approved

apartments were constructed and have since been separated from the hotel property and have different owners.

4. The existing parking lot will be more than adequate for the requested change and will be in compliance with the City's off street parking requirements.
5. With this property's location fronting the Osage Beach Parkway Commercial corridor and KK, the land use character of the area is high traffic commercial. The intensity of this area will increase as vacant property to the northeast and down KK are further developed.
6. In accordance with Section 27-164 of the Osage Beach Zoning Code, residences are permitted in C-1 zones with a Special Use Permit.

High Density residential is a common use to find intermixed within commercial corridors. It is also common to see older hotel or motel facilities undergo remodel and repurposing to allow a high density residential use. In this situation a conversion of the Williamsburg Inn will provide several positives for the City and its citizens and business's. On one hand it will provide further long term rental dwelling possibilities on the west side of town where there are few while reducing the number of hotel rooms competing for occupancy. And it will increase the number of residents in the west side customer draw area bringing more patrons into the commercial facilities on the west side meaning grocers, restaurants, and convenience stores tend to gain from such increases in residents.

Typically, it is good practice to provide some mitigated screening between residential uses and the commercial uses on adjacent properties. In this situation the side of the building that faces the adjacent commercial property is a solid concrete block wall meaning the effect the adjoining properties will have on each other will be little if any. Staff feels that this is an acceptable use for this property and should be approved with the following conditions:

1. Ingress and egress be limited to the Osage Beach Parkway frontage and access serving the existing use on the property. No access shall be gained from properties to the north or west without approval of the Planning Commission
2. All parking and access drives for the proposed use must be paved and constructed in conformance with City design standards at the time its constructed
3. Signage shall be in conformance with the City of Osage Beach Sign Ordinance.
4. This approval does not constitute building permit approval; all other zoning and building regulations must be followed.
5. An annual review of this request will not be required.

The Planning Commission recommended approval of this request.

Jason Well representing Williamsburg Inn and Mr. Morgan requested the City to approve the Special Use Permit that will provide more affordable housing. City Planner Cary Patterson said the change is use will require all building codes to be met for any type of construction or remodeling.

There being no one to speak in opposition to Special Use Permit No. 362, Mayor Lyons closed the public hearing.

**Approve Findings of Fact.** Special Use Case No. 362.

Alderman Olivarri moved to approve the Findings of Fact for Special Use Case No. 362. Alderman Catcott seconded the motion which was voted on and unanimously passed.

**Vote on Special Use Case No. 362.**

Alderman Rucker moved to approve Special Use Case No. 362 with the following conditions:

1. Ingress and egress be limited to the Osage Beach Parkway frontage and access serving the existing use on the property. No access shall be gained from properties to the north or west without approval of the Planning Commission
2. All parking and access drives for the proposed use must be paved and constructed in conformance with City design standards at the time it's constructed
3. Signage shall be in conformance with the City of Osage Beach Sign Ordinance.
4. This approval does not constitute building permit approval; all other zoning and building regulations must be followed.
5. An annual review of this request will not be required.

Alderman Catcott seconded the motion which was voted on and unanimously passed.

**Presentation of GFOA Award.**

Mayor Lyons presented the Certificate of Achievement for Excellence in Financial Reporting to City Treasurer Karri Bell for the thirteenth consecutive year. Everyone congratulated City Treasurer Karri Bell for this accomplishment.

**Bill No. 13-03.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING SECTION 125.050 F, PAY AND COMPENSTION

Human Resources Generalist Cindy Leigh explained that during the 2013 budget process staff was asked to look at reducing the pay plan expense. Currently all full time positions are reviewed once within a four year period. This frequency can be changed to once within an eight year period with little effect on employees because Section 125.050.D.1 provides for procedures for a position to be reviewed "when there has been a material, significant, and permanent change in job duties". Bill 13-03 proposes changing the frequency that all positions are reviewed from four years to eight years.

Attached is a copy of Section 125.050.A through 125.050.F that refers to the pay plan. The following is an excerpt from this section documenting the change.

