

**ROLLA CITY COUNCIL MEETING MINUTES
MONDAY, MARCH 2, 2009
ROLLA CITY HALL COUNCIL CHAMBERS
901 NORTH ELM STREET
6:30 P.M.**

Presiding: Mayor Pro-Tempore Lou Magdits

Council Members in Attendance: Monty Jordan, Donald Barklage, Stan Spadoni, Gary W. Hicks, Don Morris, Lou Magdits (presiding), Jim Williams, Donna Hawley, and Mark Walburg

Council Members Absent: Terry Ruck, Susan Eudaly, and Rick Morris.

Department Directors in Attendance: Public Works Director Steve Hargis, Police Chief Mark Kearse, Environmental Services 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, and City Clerk Carol Daniels

Mayor Pro-Tem Lou Magdits called the meeting to order at approximately 6:30 p.m., and asked Rev. M. Danny Kemp of the Calvary Assembly of God Church to give the invocation.

Following the invocation, Mayor Pro-Tem Magdits asked Councilman Gary Hicks to lead in the Pledge of Allegiance.

I. CONSENT AGENDA

A motion was made by Williams and seconded by D. Morris to approve the consent agenda, as submitted. A voice vote on the motion showed nine ayes, zero nays, and three absent. Motion carried.

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I. CONSENT AGENDA (continued)

The consent agenda consisted of the following:

(A) Approval of the City Council Minutes of:

- 1) February 2, 2009, City Council Meeting
- 2) February 17, 2009, City Council Meeting
- 3) February 17, 2009 City Council Executive Session Meeting

II. PUBLIC HEARINGS

None.

III. CITIZEN COMMUNICATION

(A) Open Citizen Communication:

(1) Mr. Ed Tenes Regarding Possible “Landlord/Tenant Ordinance”: Mr. Ed Tenes, owner of property at Fourth and Pine Streets and Fourth and Elm Streets in Rolla, stated that he has an ongoing issue with Rolla Municipal Utilities (RMU) about holding landlords responsible for unpaid tenant bills. He asked the Council to consider an ordinance stating the landlord would not be responsible for unpaid tenant bills. Mr. Tenes said that he received a letter from RMU stating that he is responsible for his tenant’s unpaid bills. He suggested that RMU devise a policy statement that stipulates the landlord be informed, by either phone or letter, when the utilities are being transferred to the landlord. Mr. Tenes pointed out that RMU has threatened to disconnect the utilities at his other rental properties because of non-payment on another property.

Mr. Tenes also asked the Council to consider adopting Missouri State Statute pertaining to eviction procedures, so that it can be handled through the City court instead of the County. He said this would simplify eviction procedures for landlords. Mr. Tenes indicated that he is working with the legislature on these issues as well.

After much dialogue, the Council asked City Counselor John Beger to explore the City’s legal options on these issues.

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III. CITIZEN COMMUNICATION (continued)

(A) Open Citizen Communication (continued):

(1) Mr. Ed Tenes Regarding Possible “Landlord/Tenant Ordinance” (continued): Mr. Rodney Bourne, RMU Operations and Public Relations Coordinator, stated that he empathizes with Mr. Tenes’ problem he had with his tenant. He explained to the Council that the tenant moved out and the utilities were transferred to Mr. Tenes’ name. Mr. Bourne told the Council that this was done because of a standing order with Mr. Tenes. He told the Council that another tenant moved in a few days later and RMU was not notified. Mr. Bourne added that RMU follows the guidelines provided by individual landlords.

After additional discussion, a motion was made by Hawley and seconded by Walburg to discuss this issue further during the Council’s next meeting. A voice vote on the motion showed eight ayes, one nay, and three absent. Motion carried.

Mayor Pro-Tem Magdits asked Mr. Bourne to prepare, in writing, some possible scenarios for the next meeting and to walk the Council through those scenarios.

(2) Mr. Joseph Levitt Regarding “Waste Incineration to Energy”: Mr. Levitt was not present to address this issue.

(3) Dr. Tom Sager Regarding Service Availability Fee: Dr. Tom Sager, 8 Laird Avenue, stated that he wished to address the Council concerning the proposed water service availability fee increase from \$6 to \$8 per meter and by \$1 in subsequent years. Dr. Sager said he is against increasing service availability fees. He pointed out that it is a regressive tax falling most heavily on those who can least afford it. Dr. Sager indicated that the fairest way to pay for upgrading water distribution for fire protection is through property taxes. He concluded that the City should look at other ways to fund what is needed to have the best fire protection we can possibly afford.

