

**ROLLA CITY COUNCIL MEETING MINUTES
MONDAY, FEBRUARY 4, 2008
ROLLA CITY HALL COUNCIL CHAMBERS
901 NORTH ELM STREET
6:30 P.M.**

Presiding: Mayor William S. Jenks, III

Council Members in Attendance: Terry Ruck, Monty Jordan, Donald Barklage, Stan Spadoni, Susan Eudaly, Gary W. Hicks, Judy Jepsen, Lou Magdits, Jim Williams, and Richard Sibley

Council Members Absent: Rick Morris and Mark Walburg

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 Director 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 Pastor Dave Neiss of the Ridgeview Christian Church to give the invocation.

Following the invocation, Councilmember Judy Jepsen led in the Pledge of Allegiance.

I. CONSENT AGENDA

(A) Consider Approval of the City Council Minutes: A motion was made by Barklage and seconded by Eudaly to approve the consent agenda, as submitted. A voice vote on the motion showed ten (10) ayes, zero (0) nays, and two (2) absent. Motion carried.

The consent agenda consisted of the following:

The minutes of the January 7, 2008, regular City Council meeting and the January 22, 2008, regular and executive session City Council meetings.

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II. PUBLIC HEARINGS

None.

III. CITIZEN COMMUNICATIONS

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

Ms. Sue Arnold, 1514 Huntleigh Drive and a realtor, who has sold many of the homes in the neighborhood, addressed the Council regarding the proposed conditional use permit to allow a massage therapy business at 1508 Overland Drive. Ms. Arnold said that when she works with buyers looking to purchase homes in some of these neighborhoods, quite often they ask to see the deed or subdivision restrictions - they very seldom ask about zoning ordinances. Ms. Arnold stated that she feels a responsibility to these people to do whatever she can to try to protect their property rights and values. As realtors, Ms. Arnold said they are required to abide by a code of ethics and one of the articles in the code of ethics says that they must present a true picture. When showing property in the subject neighborhood, Ms. Arnold said the realtors would be required to tell the potential buyer that there is a commercial operation of which they may or may not approve. Ms. Arnold stated that this could not have a positive affect on property values. Ms. Arnold asked the Council to consider rejecting Ms. Burrell's request for a massage therapy business at 1508 Overland Drive.

Dialogue ensued between Ms. Arnold and Councilmember Magdits regarding the subject massage therapy business.

Mr. Frank Bridges, realtor, noted that he did not attend the previous Council meeting, but what he is going to say is certainly new. From listening to what was just said there appears to be a misunderstanding among this group. Mr. Bridges explained that covenants are placed on property so that folks can move to Rolla and have some reasonable expectation of what will occur in their neighborhoods. They look in those covenants and see no business of any kind is allowed and they want to buy there. Mr. Bridges stated that he does not understand why the City does not want to uphold the covenants. When the County records something, he said he does not understand why the City does not want to support it. Mr. Bridges stressed that it is not an issue of a massage parlor, but rather an

III. CITIZEN COMMUNICATIONS (continued)

(A) Open Citizen Communication (continued): issue that people want to come to Rolla and know that they can buy in a neighborhood where the housing situation will stay the way they like it to be; that is, no businesses of any kind. He said it is a bad signal to send if you allow this to happen. Mr. Bridges concluded that he does not understand why the City does not feel it should support the concept of covenants as recorded by the County.

City Counselor John Beger responded the Council could take into consideration the covenants on whether or not they choose to vote in favor or vote against this request. However, the covenants are not enforceable by the City of Rolla.

Mr. Steve Daniels, Attorney at Law and co-owner of 1508 Overland Drive, addressed the Council and said one of the arguments these concerned citizens are making is that automatically these covenants are legally binding. Mr. Daniels said that this might not necessarily be the case. He indicated that he has read the covenants and there is ambiguity in them. The ambiguity is usually construed against the maker. Mr. Daniels added the covenants were not presented to Ms. Burrell until the day of the closing and in a packet, after the paperwork had been signed. While there are covenants, Mr. Daniels said they are not necessarily automatically legal.

No one else present addressed the Council.

IV. ACKNOWLEDGMENTS AND SPECIAL PRESENTATIONS

Since Recreation Center Director Scott Caron will also be speaking to the St. James City Council this evening about the Tour of Missouri 2008, Mayor Jenks asked Mr. Caron to address the Council at this point in this meeting.

