

No Standing News

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

Volume II

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Number 54

No memorial for ‘Chief’ Buehler, just an “identification element”

As ordered by the Missouri Court of Appeals, Circuit Judge Tracie Storie made his do-over decision on the second Buehler Park case on September 14, ‘06. He decided this time that **Citizens for the Preservation of Buehler Park** did have “standing” to bring suit against the city but that the words in the original 1958 deed that said the property was given to the city “for park purposes only and none other, and to be known as Buehler Park” FOREVER,” didn’t really mean that. Storie says it really means that “if the city ceases to use the property in question as a park,” as for instance when they decide to change the “purpose” of the land and make it a cash cow to bail out their \$2.2 million debt, they are free to do it. How very clever of the 1958 Chamber to land-bank property for the city’s future financial bail-out and disguise it as a public park. How clever of Judge Storie to suss out the 48-year old secret Chamber plan from the deed and their minutes. Well, we’ll see what the Missouri Appeals Court thinks of Storie’s crystal ball.

We found it striking to read the 1958 Chamber minutes quoted in the plaintiff’s brief. It was impossible not to compare the attitude of the 1958 Chamber with the attitude of the 2006 Chamber. The Chamber members and “civic leaders” of 48 years ago took pains to ensure the Rolla Park Board (we had one then) was willing and prepared to care perpetually for this important gift because, they said, “maintaining the grove (park) was a moral obligation to the memory of Chief Buehler.” Imagine that, Chamber members then felt “moral obligations”!

Today’s Chamber falls far short of their predecessor’s ethical and leadership standard. Today’s Chamber doesn’t give the city anything. Today’s Chamber demands the city give them a \$511,000 park, that we give them \$250,000 to tart it up in addition to continuing to give them their annual income of nearly a quarter of a million dollars to do a little “marketing.” Today’s Chamber members never speak about their “moral obligations.” Such useless principles were discarded long ago along with the idea that a Chamber of Commerce should have enough pride as an organization to support themselves instead of demanding handouts from city taxpayers. Today’s Chamber doesn’t give, they take and take and then they demand more.

Council has never read any briefs in their own case. It would be helpful if members of the Rolla City Council at any time during the last eight years had read the briefs *on both sides* so they would have had a clearer view of their own case but they

have not. It is not the practice of their attorneys **John Beger** and **Lee Bushie**, the ex-mayor and the city administrator to show the council *any documents* or filings *relating to any lawsuits* against the city. There is a real danger if the council read them they might begin to doubt that God is always on their side and that Butz and their lawyers are never wrong. The council has been told that even if the court gave the plaintiffs “standing” to argue their case, the magical Chamber quit claim deed would trump the park dedication in the 1958 deed; that the quit claim released the city from the public trust they pledged to the 1958 Chamber of Commerce when the city promised to keep it as a public park and permanent memorial to “**Chief**” **Buehler** “FOREVER.” Common sense tells you that if it were that easy for governments to get out from under dedicated trust agreements to get some cash there wouldn’t be a donated public park, library or museum left in the country. Heaven forbid the council should begin to use common sense.

The excerpts below are from the brief by **Citizens for the Preservation of Buehler Park**, they are the nut of the Buehler Park dispute. Basically, the dispute centers around two points: **1.** Whether the plaintiffs (Citizens for the Preservation of Buehler Park) have “standing” to be heard in court (Storie has decided they do) so can they block the city (defendant) from selling Buehler Park, and **2.** Whether Buehler Park is a “dedicated” park held in trust by the City of Rolla which must remain a park “FOREVER” as they promised to do in 1958. Now that Judge Storie has ruled for the defendants (the City) the plaintiffs (the Citizens for the...of BP) will appeal his ruling to the Appeals Court. The council now has another decision to make. Do they really think the Chamber “quit claim” deed is the magic bullet their attorney’s and Butz have told them it is, or should they drop the whole thing and admit this was just another bad idea they were pushed into by their boneheaded ex-mayor Morgan and the avaricious Chamber?

The following are excerpts from the plaintiffs post-trial brief of the *Citizens for the Preservation of Buehler Park, et al* .Plaintiffs, v. *City of Rolla, Missouri, et al* Defendants.* Lawyers briefs are a little difficult to read because like term papers they are peppered with case citations and footnotes. We have deleted those distractions. The “statement of facts” in this brief were “stipulated” by the defendant (city), i.e. the city agreed they were true and not disputed.

PLAINTIFFS’ POST-TRIAL BRIEF

STATEMENT OF FACTS

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This case concerns the dedication of a parcel of land for a park and the preservation of an important part of Rolla's heritage.

In 1958 the civic leaders of the City of Rolla intended to (and did) set aside land for a public park to be known as "Buehler Park." The civic leaders of the City now in office intend to set aside "Buehler Park" for use as a restaurant district consisting of a "Lions Choice," a "Rib Crib," and a "Ruby Tuesday."

