

# No Standing News

Since we have no standing, we stand with those left standing

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## Hy Point -The Black Hole of Tax Assessment – Part 5

*RCDC Masquerades as a Charity but Flunks the Three-Prong Test*

**RCDC's Masquerade.** While reading through deeds, contracts and old newspaper accounts, and as this systematic corporate fraud unraveled we wondered how this could just keep happening year after year. Out of the dozens of elected council members that have come and gone didn't anyone ever catch on? There are only two explanations, either they were totally dense and therefore unfit to hold public office, or they were all in on it. One thing is certain. The identity of the real beneficiary of all city expenditures for economic development has been well concealed from the public. Beginning with the original 1967 pretense, that RCDC could "pursue methods available to it which are not available to the city," RCDC was rarely, if ever, identified to the public as "*the owner*" of the industrial park. They were referred to as the "*agent for the city*" or the "*contracting agent,*" or the "*operator*" of Hy Point or the "*developer*" for the city. Passing themselves off as merely a benevolent assistant to the city was the key to their control of city government and their secret accumulation of city property.

We checked back through 2001 - 2005 articles and found that newspaper references to RCDC were elaborately veiled. The RDN has described RCDC as: "A not-for-profit group that *manages* the industrial park real estate matters for the city," or "In the past, industrial park land has been *brokered by RCDC*, a not-for-profit group that has *worked closely with the city* to develop Hy Point Industrial Park," or "For years in Rolla, economic development work was

*commanded by the RCDC*, a successful private organization *that worked hand-in-hand* with the City of Rolla to recruit industry to the industrial park," or "RCDC is a group of private citizens who came together years ago for the purpose of developing industry in Rolla. It's been *the overseer* of Hy Point Industrial Park." Why the elaborate concealment of RCDC's real role? Why not just tell the truth: "RCDC owns it all because the City gave it to them."

This lack of journalistic curiosity as to who really owns Hy Point is either a phenomenal oversight or the newspaper has been willing lapdogs in a plan to transform RCDC's image and hide their rapacious practices by concealing the truth from their readers – that taxpayers were paying to enrich RCDC. The image they have painted, that RCDC is a benevolent group that merely "works with" or "brokers for" the City is just a lie. Is it credible that in 38 years not one of the many RDN reporters have stumbled across the truth? The tortured euphemisms they've used to hide RCDC's real identity; "managers, overseers, brokers," effectively concealed the fact that RCDC's wealth came from bleeding Rolla taxpayers; the homeowners and small businesses that were unwittingly paying for RCDC's property but weren't getting RCDC's 100% tax exemptions for their own property. The newspaper connection continues: **Jim Sowers** has been listed on the RCDC board since 2003; **Tom Sowers** was elected President of RCDC this year.

## The Charity Exemption that Wasn't

### September 30, 1994 – RCDC gets another Tax Exemption.

On September 30, 1994, **Jack Harris**, the Phelps County Assessor, and the Commissioners of Phelps County: **Randy Verkamp**, **Ken Lenox** and **Glendon Klossner** each signed letters to **Dain Ward**, President of RCDC, granting that "*The real property owned by Schwitzer U.S. Inc will be classified as exempt property under Section 137.100(5), RSMo [the charity exemption] upon conveyance of title to RCDC....and will be exempt from taxation for state, county, and local purposes.*"

City officials were again violating the Missouri Constitution, (Article VI, Sec. 23) by giving public land away to RCDC. Then RCDC, the corporation benefiting from the city's constitutional violation, carefully obtained official documentation that they were getting an illegal tax

exemption. The Phelps County Tax Assessor and Phelps County Commissioners, sitting as the Board of Equalization/Appeals, obligingly went on record to explain that they were exempting RCDC from paying more property taxes by citing a law that didn't apply to RCDC! If these people robbed banks they'd sign withdrawal slips.

This one wasn't a tax loss on 120 acres of undeveloped land in the industrial park; this was a loss on a multimillion dollar property. Taxes were now bleeding from a major artery. In exempting the RCDC from paying taxes on the land and building (which by the following year would be worth a minimum of **\$12.25 million**) the County Commissioners and Assessor Jack Harris agreed that the contract between RCDC and Briggs & Stratton, when executed (and it was the same day), would provide for annual

“in-lieu-of-real property tax payments of **\$29,411.19** to the county and **\$8,844.93** to the city. The school district, handicapped, city library and parks got nothing. The in-lieu-of tax amount was loosely based on the assessed valuation of the building in its 1994 condition; abandoned, contaminated and with a leaking roof.