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(B) Update on Tour of Missouri 2008 – Impact on Rolla/St. James: Recreation Center Director Scott Caron began by showing the Council a short video that was presented during the press conference that announced the 2008 Tour of Missouri route. Following the video, Mr. Caron told the Council that there would be 120 cyclists participating within 15 teams that would be coming through the state September 8 – 14, 2008. Rolla will be a Stage 4 Finish. The stage will begin in Lebanon, Missouri on September 11 and finish in Rolla. Mr. Caron announced that the Stage 5 Start would

IV. ACKNOWLEDGMENTS AND SPECIAL PRESENTATIONS (continued)

(B) Update on Tour of Missouri 2008 – Impact on Rolla/St. James (continued): begin on September 12 in St. James. He noted that last year the state realized a \$26.2 million impact in tourism dollars. Additionally, 367,000 spectators attended last year's event. On a local scale, Mr. Caron stated that 25% of the visitors were non-Missourians, they had not visited any of the Tour of Missouri sites within the past five years, and 42% of all spectators throughout the Tour of Missouri came from outside Missouri.

(A) Rolla Area Chamber of Commerce 4th Quarter Tourism Quarterly Report: Rolla Area Chamber of Commerce Executive Director Stevie Kearse provided an overview of the 4th Quarter 2007 tourism report that was included in the agenda materials.

V. REPORT OF MAYOR AND COUNCIL/REPORTS OF BOARDS AND COMMISSIONS/CITY DEPARTMENTS

Mayor Jenks referred the Council to **(A)** the December 2007 Rolla Municipal Utilities Monthly Report; **(B)** the January 8, 2008, preliminary minutes of the Planning and Zoning Commission meeting; **(C)** the December 2007 City's Cash Position and Expenditure Report; **(D)** the December 2007 Rolla Municipal Court Report; **(E)** the December 19, 2007, Rolla Health and Recreation Center Advisory Committee Meeting Minutes, and; **(F)** the FY 2008 CENTRE Financial Analysis.

VI. OLD BUSINESS

(A) Ordinance to Consider a Cellular Service Settlement with AT&T: City Administrator John Butz noted that this is the third round of the settlement proposals with cell phone operators. He recalled the Council conducted the first reading of the subject ordinance during its last meeting. Mr. Butz pointed out that AT&T Mobility's settlement

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is \$429,165 and is the most significant. The subject ordinance assigns 1% of the settlement to the Missouri Municipal League. Mr. Butz told the Council that the subject ordinance must be filed by February 25.

City Counselor John Beger read the following proposed ordinance for its final reading, by title. **ORDINANCE NO. 3848: AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH AT&T MOBILITY AND ASSIGNING A PERCENTAGE OF THE SETTLEMENT PROCEEDS TO THE MISSOURI MUNICIPAL LEAGUE.**

VI. OLD BUSINESS (continued)

(A) Ordinance to Consider a Cellular Service Settlement with AT&T (continued):

A motion was made by Barklage and seconded by Spadoni to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Spadoni, Williams, Ruck, Sibley, Magdits, Eudaly, Jepsen, Barklage, Hicks, and Jordan. Nays; None. Absent; Morris and Walburg. Motion carried. The ordinance passed.

(B) Ordinance for 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 stated that every city that he is aware of that has zoning regulations has some provision in its code for home occupations. He explained that those elected officials have recognized that, indeed, there are viable home occupations that can go on in a single-family home without damaging the integrity of the neighborhood. Mr. Petersen pointed out that, according to Rolla City Code, home occupations have a series of conditions placed on it. This is done to mitigate any potential problems that might be associated with someone having a home occupation. Mr. Petersen explained that the Planning and Zoning Commission developed a list of conditions for the subject request. He reported the Planning and Zoning Commission recommend approval of the subject conditional use permit with the conditions as outlined in the proposed ordinance. 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.

After Council discussion, City Counselor John Beger read the following proposed ordinance for its final reading, by title. **ORDINANCE: AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AT 1508 OVERLAND (BURRELL).** A motion was made by Jepsen and seconded by Barklage to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Barklage, Jordan, Magdits, Eudaly, and Jepsen. Nays; Hicks, Sibley, Ruck, Spadoni, and Williams. Absent; Walburg and Morris. Motion failed. The ordinance failed.

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VII. NEW BUSINESS

(A) Motion to Approve the Use of the Rolla National Airport for Greek Week Games on September 13 and September 20, 2008, Including a Picnic (Beer) License:

City Administrator John Butz recalled that for the past several years, the City Council has approved the use of the Rolla National Airport for the Missouri Science & Technology,

VII. NEW BUSINESS (continued)

(A) Motion to Approve the Use of the Rolla National Airport for Greek Week Games on September 13 and September 20, 2008, Including a Picnic (Beer) License

(continued): Interfraternity Council (IFC) Greek Week games. Mr. Butz noted this has worked out well and the students have handled this appropriately. The IFC is again requesting permission to have a picnic (beer) license. A motion was made by Eudaly and seconded by Jordan to approve the use of the Rolla National Airport for Greek Week Games on September 13 and September 20, including a picnic (beer) license. A voice vote on the motion showed ten (10) ayes, zero (0) nays, and two (2) absent. Motion carried.

