

# No Standing News

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

Volume I

Number 55

January 31, 2000

## COUNCIL CHRONICLES: JANUARY 2000

By Lois Ann Marler

### Mayor Morgan 9,499; Voters 0

For those who were planning to go to the polls in April and vote on the Buehler Park referendum, you can relax! Mayor Joe Morgan cast your vote for you. The 9,499 registered voters in the City of Rolla had their voting prerogative usurped by the vote of one man.

At the January 18, 2000, Council Work Session, following discussion on the ordinance placing the Buehler Park question on the ballot, the council was split in a 6-6 vote. Morgan broke the tie, stating, "From day one I've told you my opinion on this is this is the council people's responsibility." Those who voted against letting the citizens decide the fate of the park were: Don Brown, Ed Owsley, Mike Estey, Lou Magdits, Jimmy Dale Williams and Charlotte Wiggins. Estey, who originally voted in favor of drafting an ordinance to place the issue on April's ballot, was the only member of the council that had a change of heart, and voted against the referendum.

City Administrator John Butz added that the Buehler Park question would possibly be included in a community attitude survey, which is planned for March. (Unfortunately, it won't be County Clerk Carol Bennett who will tally the votes-it

will be the ones who are wanting to sell the park who will "interpret" the results for us. Frankly, I don't trust the City Hall Fox to count the chickens.)

Members of the council who aren't afraid to hear from the public, and subsequently voted for the referendum are: Ed Rothwell, Don Barklage, Sue Eudaly, Judy Jepsen, Brian DeFrieze and Bettye Sheffield.

### Define "Workshop" Please, Mayor Morgan

Immediately after the Mayor broke the tie on the referendum vote, Phillip Lampert, Ward Three Council Candidate said, "Wait a minute, Mr. Morgan. Could I address the council?"

Morgan barked, "No, you may not. This is a work session."

Morgan explained to Lampert about the ordinance that was passed but would not allow him to speak because it was a "workshop." There was no citizen communication allowed the entire evening, even though the council does everything at a workshop that they do at a "regular" city council meeting, including voting on ordinances, public hearing on rezonings, closed sessions and contract approvals. The Workshop IS a council meeting. It looks like Morgan's "workshop" is newspeak for killing public comment. For more information on Council Workshops see NSN Vol. 1, Num. 26 and 42.

### **Buehler Park Appeal**

At the January 18, 2000, Work Session, the City Council held a closed session, which included a discussion on new developments in the Buehler Park Appeals case. Following the closed session, City Counselor Lee Bushie announced there will be a hearing regarding the Buehler Park injunction bond in March with a decision coming in April. The hearings will be held at the Phelps County Courthouse, so we'll keep you posted on the date. This hearing will focus on the 1997 appraised value of Buehler Park, and how that relates to any city damages.

Just two weeks ago at the January 3, 2000, council meeting, Bushie assured the council that the appeals court was holding a simple hearing on the injunction bond. However, there is no guarantee that this is the end of the Buehler Park Appeal. It may be a prelude to something else. Bushie can't say for certain where this case is going, because after this hearing, the Plaintiffs will decide if there is another round or not. This case could turn into a tangled mess with an unpredictable finale. Is it wise to rush into another sale with an unsettled court case still active?

### **Rec Center Update**

It was a grueling two-hour rec center discussion at the January Council Work Session in which revealed just how off course this project has gotten. The council voted 10-2 (DeFriese and Sheffield dissenting) to accept the final schematic design for the proposed rec center.

The current rec center floor plan was explained in detail by Sverdrup, the Architectural and Engineering firm hired by the city. When the indoor pool was unveiled, Councilman Rothwell spoke up and asked where the other "option" was for the pool that they had been told they would be deciding on at this meeting. Scott Hester, pool consultant from Councilman/Hunsaker said,

"This is the schematic after taking your thoughts and opinions and again incorporating what the committee said..." Rothwell responded, "What thoughts and opinions? What thoughts? Because we didn't get any thoughts."