- E. *Periodic Position Review and Maintenance of Job Descriptions:* In order to ensure that jobs remain in the appropriate classification and job descriptions are relevant, the Human

Resources Generalist is responsible for establishing procedures so that all positions are reviewed every ~~four~~ eight years.

Mayor Lyons presented the first reading of Bill No. 13-03 by title only. It was noted that Bill No. 13-03 has been available for public review.

Alderman Rucker moved to approve the first reading of Bill No. 13-03 as presented. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 13-03 by title only. Alderman Farmer moved to approve the second and final reading of Bill No. 13-03. Alderman Schmitt seconded the motion. The following roll call vote was taken to approve the second reading of Bill No. 13-03 and to pass same into Ordinance: "Ayes": Alderman Rucker, Alderman Catcott, Alderman Schmitt, Alderman Olivarri, Alderman Farmer. "Nays": None. "Absent": Alderman Kahrs. Bill No. 13-03 was passed and approved as Ordinance No. 13.03.

**Bill No. 13-04.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION ENHANCEMENT FUNDS PROGRAM AGREEMENT

City Engineer Nick Edelman explained this agreement provides funding for the construction of sidewalks along Osage Beach Parkway from Highway KK to Nichols Road. It is set up as 80% federal funds not to exceed \$354,242 with a 20% local match.

Mayor Lyons presented the first reading of Bill No. 13-04 by title only. It was noted that Bill No. 13-04 has been available for public review.

Alderman Schmitt moved to approve the first reading of Bill No. 13-04 as presented. Alderman Olivarri seconded the motion which was voted on and unanimously passed.

Alderman Catcott said that sidewalks are also needed between Highway 42 and Lake Ozark and funds should be budgeted for that area. Mr. Edelman explained that funding will be requested for that area during the next round of grant funding. Upon a question from Alderman Rucker about where the 20% is budgeted, Mr. Edelman said engineering is budgeted in 2013 and construction money will need to be budgeted in 2014.

Mayor Lyons presented the second and final reading of Bill No. 13-04 by title only. Alderman Farmer moved to approve the second and final reading of Bill No. 13-04. Alderman Schmitt seconded the motion. The following roll call vote was taken to approve the second reading of Bill No. 13-04 and to pass same into Ordinance: "Ayes": Alderman Catcott, Alderman Schmitt, Alderman Olivarri, Alderman Farmer, Alderman Rucker. "Nays": None. "Absent": Alderman Kahrs. Bill No. 13-04 was passed and approved as Ordinance No. 13.04.

**Bill No. 13-05.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING SECTION 115.410, EVALUATION OF CERTAIN APPOINTED OFFICIALS

Mayor Lyons explained that on July 19, 2012, she sent a memorandum to the Board requesting input on suggested changes to Section 115.410. In early January, she asked the Board for input. Based on the comments she received, she believes this change will improve the evaluation process of Appointed Officials.

Mayor Lyons presented the first reading of Bill No. 13-05 by title only. It was noted that Bill No. 13-05 has been available for public review.

Alderman Farmer moved to approve the first reading of Bill No. 13-05 as presented. Alderman Olivarri seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 13-05 by title only. Alderman Rucker moved to approve the second and final reading of Bill No. 13-05. Alderman Schmitt seconded the motion. The following roll call vote was taken to approve the second reading of Bill No. 13-05 and to pass same into Ordinance: "Ayes": Alderman Schmitt, Alderman Olivarri, Alderman Farmer, Alderman Rucker, Alderman Catcott. "Nays": None. "Absent": Alderman Kahrs. Bill No. 13-05 was passed and approved as Ordinance No. 13.05.