(B) Request for Ordinance to Consider a Cellular Service Settlement with Sprint/Nextel:

City Administrator John Butz noted that the subject cellular service settlement is with Sprint/Nextel and the total settlement is \$29,741. He told the Council that unlike the other providers, Sprint/Nextel began paying their taxes under protest several months ago. Once the settlement is ultimately approved, it will allow the release of the amount that was prepaid and the balance of \$29,741 will be released. Mr. Butz noted the subject ordinance assigns 2% or \$594.83 to the Missouri Municipal League. Mr. Butz asked the Council to consider the first reading of the subject ordinance.

City Counselor John Beger read the following proposed ordinance for its first reading, by title. ORDINANCE: AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT WITH SPRINT AND ASSIGNING A PERCENTAGE OF THE SETTLEMENT PROCEEDS TO THE MISSOURI MUNICIPAL LEAGUE.

(C) Motion to Declare a Nuisance and Dangerous Building at 403 N. Park Street:

Codes Administrator Brian Epstein recalled that on January 7, 2008, the Council conducted a public hearing on an alleged nuisance at 403 N. Park Street. At that time, Mr. Albert Hamilton expressed an interested in purchasing this property as well the property at 406 W. Highway 72, which had previously been declared as a nuisance by the Council. Mr. Epstein noted that Mr. Don Ratzlaff owns both properties. At its January

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7, 2008, meeting, the Council granted a month's stay to see how Mr. Hamilton progressed with the purchase of the properties.

City Administrator John Butz reported that he spoke with Mr. Hamilton on Thursday to let him know that the proposed abatement of 403 N. Park Street was placed on this agenda and suggested that either he or his attorney attend the meeting. Mr. Hamilton indicated that he would not be able to attend because he was scheduled to be out of town

VII. NEW BUSINESS (continued)

(C) Motion to Declare a Nuisance and Dangerous Building at 403 N. Park Street (continued): on that date. Mr. Butz relayed that Mr. Hamilton was frustrated because not much had been done in acquiring the property. Mr. Hamilton indicated that he is still very interested in purchasing these properties. Mr. Butz told him the Council was getting frustrated and wants to see something happen with these properties.

After some discussion, a motion was made by Magdits and seconded by Jepsen to declare the property at 403 N. Park Street a nuisance and authorize the demolition of the structure with the cost of the abatement plus administrative fee be assessed and certified to the City Clerk who shall cause a Special Tax Bill against the property be prepared and collected by the City Collector. A voice vote on the motion showed ten (10) ayes, zero (0) nays, and two (2) absent. Motion carried.

(D) Motion to Award the Demolition Bid for 403 N. Park Street: Mayor Jenks asked the Council to consider the demolition bid for the structure at 403 N. Park Street.

Councilmember Hicks noted the low bidder for the demolition of 403 N. Park Street is C & H Excavation, LLC. Councilmember Hicks recalled the City had some difficulty with them on the Hutchison Subdivision curb and guttering. He said he wondered how dependable they would be on doing the demolition. Councilmember Hicks recommended the bid be awarded to the next low bidder, Daniels Construction Company, Inc.

City Administrator John Butz added that there were some problems in that project, but they were mutual by the contractor and some of the work the City was doing. If the City had thought there was going to be a compromise on the quality on this project, staff would have suggested not going with the low bidder.

A motion was made by Williams and seconded by Jordan to award the bid for the demolition of 403 N. Park Street to C & H Excavation, LLC for \$10,500. A voice vote on the motion showed ten (9) ayes, one (1) nay, and two (2) absent. Motion carried.

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(E) Motion to Award the Rolla West (Master Plan) Contract for Professional Services with HNTB: Public Works Director Steve Hargis recalled that staff went through a professional services selection process and hired HNTB for professional services in relation to the Rolla West project. The first task for the project was the completion of the application to the Missouri Department of Transportation (MoDOT) for

VII. NEW BUSINESS (continued)

(E) Motion to Award the Rolla West (Master Plan) Contract for Professional Services with HNTB (continued): the Highway 72 extension. Mr. Hargis reported that Task Order No. 1 has been completed and submitted to MoDOT. The second phase of the project is Task Order No. 2, which is the master plan for the development of the area generally around the interchange at Martin Spring Drive. Mr. Hargis noted that Task Order No. 2 is outlined in the agenda materials. Mr. Hargis emphasized that the most important aspect of the process is there will be a three-day workshop that will be conducted by HNTB to work with City officials and developers in the area to come up with some alternatives for future development of that area. That information will be taken into consideration as well as the market study that was done by Development Strategies in developing the master plan. Mr. Hargis informed the Council that the cost for this phase of the project is an amount not to exceed \$99,993.