Acquisition of Buehler Park by the City Of Rolla

Before the City of Rolla took title to Buehler Park, the park land was owned by the Rolla Chamber of Commerce. The official records of the Chamber reveal that, in 1957, the Chamber was exploring whether to convey Buehler Park to the City:

The question has come up, whether or not the Chamber of Commerce should deed that part of Buehler Park which lies south of the road, to the City, so that the City, through the Park and Recreation Board could maintain and improve it. Discussion followed, and Mr. Maggi asked Mr. Christopher to meet with the Park and Recreation Board and get their opinion. Minutes of the Rolla Chamber of Commerce, July 10, 1957, Ex. 7.

At the next regular Chamber meeting, the Chamber discussed the conditions under which it would consider transferring the property to the City:

Mr. Christopher reviewed his meeting with the Park Board concerning the Chamber of Commerce deeding the park section of the Buehler Park tract to the City. Mr. White mentioned that maintaining the grove was a moral obligation to the memory of Chief Buehler. When the Park Board have definite plans for improvement, and maintenance, and arrangements can be made for the transfer of the property. Minutes of the Rolla Chamber of Commerce, August 16, 1957

Five months later the Chamber settled upon the conditions under which it would make the transfer:

Motion was made by Aaron Baxter, and seconded by John Morris, that the part of the land south of the road at Buehler Park be deeded to the City to be used from now on as a Park in memory of Chief Buehler. Minutes of the Rolla Chamber of Commerce, January 3, 1958, Ex. 7.

The land was to be used as a Park "from now on." The park was to be "in memory of Henry Buehler."

The following month the Chamber and the City executed the deed for the transfer of Buehler Park. The deed conveys the property "to have and to hold. . . FOREVER." (Emphasis in original.) The deed includes the following statement:

It is understood that the above described real estate is conveyed to the City of Rolla, Missouri for Park purposes only and none other, and to be known as Buehler Park.

In Memory of Chief Buehler

Buehler Park honors the life of Henry Andrew Buehler. Henry Andrew Buehler was born at Monroe, Wisconsin on May 27, 1876. He entered public service in Missouri in 1901 as Assistant State Geologist. He was appointed Missouri's State Geologist in 1908. He served as State Geologist for thirty-six years, having been appointed and reappointed by 11 governors during his term of office.

He was instrumental in bringing Fort Leonard Wood to Missouri. In 1935, he served as President of the American Institute of Mining and Metallurgical Engineers in 1935, following Herbert Hoover, the Country's thirty-first President.

Henry Buehler selflessly devoted his life to serving the public and, in particular, the citizens of Rolla. In 1944, upon Henry Buehler's death, Rolla's Mayor called for all Rolla businesses to close for two hours. The Missouri House, the Missouri Senate, and the delegates to the 1943-1944 Constitutional Convention all passed resolutions the following day. The Missouri House called Henry Buehler "Rolla's most prominent citizen." The Missouri Senate referred to Henry Buehler as "a Missouri institution." The delegates to the 1943-1944 Constitutional Convention wrote:

It is said that no man is indispensable. This may be true, but it will require many days to find a man of the stature and capacity and unselfish devotion to succeed to the work of H. A. Buehler . . .

Even a half century after his death Governor Mel Carnahan proclaimed that there be a “Chief Henry A. Buehler Week.” In all likelihood Henry Buehler is Rolla’s most prominent historical figure.

Proposed Sale of Buehler Park

In 2004 and 2005, the City of Rolla, its mayor and city council developed plans to sell Buehler Park. In December, 2004, the City mailed out requests for proposals for the sale and development of Buehler Park and placed an advertisement in the Rolla Daily News, soliciting proposals.

American Realty and Thessing Commercial Properties, among others, tendered a joint proposal to the City. The developers propose to develop Buehler Park into a “Restaurant Development District.” The proposal includes three letters of intent - one on behalf of “Ruby Tuesday,” one on behalf of “Lions Choice,” and a third on behalf of “Rib Crib.” While converting Buehler Park to these three eating establishments, the proposal claims to “preserve[] a part of the Buehler Park heritage,” in that the developers “plan to preserve a landscape strip on Fairgrounds Road and Kingshighway that will include a distinctive monument as a ‘City of Rolla’ identification element.”

In March, 2005, the City Council passed Resolution No. 1556, authorizing the Mayor to execute a contract with American Realty. In April, 2005, the City and American Realty executed an option contract for Buehler Park. The contract requires Buehler Park to be converted to at least one regional franchise restaurant and at least one other food service business.

ARGUMENT

I. BUEHLER PARK IS DEDICATED TO PUBLIC USE

The evidence establishes all three elements of a dedication: (1) the Rolla Chamber of Commerce intended to set aside Buehler Park for public use; (2) the City of Rolla has maintained the property as a park; and (3) the public has been using Buehler Park. Accordingly, as a matter of common law, Buehler Park has been dedicated to the City of Rolla for public use:

Common law dedication. . . is proven by showing: (1) that the owner, by unequivocal action, intended to dedicate the land to public use; (2) that the land dedicated was accepted by the public; and (3) that the land dedicated is used by the public.

