

**ROLLA CITY COUNCIL MEETING MINUTES  
TUESDAY, JANUARY 22, 2008  
ROLLA CITY HALL COUNCIL CHAMBERS  
901 NORTH ELM STREET  
6:30 P.M.**

**Presiding:** Mayor William S. Jenks, III

**Council Members in Attendance:** Monty Jordan, Donald Barklage, Stan Spadoni, Susan Eudaly, Gary W. Hicks, Judy Jepsen, Richard Morris, Richard Sibley, and Mark Walburg

**Council Members Absent:** Terry Ruck, Lou Magdits, and Jim Williams

**Department Directors in Attendance:** Public Works Director Steve Hargis, Police Chief Mark Kearse, Parks and Recreation Director Ken Kwantes, Finance Director Steffanie Rogers, Fire Chief Robert Williams, Recreation Center Scott Caron, and Community Development Director John Petersen

**Other City Officials in Attendance:** City Administrator John Butz, City Counselor John Beger, Communications Coordinator Scott Grahl, and City Clerk Carol Daniels

Mayor Jenks called the meeting to order at approximately 6:30 p.m. and asked Councilmember Gary Hicks to lead in the Pledge of Allegiance.

**I. PUBLIC HEARINGS**

**(A) Request for Ordinance for a Conditional Use Permit to Allow a Massage Therapy Business to be Established in an R-1 Property at 1508 Overland Drive (Burrell):** Community Development Director John Petersen addressed the Council and emphasized that this issue does not pertain to a rezoning, but a conditional use permit. In R-1 (Single-Family) districts, the City Code contains a number of businesses that are permitted in an R-1 (Single-Family) district with conditions. Mr. Petersen explained that medical services, of which a massage therapy business would be considered, is one of those conditions. According to City Code, Mr. Petersen explained the purpose of the Council's review is to determine whether the proposed location of the use or structure is consistent with the overall intent of the zoning district regulations and to permit the imposition of conditions designed to minimize or mitigate potential adverse effects. He noted that the subject conditional use permit has this type of structure. Mr. Petersen outlined the conditions placed on the proposed conditional use permit. He reported the

**JANUARY 22, 2008**

**CITY COUNCIL MEETING MINUTES  
JANUARY 22, 2008  
PAGE 2**

**I. PUBLIC HEARINGS (continued)**

**(A) Request for Ordinance for a Conditional Use Permit to Allow a Massage Therapy Business to be Established in an R-1 Property at 1508 Overland Drive (Burrell) (continued):** Planning and Zoning Commission recommend acceptance of the conditional use permit with the outlined conditions. Since a legal petition against the proposed conditional use was received, Mr. Petersen told the Council that approval of the permit would require a super majority vote of the City Council.

Following some Council discussion, Mayor Jenks opened the public hearing to anyone wishing to address the Council concerning the subject conditional use permit.

Ms. Janice Burrell, petitioner, 1508 Overland Drive, informed the Council that the State has inspected and approved her facility. She told the Council that she has spent the last 25 years in non-profit health care. Ms. Burrell said that a few years ago she chose to go into something that was a more personal contribution in the field of public health, which was massage therapy. Since massage therapy is physically demanding, it would limit the number of clients she could see in her home. Additionally, Ms. Burrell said she has community commitments she would like to continue as well as elderly parents she cares for and other commitments out of town.

Councilmember Hicks asked Ms. Burrell if she realized there were covenants in effect and recorded with the County when she purchased her home on Overland Drive.

Ms. Burrell responded that she received and read a copy of the covenants.

Councilmember Hicks asked Ms. Burrell if she understood that the covenants prohibited a home business.

Ms. Burrell said she read in the covenants that no modification of the building was permitted.

Councilmember Hicks asked City Counselor John Beger if the covenants are enforceable.

City Counselor John Beger responded that the covenants are not enforceable by the City of Rolla. However, the homeowners' association, if one has been formed, could enforce the covenants. Ordinarily, the homeowners' association is provided for in the covenants and maintained as a separate entity. Mr. Beger said it really does not have anything to do with the hearing at this meeting.