(4) Ms. Faith Ann Barnes Regarding Tax Free Weekend in August: Ms. Faith Ann Barnes, 12065 Oak Hill, asked the Council to reconsider “opting in” to the Back to School Sales Tax Holiday, which is held the first weekend of August. She pointed out that “opting in” would exempt the sales tax on certain clothing, personal computers, certain computer software, and school supplies.

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III. CITIZEN COMMUNICATION (continued)

(A) Open Citizen Communication (continued):

(4) Ms. Faith Ann Barnes Regarding Tax Free Weekend in August (continued): After some discussion, a motion was made by Hawley and seconded by Hicks to discuss and consider, during the Council's next meeting, "opting in" to the Back to School Sales Tax Holiday. A voice vote on the motion showed eight ayes, one nay, and three absent. Motion carried.

No one else present addressed the Council.

IV. ACKNOWLEDGMENTS and SPECIAL PRESENTATIONS

(A) Rolla Area Chamber of Commerce 4th Quarter 2008 Tourism Report: Rolla Area Chamber of Commerce Executive Director Stevie Kears provided an overview of the Fourth Quarter 2008-Tourism Report, a copy of which was included in the agenda materials.

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

Mayor Pro-Tem Magdits referred the Council to **(A)** the January 2009 Rolla Municipal Utilities (RMU) Monthly Report; **(B)** the February 10, 2009, Preliminary Minutes of the Planning and Zoning Commission Meeting; **(C)** the January 31, 2009, City's Cash Position and Expenditure Report; **(D)** the January 2009, Rolla Municipal Court Report; **(E)** the January 26, 2009, Rolla Board of Public Works Meeting Minutes; **(F)** the February 10, 2009, Rolla Channel 6 (RC6) Advisory Committee Meeting Minutes; **(G)** the January 21, 2009, Rolla Health and Recreation Center Advisory Committee Meeting Minutes; **(H)** the Centre FY-08 Financial Analysis; and **(I)** the February 2009 Rolla Regional Economic Commission News.

VI. OLD BUSINESS

(A) Ordinance to Revise Lot 2 of Cedar Trail Planned Unit Development Site Plan (Timber Ridge Buildings, Inc.): Community Development Director John Petersen recalled that the Cedar Trails Planned Unit Development (PUD) was put in place in

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VI. OLD BUSINESS (continued)

(A) Ordinance to Revise Lot 2 of Cedar Trail Planned Unit Development Site Plan (Timber Ridge Buildings, Inc.): November 2006. He noted the 28 units that comprise Lot 1 have already been developed. Mr. Petersen told the Council that staff recently received a request to reduce the density of Lot 2. The applicant, Timber Ridge Buildings, Inc., is requesting that the Lot 2 development plan be revised to reflect 26 units, rather than 44 units.

Mr. Petersen recalled that, during the Council's last meeting, Councilman Hicks indicated that he recalled the original plan for this PUD specified that Christy Drive "shall be constructed," rather than "shall be under construction" as stipulated in Exhibit I of the proposed ordinance. Mr. Petersen told the Council that a representative of Timber Ridge Buildings, Inc., is present to address the Council regarding the requirement of constructing Christy Drive.

Applicant, Mr. Don Howser, 2415 Carter Lane, Columbia, Missouri, addressed the Council and said his request to change Lot 2 would reduce the density and increase traffic flow, reduce the amount of impervious surface and run off, and generally make a more aesthetically pleasing portion of this subdivision. He added that he is doing this at his own expense.

Mr. Howser then addressed the Council's requested change to Exhibit I pertaining to the phasing of the project. He said changing the wording from "Christy Drive shall be under construction...." to "Christy Drive shall be constructed..." would now create an economic burden on him to finish Christy Drive prior to completion of occupancy, which he is unprepared to do. Mr. Howser said when he took this project before the bank and purchased the property based upon the PUD that was agreed to, it was not a requirement. To make it a requirement now adds hundreds of thousands of dollars of cost to the project. Mr. Howser said to make this change to the wording in the phasing of the project would create an economic burden on his company, which he does not have a remedy for at this time.

After discussion, a motion was made by Hicks and seconded by Hawley to amend the sentence in Exhibit I, "Phasing" to read "...Christy Drive shall be under construction..." as in the original PUD voted on two years ago. A voice vote on the motion showed nine ayes, zero nays, and three absent. Motion carried.