**Bill No. 13-06.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ENACTING SECTION 210.233 CODE OF ORDINANCES, ENTITLED FUNERAL PROTESTS PROHIBITED, WHEN -- CITATION OF LAW -- DEFINITION

City Attorney Ed Rucker explained that on September 3, 2009, acting upon my advice and under threat of legal action from the American Civil Liberties Union, the Board of Aldermen voted to repeal the City's ordinance designed to protect funerals from disruptive protests. He added that at that time he promised to monitor the issue and notify the Board if the position of the Eighth Circuit Court of Appeals changed as to these ordinances. In *Phelps-Roper v. City of Manchester*, 697 F.3d 698, (8<sup>th</sup> Cir. 2012) (en banc) decided on Tuesday October 16, 2012 the court upheld as constitutional a similar ordinance from the City of Manchester.

Rule 13.1 of the Rules of the Supreme Court of the United States provides that petition of a Writ of Certiorari be filed within 90 days of the decision sought to be reviewed. Those 90 days have expired. On Friday January 25, 2013 the clerk's office indicated that they did not have a petition for a Writ of Certiorari from the plaintiff. The opinion can be considered final.

The proposed ordinance is a copy of the approved language protecting funerals from protesters as it appears in the ordinance of the City of Manchester.

Mayor Lyons presented the first reading of Bill No. 13-06 by title only. It was noted that Bill No. 13-06 has been available for public review.

Alderman Farmer moved to approve the first reading of Bill No. 13-06 as presented. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 13-06 by title only. Alderman Schmitt moved to approve the second and final reading of Bill No. 13-06. Alderman Catcott seconded the motion. The following roll call vote was taken to approve the second reading of Bill No. 13-06 and to pass same into Ordinance: "Ayes": Alderman Olivarri, Alderman Farmer, Alderman Rucker, Alderman Catcott, Alderman Schmitt. "Nays": None. "Absent": Alderman Kahrs. Bill No. 13-06 was passed and approved as Ordinance No. 13.06.

**Bill No. 13-07.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, REPEALING SECTION 635.010 AND SECTION 635.015 OF THE OSAGE BEACH CODE OF ORDINANCES AND REENACTING A NEW SECTIONS 635.010 AND 635.015 ON THE

**SAME SUBJECT TO COMPLY WITH THE PROVISIONS OF SECTION 393.275 OF THE REVISED STATUTES OF MISSOURI.**

City Attorney Ed Rucker explained that Section 393.275 Revised Statutes of Missouri requires that the reenactment of the utility franchise tax must be accomplished within 60 days of the rate increase. The rate increase was granted on December 12, 2012 and this ordinance should be adopted by February 9, 2013.

Mayor Lyons presented the first reading of Bill No. 13-07 by title only. It was noted that Bill No. 13-07 has been available for public review.

Alderman Catcott moved to approve the first reading of Bill No. 13-07 as presented. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 13-07 by title only. Alderman Olivarri moved to approve the second and final reading of Bill No. 13-07. Alderman Schmitt seconded the motion. The following roll call vote was taken to approve the second reading of Bill No. 13-07 and to pass same into Ordinance: "Ayes": Alderman Farmer, Alderman Rucker, Alderman Catcott, Alderman Schmitt, Alderman Olivarri. "Nays": None. Bill No. 13-07 was passed and approved as Ordinance No. 13.07.

**Authorize Placement of Street Light on a Portion of Nichols Road formerly known as Old State Park Road.**

City Engineer Nick Edelman explained property owners have submitted the appropriate documents for the City to place a street light on Nichols Road and is acceptable to the Engineering Department. It meets the standards as set forth in the Osage Beach Design Guidelines and Ameren has agreed to place a street light on their pole. Ameren will maintain the street light and the City will be paying the bill for this street light. The Engineering Department recommended approval of the street light as requested.

Alderman Olivarri moved to approve the placement of a street light on a portion of Nichols Road as recommended. Alderman Catcott seconded the motion which was voted on and unanimously passed.