The tax exemption letters cited RSMo 137.100(5) as their justification for making this tax exemption ‘gift’ to RCDC. That law exempts from taxation: *“All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes.”* (emphasis added) With the stroke of a pen **County Assessor Jack Harris and County Commissioners Randy Verkamp, Glendon Klossner and Ken Lenox** had transformed RCDC from an *“agent for the city”* to a psalm-singing religious charity.

**Flunking the “Three-Prong Test.”** There are specific legal guidelines that must be used to determine who is entitled to property tax exemptions because they claim to be a charity. They have been established by the Missouri Supreme Court over the last century and are the standard used by all county tax assessors (except ours) and the Missouri Tax Commission. The criterion is called the “Three-Prong Test.” Many church-owned properties, fraternal orders and even the South Side Day Nursery in St. Louis, a charitable day care center organized in 1888, have had their claims to tax exempt status *rejected* by the Missouri Tax Commission because they did not meet *all three prongs* of the Three-Prong Test. The Missouri Tax Commission web site details all their rulings going back many years and most of the tax appeals they hear are a result of the local tax assessor NOT granting tax exemptions or NOT lowering someone’s taxes. Other county assessors in Missouri understand their duty is to put as much taxable property *on* the tax rolls as possible – not take taxable property *off* the tax rolls.

All of RCDC’s bombast about “the betterment of Rolla” to the contrary, they are not a “purpose purely charitable.” RCDC didn’t qualify to have their 120-acre industrial park or any building they own in their industrial park exempted from property taxes because they aren’t a charity and they could not possibly pass the Three-Prong Test. One fact alone disqualifies them, that the building would house a *for-profit commercial business*, Briggs & Stratton. The property was also not *“dedicated unconditionally to a charitable activity”* in such a way that there was no profit, now or in the future for either RCDC or Briggs & Stratton. RCDC also fails the test because when they organized they sold their stock to investors and promised them a 5% return on their investment. RCDC flunked every one of the three-prongs. The only people who got pronged here were county taxpayers and again, it was their own elected officials that did it to them.

The Phelps County Commission and the Phelps County Assessor, sitting once a year as the Phelps County Board of Appeals, can hear appeals from anyone who thinks they are unfairly taxed or who think they *can prove* they are entitled to be exempt from property taxes. If the Assessor and/or the County Commissioners agree, they can adjust a tax assessment or grant an exemption but *only if it meets legal standards*. It is their sworn duty to know and apply those standards. The only legitimate way RCDC could get this exemption from the Phelps County Assessor and the County Commission was by proving they were a public charity, that they did not hold the property for corporate profit and that they would not rent or give the building to anyone who would make a profit from renting it. Failing all that - and they did fail to prove all that because they were not asked to prove anything - to legitimately get the charity tax exemption they would have to prove that they only bought the building to hold church services on Sundays.

**September 1994 – the Briggs & Stratton announcement.** On September 30, 1994, the same day the tax exemption was granted, Schwitzer, U.S. Inc., RCDC and Briggs & Stratton signed a *Memorandum of Understanding* which detailed the responsibilities of each party regarding the investigation and clean-up of environmental contamination at the Schwitzer building. The building had been empty and deteriorating for years. It also had a bad roof so the price was low. A company was hired to prepare a Remedial Investigation and Work Plan and provide the Missouri Department of Natural Resources (MDNR) with a clean-up plan they would accept. The cleanup was to be completed on May 1, 1995. During that period Briggs & Stratton were allowed to start their work on plant renovations. Schwitzer, still owner of the building, agreed to be responsible for all risks and costs of the cleanup which was not really all that generous of them because legally they *were* responsible and had to do it sooner or later. Any building under a DNR cleanup order was virtually unsalable until the contamination was cleaned up. The city could have forced Schwitzer to clean it up and repair the building with or without a sale, but the city never enforces any kind of clean-up or abandoned property ordinance; you can tell that just by driving around town.

Sometime, probably after the *Contract for Sale of Real Estate* was signed, Ed Owsley, Dain Ward and Mayor Wax made the announcement from the new band shell behind City Hall that **Briggs & Stratton** would be locating in Rolla. No one was more relieved than City Hall and RCDC; both had been taking considerable heat from the public about their ineptitude in economic development since Schwitzer fled. In the excitement at the prospect of gaining 300 new jobs, no one noticed that no financial details were given about how this occurred. No one asked and neither the city nor RCDC were going to confess to what they had done. For most people, especially those families that had lost jobs when Schwitzer left, just knowing Briggs & Stratton would be replacing the lost jobs was great news and besides didn’t we have city officials whose job it was to see to whatever minor details Briggs & Stratton needed? Everyone assumed these were the normal things such as making sure the sewers

worked and the lights came on. No one guessed how much they, as taxpayers, were really paying. RCDC, the private corporation, didn't have to tell, city officials had done it all in closed session so they weren't going to tell and it was not the Royal Utility's practice to explain anything to anyone.