VI. OLD BUSINESS (continued)

(A) Ordinance to Revise Lot 2 of Cedar Trail Planned Unit Development Site Plan (Timber Ridge Buildings, Inc.) (continued): City Counselor John Beger read the following proposed ordinance for its final reading, by title. ORDINANCE NO. 3900: AN ORDINANCE AMENDING SECTION 42-384(c) (ORDINANCE NO. 3772) OF THE ROLLA CITY CODE, PERTAINING TO LOT 2 OF CEDAR TRAIL PLANNED UNIT DEVELOPMENT (TIMBER RIDGE BUILDINGS, INC.). A motion was made by Jordan and seconded by Spadoni to approve the proposed ordinance. A roll call vote on the motion showed the following: Ayes; Barklage, Spadoni, Hicks, Hawley, Jordan, D. Morris, Walburg, Williams, Magdits. Nays; None. Absent; Eudaly, Ruck, and R. Morris. Motion carried. The ordinance passed.

VII. NEW BUSINESS

(A) Motion to Approve the Use of the Rolla National Airport for the Missouri S & T- IFC Greek Week Games: City Administrator John Butz noted that for the past ten or eleven years, the Missouri S & T Interfraternity Council has worked well with Rolla National Airport personnel during the Greek Week Games. He explained that this year's Greek Week Games are scheduled for the weekends of September 19 and 26, 2009. Mr. Butz pointed out that this event includes a liquor license. He told the Council the City asks that a shuttle service be provided as a condition for the use of the Airport, as well as proof of insurance for the event. Mr. Butz stated that staff's recommendation is to approve the request.

A motion was made by Williams and seconded by D. Morris to allow the Missouri S & T Interfraternity Council to use the Rolla National Airport for the Greek Week Games on September 19, 2009, and September 26, 2009, with beer sales. A voice vote on the motion showed nine ayes, zero nays, and three absent. Motion carried.

(B) Request for Ordinance to Increase Parking Fines for the City of Rolla: City Administrator John Butz referred the Council to information provided tonight from Mr. Kent Bagnall, owner of Kent Jewelry, LLC, and a Rolla Downtown Business Association Representative, regarding downtown parking problems. Mr. Butz said there has been a perpetual problem with business owners/employees and some renters who tend to park on Pine Street and some of the side streets longer than the allowed parking. He explained that traditionally the City had a full-time parking enforcement position, but reduced that

VII. NEW BUSINESS (continued)

(B) Request for Ordinance to Increase Parking Fines for the City of Rolla (continued): position to part-time about five or six years ago. As a result, the enforcement has been less effective. Mr. Butz mentioned that Municipal Court Judge William Hickle increased the court fee from \$3 to \$5 on his own, because the ordinance authorizes up to \$50 for a fee. In discussing about what could be done to improve attention to parking violators and, in particular, repeat violators, the suggestion was to set the minimum at \$10, but still allowing the maximum of \$50. This would give the judge discretion on repeat violators where he could increase the fine from \$10 to \$20, to \$30, etc. Staff recommends the first reading of the subject ordinance.

Following some discussion, City Counselor John Beger read the following proposed ordinance for its first reading, by title. ORDINANCE NO. 3901: AN ORDINANCE AMENDING SECTION 27-80 OF THE GENERAL ORDINANCES OF THE CITY OF ROLLA, MISSOURI, KNOWN AS THE CODE OF THE CITY OF ROLLA, MISSOURI, PERTAINING TO PENALTY FOR PARKING ORDINANCE VIOLATION. A motion as made by Williams and seconded by D. Morris to suspend the rules and that the ordinance be read for its final reading, by title. A voice vote on the motion showed seven ayes, two nays, and three absent. Motion carried. City Counselor Beger then read the proposed ordinance for its final reading, by title. A motion was made by Williams and seconded by D. Morris to approve the proposed ordinance. After further discussion, which included possibly having full-time parking enforcement, a roll call vote on the motion showed the following: Ayes; Jordan, Williams, Spadoni, Barklage, Magdits, D. Morris, and Hicks. Nays; Hawley and Walburg. Absent; Ruck, R. Morris, and Eudaly. Motion carried. The ordinance passed.