**Bid Award.** Mace Road Sewer Extension Project.

The following bids were received for the Mace Road Sewer Extension Project:

Keystone Excavating, LLC	\$205,502.25
Temman Excavating	\$128,933.10
Travis Hodge Hauling, LLC	\$147,273.54
Hutchins Telecom, LLC	\$169,470.70
Stockman Construction Group	\$211,168.10
Four Seasons Plumbing	\$133,975.00
Sterling Excavation Inc.	\$194,106.00
Excel Excavating	\$175,131.00
Cooper Siteworks Inc.	\$168,721.55
APAC Missouri Inc.	\$199,132.41
JC Industries Inc.	\$167,680.30
Ed Laubinger Excavating	\$221,705.00

Midstate Pipeline Maintenance, LLC	\$161,329.00
M & M Utilities, LLC	\$181,533.05
Lamke Trenching & Excavating Inc.	\$292,911.37

City Engineer Nick Edelman said Temman Excavating is the apparent low bidder and all the references were positive. This project will remove residences within the City limits from Lake Ozark's sewer system and re-route the sewer line to Osage Beach's sewer system.

Funding for this project can be obtained from 35-00-773208 Mace Road with a budget balance of \$220,000. The Engineering Department recommends awarding the project to Temmen Excavating in the amount of \$128,933.10.

Alderman Rucker moved to award the bid for Mace Road Sewer Extension Project to the low bidder, Temmen Excavating, in the amount of \$128,933.10. Alderman Olivarri seconded the motion which was voted on and unanimously passed.

#### **Communications from Board Members.**

Alderman Schmitt. Ron Schmitt said he appreciated that Summit Natural Gas is doing a good job.

Alderman Farmer. Lois Farmer announced that she has a new great granddaughter.

Alderman Catcott. Fred Catcott thanked City Attorney Ed Rucker for his explanation of legal matters so they are easily understood.

Alderman Rucker. Kevin Rucker expressed his desire that everyone support Representative Rocky Miller's Bill about E. coli testing. He said this is an opportunity to eliminate problems for the swimming beaches.

#### **Staff Communications.**

Chief of Police. Todd Davis reminded everyone that February 15, 2013 is Cops on Top which provides an opportunity to raise money for Special Olympics.

City Attorney. Ed Rucker clarified some misunderstanding about the City Use Tax Election. He said that recent reports may have left the impression that the City Use Tax submitted to voters on the April ballot is an additional tax imposed on top of the current sales tax. That is not true. He added that the use tax can apply to a purchase only where no sales tax is applied. If sales tax is collected, the use tax is not collected.

The decision in Street v. Director of Revenue in 2012, changed existing practice by prohibiting collection of a local sales tax on a vehicle purchased from an out of state vendor. The Department of Revenue will collect the use tax, if adopted, when the vehicle is purchased from an out of state vendor. At registration, vehicle or boat owners will be charged sales tax or use tax, but not both.

The ordinance submitted to the voters, is the only option available to address the loss of City revenue caused by the decision in Street v. Director of Revenue. The Department of Revenue's initial estimate was a loss to the City of Osage Beach of \$33,000.00 annually. The City of Camdenton, Morgan County, Camden County and the City of Laurie are all placing use tax proposals before their voters in the April 2, 2013 election.

City Engineer. Nick Edelman said a decrease was submitted in the Contract Modification from Gerstner Electric in the amount of \$28,215 for Osage Beach Parkway Lighting Improvement Project from KK to Lazy Days Road.

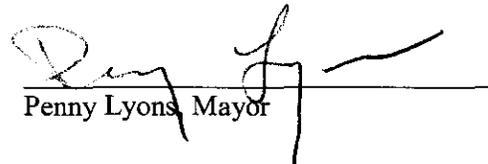
Superintendent of Public Works. Rick King commented on Summit Natural Gas. He works with them on hundreds of locates a day and has a good working relationship so far.

At the request of Alderman Catcott, State Representative Rocky Miller came forward and there was a brief discussion on Key Largo.

There being no further business to come before the Board, the meeting adjourned at 8:20 p.m.

I, Dorothy Urlicks, Deputy City Clerk of the City of Osage Beach, Missouri, do hereby certify that the above foregoing is a true and complete journal of proceedings of the regular meeting of the Board of Aldermen of the City of Osage Beach, Missouri, held on February 7, 2013.

  
Dorothy Urlicks, Deputy City Clerk

  
Penny Lyons, Mayor