WILDWOOD

CITY COUNCIL
WORK SESSION AGENDA
COUNCIL CHAMBERS
6:30 P.M.
04/11/2016

If you would like to submit a comment regarding an item on this meeting agenda, please visit the Form Center**.**

I. Annual City Council Photograph

II. EXECUTIVE [CLOSED] SESSION
with regard to legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys [RSMO 610.021(1) 1994]; lease, purchase or sale of real estate [RSMO 610.021 (2) 1994]; hiring, firing, disciplining or promoting employees by a public governmental body [RSMO 610.021 (3) 1994]; bidding specification [RSMO 610.021 (11) 1994]; sealed bids and related documents, until the bids are opened and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected [RSMO 610.021 (12) 1994]; and/or individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment [RSMO 610.021 (13) 1994]

III. MAYOR'S COMMENTS/ANNOUNCEMENTS/APPOINTMENTS - None

IV. COMMITTEE ACTION ITEM(S)/RECOMMENDATION(S)

IV.I. Update On Rural Internet Access Project (Wards – All)

Documents: WS - RURAL INTERNET ACCESS UPDATE.PDF

IV.II. Historic Preservation Commission

IV.II.A. Historic Community Marker Program Update (Wards – All)

Documents: WS - HISTORIC MARKER PROGRAM UPDATE.PDF

V. ADJOURNMENT

If you would like to submit a comment regarding an item on this meeting agenda, please visit the Form Center.

City Council Will Consider and Act upon the Matters Listed above and Such Others as May Be Presented at the Meeting and Determined to Be Appropriate for Discussion at That Time.

Notice is hereby given that the City Council may also hold a closed meeting for the purpose of dealing with matters relating to one or more of the following: Legal Actions, Causes of Action, Litigation or Privileged Communications Between the City's Representatives and its Attorneys [RSMO 610.021(1) 1994]; Lease, Purchase or Sale of Real Estate [RSMO 610.021 (2) 1994];

hiring, firing, disciplining or promoting employees by a public governmental body [RSMO 610.021 (3) 1994]; bidding specification [RSMO 610.021 (11) 1994]; sealed bids and related documents, until the bids are opened' and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected [RSMO 610.021 (12) 1994]; and/or individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment [RSMO 610.021 (13) 1994]

The City of Wildwood Is Working to Comply with the Americans with Disabilities Act Mandates. Individuals Who Require an Accommodation to Attend a Meeting Should Contact City Hall, (636) 458-0440 at Least 48 Hours in Advance.

WILDWOOD

April 11, 2016

The Honorable City Council
City of Wildwood, Missouri
16860 Main Street
Wildwood, Missouri 63040

Re: Update on the City's Rural Internet Access Project

Council Members:

The Department of Planning has not received an update from Wisper ISP regarding its potential fiber optic installation in the areas of Wild Horse Creek Road and State Route 109. The impact of such an installation cannot be understated in an area that is so poorly served with options for high-speed internet service. The last correspondence from Wisper ISP noted that something would be provided to the City by the week of March 28, 2016. As noted, the Department has nothing to report at this time relative to this item.

However, since the last update on this matter, a trustee in the Wild Horse Farms Subdivision sent an email to Council Member McGowen (Ward One) about the lack of progress in finding a high-speed internet solution for this area of Wildwood, the poor choice of wireless internet access by the City, as a solution to this problem, and the area's frustration with the City for not being willing to compensate Charter Communications for work to bring internet service to these locations by the City of Wildwood. The e-mail in this regard is attached.

The Department still believes its past position on this matter, which was verified/directed by the City Attorney, to be accurate, i.e. the City cannot use public money for private purposes, without some benefit to the entire community, but would be willing to contact Charter Communications and seek more information on the cost of this service and timelines for such. This contact would be introductory, but would be intended to find service options acceptable to all parties. Again, in past discussions with Charter Communications, the company has not wanted to provide any ownership of the improvements (fiber optic, conduit, etc.) or a fee or recoupment component to offset the taxpayers' outlay in this regard. These circumstances led to the action of the City Council not pursuing an agreement with the cable provider.

As part of this update, the Department is also presenting information regarding current payments to the City from the two (2) providers that utilize its current system of sixteen (16) poles. The last payments from these two (2) companies totalled $1,245.00 (January 1, 2016 – March 16, 2016), which is indicative of approximately four hundred (400) households being served by these two (2) networks that are provided by Bays ET and Wisper ISP. Most recently, Bays ET has been adding customers to its system, particularly with the installations of the latest three (3) poles. Without the City's efforts, many of these households would not have service at this time.

