

**City of Bel-Ridge**  
**Special Meeting Minutes**  
**For**  
**Wednesday, March 14<sup>th</sup>, 2018**  
**12:30PM**

The Meeting was called to order by Mayor White at 1:05pm. Mayor White reminded the audience that the dinging of the cell phones interrupts the recording of the minutes and asked everyone to please silence their phones. The roll was taken by Deputy Clerk, Jacqueline Jones.

**ATTENDANCE AS FOLLOWS:**

|             |   |                                                              |
|-------------|---|--------------------------------------------------------------|
| Abernathy   | - | Present                                                      |
| Brown       | - | Present                                                      |
| Mans        | - | Present                                                      |
| Nelson      | - | Present                                                      |
| Ruff        | - | Absent                                                       |
| Russell     | - | Present. - Ms. Russell was present via visual/audio facetime |
| Mayor White | - | Present                                                      |

Also present was City Attorney, Ken Heinz.

Attorney Michael Daming was present due to the absent of Attorney Evelyn Sims, who is representing Wilma Abernathy.

**DISCUSSION OF STREET BIDS**

Mayor White informed the Board that there were three (3) bids in their packets. The street bids are for Severin, Loganberry, Mary Mark and Almhurst. Mayor White informed the Board that the City does have a contract with an engineer of Polonium.

Alderman Brown had some questions regarding the bids for Severin.

The Board agreed that removing 2 inches would be better than just removing ½ inch before replacing.

Mayor White informed the Board that Jones gave a bulk quote and will do as many as they can while they are here. Kelly gave a quote, but will do one and

then come back. Mary Mark is higher because it is all concrete. Mayor White suggest that everyone drive and look at there's streets.

A motion was made by Alderman Brown and seconded by Alderman Nelson to table the street bids until we can reaffirm what we want to happen. A voice vote was taken and all were in favor. **Motion passed (TABLED)**

**BILL 1351 – AN ORDINANCE AMENDING SECTION 605.160C REGARDING LICENSES AND PERMITS CONDITIONS FOR ISSURANCE**

A motion was made by Alderman Russell and seconded by Alderman Mans for the first reading of Bill 1351 by caption only. A voice vote was taken and all were in favor. Motion passed. Bill 1351 was read for the first time by captain only by City Attorney, Ken Heinz.

Mr. Ken Heinz, City Attorney mentions that a different section number may be needed. He was not too sure there to place it.

Mr. Heinz gave some background on the ordinance. Mayor White had asked him to draw this ordinance up because there are a lot of situations where people are getting licenses and permits and are not paying their other financial obligations. This would cover both commercial and residential properties.

Alderman Abernathy questioned how this would affect the low income residents. Sometimes it comes to home repair or paying taxes.

Mr. Heinz suggested that they pay their taxes. Or they may be able to ask for a waiver.

A motion was made by Alderman Brown and seconded by Alderman Mans for the seconded reading of Bill 1351 by caption only. A voice vote was taken and all were in favor. Motion passed. Bill 1351 was read for a seconded time by caption only, by City Attorney, Ken Heinz.

A motion was made by Alderman Mans and seconded by Alderman Nelson to adopt Bill 1351. A roll call vote was as follows:

Abernathy -        nay

Brown - aye  
Mans - aye  
Nelson - aye  
Ruff - absent  
Russell - aye

4 ayes, 1 nay, 1 absent

**Motion passed. Bill 1351 becomes Ordinance 2018-9**

City Attorney, Ken Heinz mentioned that the telephone conference call was necessary due to the emergency of the City getting the taxes it is owed.

Attorney Michael Daming mentions that the Board needs to vote on that nature.

Mr. Heinz asked the Board if they agreed to this being the reason for the emergency issue. The Board replied yes.

A motion was made by Alderman Mans and seconded by Alderman Russell that the Board agreed with the City Attorney's comment regarding emergency situation. A voice vote was taken and all were in favor except Alderman Abernathy. **Motion passed.**

#### **DISCUSSION OF BILL 1352 – AN ORIDANCE FOR THE CONTRACT AGREEMENT BETWEEN THE CITY OF BEL-RIDGE AND DELL**

Mayor White gave some background on the acceptance of the Dell contract to upgrade the police department computer system that was voted upon on March 9<sup>th</sup>, 2018. This is an ordinance backing that up.