**JANUARY 22, 2008**

**I. PUBLIC HEARINGS (continued)**

**(A) Request for Ordinance for a Conditional Use Permit to Allow a Massage Therapy Business to be Established in an R-1 Property at 1508 Overland Drive (Burrell) (continued):** Mr. Harold Fales, who resides at 1502 Overland and also owns a house at 1511 Huntleigh Drive, said he is opposed to the conditional use permit. Mr. Fales said the zoning is an R-1 (Single-Family) District and he would like it to remain an R-1 (Single Family) District. Mr. Fales said the Planning and Zoning Commission ignored their petitions. He said he hopes the petitions actually mean something besides just paperwork.

Ms. Danette Sherrell, 1419 Huntleigh Drive, said she has no problem with commercial businesses; however, she indicated she has problems with commercial businesses in residential neighborhoods. When she and her husband purchased their home, it is recorded in the Phelps County Recorder's Office that there would be no building or structure intended for or adapted for business purposes. Ms. Sherrell said they took this at its word. She added that it frightens her that it seems to be a non-issue at this point. Ms. Sherrell said when they purchased their home, we chose a location where we could raise our children that was not a commercial area. Otherwise, there were many other areas in town that we could have chosen. Ms. Sherrell expressed some concerns with the traffic situation. She said it is a wonderful service that Ms. Burrell wants to provide for the community, however, she said it is a service she does not want based out of her neighborhood.

Mr. Martin Anderson, 1417 Huntleigh Drive, told the Council that he has no problem with commercial businesses. He noted that he has been in the military for 17 years and when he sees things in writing, it means something. Mr. Anderson said his concern is with the traffic. It is presently a quiet neighborhood, but with the business there will be different people coming through their neighborhood and driving around the traffic circle.

Ms. Sue Arnold, 1415 Huntleigh Drive, stated that she realizes the City Council cannot be put in a position of enforcing the covenants. However, she said it troubles her when she thinks the Council may take action that directly conflicts with the covenants that were put on the property. Ms. Arnold said this has been a revelation to her because the people rely on the covenants to be able to live peaceably on their properties. Additionally, it really has been a revelation that the covenants have no validity where the City is concerned.

**CITY COUNCIL MEETING MINUTES  
JANUARY 22, 2008  
PAGE 4**

**I. PUBLIC HEARINGS (continued)**

**(A) Request for Ordinance for a Conditional Use Permit to Allow a Massage Therapy Business to be Established in an R-1 Property at 1508 Overland Drive (Burrell) (continued):** No one else present addressed the Council concerning the subject conditional use permit. Mayor Jenks closed the public hearing.

After Council discussion, City Counselor John Beger read the following proposed ordinance for one reading, by title. ORDINANCE: AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AT 1508 OVERLAND (BURRELL).

**II. CITIZEN COMMUNICATION**

**(A) Open Citizen Communication:** Mayor Jenks opened the floor to any citizen wishing to address the Council.

Mr. Len Ihler, 704 George Drive, reported that the noise generated from the truck that delivers to Triad Printing has been keeping him up all night and has been doing it for some time. He reported that a couple of times the motor on the delivery truck has been turned off, but other times it has not. Mr. Ihler indicated that this could have been done six months ago. Mr. Ihler explained that there was an incident last Tuesday when the truck arrived at 3:30 a.m. He said he witnessed the truck leaving the dock, purposely making a turn, facing his brother's window and laying on his horn for 10 to 12 seconds. Mr. Ihler said another complaint was made to the police. Between Mr. Ihler and his brother, he said the police have been called 110 times.

Police Chief Mark Kears explained that months ago the Ihlers began calling the Police Department regarding this issue. He said the Police Department could have issued tickets, but many months ago chose to let the legal system work without going out and writing 110 tickets. Chief Kears said he has been in the process of trying to get the attorneys together to address this issue. He added the Police Department completed a couple of initial reports and then asked the Ihlers to call every time so the Department could document the complaints in the computer. With the complaints coming from a commercial area, Chief Kears said there are concerns whether this issue is enforceable and to let the attorneys discuss it.