**June 27, 1995** – Schwitzer U.S. Inc. executed the Warranty Deed but with RCDC, not with the city. The *first* City/RMU check for **\$1,536,000** to buy the building from Schwitzer had been made out to RCDC. It had gone right into RCDC's *hand* attached to RCDC's *arm*. We couldn't find any publicity about this illegal transaction. How could they do the usual handshaking picture, there was no way to justify putting **\$1,536,000** of city money in RCDC's bank account. Didn't anyone on the council question why RCDC had their fat fingers stuck in this deal? Didn't anyone question the sanity of just giving away \$1.5 million of the taxpayer's money to RCDC so *they* could buy property? The deal would have worked if the city had made the purchase themselves – it also would have been legal. But if done legally RCDC wouldn't have been able to take the credit for finally pulling off the big development deal they had been promising for 28 years and what was most important, they wouldn't have wound up owning a building that didn't cost them a dime. Not a bad day's work for a *non profit* corporation.

**June 29, 1995** - Briggs & Stratton signed their 'lease' with RCDC. The term of the lease was from June 29, 1995 to June 28, 2015. By virtue of the phony 'lease' Briggs & Stratton could duck out of paying the property taxes they owed everybody. Briggs was not required to pay any rent to RCDC but within one year from the beginning of the lease they had to spend **\$10,000,000** on improvements to the building and parking lot. This would boost the value of RCDC's new property to **\$12,250,000** in just twelve months. Briggs & Stratton was required to keep the premises in good repair and annually pay RCDC's in-lieu-of-real property tax payments of **\$29,411** to the county and **\$8,844** to the city as per the arrangement made to get RCDC's 100% property tax exemption from the county. Why a phony lease for 20 years? Because it got B&S 20 years of property tax exemptions and property taxes have gone up a lot in the last 10 years.

Briggs was required to pay their personal property taxes (on their machinery and equipment) and "*any special assessments levied or assessed against the leased premises by the State of Missouri, Phelps County or the City of Rolla during the term of the lease.*" Tax issues have passed since 1995, but Briggs & Stratton isn't helping pay any of them. They're still paying mock in-lieu-of taxes based on a small percentage of the low value of a trashed abandoned and contaminated building. The Rolla School District should be taking action to get their 91% of the property taxes from that property including the 80¢ increase in the school levy which they told us would be used only to pay teachers - not administrators. But the Rolla School Board doesn't keep an eye on the taxes they are owed. To this day they are stupidly unaware that they could be collecting their \$4.11 pound of flesh from what is now in 2005, a **\$32.25 million** property.

They have made no effort to recover any of the industrial property taxes the district is entitled to and given the phony "charity" exemption it would be as simple as filing an appeal with the Missouri Tax Commission. They have even (unlike all other school boards) collaborated with the city to give away more school taxes to the city's TIF project. Whenever they want more money they just get more from the same taxpayers who are also paying to make up for all the industrial property tax exemptions. RCDC isn't the only organization that continually milks taxpayers.

The lessee was also required to keep the property insured for "*ordinary fire plus extended coverage during the term of this lease and any extensions thereof for the sum of at least \$2,250,000 plus the cost of any improvements*" but they were not required to name RCDC or the City of Rolla as additional insured on the now grossly underinsured building. Briggs is also required to provide proof that they have liability insurance on the premises with minimum liability limit of \$5 million per occurrence.

On or before midnight on **June 28, 2015**, Briggs & Stratton has to tell RCDC if they are going to take possession of the building. The purchase price will only be **\$2,250,000** less 1.4% of their plant payroll for each lease year up to a maximum of \$112,500.00 per year. That works out to a purchase price of **\$0**. If there happens to be any cash payment due in 2015, it will go into RCDC's pockets not to the taxpayers of the City of Rolla who really paid for the building.