Lastly, the Department received the attached e-mail from a resident, who has been waiting patiently for service from Wisper ISP that would originate from the emergency communication tower in Babler State Park. As detailed in this e-mail response from Richard Barney, the Executive Director of the Emergency Communications

Commission (ECC), to this individual, a moratorium has been in place since November 2015 on the use of these towers, so as an audit can be completed by the Department of Homeland Security on the practicality of their use for commercial applications. First, the Department would note that no one from St. Louis County advised the City of this situation, after many contacts over the last year about the status of the towers for use by Bays ET and Wisper ISP and, secondly, the representative from the Emergency Communications Commission (ECC) had noted, when the towers were under review by the City several years ago, that no other commercial applications were planned for these towers, given their purpose and security associated with them. In both instances, the Department believes St. Louis County is not maintaining its commitments to the City of Wildwood.

If any of the City Council members should have questions or comments in this regard, please feel free to contact the Department of Planning at (636) 458-0440. Thank you for your continued support of this project and the efforts to address the needs of rural Wildwood residents.

Respectfully submitted,
CITY OF WILDWOOD

Joe Vujnich, Director
Department of Planning

Cc: The Honorable Timothy Woerther, Mayor
Ryan S. Thomas, P.E., City Administrator
Rob Golterman, City Attorney
Kathy Arnett, Assistant Director of Planning and Parks
Chris Bay, Malinda Heuring, and Nathan Stooke, Service Providers – Bays ET and Wisper ISP

From: **Larry McGowen** mcgwildwood@att.net
Subject: Re: WS - Update on Rural Internet Access.pdf
Date: April 7, 2016 at 11:20 PM
To: Greg Thebeau Greg.Thebeau@bunge.com
Cc: Larry McGowen mcgwildwood@att.net, Joe Vujnich jvujnich@cityofwildwood.com, Ryan Thomas ryan@cityofwildwood.com, Jim Bowlin jbowlin@cityofwildwood.com, Robert Golterman rgolterman@lewisrice.com, Glen DeHart gbwrecycling@att.net, Tim Dolan timdolan@dolancare.com

LM

Greg:

A few years ago we felt we were close to working out arrangements with Charter to get them to extend high speed internet service (which would probably have also included TV and voice phone service) to unserved areas of the city. As negotiations proceeded however, Charter told us that to do so they would require an upfront payment of approximately $3 million dollars due to the economic considerations of the low density of potential users and the difficulty of extending fiber over an extensive area. Charter was also unable or unwilling to allow the city to bill a surcharge or special user fee to the Charter customers who used the service. Since the city was not set up to handle billing of the hundreds of customers who would use the Charter service, without the assistance of Charter the hoped for deal fell apart. We revisited the billing accomodation issue with Charter in more recent years only to find they remained unwilling to assist in the billing process.

The city could and I believe already does impose a franchise fee on Charter. The company bears the full cost of extending and providing service to their customers. In this case the City is not paying for the installation of any service or equipment.

As we discuss internet service its important to understand there are differences between what municipalities can charge providers of such service. The Federal law which since 1998 by multiple extensions has barred the taxation of internet access was recently made permanent when President Obama signed into effect a new law on 2/24/16, refer to 47 U.S.C.A. 152. Thus no taxes or franchise fees are allowed to be charged to providers of internet service. My own AT&T Uverse combined bill shows that my internet service includes no fees or taxes of any sort. When our past efforts to work out arrangements with Charter collapsed, we focused our attention on smaller wireless providers that agreed to work with us to extend and provide internet only service. As the two providers do so, as internet providers they are exempt from any franchise fees. However, they do pay the city a user fee, i.e. rent for being allowed to place their equipment on special poles the city has paid to have installed with electric service brought to the poles. We will continue working with Wisper ISP and Bays ET in our efforts to have internet service extended to all parts of the city.

It is interesting that providers of cable TV service can be charged franchise fees whereas providers of satellite TV service cannot be charged such fees. The rationale for that difference is that, unlike cable companies, satellite providers do not use public rights-of-way, and therefore the satellite providers do not pay franchise fees. Again my own AT&T combined bill shows that my current Directv service which is a satellite provider includes no taxes or fees of any sort. Prior to the time I switched to Directv service, my AT&T bill for uverse TV cable service included a local video franchise fee.

