

**ROLLA CITY COUNCIL MEETING MINUTES
MONDAY, JANUARY 5, 2009
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, Stan Spadoni, Susan Eudaly, Gary W. Hicks, Don Morris, Lou Magdits, Jim Williams, Rick Morris, Donna Hawley, and Mark Walburg

Council Members Absent: Donald Barklage

Department Directors in Attendance: Public Works Director Steve Hargis, Police Chief Mark Kearse, Solid Waste Director Brady Wilson, Fire Chief Robert Williams, Parks and Recreation Director Ken Kwantes, Recreation Center Director Scott Caron, Finance Director Steffanie Rogers, 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 Rev. Gary Teague to give the invocation.

Following the invocation, Mayor Jenks asked Councilman Mark Walburg to lead in the Pledge of Allegiance.

I. CONSENT AGENDA

A motion was made by Williams and seconded by Eudaly to approve the consent agenda, as submitted. A voice vote on the motion showed eleven ayes, zero nays, and one absent. Motion carried.

The consent agenda consisted of the following:

(A) Approval of the City Council Minutes of:

- 1) December 1, 2008, City Council Meeting
- 2) December 15, 2008, City Council Meeting
- 3) December 15, 2008, Executive Session City Council Meeting

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II. PUBLIC HEARINGS

None.

III. CITIZEN COMMUNICATION

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

Ms. Ruth Hengartner, 423 Lanning Lane, Apt. J., Rolla, Missouri, stated that she is present to protest the Municipal Court or any other entity taking over the Eugene E. Northern Community Hall. She requested that the Community Hall be used as it has been for the last 40 years – for the citizens of Rolla and Phelps County. She asked how the Community Hall could be taken over for City office space without a vote of the citizens. Ms. Hengartner pointed out the taxpayers are funding the building. She asked the citizens of Rolla and Phelps County to make a stand and voice their opinions to the Council to keep the Community Hall for the community and not for the elected officials.

Ms. Hengartner recalled that in November 2008, she asked the Council to consider waiving the Community Hall rental fee for the Friendly Neighbors Country Dance club. She noted that the Community Hall rules and regulations state, “No rental rate shall be charged for community senior citizens activities, 75% or more participants who are at least 62 years old.” Ms. Hengartner pointed out that for years Friendly Neighbors Country Dance was over 100% seniors. She asked why these seniors are being discriminated against.

Mr. Tom VanDoren, County Road 5180, Rolla, Missouri, stated that he and his wife have had the privilege of dancing with the Duck ‘n Dive Square Dance group at the Community Hall for about 32 years. He said they would like to thank the City for providing this space and would like to continue for a few more years. Instead of using the Community Hall space for Municipal Court, Mr. VanDoren respectfully suggested the City consider using the offices at the old courthouse and that the court be held in the new Courthouse. Mr. VanDoren told the Council that approximately 60 individuals attended last Saturday night’s Duck ‘n Dive Square Dance and the Community Hall space was almost too crowded. If the City decides to use any of the space for offices, it will not leave enough room and the Duck ‘n Dive Square Dance group may have to find another location.

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III. CITIZEN COMMUNICATION (continued)

(A) Open Citizen Communication (continued): Ms. Jean Teasley, 305 Pinetree Road, Rolla, Missouri, told the Council that she is a member of the Friendly Neighbors Dance group that uses the Community Hall. She said that when she moved to Rolla she was disappointed to find that the seniors did not have a special place. Ms. Teasley said that since she discovered the Community Hall she has helped teach line dance with some senior citizens. She stated the seniors need a place to be interested in to have mental and physical activity, and socialization. On behalf of the Friendly Neighbors, Duck 'n Dive dance groups and others who meet at the Community Hall so often, Ms. Teasley asked the Council to not take their Community Hall.

Mr. Johnny Jones, 206 Brookridge, Rolla, Missouri, told the Council that he and his wife purchased their home in Rolla about four years ago. He explained that every time there is heavy rainfall, their backyard floods. Mr. Jones informed the Council that the water has killed three trees in the backyard and he cannot have a swing set in the backyard for his son. He added the water would eventually wash away his privacy fence. Mr. Jones said he spoke with someone from the City about this problem about a year after he moved into his home. He was told there was a plan to remedy this situation in 2011. Within the past month, Mr. Jones said he was told the Council decided to make this project a low priority. He encouraged the Council to look into this situation.

