

**SMITHVILLE BOARD OF ALDERMEN  
REGULAR SESSION**

January 17, 2023 7:00 p.m.  
City Hall Council Chambers and Via Videoconference

**1. Call to Order**

Mayor Boley, present, called the meeting to order at 6:58 p.m. A quorum of the Board was present: John Chevalier, Leeah Shipley, Marv Atkins, Dan Hartman, Ronald Russell and Dan Ulledahl.

Staff present: Cynthia Wagner, Chuck Soules, Gina Pate, Chief Lockridge, Jack Hendrix, Matt Denton and Linda Drummond.

**2. Pledge of Allegiance led by Boy Scout Troop 412**

Jacob Schuerman, Sam Hunter and Connor Fredrick

**3. Consent Agenda**

- **Minutes**

- December 20, 2022, Board of Aldermen Regular Session Minutes

- **Finance Report**

- Financial Report for December 2022

- **Resolution 1163, TAP Grant Funding Application**

A Resolution acknowledging Board of Aldermen support of a 2022 TAP Supplemental Grant Application for Maple Lane sidewalks.

- **Resolution 1164, Payment to Kansas City Board of Police Commissioners**

A Resolution authorizing payment to the Kansas City Board of Police Commissioners for police academy training in the amount of \$10,478.36.

- **Resolution 1165, Crime Stoppers TIPS Hotline Program**

A Resolution authorizing and directing the Mayor to execute a contract with the Kansas City Metropolitan Crime Commission to provide services to the City through participation in the TIPS Hotline Program.

- **Resolution 1166, Authorize Purchase of Utility Meters**

A Resolution authorizing the expenditure of funds from the Combined Water and Wastewater System Fund for the purchase of utility meters from Kansas City Winnelson Company in the amount of \$19,375.72.

- **Resolution 1167, Acknowledging and Authorizing Payment to Mid-America Pump**

A Resolution acknowledging and authorizing the expenditure of \$33,526.35 to Mid-America Pump for repairs to SBR#1 at the Wastewater Treatment Plant.

- **Resolution 1168, Leak Adjustment**

A Resolution approving a water and wastewater leak adjustment for Cindy Hadley in the amount of \$454.82 for November and December utility bills.

- **Resolution 1169, Authorize Payment for Utility Easement**

A Resolution authorizing the expenditure of \$9,240 for utility easements for the 144<sup>th</sup> Street West Interceptor Force Main.

Alderman Hartman moved to approve the consent agenda. Alderman Atkins seconded the motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. The Mayor declared the consent agenda approved.

## **REPORTS FROM OFFICERS AND STANDING COMMITTEES**

### **4. Committee Reports**

Alderman Chevalier reported on the January 10 Planning and Zoning Commission Meeting. They discussed and approved items that are on the agenda this evening. Alderman Chevalier noted the 2022 end of year totals for building permits are 58 single family residential building permits and 15 commercial building permits.

### **5. City Administrator's Report**

Cynthia Wagner, City Administrator, had nothing to add to the report in the packet.

## **ORDINANCES & RESOLUTIONS**

### **6. Bill No. 2969-22, Amending Zoning Code Related to Fences – 2<sup>nd</sup> Reading**

Alderman Hartman moved to approve Bill No. 2969-22, amending sections of Chapter 400, the zoning code related to fences. 2<sup>nd</sup> reading by title only. Alderman Chevalier seconded the motion.

Todd Johnson, 410 Lakeview, requested that the Board consider changing the maximum height of the fence allowed to eight (8) feet. Mr. Johnson listed his reasons for the consideration.

1. 8-foot fence will provide a high level of privacy and security. Allow them to enjoy their own space without feeling like they are being watched. Blocked out unwanted views and provide a sense of security that his property is protected from unwanted visitors.
2. It will reduce noise pollution from the street making his property of more peaceful and a quieter place to live.
3. 8- foot fence can also have an aesthetic appeal to the property, make properties look more polished and well maintained. He believes it can also increase the value of the property.
4. 8-foot fence provides more privacy for those who live at the bottom of a hill it blocks the view of people looking down from above giving residents privacy they need to enjoy their own outdoor space.
5. 8-foot fence would help with stargazing by blocking out unwanted light pollution. The fence would also allow an environment for a secured backyard observer and would help block wind to improve telescope stability.

Alderman Chevalier moved to amend Bill No. 2969-22, Section 400.030,  
*5. No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous. This would include barbed wire, electrically charged or otherwise detrimental to persons, except as stated herein. Barbed wire fences may be constructed in the agricultural districts; and barbed wire may be used in the industrial districts and the B-3 district, but only as a component of security or anti-climb fences with such component not less than ~~six (6)~~ eight (8) feet above the outside adjacent grade. The use of barbed wire arms is limited to those not larger than 18", and upon attachment of the arm, the extended portion of the arm and wire shall not extend beyond any property lines.*

Alderman Russell seconded the motion.