A. The Rolla Chamber of Commerce intended to dedicate the land to public use as a park

The Chamber’s intent to set aside the “park” or “grove” in memory of Henry Buehler appears in the Chamber’s official records. The Chamber believed that there was a “moral obligation” to maintain the grove in memory of Chief Buehler. Minutes of the Rolla Chamber of Commerce, August 16, 1957. The Chamber would not transfer Buehler Park to the City until the City had definite plans to maintain the park. When the City’s plans to improve and maintain the Park were in place:

Motion was made by Aaron Baxter, and seconded by John Morris, that the part of the land south of the road at Buehler Park be deeded to the City to be used **from now on as a Park in memory of Chief Buehler**. Minutes of the Rolla Chamber of Commerce, January 3, 1958, Ex. 7 (emphasis added).

Moreover, the Chamber’s intent to dedicate or set aside Buehler Park for public use is set out on the face of the deed:

It is understood that the above described real estate is conveyed to the City of Rolla, Missouri for Park purposes only and none other, and to be known as Buehler Park.

Even if one were to ignore the existence of the Chamber’s official records, the wording of the warranty deed itself shows that the Chamber intended to set aside the Buehler Park land for public use as a park. A warranty deed which contains language showing an intent that the property be accessible to the public is sufficient to show an intention to dedicate land to public use. The language in the Buehler Park deed is far more restrictive, for example, than the language contained in the warranty deed which was the subject of *Coffey*. In *Coffey*, a general warranty deed conveyed a private road and contained the language “Grantee agrees maintenance of road in suitable condition for school bus to travel.” The Court of Appeals held that the recitals in the deed manifest the owner’s intent to dedicate the road to public use. See also *Hand v. City of St. Louis*, 59 S.W.92 (Mo. 1900). The language in the Buehler Park deed is far more specific and more limiting than the language in the *Coffey* and *Hand* deeds. The language in the Buehler Park deed shows the intent of the Rolla Chamber of Commerce to dedicate Buehler Park to public use.

B. The land dedicated was accepted by the City of Rolla and maintained as a public park

With respect to the second element, acceptance by the public, the City of Rolla has maintained, and the public has used, Buehler Park for approximately fifty years. Maintenance of

Buehler Park by the City and use of Buehler Park by the public are sufficient to establish acceptance by the public.

Summary: The purpose of a dedication is to establish a trust. The grantor gives up his ownership, in exchange for assurance that successors to the grantor and grantee will not have the authority to alter the terms of the trust. In 1958, the Rolla Chamber of Commerce dedicated Buehler Park for public use as a Park in exchange for the assurance that neither the Chamber’s successor, nor the City of Rolla, would one day be tempted to swap park land for tax dollars (or perhaps for a bite of Rib Crib’s “Buckaroo BBQ Sandwich”).

CONCLUSION

Buehler Park was dedicated to the City of Rolla for use by the public as a park. Having received the property for "Park purposes only and none other," the City of Rolla holds Buehler Park in trust for the public, to be used for the purpose for which it was conveyed. The City has no power to sell or alienate any part of the Park property. For the reasons set forth above, this Court should enjoin the City of Rolla from conveying or alienating Buehler Park for use as a restaurant district. *(End of Plaintiffs brief)*

The Buehler Park ‘legacy.’ Regardless of Judge Storie’s September 14, ’06 decision and regardless of the outcome of the

higher court ruling, some things will remain as the legacy of the Buehler Park Lawsuits which were instigated by the Chamber dominated City Hall. Eight years of litigation has exposed an absence of character in our self-appointed Chamber and city “leaders.” Real character was shown by the Chamber of the previous generation in their respect for Chief Buehler and their generous act of citizenship. Part of the ‘legacy’ will now be a lingering public distrust of a city government that has demonstrated they think nothing of going back on their word and violating a trust for money (quickly spent) to get more “name” brand eateries (which come and go with fashion tides) because they think having the ‘right’ labels, whether on luxury handbags, cars or restaurants, confers the ‘right’ status which will solve their self-created financial crisis. If they do finally destroy the park all we will be left with, as the sale contract says, is “a landscape strip on Fairgrounds Road and Kingshighway that will include a distinctive monument as a ‘City of Rolla’ identification element.” A meager “identification element” will not remind future generations of a selfless and highly accomplished Rolla leader, but it will be a bitter reminder that we are now represented by Generation X-ers with their “me-first” entitlement attitudes who easily rationalize pulling down anything that gets in the way of their obsession with status, image and money.

*Brief submitted by attys: **Bruce A. Morrison, Kathleen G. Henry, Henry B. Robertson**, Great Rivers Environmental Law Center. The entire brief including the “standing” argument and the City’s brief submitted by **John Beger** and **Lee Bushie** can be read in full at: <http://www.buehlerpark.org/>

“**Hail to the Chief**” by Lois Marler - the full history of Chief Buehler can be found at: http://www.rollanet.org/~rwnash/Buehler/Hail_to_The_Chief.PDF

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