## **CITY COUNCIL MEETING MINUTES**

**JANUARY 22, 2008**

**PAGE 5**

### **II. CITIZEN COMMUNICATION (continued)**

**(A) Open Citizen Communication (continued):** City Administrator John Butz said this is an issue that will go to a prosecutor who will decide whether a reasonable effort has been made on peace disturbance. In the commercial area of a business, that has been operating the same way for twenty years, the prosecutor must make a compelling case to the judge. Mr. Butz said if he is not willing to do that, there is no enforcement.

City Administrator John Butz then read the attached letter he received this afternoon, addressed to the City Council, from Mr. Doug Cresswell, President of Triad Printing.

Mayor Jenks indicated to Mr. Ihler that the attorneys would be meeting to discuss this matter.

No one else present addressed the Council.

### **III. SPECIAL PRESENTATION**

**(A) Rolla Regional Economic Commission (RREC) Annual Report:** Rolla Regional Economic Commission Executive Director Elizabeth Bax presented the Council with the Rolla/Phelps County Economic Development Annual Report for 2007.

### **IV. OLD BUSINESS**

**(A) Ordinance to Consider the Termination of the Highway 63 & 72 TIF Area:** City Administrator John Butz recalled that in October 2007, at the request of a councilmember, an ordinance was considered that would rescind the redevelopment area at Highways 63 and 72. As mentioned at that time, Mr. Butz explained there is no legal requirement to rescind the redevelopment area. He referred the Council to the list of pros and cons, he listed in the agenda materials, of rescinding the redevelopment area. Mr. Butz said if the blighted area is removed and there is an opportunity later with Mr. Warren Dean or someone else who acquires this property, the City would need to start from scratch. He added that this is doable, but will take more time and expense. Mr. Butz noted that it is easier to do if done through an amendment to the plan rather than the re-creation of the whole process. Staff's position is to leave the TIF (Tax Increment Financing) designation in place. As far as the City can determine, Mr. Butz stated that it does not have an adverse impact on the properties.

**JANUARY 22, 2008**

**IV. OLD BUSINESS (continued)**

**(A) Ordinance to Consider the Termination of the Highway 63 & 72 TIF Area (continued):** After Council discussion, City Counselor John Beger read the following proposed ordinance for its final reading, by title. **ORDINANCE: AN ORDINANCE TERMINATING THE DESIGNATION OF A PORTION OF THE CITY OF ROLLA, MISSOURI, AS A REDEVELOPMENT AREA AND AUTHORIZING CERTAIN ACTIONS RELATING THERETO.** A motion was made by Hicks and seconded by Morris to approve the proposed ordinance. After additional discussion, a roll call vote on the motion showed the following: Ayes; Jordan, Sibley, Hicks, Morris, Spadoni, and Jepsen. Nays; Walburg, Barklage, and Eudaly. Absent; Williams, Magdits, and Ruck. Motion failed. The ordinance failed.

**V. NEW BUSINESS**

**(A) Resolution Authorizing MoDOT to Install Signals at Route V with the City of Rolla STP-Urban Entitlement Funding:** Public Works Director Steve Hargis told the Council that the subject resolution would authorize the Missouri Department of Transportation (MoDOT) to use STP Entitlement money to install a new signal at the ramps at Interstate 44 and Highway V. The \$70,000 authorization would be used for materials and to pay Rolla Municipal Utilities (RMU) to bring power to the site. MoDOT will provide the labor and equipment necessary to install the signals. Mr. Hargis pointed out that with the opening of the Loves Travel Center there has been a marked increase in traffic, particularly truck traffic, which has warranted a need for these signals. MoDOT will operate and maintain the signals and the City of Rolla will pay the monthly electrical bills, which are estimated at \$25/month. If the resolution is approved, MoDOT has tentatively scheduled this project to begin in April 2008. Mr. Hargis added that improvements at Highway V and HyPoint Boulevard are also being considered. The improvements will entail either a signal or a round-a-bout.