Larry W. McGowen
18538 Wild Horse Creek Rd.
Wildwood, Mo. 63005
Cell 314-495-1847
E mail mcgwildwood@att.net

On Wednesday, April 6, 2016 2:53 PM, Greg Thebeau <Greg.Thebeau@bunge.com> wrote:

Larry

I appreciate your time and comments. Please see my comments below in red.

Thanks

Gregory L. Thebeau

E-mail Greg.Thebeau@bunge.com

From: Larry McGowen <mcgwildwood@att.net>

To: tim dolan <timdolan@dolancare.com>, 'Greg Thebeau' <Greg.Thebeau@bunge.com>
Cc: Larry McGowen <mcgwildwood@att.net>, Joe Vujnich <jvujnich@cityofwildwood.com>, Glen DeHart <gbwrecycling@att.net>, Ryan Thomas <ryan@cityofwildwood.com>, Jim Bowlin <jbowlin@cityofwildwood.com>, Robert Golterman <rgolterman@lewisrice.com>

Date: 04/01/2016 07:03 PM

Subject: Re: WS - Update on Rural Internet Access.pdf

Tim and Greg:

I want to respond to Tim's comments and concerns in the following email. Over the last couple days I've reconfirmed my understanding of the city's position concerning our efforts to assist in the extension of high speed internet service to residents in areas that now lack or have inadequate service.

Our position is that there is a material difference between a developer paying to bring utilities (water, electric, sanitary sewer, cable, internet, etc.) to a private development versus a public entity doing the same. Our legal counsel has advised us that the Missouri Constitution in Article VI Sections 23 and 25 prohibit a City from granting public money to any private individual, association, or corporation. Given the case law interpreting these provisions, the city has taken the approach that expenditure of public funds in connection with the rural internet extension program should include a mechanism to recoup the public funds expended as well as retaining ownership of the facilities. The reason for retaining ownership of some part of the infrastructure involved in extending the internet service, is that by doing so, it provides the City a means to recoup the funds we have expended. The City has the ability to tax. As the million other items on phone/cable bills, the City could attach say a 5% royalty and recoup its money from the users. By illustration, the city has paid to install approximately a dozen utility poles scattered throughout underserved areas, and internet providers such as Wisper ISP and Rave FT pay a fee to the city for being able to install their wireless

providers such as Wisper ISP and Bays ET pay a fee to the city for being able to install their wireless equipment on those poles. thus over time, the fees the providers pay to Wildwood allow us to recoup the public funds expended. Again the City could pay for the fiber and can charge use tax of sorts on those that tap in by charging a % of the service cost. It just looks like the City does not want to look at a different way to "skin the cat".

Keep in mind that only residents in the less dense areas receive the benefit of the extension of internet service to their private residences, since those in the more dense areas already have it. If public funds intended to beneift all residents are used to assist with the extension of service to benefit only a few, you can probably understand why many residents may feel that represents inequitable treatment. I am guessing that the City already spends some money on walking paths/bridges that certainly are not meant to benefit me in any real practical sense of the word benefit. Thus the need for a recoupment mechanism. Again charge a reasonable user fee.

In our part of Wildwood, residents over a year ago objected to placement of a utiltiy pole on the north side of Wild Horse Creek Road (WHC) due to the requirement it be painted white and orange and be lighted due to FAA requirements. To date Wisper has not been able to work out arrangements to install their equipment on the STL County emergency network tower in Babler Park. Due to these limitations, we have tried to identify another recoupment mechanism. One that seems to make sense currently is the idea of the city participating by installing conduit along WHC road. We are hoping to have firm cost numbers from Wisper to consider very shortly. The city would then charge a fee to Wisper, Charter or any other provider wanting to place their cable runs in the city owned conduit. The city has no interest in owning any of the technological equipment such as the actual fiber cable runs, switches, etc. since we are not in the business of providing technology services. Whisper does not appear to be doing anything reasonable when it comes to investment in Wildwood. Wasn't Whisper supposed to have these same numbers at the last Council Meeting? The whole Whisper participation seems sad.