Following discussion, a motion was made by Jordan and seconded by Spadoni to award Task Order No. 2 of the Rolla West Contract with HNTB. A voice vote on the motion showed ten (10) ayes, zero (0) nays, and two (2) absent. Motion carried.

VIII. CLAIMS and/or FISCAL TRANSACTIONS

None.

IX. MAYOR/CITY COUNCIL COMMENTS

(A) Review of the City Administrator's Goals & Objectives for November 2007 – October 2008: Mayor Jenks explained a committee consisting of Councilmember Magdits, Councilmember Morris, and he developed the subject goals and objectives.

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Councilmember Magdits asked City Administrator John Butz to reconsider Goal No. 1, subsection two, a & b. Since “support” and “assist” are not measurable, he asked City Administrator Butz to reconsider wording them or eliminating them.

City Administrator John Butz responded that he has no objection to removing that goal. No Council objections were noted.

X. COMMENTS FOR THE GOOD OF THE ORDER

(A) Reconsideration of TIF Vote: Councilmember Barklage noted that it has been proposed to him by several Council members to reconsider the vote to terminate the Tax Increment Financing (TIF) area. Councilmember Barklage said he would prefer to wait until there are at least eleven councilmembers present before voting to reconsider.

When following Roberts Rules of Order for reconsideration, City Administrator John Butz said a councilmember on the prevailing side would need to make a motion to reconsider.

(B) Phelps County Budget: Councilmember Magdits recalled that in a newspaper article a couple of weeks ago regarding the Phelps County budget, he read about Police Chief Mark Kearsa addressing the Phelps County Commission to seek monies for 911. He asked if Chief Kearsa could provide additional information.

Chief Kearsa reported that he addressed the County Commission regarding repeaters as well as moving to another phase in cell phone service where the Police Department could locate an individual in an emergency by tracking their cell phone.

Regarding cell phone service, Chief Kearsa said he learned the City only needs about \$15,000 to complete the next phase in cell phone tracking. He said he approached the Commission about providing these funds.

Chief Kearsa said he asked the Commission for \$40,000 to purchase repeaters. After the meeting, he said the Police Department was told the County would be willing to purchase one repeater. Chief Kearsa said he also believes the County will be funding the \$15,000 for the cell phone tracking, but he said he needs to confirm this.

Council discussion followed.

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(C) American Motor Inn Fire: Councilmember Hicks noted that the American Motor Inn, located on Highway 63 North and which was recently destroyed by fire, appears to be totally unsecured. He noted that some of the debris from the site has blown to Schuman Park.

Codes Administrator Brian Epstein reported that he has been in contact with the motel's insurance company and they have indicated they would take care of securing the property. The insurance company advised him that the claim should be settled within 10 ten days.

X. COMMENTS FOR THE GOOD OF THE ORDER (continued)

(D) Blue's Lake Storm Water: Councilmember Hicks asked Public Works Director Steve Hargis if the new St. John's Clinic is going to have any problem in obtaining their building permit. He asked him when the City is going to do something with Blue's Lake.

Public Works Director Steve Hargis stated that he hopes to begin work with Blue's Lake this spring. He said there should not be any significant problem with St. John's pertaining to storm water. The City has not received the final plans.

(E) Municipal Court: Councilmember Hicks alluded to a letter the Council recently received from a Judge Elsworth. He said he believes Judge Elsworth missed the point of what the City was trying to accomplish. Councilmember Hicks said the Council was not expecting the County to provide a court room area. The City was more than happy to rent one of their courtrooms. Councilmember Hicks said he believes the City needs to follow up on this matter.

(F) Triad Printing/Ihler Situation: Councilmember Hicks asked for an update on the Triad Printing/Ihler situation.

Councilmember Williams reported that the owners of Triad Printing are working toward solving the problem. Their trucking company has changed the time they make the deliveries to Triad. Instead of arriving between 2 a.m. and 3 a.m., the truck now arrives around 5 a.m. – 6 a.m. Additionally, Councilmember Williams told the Council that Triad is also considering erecting a fence to help alleviate some of the noise.

(G) Osage Drive: Councilmember Hicks noted that in a plat registered with the County there are two streets that extent off Osage Drive that are platted, but have not been built. Councilmember Hicks asked Public Works Director Steve Hargis if the City would be building these streets when the City works on Osage Drive.

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Public Works Director Steve Hargis stated the City only maintains existing streets. If there are platted streets that have not been built, the City has no obligation to build them.

XI. ADJOURNMENT

Having no further business, the meeting adjourned at approximately 8:06 p.m.

Minutes respectfully submitted by City Clerk Carol Daniels.

CITY CLERK

MAYOR

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