Hester had unknowingly let the cat out of the bag. I suppose he hadn't been coached like the other "experts" have: pretend like you are taking orders from the council, even though a handful of people are calling all the shots on the rec center. For one thing, there is no "committee." It was disbanded on 9-1-99. Who gave Sverdrup authorization for the design that was chosen? It probably doesn't matter. It follows suit with the way this entire project has been managed (or mismanaged). Sverdrup, Magdits, Morgan and Kwantes tried to smooth it over, but they sounded like juvenile delinquents trying to cover for each other. Rothwell never did get an answer to his question, and he certainly didn't buy the baloney they were trying to sell.

Discussion was also heard on the latest proforma for the rec center. Jeff King of Ballard & King addressed the council on the proforma, which concentrated on the current recovery rate of 86%. An 86% recovery rate leaves an annual shortfall of approximately \$114,000. ("Recovery rate" or "recapture rate" = how much they're going to gouge the public in fees for their bad design decisions.)

In a letter from King to Ken Kwantes, Park & Recreation Director, King suggested ways that the city could edge closer to a 100% recapture rate. One suggestion was to create a partnership with UMR and develop sports-related and rec center management-related curriculum, in essence making the rec center a UMR classroom. He also suggested pursuing a partnership with the hospital, Rolla Public Schools, selling advertising space inside the building and implementing a non-resident fee structure.

Another suggestion was the "aggressive" route. When Councilman Rothwell pressed King for a solution to closing the recapture gap, King said, "What you're asking for is something that's very aggressive. It's an aggressive approach to raising revenue and that comes at a price. It comes at a **price of competing with existing businesses and services in Rolla**, and we have been trying to balance that. And the crux of where we're at is how aggressive do we want to be in pursuit of that revenue? And what do we want to do to existing businesses?"

King also responded to a question about the rec center director. In his letter to Kwantes, he suggests maintaining the "already efficient" structure of the Parks Department. He wrote, "The senior management team is already in place and has substantial professional background." He's talking about Ken Kwantes. The proforma doesn't include a salary for the director of the rec center. When Councilman Magdits asked why it was missing, King replied that it was a "no line item." (It's not hard to figure this one. The proforma states that the position "...is appropriated through the existing recreation fund and will not be funded in the proposed health and recreation center's budget." Staff already exists to fill the position: Ken Kwantes. Simply give him a new title, more pay, more staff and VIOLA! We have the makings for a disaster.)

The Council also approved the bid to Maggi Construction for the Site B package on the pool, which was originally to include a sand volleyball court, but has been scrapped (along with a laundry list of other items) because of budgetary constraints.

At the January 3, 2000 meeting, the Council awarded the bid of \$163,082 to Maggi Construction with the hopes that Maggi would reduce the bid before the January 18th meeting when the contract was "formally awarded." The city chose to trim the bid to the bone in order not exceed 5% over budget. Deductibles of \$8,995

were shaved off which included a \$3,795 retaining wall, \$3,000 in excavation work and \$1,450 in stereo equipment. The \$1,450 stereo expense is for a compact disc player. Councilperson Sue Eudaly insisted that a CD player is necessary for a place where kids will patronize, and was appalled to learn from Kwantes that the entire public announcement system at the pool was \$11,000, now reduced to \$9,550 without the CD player. She said that she has experience with sound systems and plans to get a better deal for the city.

The Council also approved a contract with SM Wilson & Co. for "value engineering and validation of the rec center's construction budget" for \$10,000 plus reimbursables. The contract could have been expanded to include their services through the final design phase, but the council opted for their expertise during the next 2 months of the final schematic design.

Something that wasn't discussed regarding the rec center is governmental approval for using Ber Juan Park to build in. The city has not been given the green light to use Ber Juan Park for the rec center from the Department of Natural Resources and the National Parks Service. This approval is necessary because of restrictions in the grant program that the city participated in when they developed Ber Juan Park.