Alderman Russell asked if there would be a need to amend it further for the electric fence for industrial.

Mayor Boley explained that issue would be brought before the Board in a different Ordinance.

Upon roll call vote:

Alderman Atkins - Aye, Alderman Russell - Aye, Alderman Ulledahl - Aye,  
Alderman Shipley - Aye, Alderman Chevalier - Aye, Alderman Hartman - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared the amendment to Bill No. 2969-22 approved.

No discussion.

Upon roll call vote:

Alderman Hartman - Aye, Alderman Chevalier - Aye, Alderman Shipley - Aye,  
Alderman Ulledahl - Aye, Alderman Russell - Aye, Alderman Atkins - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2969-22 approved as amended.

**7. Bill No. 2970-22, Rezoning 18601 North 169 Highway from R-1B to R-3P – 2<sup>nd</sup> Reading**

Alderman Hartman moved to approve Bill No. 2970-22, rezoning a portion of 18601 North 169 Highway from R-1B to R-3P for the new Herzog Education Center. 2<sup>nd</sup> reading by title only. Alderman Ulledahl seconded the motion.

Alderman Russell asked the difference between the original requests for the lodge then the hotel and now the dormitory.

Jack Hendrix, Development Director explained that the facility will have dormitory features and will not be for rent. It will only be used for the education facility.

Alderman Russell asked when the stormwater study would occur and what improvements will be made and if improvements will be made to the .

Jack explained that that is all part of the site plan approval and will be reviewed then.

Alderman Russell asked if improvements will be made the back road that goes to Rock Creek at that time also.

Mayor Boley explained that road is a utility construction driveway that people use it is not a city street.

Upon roll call vote:

Alderman Chevalier - Aye, Alderman Hartman - Aye, Alderman Atkins – Aye,  
Alderman Russell - Aye, Alderman Ulledahl – Aye, Alderman Shipley - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2970-22 approved.

**8. Bill No. 2971-22, Rezoning Northeast Corner of Second Creek and Lowman Road from A-1 to R-1B and R-3 – 2<sup>nd</sup> Reading**

Alderman Hartman recused himself and left the room at 7:10 p.m.

Alderman Ulledahl moved to approve Bill No. 2971-22, rezoning the northeast corner of Second Creek and Lowman Road from A-1 to R-1B and R-3 for a new Second Creek Meadows subdivision. 2<sup>nd</sup> reading by title only. Alderman Shipley seconded the motion.

Jack presented a memo to the Board and audience concerning Bill No 2971-22.

*On the agenda this evening in item 8 is the second reading of an ordinance that would rezone the Northeast corner for Second Creek Bridge Road and Lowman Road to both R-1B and R-3 in accordance with a preliminary plat. The Planning Commission made certain findings of fact and a recommendation for approval of the rezone, which is also included in your packet. The findings of fact are based upon information provided during a public hearing, including the staff report. Two of the items contained in the staff report, and thereafter the Findings of Fact of the Commission, related to the zoning of adjacent property. Both the character of the neighborhood and the compatibility of the proposed district classification with nearby properties sections include information concerning the zoning of adjacent land.*

*The staff report provided much of the background information used in the Findings of Fact, and it included the zoning of an adjacent property to the west described as R-3. (George Lowman Tract) Staff's report is made by reviewing a large format map created under contract with the Clay County Assessor's GIS department. This map is an eight foot (8') tall map that is color-coded to represent the various zoning districts overlaid on the County parcel map. The current version of this document was created in 2019 as a part of the 2020 Comprehensive Plan process. Staff requested that the GIS department in Clay County to prepare a color map in digital form, formatted to be printed on paper that is approximately 4' wide. That map was sent to the city, and we then used it to produce several versions of the map for various public meetings that were scheduled to occur during the Comprehensive Planning process. This map is the ready-reference document used to perform these staff reports.*

*This 2019 map shows the George Lowman Tract as R-3, and the underlying parcel data on the GIS website also shows this as part R-3 and part A-1. During the Planning Commission meeting last week on the Preliminary Plat, the zoning of the George Lowman tract was questioned. Staff explained that we use the map from the County's GIS, and that map was based upon maps that were approved by the Planning Commission. Staff reported that we were unaware of when this R-3 zoning may have occurred, but instead we rely on the approved maps. Staff began researching to find the exact ordinance or map that may clarify exactly when this property was zoned R-3.*