Every time we have explored with Charter whether some form of recoupment mechanism can be identified, we have been unable to work out arrangements satisfactory to both parties. Again don't recoup from Charter, recoup from the user (minus Charter Vig), It is important to reinterate that legal counsel has advised us as recently as yesterday that we would be in violation of state law if we were to pay Charter or any private entity to install fiber optic cable along WHC road without a recoupment mechanism in place, since doing so would involve expending public funds to benefit only some of the resdients without such benefit being offered to everyone in the City.

The city is not tied to Wisper as the only possible provider. If we could work out a recoupment plan with Charter or others (see above) to address the legal requirements we face, I'm sure the city would be willing to discuss seriously such possibilities. However, we cannot violate the law to accomodate Charter or other private entities. If your group can help us identify another way in which we could assist in this endeavor, which includes a recoupment mechanism, I will be glad to bring it forward for consideration.

Larry W. McGowen
Council Member, Ward One
18538 Wild Horse Creek Rd.
Wildwood, Mo. 63005
Cell 314-495-1847
E mail mcgwildwood@att.net

On Wednesday, March 30, 2016 2:11 PM, tim dolan <timdolan@dolancare.com> wrote:

Larry,
Greg has been keeping me in the loop regarding the cities willingness to participate in the Charter and Wildhorse Spring

Farm agreement to bring fiber into the neighborhood to include Cable TV. Broadband Internet (100mbps) and IP landline phone service. The contract price we have with them for bringing their services down Wild Horse Creek Rd. is ($37,142.54) and the cost to bring it in to all of the home owners within Wildhorse Spring Farms ($65,857.46) total contract price is $103,000.00.

I had reached out to Nathan at Whisper for a price on the cable plant for broadband only 2 years ago. He came up with an estimate cost of just over $200,000.00 for the same cable run.

While I'd hoped the Wildwood would be receptive to Charter's proposal, Joe had said that the City could not legally participate because Charter would still maintain ownership of the cable run and not the city. As I've pointed out in earlier emails this defies logic and or common sense.

As a developer, I've personally paid Charter along with Ameren, Laclede Gas, MSD and American water to bring their services into my developments. In those agreements they've always maintain ownership of their respective infrastructure. Since I'm not in, or do I want to be in the Cable or, the Electric, Natural Gas, Sewer or, Water business it makes no sense for me to own, maintain, upgrade or, service the various utility infrastructures. If Wildwood would explore their position more closely, they would probably arrive at the same conclusion. Why would the city want to own technology they know little or virtually nothing about? Does it really want to address maintenance, service degradation and infrastructure upgrades much less fielding calls from unhappy customers?

As stated earlier, the cable run down Wild Horse Creek Road would allow everyone on either side of the road including you to take advantage of Charter's service offerings.

It seems that for some reason that Wildwood's Broadband initiative for our area is tied to Whisper's why is that? Whisper is a small company with limited resources and as technology changes may not be in business 5 years what happens then? Whisper is selling Wildwood only one technology, Broadband and at an inflated price. On the other hand, Charter has a suite of service they can offer along with the technical expertise and financial viability that will assure a long lasting relationship with the city.

Thanks,
Tim

Tim Dolan
314-993-9500 ext. 119 - Office
314-616-3848 - Mobile

Dolan
Memory Care Homes

From: Greg Thebeau [mailto:Greg.Thebeau@bunge.com]
Sent: Wednesday, March 30, 2016 11:27 AM
To: tim dolan
Subject: Fw: WS - Update on Rural Internet Access.pdf

From: **Steve Mahfood** stevemahf@gmail.com
Subject: Re: Babler State Park and Citizen Internet Access
Date: April 6, 2016 at 3:50 PM
To: Barney, David DBarney@stlouisco.com
Cc: Bill Bryan bill.bryan@dnr.mo.gov, Pauley, Sara sara.pauley@dnr.mo.gov

SM

Thanks Mr Barney. I appreciate your response. Sorry I haven't respond sooner.
I do hope the Commission in its deliberations understands that the original proposal to the Missouri Department of Natural Resources Division of State Parks and the citizens of Wildwood, who originally opposed the tower location, was that the Tower would be made available, after appropriate testing and break-in, for use as an internet repeater for Babler State Park and local citizens who have no internet services. This is what clinched the agreement to move ahead without interference or opposition to the Tower's location.
I am looking forward to hearing something next month about the use of the Tower in Babler State Park for a simple internet repeater. I appreciate your understanding and hope that we have your support in this matter. Thanks so much. Kind regards, Steve Mahfood