### **RMU Rezoning Request**

At the January 3, 2000, meeting, the city council heard the first and second reading on two ordinances submitted by Rolla Municipal Utilities. RMU is requesting that the city approve the preliminary and final plats of "Municipal Acres 1 and 2." The properties are located on Highway O adjacent to the current RMU maintenance facility. The request is will provide right-of-way for Lions Club Drive, and added future storage space for RMU. The Rolla Public Schools had planned to build on the property, but realized they would have been land-locked with the roads.

Unlike any other person(s) requesting approval of a plat or rezoning, RMU was not present at the council meeting to answer questions from the council. Councilman Magdits suggested that RMU appear before the council before the plat is approved.

Council Brian DeFriese speculated that if RMU can own property, then they are a "private" utility and can't be a protected utility provider for the city. City Administrator Butz added, "RMU is allowed to do whatever the city council is willing to delegate to them." (In the 1998 state audit, RMU was reprimanded by then-Auditor Margaret Kelly for exercising this "delegated authority." RMU responded to the Auditor's reprimand by saying, "Chapter 91, Section 91.590 [RSMo], suggests that a municipally owned utility is granted all of the same rights and powers as the city **and additional rights in Sections 91-560-91.590.**" The Auditor responded to their rebuttal by writing, "The statutes in Chapter 91, RSMo, cited in the Board of Public Works' response do not support the board's assertions. In addition, these statutes **do not apply to the city of Rolla.** The Board of Public Works' authority and power is limited to managing municipal utilities. **Any expenditures of utility monies for non-utility purposes translates into higher utility rates than necessary to operate and maintain the municipal utilities.**"[all emphasis mine]) The Auditor was sending a wake-up call to the ratepayers of Rolla. The state audit helped to prove that our "public" utility is nothing more than a publicly funded maverick organization!

### Skateboard Park on the Horizon?

The City Council heard from the Rolla Skateboard Association at the January 3, 2000, meeting. The organization is requesting that the city help them develop a plan for a 25,000 square foot skate park, which is to include outdoor lighting, restrooms, and a shelter. The

association estimates the cost to be approximately \$50,000.

A motion was made and passed to have Parks and Recreation Director Ken Kwantes work with the organization to get the project off the ground. I learned that Kwantes had an initial meeting with the group on January 20, 2000.

### Commentary

The subject of Rolla's missing Park Board has been a hot topic since the Buehler Park issue emerged in 1996. On March 11, 1998, City Counselor John Beger gave his "opinion" on the topic, saying that according to state law, Rolla is not required to have a park board. Now Mr. Beger's legal sidekick, Lee Bushie, has interpreted the same law as it applies (or doesn't apply) to the sale of Buehler Park.

The discussion started on January 3, 2000, when Councilman Brian DeFriese claimed that the Buehler Park ballot language was superfluous when it specified that park sale proceeds would go to "parks and park improvements." DeFriese contended that by law the proceeds couldn't go toward anything but the park fund. The Mayor challenged DeFriese to produce the state law he was referring to, and at the January workshop he asked DeFriese for it again. DeFriese said he didn't have a specific number from the state statutes, but that all park monies should be under the control of the Park Board. He added that since the Park Board had been abolished, it was now in the council's control.

The Mayor then turned to City Counselor Lee Bushie for his "opinion." Bushie opined, "Yeah, let me just say I think I did a poor job at last meeting responding to your question. There is that statute, it's a statute, not an ordinance, park boards, and it talks about, there's a levy, that the citizens may tax and then if the park board, voted to appoint, then that money has to go back to the

fund. Well, that wouldn't apply if Buehler Park were sold. The facts with Buehler Park don't fit that statute. So to my knowledge...and it's different with Ber Juan cause that's a different process that we're going through there on the 6(f) conversion. There's no state or federal statute or regulation that would apply in the event that the park were sold. So the statement that we're bound to take the proceeds from the sale of Buehler Park and use those for any certain purpose or any certain fund, I don't think it's correct, and I should've said as much to the council."