*Rather quickly, staff identified that previous versions of this map also printed by the County GIS office in fact showed the property as B-3. Once we identified that there was a discrepancy in the County data, staff began an ordinance-by-ordinance review of the rezoning of this property. An ordinance was found from 1989 that appears to have rezoned the property to B-3. No ordinance rezoning it to R-3 was found. It is the determination of the Planning Department that the true zoning of a portion of the George Lowman property was intended to be zoned B-3, and not the less intensive R-3.*

*With this discovery, it is necessary to provide the Board the information that a portion of the Findings of Fact from the Commission described the zoning of the character of the neighborhood and compatibility of the proposed change with B-3 on the east and R-3 on the west. We now know that the property has B-3 on both sides, and not the lesser R-3. After discussion with City's legal counsel, the Board has two options:*

- 1. The Board can accept the new information of the adjacent land's zoning is more intensive than that identified in the Commission's finding and proceed to approve the ordinance, or*
- 2. The Board can return the matter to the Commission to hold another hearing where the B-3 information can be presented directly, and a new recommendation be made.*

*No matter the Board's decision on how to handle the B-3 zoning issue, it is important to note that over the last several months, staff has identified various random changes to a few parcels on the County GIS map. When we identify any such error, we complete the research necessary to provide accurate information to the County GIS and correct the map. Prior to identifying this parcel error on the County system, staff has begun the process of creating a new zoning layer upon the new City GIS. As that system continues to be developed, Development staff will work to update and verify the zoning shown on this system is accurate and provide some accountability for ensuring that accuracy.*

Jack reviewed some of the highlights from the memo and explained the Board's two options.

Mayor Boley noted that last week staff researched the Ordinance from 1989 when the Lowman property was zoned B-3 and in the minutes from that meeting and there was no discussion just the vote. At some point Clay County made a mistake changed the zoning to R-3 on that property.

Alderman Russell noted that if it is not uncommon for these mistakes to be made in the Clay County GIS system, what is to keep it from happening again.

Mayor Boley explained that we could do nothing to keep it from happening again.

Jack noted that having our own GIS system and developing it so that all our record keeping would be done in-house. We will also look into the ability to lock the system. These are things that would prevent these types of errors from occurring.

Alderman Chevalier asked if the R-3 zoning was more restrictive than B-3.

Jack explained that R-3 zoning is more restrictive than B-3 zoning, he said that you could put a Walmart in an area zoned B-3.

Alderman Chevalier asked if this would be taking away a business opportunity from the Lowman property.

Mayor Boley explained that we are not changing any zoning for the Lowman property just correcting it. The Board is only acting on the application for the property presented tonight.

Alderman Chevalier noted that there is property in that area that is zoned B-3 and Ag which is inconsistent with the Comprehensive Plan.

Jack explained that the Comprehensive Plan talks about filling in the gaps so we do not have the massive gaps between subdivisions because those gaps make it very inefficient for our utilities.

Mayor Boley explained to the Board that they need to vote on Bill No. 2971-22 as presented or send it back to the Planning and Zoning Commission with the corrected B-3 zoning for the Lowman property across from it.

Alderman Russell asked if it would change the traffic flow.

Mayor Boley explained this would not change the facts and findings. The Lowman property is zoned the same as the Old Price Chopper (now NAPA). He noted that if the Board wanted to send this back to Planning and Zoning they would make their decision in February, and it would then come back to the Board at the second meeting in February.

Cynthia said that staff would recommend that it go back to the Planning and Zoning Commission for their review and then the Ordinance would come back to the Board for their review. Staff would also recommend that the Board consider acting on the Ordinance for first and second reading as an emergency Ordinance at the second meeting in February.

Alderman Russell asked if the Board would vote on Resolution 1171, Preliminary Plat, Second Creek Meadows.

Cynthia explained that it would be postponed.

Mayor Boley asked that Board if they wanted Bill No. 2971-22 referred back to the Planning and Zoning Commission or be voted on this evening.

The Board all agreed to refer this item back to the Planning and Zoning Commission for reconsideration.

Alderman Hartman returned at 7:25 p.m.

**9. Bill No. 2972-23, Ballot Language for 3% Recreational Marijuana Sales Tax – Emergency Ordinance Sponsored by Mayor Boley - 1<sup>st</sup> and 2<sup>nd</sup> Reading**

Alderman Chevalier moved to approve Bill No. 2972-23, calling for the question of imposing a 3% sales tax for recreational marijuana on the ballot for the April 4, 2023 election. 1<sup>st</sup> reading by title only. Alderman Ulledahl seconded the motion.

Alderman Chevalier noted that this 3% would be in addition to the present tax.

Cynthia clarified that this is in addition to any taxes currently collected and only on the sale of adult use recreational marijuana.