On Tue, Mar 29, 2016 at 2:02 PM, Barney, David <DBarney@stlouisco.com> wrote:

Mr. Mahfood,

Thank you for following up. We met with a commercial provider regarding the Babler Park tower last September, following final cut-over and transition of our public safety and other agencies onto the new radio system. We had been discussing the technical and business terms with them regarding the tower use, but had not agreed on those arrangements. Subsequently, at its meeting of November 12, 2015, the Emergency Communications Commission voted to table all requests for commercial use of any of its towers for six months – we are currently awaiting the results of an audit and risk analysis conducted by the U.S. Department of Homeland Security regarding commercial use of the towers. Once the Commission reviews those results and recommendations, I will be able to update you further.

Thank you,

David J. "Duff" Barney

Executive Director

St Louis County Emergency Communications Commission

1150 Hanna Road

Ballwin, Missouri 63021

From: Steve Mahfood [mailto:stevemahf@gmail.com]
Sent: Friday, March 25, 2016 11:07 AM
To: Barney, David
Cc: Bill Bryan
Subject: Fwd: Babler State Park and Citizen Internet Access

Hello Mr Barney. I wanted to follow up with you about the Babler Tower Wi Fi situation since I have not heard of any results since our past conversations and the fact that JC Kuessner no longer works for Missouri State Parks. I know as Missouri State Parks Association Board members

WILDWOOD

April 11, 2016

The Honorable City Council
City of wildwood, Missouri
16860 Main Street
Wildwood, Missouri 63040

Re: Historical Marker Program

Council Members:

Over the course of 2015, and now starting in 2016, the Historic Preservation Commission has continued its efforts in completing a longstanding project of placing historic markers throughout portions of Wildwood that represent its original eleven (11) historic communities. In 2015, the markers for the Glencoe and Pond Communities were installed and received very favorable feedback from those parties that participated in their unveiling ceremony, as well as members of the larger community. These markers were selected for the first phase of installations, given the locations would be on City-owned properties, making it easier in that regard.

The next two (2) installations occurred just a couple of weeks ago and included the Monarch and Westland Acres Communities, both located on the north end of the City. The members of the Historic Preservation Commission and residents of the areas attended these installations. Participants at the unveiling of the marker at Westland Acres included Doris Frazier, a longtime resident, and some of her family members. Having the Frazier Family represented at the unveiling of this marker was particularly appropriate and made the day very special.

The status of the remaining seven (7) markers are as follows, along with the needed steps to complete their planned installations, between now and the 2016 Celebrate Wildwood Event at the end of August:

Community Name	Item Needed for Installation
Centaur	A new design is being considered by the Historic Preservation Commission for this marker's pole and was discussed at its April 7th meeting.
Fox Creek	The edge of Fox Creek Road right-of-way (City-owned) has been defined and the wording for this marker is being finalized upon which it will be ordered for fabrication and installation shortly thereafter
Grover	The easement area has been defined on this private property and the Department will now provide this information to the private property owner – Imogene's Tea Room - for consideration of its establishment and use of an area upon the site for this marker.

Community Name	Item Needed for Installation
Hollow	The edge of State Route 100 right-of-way has been defined, along with a small easement area on the abutting private property, and the Department will now provide this information to the owner – Stovall's Grove - for consideration of its establishment and use upon an area of the site for this marker.
Kelpe	The marker is in fabrication and not ready for installation.
Melrose	A plan for the use area has been developed, where the marker is to be situated, which would include adding asphalt to the existing shoulder, thereby creating a pull-off area for viewing. This plan is also needed for permit purposes.
Orrville	The redesign is still underway, given concerns about safety and stormwater drainage along edge of roadway (Eatherton Road). Permit will be needed as well.

If any of the City Council Members should have questions or comments in this regard, please feel free to contact the Department of Planning and Parks at (626) 458-0440. A short presentation is planned on this item at tonight's Work Session. Thank you for your continued support of this effort to preserve the history of the area that is now the great community of Wildwood.

Respectfully submitted,
CITY OF WILDWOOD

Joe Vujnich, Director
Department of Planning

Cc: The Honorable Timothy Woerther, Mayor
Historic Preservation Commission Members
Ryan S. Thomas, P.E., City Administrator
Rob Golterman, City Attorney
Kathy Arnett, Assistant Director of Planning and Parks
Terri L. Gaston, Senior Planner