Too bad Mr. Bushie didn't explain WHY the Buehler Park sale doesn't fit that statute. The council sheep fell for his asinine explanation. The fact is, what happens to ANY city park should be under the control of the park board. In 1981, however, Rolla decided to abolish the park board by ordinance and establish the Parks Department that is now not only "managing" our parks, but also is charting the course for the rec center and outdoor pool renovation. Accountability was thrown out the window with the same vote that made Ken Kwantes Parks and Recreation Director.

Just to clarify, the park board that Rolla once had was an *administrative* board. They had their own budget, were in control of personnel matters, and were a public body that was accountable to the citizens of Rolla, much like the current library board. <url #1- Park Board statute>

Had a park board been in existence in 1996, the Buehler Park fiasco might never have happened. The park board would have worked toward park upgrades, not neglect of our system and buddy-bailouts. That's probably why the council voted to disband it; it wouldn't "cooperate" with their deviant plans.

Imagine the turmoil that would erupt if our city council decided to "abolish" the library board! Now imagine one person having full control of

the library, enjoying the liberty to decide what books would be on the shelves. Now imagine the city council deciding to dispose of the entire reference section without as much as a public hearing! (In 1996 then-Mayor Wax, when asked about a public hearing on the sale of Buehler Park, stated, "You'd trade a Cracker Barrel for a public hearing?") "But these books are valuable on the antique market!" the Council would reason. "Besides, we'll buy you more books! We promise! Trust us!" With the city's history of records destruction with no microfilm backup, it would be nothing for them to dispose of books. This would create chaos in the community not unlike the chaos that their park sale has caused.

Something that Bushie failed to mention was a 1995 Missouri Attorney General opinion on this very subject. This opinion is very relevant to the abolition of Rolla's Park Board, and subsequently the abolition of any accountability from that department. In Opinion letter number 181-95 the Attorney General states, "There is no provision in (RSMo) Sections 90.500 through 90.570 that causes the park board to be abolished even if no property tax for parks is levied. **Therefore, it is the opinion of this office that a park board created under Sections 90.500 through 90.570, RSMo 1994, continues to exist even if no property tax for parks is levied.**" Rolla's attempt to abolish the Park Board in 1981 was as futile as trying to stop death and taxes. For 19 years, the city has been collecting a park tax with an illegally abolished park board. Are the taxpayers due a refund?

So what has the fallout been from this assassination of accountability? We now have one city park on the auction block, a Ber Juan paradise that is scheduled for concrete coverage, a Parks Director whose salary and car perk is approaching that of the city administrator, a recreation center that is in total confusion, and the list goes on. It is time for citizens of Rolla to step up to the plate and demand accountability with the money that is being bled from them. If

left to fester, we'll see Kwantes as King of the Rec Center, which could dive into an economic abyss, along with more park exploitation.

---

url #1- Park Board statute: RSMo 90.550:  
<http://www.moga.state.mo.us/statutes/C000-099/0900550.HTM> (**Other relevant park board accountability statutes from 90.500-570**)

---

Views expressed do not necessarily reflect those of No Standing News, nor of its Editor-in-Chief.

-----  
To receive " No Standing News " by e-mail, free of charge, send a message to [rwnash@rollanet.org](mailto:rwnash@rollanet.org) with the word SUBSCRIBE in the Subject line.

To unsubscribe this list, send a message to [rwnash@rollanet.org](mailto:rwnash@rollanet.org) with the word UNSUBSCRIBE in the Subject line.

-----  
Editors note: Copies of No Standing News can be obtained free from the Rolla Public Library who is a subscriber, and from Mail Boxes Etc Of Rolla Also visit our web site at:  
<http://www.rollanet.org/~rwnash/nsn.html>

-----  
I encourage distribution of " No Standing News ."Please feel free to copy and distribute any issue.