(C) Information Regarding the Phelps County Transfer Station Contract: Environmental Services Director Brady Wilson explained that because of a competitive process by the Phelps County Landfill Board for operation of the Phelps County Transfer Station, there is a new operator at the Transfer Station. The operator is Prairie Valley Disposal of Cuba, Missouri, operating Prairie Valley Sanitary Landfill of Cuba, Missouri. Mr. Wilson announced that through this process, the City of Rolla is the beneficiary of a much lower disposal rate than what the City has been accustomed to over the last five to ten years. Mr. Wilson said the disposal rate has been as high as \$49 per ton. Through this new contract, Rolla has been quoted a disposal fee of \$38.56 per ton as opposed to the current fee of \$43.25. Throughout the first year, Mr. Wilson said he anticipates about an \$80,000 savings to the Environmental Services Department to the City of Rolla through lower disposal fees. He pointed out that this largely comes from a shorter travel

VII. NEW BUSINESS (continued)

(C) Information Regarding the Phelps County Transfer Station Contract (continued): distance. While the City will see a significant savings in disposal costs, operating costs are increasing, and the recycling markets have severely deteriorated. Mr. Wilson said this would allow the City to hold the bottom line for at least the five years during the current operating contract, which went into effect last week. Because the landfill now being used for disposal is located within the Ozark Rivers Solid Waste Management District, Mr. Wilson reported that there would be an influx of additional grant monies coming into the Solid Waste Management District office, which is housed at the Meramec Regional Planning Commission (MRPC) in St. James, Missouri. Following his report, Mr. Wilson entertained questions from the Council.

(D) Information Regarding the Employee Wellness Program: Recreation Center Director Scott Caron reported that over the past year, the City has implemented an employee wellness program. The basic goal of the City's wellness program was to limit or reduce the City's expenses with health insurance for its employees. Mr. Caron noted the City developed four objectives to meet this goal. He added that a wellness plan is a program designed to help employees stay well and research has shown that for every dollar that is invested in an employee wellness plan, \$3 of \$5 is returned to the company. Mr. Caron explained that staff devised a program in which the results could be measured, such as absenteeism, health care costs, and a health risk assessment. Mr. Caron continued by reviewing the overall demographics of the 2008 survey conducted by Healics from Wisconsin to assist the City. Through the efforts over the past year, he reported that sick leave was reduced 8% and health insurance costs remained the same. Following his presentation, Mr. Caron addressed comments and questions from the Council.

VIII. CLAIMS AND/OR FISCAL TRANSACTIONS

None.

IX. MAYOR/CITY COUNCIL COMMENTS

(A) \$726,000 Bill from MoPEP: Councilwoman Hawley noted that recently she was made aware through a Rolla Daily News article that Rolla Municipal Utilities (RMU) received a \$726,000 bill from MoPEP. She asked if someone from RMU would explain what the bill was for, for what length of time, and how RMU plans to address it.

IX. MAYOR/CITY COUNCIL COMMENTS (continued)

(A) \$726,000 Bill from MoPEP (continued): Mr. Rodney Bourne, RMU Operations and Public Relations Coordinator, explained that the \$726,000 charge is not a bill, but a potential bill. He explained that RMU is investigating what may be a bill. Mr. Bourne said RMU may have already paid these charges. RMU will be meeting with MoPEP (Missouri Public Energy Pool) to determine if the charges are owed.

(A.1.) Setting Equitable Water Rates – Councilwoman Hawley: Councilwoman Hawley said she was unable to attend the last Council meeting when the proposed Rolla Municipal Utilities (RMU) service availability fee increase was discussed. Due to past interest and the fact that she was unable to attend the presentation, she said she has extensively examined the issue. Ms. Hawley pointed out that the 2009 RMU Water Rate Study shows an average annual shortfall of almost \$400,000 for the past five years. During her presentation, she stressed that the water plan is not equitable because customers with larger water meters use more water than residential customers with smaller meters. She added it would be more equitable to set the Service Availability Rate (SAF) based on percentage of water used and meter size. She listed examples of several communities whose SAF is based on the size of the meter. She stressed it is unfair that residential customers are paying for commercial customers through the SAF. RMU management should reconsider the rate study and the SAF should be recalculated and based on demand. Ms. Hawley also stated that Rolla City Council should approve rate increases through ordinance. According to her calculations, residential customers should only be paying about \$3.90 for the SAF instead of the current \$6. Based on the pro-rata share of the gallons of water used each month, the commercial customers should be paying \$9 because they are causing more wear and tear on the system and there is more demand on the water tables. Ms. Hawley said her opinion is that the way SAF is charged, the residential customers are paying for the commercial and industrial customers usage, demand, and wear and tear on the system. She said the SAF should be a graduated cost based on the usage and the demand on the system. Since RMU has made the SAF such a huge portion of the utility bill, the City is allowing them to punish the residential customers in favor of the commercial and industrial customers. Ms. Hawley said she feels very strongly the Council needs to have RMU management go back and rethink the Water Study.