There is one catch to the tax-free RCDC building. **The property tax exemption was not given to Briggs & Stratton - it was only given to RCDC**, the owner of the building. Briggs & Stratton is expanding right now; a 300,000 sq. ft. addition estimated to cost another \$10 million. We find it hard to believe that such an expensive capital investment would be undertaken as a leasehold improvement for their RCDC landlord. Anything could happen between now and 2015; why risk losing what is now their own \$20 million investment in the building? Has B&S accelerated their \$112,500 per year credit and taken possession of the building ten years early? Only Briggs & Stratton and RCDC know and because they're both private corporations they don't have to tell anyone. The **Phelps County Assessor Jack Harris** (the new **Assessor, Kevin Rasmussen** doesn't take office until this fall) could find out if the deed has already been transferred to Briggs & Stratton. If it has he can post what is now, at minimum, a **\$32,250,000** taxable property on the property tax rolls. Has he bothered to check?

But wait. There is a catch to the catch. Just as we're only one more decade away from recouping some long-awaited property tax rewards from our secretive "investment," the city has extended the Enterprise Zone for another 7 years! Briggs and Stratton will have finished a \$10,000,000 expansion which qualifies for at least another ten years of 100% property tax exemptions *if* they had paid property taxes - which they haven't. They only make a **\$29,411** payment in *lieu of taxes*. If the city expands the old Enterprise Zone with the new Expanded Enterprise Zone, B&S will qualify for more decades of property tax exemptions. Every time we get within sight of the tax rewards

that we have been promised for 38 years from economic development 'investments,' we weren't told we were making, RCDC and the City of Rolla move the goalposts again and non-industrial taxpayers continue to pay the growing community services tax burden by themselves.

**June 30, 1995** – Rolla City Administrator **Merle Strouse** sent a memo to **Dan Watkins**, RMU manager, telling Watkins that RMU had to put in another \$7,000 toward their joint agreement to each contribute \$768,000 toward the purchase of the Switzer building. Exactly how much did city taxpayers and RMU utility rate payers end up investing in this building that, like everything else, was given to RCDC?

In response to our inquiry about the Briggs & Stratton deal, current City Administrator John Butz gave this explanation: *"The total purchase price from Switzer was \$2.25 million. UE paid \$700,000 and the City and RMU split the other \$1,536,000 (\$768,000). On 9/6/04 the City Council authorized to spend up to \$800,000 for the purchase and indicated "since the City cannot legally use its funds for another operation the funds must go through RCDC". The vote passed unanimously. RCDC was then approved as the "contracting agency". Under a lease dated 6/29/95 from RCDC to Briggs & Stratton, where B&S was required to invest an additional \$10 million on improvements, the building would slowly revert to B&S over 20 years provided they meet or exceed the employment requirements. The property tax rate was fixed at the 1994 amount of \$8,844.93 (County taxes of \$29,422) for a 20 year period."* (emphasis ed.)

**(Note: Jim Stoffer, President of the RMU board** told the council at their July 16, 2005 meeting that the board feels they were justified in secretly using huge amounts of their customer's utility payments for 'donations' like this because the new industries buy power and RMU will

eventually recoup the money from new power sales. In addition to the **\$768,000** purchase money RMU only recently ceased giving Briggs huge cash rebates on their bills. Who does Stoffer think he's kidding? Stoffer was at that council meeting to announce a 22.5% utility rate increase and he said they expect to be "raising rates by 6-10% every year for the foreseeable future because (he claims) their profits are shrinking.")

**July 3, 1995 – City uses reserves; cancels capital improvements.** On July 3, 1995, City Finance Director Murphy advised council that the hit on the city budget would drop reserves below \$2 million, cancel some planned '95 budget expenditures and cause unfinished projects to be put over in the '96 budget. No matter what city residents would have to do without or how low reserves would drop, a deal was on. If people complained their streets weren't getting fixed or sewage was backing up in their homes they could be fobbed off with excuses – just as long as the co-conspirators didn't tell their constituents what they had really done with their capital improvement taxes - and none of them did.

**How the deal should have been done.** If the City, RCDC, Briggs & Stratton 'deal' had happened anywhere else there would have been arrests or grand jury indictments. If the city had used their own IDA instead of RCDC to buy the building for \$2.25 million, the Rolla IDA (actually the City of Rolla) would be Briggs & Stratton's 'landlord.' They could also have done the PILOT on an accelerating scale. The whole deal would have worked exactly the same way except it would have been legal. It seems to be the minority view these days but we still see some virtue in government actions being legal.

In **"Hy Point - the Black Hole of Tax Assessment"** part 6: *"Avoiding the constitutional question"*

**Note:** Some documents referred to in this series are posted on the NSN home page. Providing them all would take up too much space. All are public record and available at City Hall or the County Courthouse.

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