Councilman Hicks indicated that he looked at the situation and said the problem was exacerbated by the construction of the privacy fence. He added the City has spent a lot of money on main flood control, however, the City may have run short of money for correcting the peripheral problems. Councilman Hicks stated that situations like Mr. Jones' really need to be addressed, particularly at budget time, and make sure they are properly prioritized.

Mr. Andy Stewart, 1605 Autumn Place, told the Council that he has lived in Rolla for 21 years. He said that when he saw the discussion item regarding the Municipal Court, he noticed the pros and cons for using the Community Hall for the Municipal Court. Mr. Stewart indicated that the proximity to the Circuit Court for the convenience of customers sounds good except for the railroad bridge, railroad tracks, and footbridge. He said they really are not that much closer if the City Court were moved into the Eugene E. Northern Community Hall. If City Court were to be placed in the Community Hall, he said he is unclear how the foot traffic flow would work. Mr. Stewart added that he and his wife just recently joined the Duck 'n Dive club and enjoy it.

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III. CITIZEN COMMUNICATION (continued)

(A) Open Citizen Communication (continued): Ms. Mary Cunningham, 31 Johnson Street, spoke in support of retaining Eugene E. Northern Community Hall as a community activity center. She said most local people know the Community Hall, it is accessible for people who have handicaps, and is adequate for the snacks.

Mr. Floyd Huffman, Highway 72, Rolla, Missouri, stated that the Huffman family has not been treated justly or fairly and he only lost his rezoning request by one councilmember's vote. He told the Council that the Huffman business was there before any homes were built and he cannot do anything about that. He said he heard a councilmember say that the Council has to satisfy the neighbors. Mr. Huffman said he has done everything he can to satisfy them. He emphasized that he has tried to rezone his property time after time so he could improve his property and do some things for his family, but the City Council says "no." Mr. Huffman explained that since he last spoke to the Council, his plans have fallen through because of the economic situation. He said all the developers he has worked with are "down the tubes." Mr. Huffman said he has a couple of prospective buyers for his property, but they want the property to first be rezoned. He asked the Council why they are holding his "feet to the fire," and what is he being punished for. Mr. Huffman concluded by saying he is only talking about one councilmember, because his property was not rezoned because of one vote. He said he needs to have his property zoned to either C-2 (General Retail District) or C-3 (Highway Commercial District). Council discussion followed with no action taken.

In response to a comment made by one of the dance clubs about using one of the Phelps County courtrooms for municipal court, Councilman Jim Williams explained the City has asked the County Court officials multiple times and have been denied use. He added the City offered to rent the courtroom and to provide security.

Mr. Max Trueblood, with the Duck 'n Dive dance group, asked for clarification regarding Councilman Williams's response about using the new courthouse for court proceedings. Mayor Jenks explained the City has been denied use of the courtrooms in the new courthouse. He pointed out the reason the City is seeking another location for the municipal court, is because the old courthouse, which currently houses the municipal court, is not ADA (American with Disabilities Act) compliant.

Ms. Jan Vaughn, 1004 Sycamore Drive, Rolla, Missouri, said the senior citizens of this town really need a place to go. She told the Council that both Malden and Wheatland, Missouri, have a wonderful senior citizens community center. Ms. Vaughn added that

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III. CITIZEN COMMUNICATION (continued)

(A) Open Citizen Communication (continued): Rolla needs to begin catering to the senior citizens a bit. She suggested that the municipal court be held in the newly renovated City Hall building. She asked the Council to look for other alternatives for the court.

Mayor Jenks explained that it has not yet been decided where the Municipal Court would be housed. Secondly, he pointed out that he has appointed a group that is working on a series of recommendations to come back to the City Council regarding a senior facility that would address a number of items for both senior citizens and handicapped individuals. Mayor Jenks indicated that after the committee submits its report, a public hearing would be conducted.

Mr. Tom VanDoren, County Road 5180, Rolla, Missouri, encouraged the City to again ask the County to reconsider sharing their facilities.

Mayor Jenks suggested to the citizens that they approach the County regarding their concerns.

IV. ACKNOWLEDGMENTS and SPECIAL PRESENTATIONS

None.

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

Mayor Jenks referred the Council to **(A)** the November 2008 Rolla Municipal Utilities (RMU) Monthly Report; **(B)** the preliminary minutes of the December 9, 2008, Planning and Zoning Commission meeting; **(C)** the November 2008, Rolla Municipal Court Report; **(D)** the September 30, 2008 Development Review Committee meeting minutes; **(E)** the December 4, 2008, Rolla Board of Adjustment meeting minutes; **(F)** the December 2008 Rolla Regional Economic Commission Meeting Minutes; **(G)** the November 19, 2008, Rolla Health & Recreation Center Advisory Committee meeting minutes, and; **(H)** The Centre FY-08 Financial Analysis.