Alderman Chevalier asked if medical marijuana is exempt from this sales tax.

Cynthia said that yes medical marijuana is exempt from this tax.

Alderman Russell asked if the revenue from this tax was to go into the general fund.

Cynthia explained that based on discussion with the Board the revenue would go into the general fund. She noted that staff will monitor it throughout the budget process to see where those funds would best be directed. Cynthia explained that based on estimates from Missouri Municipal League \$150,000 is projected per outlet per year in sales. She asked that the Board remember that those estimates are probably high because that is a state wide average estimate.

Alderman Chevalier asked how staff will be able to track the funds since you cannot track sales tax for individual businesses.

Alderman Ulledahl asked if it included the DHC products that gas stations sell for it.

Cynthia explained that staff is still trying to confirm that.

Cynthia explained that it will come in coded a certain way so it can be tracked. We will not be able to report on where it came from.

Upon roll call vote:

Alderman Atkins - Aye, Alderman Chevalier - Aye, Alderman Ulledahl – Aye,  
Alderman Russell - Aye, Alderman Shipley – Aye, Alderman Hartman - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2972-23 approved first reading.

Alderman Ulledahl moved to approve Bill No. 2972-23, calling for the question of imposing a 3% sales tax for recreational marijuana on the ballot for the April 4, 2023 election. 2<sup>nd</sup> reading by title only. Alderman Chevalier seconded the motion.

No discussion.

Upon roll call vote:

Alderman Ulledahl - Aye, Alderman Atkins – Aye, Alderman Shipley - Aye,  
Alderman Hartman – Aye, Alderman Russell – Aye, Alderman Chevalier - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2972-23 approved.

#### **10. Bill No. 2973-23, Destruction of Records – 1<sup>st</sup> Reading**

Alderman Hartman moved to approve Bill No. 2973-23, authorizing staff to proceed with the destruction of certain administrative and finance documents as authorized by the retention and destruction schedule approved by the Secretary of State's Office. 1<sup>st</sup> reading by title only. Alderman Ulledahl seconded the motion.

No discussion.

Upon roll call vote:

Alderman Hartman – Aye, Alderman Atkins – Aye, Alderman Russell – Aye,  
Alderman Shipley – Aye, Alderman Ulledahl – Aye, Alderman Chevalier - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2973-23 approved first reading.

**11. Resolution 1170, Site Plan, 14991 North Industrial Drive**

Alderman Ulledahl moved to approve Resolution 1170, approving the site plan for a new 3,600ft<sup>2</sup> building at 14991 North Industrial Dr. for 14991 North Industrial Drive. Alderman Russell seconded the motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolution 1170 approved.

**12. Resolution 1171, Preliminary Plat, Second Creek Meadows**

Alderman Ulledahl moved to postpone Resolution 1171, approving the preliminary plat for a new residential subdivision to be called Second Creek Meadows with 53 Single Family lots and 17 multifamily lots to include 87 dwelling units. Alderman Atkins seconded the motion.

No discussion.

Ayes – 5, Noes – 0, Abstained – 1, motion carries. Mayor Boley declared Resolution 1171 postponed.

**OTHER MATTERS BEFORE THE BOARD**

**13. Public Comment**

Blake Tebbs Dingman, 600 NE 180<sup>th</sup> Street, spoke to the Board concerned their leak that occurred in October of 2022 where they acquired a \$3,600 water bill. The repair cost them \$6,200 and now they do not have the means to pay the \$3,600 water bill. Ms. Dingman explained that they have always paid their water bills on time and asked that the Board consider adjusting their water bill lower.

Cynthia explained that staff has been in contact with the Tebbs and had not received the leak adjustment paperwork from them until right before this meeting. Cynthia explained that the adjustment, per Ordinance, would lower the bill \$1,200. She noted that staff will work on this adjustment and bring it forward at the February 7 meeting.

**14. Appointment – Parks and Recreation Committee**

The Mayor nominated Jeremiah Bloemker to the Parks and Recreation Committee, and the Board voted:

By roll call vote.

Alderman Shipley – Aye, Alderman Atkins – Aye, Alderman Russell – Aye,  
Alderman Hartman – Aye, Alderman Chevalier – Aye, Alderman Ulledahl – Aye.

Ayes – 6, Noes – 0, motion carries. The Mayor declared Jeremiah Bloemker a member of the Parks and Recreation Committee.

**15. New Business from the Floor**



Alderman Chevalier asked staff to look into City officials and committee members ability to conceal to carry during meeting at city hall.

**16. Adjourn**

Alderman Ulledahl moved to adjourn. Alderman Russell seconded the motion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared the regular session adjourned at 7:39 p.m.

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Linda Drummond, City Clerk

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Damien Boley, Mayor