A motion was made by Alderman Mans and seconded by Alderman Brown for the first reading of Bill 1352 by caption only. A voice vote was taken and all were in favor. Motion passed. Bill 1352 was read a first time by caption only by City Attorney, Ken Heinz.

A motion was made by Alderman Mans and seconded by Alderman Nelson for the seconded reading of Bill 1352 by captions only. A voice vote was taken and all were in favor. Motion passed. Bill 1352 was read a seconded time by caption only by City Attorney, Ken Heinz.

A motion was made by Alderman Brown and seconded by Alderman Mans to adopt due to the possibilities of losing favorable pricing and this is being done as an emergency. A roll call vote was taken as follows:

|           |   |        |
|-----------|---|--------|
| Abernathy | - | aye    |
| Brown     | - | aye    |
| Mans      | - | aye    |
| Nelson    | - | aye    |
| Ruff      | - | absent |
| Russell   | - | aye    |

5 ayes, 0 nays, 1 absent

**Motion passed. Bill 1352 becomes Ordinance 2018-10**

#### **APPROVAL OF LANGUAGE CANDIDATE FORUM**

Mayor White gave some information on the forum that will be held on March 29<sup>th</sup>, 2018 at Bel-Ridge City Hall. Mayor White asked if the language was ok or was there something that needed to be added.

Attorney Heinz replied that it looked fine. But the third sentence said it would be 104 minute forum but should read "up to 104 minute forums".

Alderman Abernathy informed the Board that she was not sure if she would be at the forum or not.

#### **DISCUSSION OF MODIATOR FOR FORUM**

Mayor White informed the Board that she would be contacting the League of Women Voters to get a mediator for the forum for free. If not the Board agreed to hire one for no more than \$125.00.

A motion was made by Alderman Russell and seconded by Alderman Nelson to hire the mediator for the forum for \$125.00. A voice vote was taken and all were in favor. **Motion passed.**

#### **APPROVAL OF JOHN DEERE BID**

Captain Thiemann said that there are manufacture warranties. Mayor White informed the Board that the cost was \$15,805.61. The cost is the same. Everything is going to be new. Captain Thiemann informed the Board that this

was placed in the budget under the park fund. The skid loader was taken out of the budget.

Public Works supervisor, Cary Herndon, was absent due to a tree that fall in the park.

Captain Thiemann informed the Board that the old equipment could be kept as back up or sold.

A motion was made by Alderman Mans and seconded by Alderman Nelson to accept the John Deere bid and the matter is an emergency due to the price of the John Deere bid carried over from a previous meeting. A voice vote was taken and all were in favor. **Motion passed.**

#### **BREAK**

A motion was made by Alderman Russell and seconded by Alderman Mans to take a 10 minute break before continuing with item 9. A voice vote was taken and all were in favor.

Glen Tope a resident of Bel-Ridge asked the Board if Alderman Abernathy was sick and at home could she vote by phone also. Mr. Heinz replied yes. Attorney Daming replied only if it is an emergency meeting.

Break started at 1:44pm. Re-assembled at 2:01

Mayor White called the meeting to order at 2:01pm.

#### **SPECIAL PROSECUTOR FOR IMPEACHMENT OF WILMA ABERNATHY**

City Attorney, Ken Heinz, asked the special prosecutor, Wesley Bell, to inform the Board what he wants to accomplish today due to unfinished business from March 9<sup>th</sup>, 2018 meeting.

Special Prosecutor, Wesley Bell, informed the Board that he would like to talk to his clients regarding legal options, and this is an attorney client privilege. Mr. Bell's recommendation was that the Board goes into close session which is authorized under the sunshine law section 610.