With the relocation of the substation into town, Councilman Hicks asked Rolla Municipal Utilities General Manager Dan Watkins if the estimated energy loss of 12%, as stated in RMU's report, would decline.

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V. REPORT OF MAYOR AND COUNCIL/REPORTS OF BOARDS AND COMMISSION/CITY DEPARTMENTS (continued)

Mr. Watkins responded that there are some deficiencies that will be realized by that process. However, he said he did not know if the losses would be reduced by half. Mr. Watkins pointed out that some of the losses that RMU is paying for are contractual. He said it is based on how much power is moving on the grid and there is an assumed amount included in it.

VI. OLD BUSINESS

(A) Ordinance to Rezone Property as Part of Heritage Heights Addition from R-3 to PUD Zoning (Gingerbread House): Community Development Director John Petersen indicated that the subject-rezoning request was first presented to the Council during its last meeting. The property contains 2.37 acres and the proposed Planned Unit Development (PUD) would be located off Aston Place and Pershing Place. Mr. Petersen explained the development contains three structures with 24 bedroom units. The primary reason for this PUD is the need to avoid the 1,500-foot separation between group homes. Mr. Petersen added the proposed PUD is consistent with the City's Comprehensive Plan and the Planning and Zoning Commission recommend approval of the proposed PUD.

After a brief discussion, City Counselor John Beger read the following proposed ordinance for its final reading, by title. ORDINANCE NO. 3889: AN ORDINANCE AMENDING THE BASIC ZONING ORDINANCE NO. 3414, CHAPTER 42 OF THE CODE OF THE CITY OF ROLLA, MISSOURI, AFFECTING THE REAL ESTATE KNOWN AS PART OF TRACT 3, HERITAGE HEIGHTS ADDITION FROM R-3 (MULTI-FAMILY) ZONING TO PUD (PLANNED UNIT DEVELOPMENT DISTRICT) ZONING (GINGERBREAD HOUSE.) A motion was made by Hicks and seconded by Eudaly to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Williams, Jordan, Hawley, Hicks, R. Morris, Spadoni, Walburg, Magdits, Eudaly, D. Morris, and Ruck. Nays; None. Absent; Barklage. Motion carried. The ordinance passed.

(B) Ordinance to Repeal Chapter 42, Article I, Section 42-17 and Revise Article III, Section 42-250.7: Community Development Director John Petersen explained the City's zoning ordinance currently contains two sections referring to limitations on rezoning requests. He noted the two sections are essentially identical except one requires the

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VI. OLD BUSINESS (continued)

(B) Ordinance to Repeal Chapter 42, Article I, Section 42-17 and Revise Article III, Section 42-250.7 (continued): applicant to show substantially changed conditions. To eliminate any duplication and for clarification, the recommendation is to repeal Section 42-17 and to add to Section 42-250.7 the requirement that the applicant must show substantially changed conditions. Mr. Petersen reported that the Planning and Zoning Commission's recommendation is to approve the amendments.

City Counselor John Beger read the following proposed ordinance for its final reading, by title. ORDINANCE NO. 3890: AN ORDINANCE AMENDING CHAPTER 42 OF THE ROLLA CITY CODE, ARTICLE III, KNOWN AS THE PLANNING AND ZONING CODE, BY DELETING CERTAIN PROVISIONS AND BY ENACTING NEW REGULATIONS. A motion was made by Williams and seconded by Spadoni to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Walburg, R. Morris, Spadoni, Williams, Ruck, Eudaly, Magdits, Jordan, D. Morris, Hicks, and Hawley. Nays; None. Absent; Barklage. Motion carried. The ordinance passed.

(C) Ordinance to Amend Chapter 42, Article III, Section 42-141: Community Development Director John Petersen explained that it was felt that Section 42-141 of the Code needed to be more specific instead of just using the word "animals." The proposal is to change the word "animals" to "bovines or equines." Mr. Petersen reported the Planning and Zoning Commission voted to also remove the word "plants" from this section.

City Counselor John Beger read the following proposed ordinance for its final reading, by title. ORDINANCE NO. 3891: AN ORDINANCE AMENDING CHAPTER 42 OF THE ROLLA CITY CODE, ARTICLE III, KNOWN AS THE PLANNING AND ZONING CODE, BY AMENDING CERTAIN PROVISIONS AND BY ENACTING NEW REGULATIONS. A motion was made by Williams and seconded by D. Morris to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Magdits, Hicks, Hawley, Ruck, R. Morris, Spadoni, Walburg, Eudaly, Jordan, D. Morris, and Williams. Nays; None. Absent; Barklage. Motion carried. The ordinance passed.