Ms. Hawley said another issue that needs to be addressed is a rate structure that encourages conservation. She indicated the reason many municipalities are encouraging conservation is because the water aquifers are depleting. They are being

IX. MAYOR/CITY COUNCIL COMMENTS (continued)

(A.1.) Setting Equitable Water Rates – Councilwoman Hawley (continued): used up at a faster rate than it is being replenished by rainfall. Using data from a study completed in 1992 by James VanDyke, Ms. Hawley pointed out that of the City's 18 wells, there are two or three wells causing a severe problem in the aquifer. She said it would be a good idea for the City to have a discussion on what should be done in Rolla as far as preserving our aquifer and water table. Additionally, she said a more current environmental assessment of the ground water risk needs to be done. Ms. Hawley concluded by stating that she would like the Council to have a good discussion on this issue.

Ms. Hawley pointed out there has been much discussion about whether the Council should vote to approve the rates and to place them in an ordinance. She said she frequently hears that it is not a requirement and very few other cities are doing this. Ms. Hawley said in State Statute it says that we must do this. To verify her own expectations, Ms. Hawley told the Council that she called the cities of St. James, Cuba, Waynesville, Salem, Lebanon, Sullivan, Springfield, and Columbia. Jefferson City was the only city that did not have an ordinance setting their water rates. She explained the reason the water rates are not included in ordinance is that they had to go to the Public Service Commission because the American Water Company furnishes their water. She added the Public Service Commission monthly service charges were dependent upon their meter size. Ms. Hawley stressed the City needs to come up with something that is equitable to everyone, so that each customer pays their fair share of the cost of operating the system.

Following some discussion, Ms. Hawley recommended the Council discuss/study the aquifer depletion under the RMU wells.

Mayor Pro-Tem Magdits suggested asking RMU to make a presentation on the aquifer situation. He added they might already have the answers to our questions.

Mr. Rodney Bourne, RMU Operations and Public Relations Coordinator addressed the Council and recalled that a few weeks ago during his presentation on the water study he reported there are several ways to develop water rates. He said the uniform rate on the volumetric was chosen because it is simple to implement, easy for the customer to understand, is considered equitable, and implements a conservation signal. With regard to the Service Availability Fee (SAF), he said one could argue that it places a higher burden on the low water usage customer. Conversely, it could be argued that by having a

IX. MAYOR/CITY COUNCIL COMMENTS (continued)

(A.1.) Setting Equitable Water Rates – Councilwoman Hawley (continued): low SAF it places a higher burden on your high usage customers. Mr. Bourne said that is why the American Water Works Association (AWWA) does not make recommendations on the formula used to calculate water rates, but shows there are several ways to calculate it. He said the facts are that RMU is operating with an annual cash shortfall and costs are going to increase for everyone, and the rates will be annually reviewed and adjusted accordingly. Mr. Bourne said in the future it is entirely possible that RMU would look into an inclining meter SAF and RMU may adopt a completely different rate structure.

Following discussion, Dr. James Stoffer, President of the Rolla Board of Public Works, requested a copy of the report Ms. Hawley presented, so the Board would have an opportunity to review it and return with a recommendation. He asked that the Board be permitted to respond after reviewing her data.

Dr. Stoffer asked the Council to give the Rolla Board of Public Works a list of questions they would like addressed, based upon Ms. Hawley's report.

Mayor Pro-Tem Magdits asked Ms. Hawley to succinctly list the issues she raised during her presentation and bring them to the Council to refine them and the Council, as a body, would submit them to the Board of Public Works.

A motion was made by Barklage and seconded by Spadoni that the Council not take any action until the RMU Review Committee submits a report to the Council. A voice vote on the motion showed eight ayes, one nay, and three absent. Motion carried.

X. COMMENTS FOR THE GOOD OF THE ORDER

(A) Parks and Recreation Director Ken Kwantes: Mayor Pro-Tem Magdits congratulated Parks and Recreation Director Ken Kwantes for his recent recognition for a Lifetime of Devotion to Softball in Rolla.

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XI. EXECUTIVE SESSION

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

The Council adjourned into Executive Session at approximately 9:47 p.m.

XII. EXECUTIVE SESSION ACTION

The Council reconvened into open session at approximately 10:21 p.m.

City Counselor John Beger reported that during Executive Session the Council discussed continued efforts to sell parcels of surplus City real estate. By a vote of five to four, the Council voted to renew the listing agreement at a reduced price, the details of which will be disclosed upon execution of a listing agreement.

The Council also discussed the process of performance review of the City Administrator. By a vote of 9 to 0, the Council voted to direct the City Administrator Review Committee to continue that process.

XIII. ADJOURNMENT

Having no further business, the meeting adjourned at approximately 10:22 p.m.

Minutes respectfully submitted by City Clerk Carol Daniels.

CITY CLERK

MAYOR

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