Mr. Heinz asked if this constitutes his attorney work product. Mr. Bell replies yes it does. Mr. Heinz asked Mr. Bell if at the last meeting he felt that the meeting should not have included the person who has the articles of impeachment, Alderman Abernathy, because of conflict of interest. Mr. Bell response yes under section 105., which was read for the record and clearly states that a member can not take part directly or indirectly in something that is in respect to themselves, personally or professionally. Mr. Heinz mentions that he looked at the City Code and it provides a person cannot have any conflict of interest in the matter. Section 117.020 prohibits any elected official from having conflict of interest in voting on a matter that provides any monetary benefits. Section 120.055 provides more confidentiality of a closed meeting and there are standard for penalties or other sanctions by the body for any violation.

Mr. Bell added while before the council he would like to add he has no agenda and will give a recommendation accordingly. The Board does have the right to be advise of their legal options etc. Mr. Heinz asked would this request not include Ms. Abernathy? Mr. Bell replied yes and that would be appropriate.

City Attorney, Ken Heinz, gives Attorney Michael Daming a chance to respond. He is the Attorney for Alderman Wilma Abernathy. Mr. Daming stated the sections that Mr. Heinz mentioned pertains to employees of the City. Ms. Abernathy and the other Board members are not employees of the City under Attorney General section 77.69. Mr. Daming felt there were no conflicts. Conflict is the fact that Ms. Abernathy receives her Alderman salary therefore cannot participate in an impeachment discussion of herself. Mr. Daming gave reasons why that was no more of a conflict then. Mr. Daming mentioned that Ms. Abernathy's constituents would be doing a disservice to exclude her from City business.

Attorney Daming states that Mr. Bell is an attorney for the Board and Ms. Abernathy is a member of the Board and she participate in City business. Mr. Daming asked that Ms. Jones, Deputy Clerk for the City of Bel-Ridge, make sure everything is put in the record because it may need to be address by the Circuit Court of the County of St. Louis. SR0mo610.022.6 provides that any member of the Board of Alderman after making her objection, which Ms. Abernathy is making her objection, is allowed to fully participate in a close session. Mr. Daming informed the Board that this is what Ms. Abernathy would like to do. And is part



of her role as an Alderman. Mr. Daming participated that Ms. Abernathy will vote no to the motion.

To the extent that the Board would like to override Ms. Abernathy's vote Mr. Daming informed the Board that it cannot do so. There would not be a quorum to override and a majority is needed to enter into a close session. Mr. Daming went on to say he would like to know the nature of the emergency that would allow the Alderman on the phone to participate in this vote. There is no legal justification for emergency to authorize her to vote to go into close session. Mr. Daming final statement was to point out to the Board that excluding one of its own Alder people from engaging in City business would be violating Missouri statues and it own ordinance 110.050 Duties of Board Members, 110.170 Shall meet as a body. Mr. Daming would like all Alder people to engage and participate in all City business and vote no to exclude Ms. Abernathy or enter into close session.

Mr. Heinz asked Attorney Bell would he like to respond. Mr. Bell states that this is the clearest example of conflict of interest.

Mr. Heinz agreed with Attorney Bell and felt that the case of Moore vs Bruster at 116 SW 3<sup>rd</sup> 630 was a good example of the investigation of a Board member. No information is to be given out to the Board member being investigated. The Board is not privy to the discussions between Ms. Abernathy has with her attorney and would not violation her attorney client privileges. Mr. Heinz did not see why Ms. Abernathy should be able to violate the attorney client privileges of the other Board members.

Mayor White asked the Board of Alderman to authorize her to file a complaint with the Ethics Commission of Missouri against Alderman Abernathy for conflict of interest in voting in her own impeachment hearing, leaking closed session discussions.

City Attorney, Ken Heinz, mentioned that this would be an emergency due to Ms. Abernathy's attempts to invade the close session meetings. Mayor White responded yes.

A motion was made by Alderman Mans and seconded by Alderman Russell to file with the Ethics Commission.

A roll call vote was taken as follows:

|           |   |        |
|-----------|---|--------|
| Abernathy | - | nay    |
| Brown     | - | aye    |
| Mans      | - | aye    |
| Nelson    | - | aye    |
| Ruff      | - | absent |
| Russell   | - | aye    |

4 ayes, 1 nay, 1 absent

**Motion passed**

Mayor White asked the Board of Alderman's to put together a Committee for the impeachment hearing procedures and the committee would include:

Alderman Mans

Alderman Brown

Alderman Nelson

Alderman Russell

Alderman Ruff

The emergency was to carry out the hearing.