(D) Update on Televising Rolla Municipal Utility Meetings: Mayor Jenks asked that this item be moved from VII. New Business, Item E. , to VI. Old Business, Item D.

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VI. OLD BUSINESS (continued)

(D) Update on Televising Rolla Municipal Utility Meetings: Rolla Municipal Utilities Office Manager Dennis Roberts reported the video equipment for televising the Rolla Board of Public Works meetings has been ordered but has not yet been received. He said it is expected to arrive sometime this month and installation will begin as soon as it is available. Mr. Roberts added the reason the Board of Public Works prefers to conduct its meetings in the Rolla Municipal Utilities (RMU) boardroom instead of the Council Chambers is the need to access RMU computers and records. Additionally, the video equipment will be paid off in five years or less and would be less expensive than paying for use of the Council Chambers. Mr. Roberts also pointed out that there might be scheduling conflicts in using the Council Chambers. Some discussion followed.

VII. NEW BUSINESS

(A) Information Regarding the Use of the Ramsey Building at the Corner of 8th and Rolla Streets: Community Development Director John Petersen reported that a few months ago the City received a request from Mr. Dale Wands, owner of the building located at Eighth and Rolla Streets. Mr. Petersen explained that Mr. Wands requested a variance to allow full utilization of the property for residential purposes. However, the Board of Adjustment denied Mr. Wands' request. After receiving the denial, City officials met with Mr. Wands and the prospective tenants of the building and a plan was arrived at that will narrowly meet the letter of the law, as well as the intent of the law. Mr. Petersen explained that the Delta Epsilon Alumni Corporation would lease the front part of the first floor and the basement of the building and use it for their offices and meeting rooms, with a separate bathroom facility. By doing this, the Delta Epsilon Alumni Corporation would maintain the streetscape that the City wants. The upper story of the structure and the back half of the first floor would be converted to housing and rented by the fraternity. If the intent of the City's law is met, Mr. Petersen said the structure would have a business-looking appearance in the front of the building and the City would have the advantage of having some additional housing downtown. Mr. Petersen added that a study showed there is adequate parking downtown.

(B) Resolution to Enter into a Revised "Contract of Obligation" with the Missouri Department of Natural Resources: Solid Waste Director Brady Wilson explained that as a member of the Landfill Board, the City has been involved in a "Contract of Obligation" since the closure of the landfill facility during the mid 1990's. The "Contract of Obligation" is the City's means of providing financial assurance for post-closure costs

VII. NEW BUSINESS (continued)

(B) Resolution to Enter into a Revised “Contract of Obligation” with the Missouri Department of Natural Resources (continued): in the event the owner (Phelps County Landfill Board) defaults on the post-closure care requirements. Mr. Wilson told the Council that each member community of the Landfill Board is asked to adopt a resolution authorizing execution of the “Contract of Obligation.”

After some discussion, City Counselor John Beger read the following proposed resolution for one reading, by title. RESOLUTION NO. 1677: A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI, A “CONTRACT OF OBLIGATION” WITH THE DEPARTMENT OF NATURAL RESOURCES. A motion was made by Williams and seconded by Eudaly to approve the proposed resolution. A voice vote on the motion showed eleven ayes, zero nays, and one absent. Motion carried.

(C) Information on the Solid Waste Department Proposed Name Change (Environmental Services Department): Due to the diversity of the services the Solid Waste Department offers, Solid Waste Director Brady Wilson reported that changing the name of the Solid Waste Department has been discussed by staff off and on for at least a year. He explained that the Department has evolved over the past five to ten years to the point where it provides more than just trash service. Mr. Wilson explained that it is a very highly regulated and diverse industry and because of the nature of the services the Department is providing, staff would like to change the name or branding of the Department to the Environmental Services Department.

Mayor Jenks indicated that no action is required on the Council’s part at this meeting.

Mr. Wilson added that there would not be a lot of cost involved in changing the Department name. He said current supplies, i.e. letterhead, business cards, would be used until they are exhausted. Mr. Wilson estimated the new name would be placed on the side of the Department’s fleet at an approximate cost of \$1,000 or less for the entire department.

(D) Discussion Regarding the Status of the Rolla Municipal Court Offices: In addition to the previous discussion regarding the Municipal Court, City Administrator John Butz referred the Council to the pages in the agenda materials, which were presented by the architects on the City Hall building where the Court was fully planned and as a function of the building for the first two rounds of space utilization.