City Counselor John Beger read the following proposed resolution for one reading, by title. **RESOLUTION NO. 1657: A RESOLUTION AUTHORIZING MoDOT TO USE \$70,000 OF THE CITY OF ROLLA, MISSOURI STP-URBAN FUNDING TO INSTALL TWO SETS OF SIGNALS AT THE INTERSTATE 44 RAMPS AT ROUTE V IN PHELPS COUNTY.** A motion was made by Eudaly and seconded by Spadoni to approve the proposed resolution. A voice vote on the motion showed nine (9) ayes, zero (0) nays, and three (3) absent. Motion carried. The resolution passed.

**CITY COUNCIL MEETING MINUTES  
JANUARY 22, 2008  
PAGE 7**

**V. NEW BUSINESS (continued)**

**(B) Request for Ordinance to Consider a Cellular Service Settlement with AT&T:**

City Administrator John Butz recalled the City has approved similar ordinances with Verizon and U.S. Cellular and the subject ordinance is with AT&T Mobility. The City was recently notified that Sprint and Nextel have also settled the suit. Mr. Butz said there is no guarantee that this will be ultimately finalized, but they have accepted the premise that Rolla is a participating city. Until the ordinances are filed with AT&T Mobility, they will do the same diligence that Verizon has done. Mr. Butz asked the Council to consider the first reading of the proposed ordinance at this meeting. The ordinance must be filed with the court by February 25, 2008.

Following a brief discussion, City Counselor John Beger read the following proposed ordinance for its first reading, by title. **ORDINANCE: AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH AT&T MOBILITY AND ASSIGNING A PERCENTAGE OF THE SETTLEMENT PROCEEDS TO THE MISSOURI MUNICIPAL LEAGUE.**

**VI. CLAIMS and/or FISCAL TRANSACTIONS**

None.

**VII. MAYOR/CITY COUNCIL COMMENTS**

**(A) Consider Appointment of Kenneth Kaunley to the City of Rolla Police Personnel**

**Board:** Mayor Jenks requested the appointment of Mr. Kenneth Kaunley to the Police Personnel Board to replace Mr. Dennis Noel who has moved outside the City's limits. A motion was made by Jordan and seconded by Spadoni to appoint Mr. Kenneth Kaunley to the Police Personnel Board to complete the unexpired term of Mr. Dennis Noel. A voice vote on the motion showed nine (9) ayes, zero (0) nays, and three (3) absent. Motion carried.

## **CITY COUNCIL MEETING MINUTES**

**JANUARY 22, 2008**

**PAGE 8**

### **VIII. COMMENTS FOR THE GOOD OF THE ORDER**

**(A) Black and White Police Car:** Mayor Jenks asked the Council to look at the new black and white police car that is parked outside City Hall. He said it is very impressive.

**(B) Tour of Missouri:** Councilmember Morris asked if there is any news regarding the Tour of Missouri application.

Mayor Jenks advised that the official announcement would be held on January 30, 2008, in Jefferson City, Missouri. He invited interested individuals to attend.

### **IX. EXECUTIVE SESSION**

A motion was made by Morris and seconded by Walburg to adjourn into Executive Session pursuant to RSMo. 610.021 to discuss personnel. A roll call vote on the motion showed the following: Ayes; Walburg, Morris, Spadoni, Eudaly, Jordan, Jepsen, Barklage, Hicks, and Sibley. Nays; None. Absent; Williams, Ruck, and Magdits. Motion carried.

Following a brief recess, the Council adjourned into Executive Session at approximately 8:20 p.m.

### **X. EXECUTIVE SESSION ACTION**

The Council reconvened into open session at approximately 8:42 p.m.

City Counselor John Beger reported that during Executive Session the Council reviewed the performance of City Administrator John Butz by reviewing performance on previously established goals and objectives. Discussion was had and the Council unanimously accepted the Personnel Committee's recommendation as to that review. By a vote of eight to one the Council approved a salary adjustment based thereon which will be made public after disclosure to Mr. Butz.

### **XI. ADJOURNMENT**

**JANUARY 22, 2008**

**CITY COUNCIL MEETING MINUTES  
JANUARY 22, 2008  
PAGE 9**

Having no further business, the meeting adjourned at approximately 8:43 p.m.

Minutes respectfully submitted by City Clerk Carol Daniels.

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CITY CLERK

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MAYOR

**JANUARY 22, 2008**