Attorney Daming asked why it was an emergency to carry out the hearing.

Mr. Heinz asked Mr. Daming to respect the point of order. Mr. Daming referred to Roberts rules.

A motion was made by Alderman Russell and seconded by Alderman Mans to appoint a special committee for the impeachment hearing of Wilma Abernathy.

A roll call vote was as follow:

|           |   |        |
|-----------|---|--------|
| Abernathy | - | nay    |
| Brown     | - | aye    |
| Mans      | - | aye    |
| Nelson    | - | aye    |
| Ruff      | - | absent |
| Russell   | - | aye    |

4 ayes, 1 nay, 1 absent

**Motion passed.**



Mayor White asked the Board to make a motion to assess penalties for violating conflict of interest and sunshine law of \$1000.00 per infraction and that all funds are withheld from the individual until the penalties are paid.

Alderman Russell asked that it be repeated. Mayor White repeated the request.

Mr. Heinz asked who the individual was. Mayor White responds Alderman Abernathy. Mr. Heinz asked if this was based on the projected price of having to re-establish the meeting that was interrupted by Alderman Abernathy's actions. Mayor White responds yes. Mr. Heinz asked Mayor White if the emergency was because Ms. Abernathy continues to take that position. Mayor White replied correct.

Attorney Daming asked as a point of order what the emergency was. Mr. Heinz requested that Mr. Daming stop interrupting. Mr. Daming responds that point of order takes precedence. Mr. Heinz mentions that the point of order is to be raised by the members of the Board. Mr. Daming replies to the Attorney and would like it noted that no such nature was stated. Mr. Heinz responds point of order is over ruled.

A motion was made by Alderman Russell and seconded by Alderman Mans for Wilma Abernathy to be fined \$1000.00 for the sunshine law and infractions and funds be withheld until all penalties are paid.

Alderman Brown agrees with the penalty but not the amount of the penalty.

Mayor White asked if Alderman Brown would like to assess the amount.

Alderman Brown suggest that the amount be \$500.00.

Mr. Heinz suggests that the Board make a motion to amend the previous motion to make the penalty \$500.00.

Alderman Russell asked if there was a certain amount to be assessed. Mr. Heinz replies no just to assess an amount.

A motion was made by Alderman Brown and seconded by Alderman Nelson that the fines be changed to \$500.00 for the penalties of the violations. A roll call vote was as follows:

|           |   |        |                                                    |
|-----------|---|--------|----------------------------------------------------|
| Abernathy | - | aye    | asked if this was for \$500.00, Nelson replies yes |
| Brown     | - | aye    |                                                    |
| Mans      | - | nay    |                                                    |
| Nelson    | - | aye    |                                                    |
| Ruff      | - | absent |                                                    |
| Russell   | - | nay    |                                                    |

3 ayes, 2 nays, 1 absent

**Motion passed**

The clerk asked if the wording of the motion was the same as the first one but they were just changing the dollar amount. Mayor White responds yes.

Mr. Daming mentions that Ms. Abernathy is voting on the amended motion.

Mr. Heinz informs the Board that now they have to vote on the assessment of \$500.00. A roll call vote was as follows:

|           |   |        |
|-----------|---|--------|
| Abernathy | - | nay    |
| Brown     | - | aye    |
| Mans      | - | nay    |
| Nelson    | - | aye    |
| Ruff      | - | absent |
| Russell   | - | nay    |

2 ayes, 3 nays, 1 absent

**Motion failed.**

City Attorney, Ken Heinz, asked the clerk to read the results of the roll call.

Alderman Mans informed the Board that the vote should not stand due to Alderman Abernathy voting on her own impeachment.

Ms. Abernathy responded that Mr. Heinz told her she could vote.

A motion was made by Aldermen Russell and seconded by Alderman Nelson to assess Wilma Abernathy penalties at \$500.00. A roll call vote was as follows:

Abernathy - she did not vote

Brown - aye

Mans - nay

Nelson - aye

Ruff - absent

Russell - aye

3 ayes, 1 nay, 1 absent, Alderman Abernathy did not vote

**Motion passed.**

Mr. Daming asked what the emergency was.