VII. NEW BUSINESS (continued)

(D) Discussion Regarding the Status of the Rolla Municipal Court Offices (continued):

At that time, Mr. Butz noted there was some very positive discussion with the County Commission and they were supportive of the idea of merging the Rolla Municipal Court into the Circuit Court. Because of that discussion, the Municipal Court space was removed during the City Hall renovations so the building could be restructured. Mr. Butz said that City officials spoke with the County Commission about paying fees for reasonable space. The County Commission got back with the City on space utilizations of the courtrooms and there did not appear to be any kind of a conflict. Mr. Butz explained that this temporarily precipitated the City's move for Municipal Court into the old Courthouse. He told the Council that the old Courthouse has worked very well for the Municipal Court. Once the Municipal Court was placed in the old Courthouse, the proximity to the new Courthouse was a real benefit. Mr. Butz said the County Commissioners then deferred the decision to the County judges and in a dialogue with Municipal Judge Bill Hickle took a fairly strong position (copy of letter included in agenda materials). Mr. Butz said he has found sections in the State Statute that gives the City authority to negotiate and to contract with other public entities for the provisions of public services. Regardless, he explained that there is nothing further that he can do. Mr. Butz added the County Commission is still interested in working out something and the decision is ultimately the County's.

Following Council discussion, Mr. Butz was asked to draft a formal letter to the County Commission asking them for direction in this matter and the reason why the County will not permit the City to rent the courtrooms in the new Phelps County Courthouse .

VIII. CLAIMS AND/OR FISCAL TRANSACTIONS

None.

IX. MAYOR/CITY COUNCIL COMMENTS

(1) Councilwoman Hawley:

(a) Abuse of Power Allegation: Councilwoman Hawley stated that she has struggled with this issue for the past two weeks and feels that if the Council had moved on this issue on Monday, when it was first presented, it probably would not have

IX. MAYOR/CITY COUNCIL COMMENTS (continued)

(1) Councilwoman Hawley:

(a) Abuse of Power Allegation (continued): escalated to the point that it did. She explained she requested the “abuse of power” discussion be handled under closed executive session because it involves City employees. Councilwoman Hawley indicated that it would be irresponsible of the Council to not use closed executive session for this type of discussion. Therefore, she said she would not discuss this item tonight.

(b) Request for Impeachment Consideration of Councilman Ruck: Councilwoman Hawley said that she feels the Council has completely digressed from the point where, not six months ago, the Council approved a “Code of Conduct” for the Council. She pointed out that a large part of the “Code of Conduct” was about respect and communication. Councilwoman Hawley stated that what happened last week was a complete and total lack of respect for a co-council. She said it was threatening, intimidating, and completely uncalled for. Councilwoman Hawley noted that she sent a grievance to the Council requesting action and believes the Council could have censored, sanctioned, etc. However, after listening to the answering machine tape, Councilwoman Hawley said she realized the threat was a lot more physical than originally thought. She said she would like to be advised of the exact procedures for proceeding with her request.

City Counselor John Beger explained there must be written specifications for the Council to either approve or not approve. If the specifications are approved, they would be served on the councilman in question and a date and time would be set for a hearing for the Council to determine, after presentation of evidence, whether or not improper actions occurred. Mr. Beger said he believes it requires a two-thirds vote of the Council.

Councilwoman Hawley indicated that she would prepare the specifications and have it ready for the next Council meeting.

A motion was then made by Hawley to discuss the “abuse of power” issue during closed session either tonight or at the next meeting. The motion did not receive a second.

X. COMMENTS FOR THE GOOD OF THE ORDER

None.

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XI. EXECUTIVE SESSION

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

The Council adjourned into Executive Session at approximately 8:25 p.m.

XII. EXECUTIVE SESSION ACTION

The Council reconvened into open session at approximately 9:38 p.m.

City Counselor John Beger reported that earlier this evening, the Council met in Executive Session and was advised and conferred with special counsel concerning upcoming labor negotiations. No formal action was taken at that time.

City Counselor Beger reported that a few minutes ago, the Council concluded an Executive Session meeting with Rolla Municipal Utilities (RMU) at which time it was advised of RMU's need for and efforts to purchase real property. The Council took no formal action.

XIII. ADJOURNMENT

Having no further business, the meeting adjourned at approximately 9:40 p.m.

Minutes respectfully submitted by City Clerk Carol Daniels.

CITY CLERK

MAYOR

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