Mr. Heinz replied that the minutes should reflect the same reason as before, which was the need to proceed with the impeachment hearing for Wilma Abernathy, and hear from legal counsel, regarding this matter.

Mr. Daming informs Mr. Heinz that that has nothing to do with the motion of a \$500.00 penalty.

Mr. Heinz replies yes it does.

Mr. Daming responds that the record does not reflect a reason for taking an emergency vote to impose a \$500.00 penalty.

Mr. Heinz asked the clerk did she hear him say that. Ms. Jones replied yes, she wrote down what he said.

Mr. Daming asked what the reason was for moving forward with a hearing and imposing penalties today.

Mr. Heinz replies we do not want to delay this forever.

Mr. Daming wanted to know if this was the main reason for imposing a \$500.00 penalty today.

Mr. Heinz replied it was not the main reason but it was the reason the meeting was interrupted on Friday.

Mr. Daming suggested that the Board vote to approve the nature of the emergency reason for imposing the penalty.

Mr. Heinz mentions that the emergency needs to be reflected in the minutes.

Mr. Daming suggest that it be done for every motion. There is a big difference between a John Deere Bid and imposing a \$500.00 penalty.

Mr. Heinz asked the Board if they felt that the nature of the emergency had been entered properly. The Board member responded one by one by saying yes.

Mr. Heinz informed Mr. Daming that the nature was due to Ms. Abernathy behavior which cause the City to have to have additional staff and attorney fees and the penalty can be assess at every meeting that is interrupted.

**MOTION TO ADJOURN AND CLOSE THE OPEN SESSION TO GO INTO CLOSE SESSION FOR PERSONEL ISSUES AND OR LEGAL LITIGATION.**

City Attorney, Ken Heinz, suggest that the Board motion to go into close for attorney client work product discussion for the Board of Alderman excluding the member that is subject to the articles of impeachment.

Mr. Daming asked what sub-section that Mr. Heinz is seeking to close meeting under.

Mr. Heinz replies section 610.021 Attorney Client legal privileges. Number 1, number 14, Common Law Work Product.

A motion was made by Alderman Russell and seconded by Alderman Mans to go into close session for the reason stated earlier by City Attorney, Ken Heinz and attorney client privilege.

Mr. Daming asked what the emergency reason for the close session was.

Mr. Heinz replied the emergency was due to the last meeting Attorney Bell was unable to exercise his attorney client privileges and work product discussion on

Friday due to disruption and it is important for members of the Board to communicate the Mr. Bell.

Mr. Bell informed the Board that it would be unethical to discuss the matter in open session when it regards attorney client privileges.

A roll call vote was as follows:

Abernathy -nay and adjected due to it not bring a conflict like alderman voting on the budget. All members can participate in close session. Section 6101022.6 and section 110.050, 110.170. what is the emergency.

Brown - aye

Mans - aye

Nelson - aye

Ruff - absent

Russell - aye

4 ayes, 1 nay, 1 absent

**Motion passed**

**A MOTION WAS MADE AND PASSED BY ROLL CALL VOTE THAT THE FINE WOULD BE \$500.00 FOR EACH INFRACTION FOR WILMA ABERNATHY VOTING IN HER OWN SELF INTERST DURING HER IMPEACHMENT PROCEEDINGS. MS. ABERNATHY HAD THREE INFRACTIONS MAKING THE AMOUNT TO BEPAID \$1500.00.**

Mr. Heinz mentions that Ms. Abernathy objection was not properly made under the statues of the Missouri therefore over ruled.

**Time is 3:00pm**

**NOTE: THERE WAS NOT RECORDING OF THE CLOSE SESSION DUE TO ATTORNEY CLIENT PRIVILEGES WERE IN AFFECT.**

**The Board returns shortly.**

#### **MOTION TO ADJOURN THE OPEN SESSION**

A motion was made by Alderman Mans and seconded by Alderman Brown to adjourn the open session. A voice vote was taken and all were in favor. **Motion**

passed.

**ADJOURN AT 3:11PM**

The minutes were taken and transcribe by Deputy Clerk, Jacqueline Jones

The minutes were approved by the Board of Alderman on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_