

The Carl Junction City Council met in regular session on Tuesday, July 6, 2004 at 7:00 at City Hall. Mayor Jim Wisdom called the meeting to order with the following present: Richard Zaccardelli, Barbara Evans, Mike Moss, Gary Stover, Mike Palmer, Walter Hayes and Wayne Smith. Aldermen Pat Smith was absent.

### AGENDA

Mike Palmer motioned to approve the agenda. Richard Zaccardelli seconded. All in favor. No opposed. Walter Hayes then asked that we split the consent agenda items. Mike Palmer motioned that we approve item (a) minutes as presented. Richard Zaccardelli seconded. All in favor. No opposed. Next the council reviewed item (b) disbursements. Walter Hayes stated that Pat Smith had a question about the disbursements that she asked him to check into. There was some discussion in February about the payment of attorney fees for the Mayor. In that meeting our attorney stated that the mayor's right to seek legal counsel is being challenged in court. It was stated that it was part of the Rails to Trails lawsuit. Mike Talley stated that we would move for dismissal of those lawsuits when the Joplin Rails to Trails obtains the deed to the property, since the City has no interest in it. Therefore we will probably not get an opinion on the other issue of the Mayor obtaining outside counsel. His opinion was that the Mayor can spend up to \$1000 and there has been nothing since then that has happened that has changed his opinion. However, he stressed that his opinion was not an unqualified opinion. He quoted from his original opinion citing several code sections which, when construed together, appeared to give the Mayor such authority. However, that same opinion also suggested that the question was a close one, there appeared to be inconsistencies, and that if the practice of the Mayor hiring outside counsel without the approval of the Board of Aldermen was to continue, the code should be amended to clarify the procedure. Mike Palmer stated that the code committee should probably look into that limit of \$1000. There was some discussion of the previous event when the Mayor hired Charles Montagne to represent the City. There was more discussion about the \$1000 limit. Mike Palmer stated that this bill is for \$1120 and asked what is right. It exceeds the limit. Mayor Wisdom stated that the department heads and City Administrator have the \$1000 they could spend. The question is whether the Mayor can or cannot spend more. He stated he engaged the attorney because of the practice of the City Administrator not following our code. He also stated that the City Attorney was incorrect as far as voting procedure. He stated that there are procedures he could take legally if the practice continued. He also stated that the City Administrator is under the direction and supervision of the Mayor. Mayor Wisdom stated that they all took oaths to uphold the state law and city codes. The Mayor is to see that they are followed and if there is a violation he expects it to be corrected. He stated that the council needs to read the codebook and see that it is followed. And if they don't see that the codes are followed he will take whatever action is needed to see that they are followed. He stated that more than \$1000 has been spent on legal fees as far as Rails to Trails. He stated that the council can change the code but they can't change the state statute. Mike Palmer replied that \$1000 is the current code. Mayor Wisdom stated yes but the Mayor can seek outside legal help anytime when violations occur. Mike Palmer stated that in seeking legal counsel we have hired a city attorney and there is no limit on our attorney. Mayor Wisdom challenged that he can spend \$1000 on seeking outside counsel when our city attorney is wrong. He does not think he needs to seek their approval to do that. He could be wrong but that is what the state law says. He only wants the codes followed and when he tries to enforce them the council tries to change the code. Changing our code does not change the state law. Mike Palmer stated the question is can they approve a bill for over \$1000 and be within the code. He is finding it difficult to believe they can. Mayor Wisdom said he may be right but he will challenge it. Mayor Wisdom said it is about the Mayor's duties and the state laws. If the council wants to change it then change it but they need to do what the book says. Mike Palmer asked what limits on the amount that he thought he had. Mayor Wisdom thinks there is a limit he is only challenging it when the code is not being followed. Mike Palmer is concerned that a Mayor could spend whatever he thought he needed to if he thought the council was not following the code. Mayor Wisdom stated that the council is not following our codes. He asked if the council as a whole has a right to request legal counsel. Mike Palmer stated that the city attorney is on our payroll and it is a different question regarding his fees. Mayor Wisdom stated that the written opinion from our city attorney was not correct in all its phases. Mike Palmer replied that it was correct on the original question but was incorrect on the voting issue. The City Attorney was correct on the main issue. Mayor Wisdom stated that he does not think the Mayor should spend money on outside legal counsel and bypass the City Attorney but there is a process there and he followed it. He questions someone writing a code that sets conditions for his employment. He is not saying that is what the City Attorney does but he questions the perception of that. He is frustrated that the code is not being followed and he has not been able to get the council to follow the city code. Mike Palmer asked that the Mayor prepare what he feels like what the council is not doing to not follow the code and he would like to discuss that at a future meeting. He stated that is a serious statement. Mayor Wisdom stated he would prepare a statement. Walter Hayes stated that Pat Smith was very vocal of her feelings on this issue. Walter agreed that there is no direction on what the City can do except what the code says up to \$1000. Walter suggested that even though it goes over that amount we should go ahead and approve it. It would cost us more money not to. Walter just wanted to reiterate the displeasure of several of the council to go outside our legal counsel for another opinion. Mayor Wisdom wanted the record to state that it was not a whim it was something very serious about what we should be doing. The attorney's have an opinion and if you think it is wrong then you have every right to seek another opinion if code violations are being made. Mayor Wisdom thinks we need a City Administrator and Joe Barfield is a fine person, but the problem he has is he does not follow the code in all aspects. Mike Palmer stated that we need to put in the code somewhere that the Mayor cannot spend an unlimited amount of money on attorney fees for second opinions. We need to improve that and close that door. Mike Talley then asked to make a statement. He stated he could not let the public misconception stand about his advice and opinion issued. The central issue was a section of our code that allowed our mayor to suspend without council approval any employee of our city and it was questioned whether that applied to the City Administrator. His opinion was it did not without council approval. Another issue arose from this question. He noticed an inconsistency regarding the mayor's vote. The mayor's outside legal counsel pointed out that he was incorrect on the mayor's vote and Mike Talley informed the council and stated he stood corrected on that count. But as far as the central issue on the personnel rules on the suspension of the City

Administrator he has not changed his opinion nor has any information from the independent attorney shed any light on a different interpretation. The voting issue was a side issue to the main issue. Mayor Wisdom then had a question on the bill from King Hershey on the TIF Commission. He stated that when they were hired the agreement was \$3500-\$5000. He asked Joe for the total amount paid. Joe replied about \$9000 but it includes meetings with the TIF Commission. It was also mentioned that the bill from Stewart-Neece is on the Ivy Road property. Walter Hayes motioned to approve the disbursements as presented. Richard Zaccardelli seconded. All in favor. No opposed.

### **PUBLIC FORUM**

There was no one for public forum.

### **P&Z CASES**

P&Z Case #04-22 – Special Use Permit kennel permit – Wilma Sours – 408 N Arlington. Public Hearing opened at 7:40 PM. Cynthia Hinton, 408 N Arlington, stated that they are withdrawing their request, as they no longer need the permit since her mother moved out. Public Hearing closed at 7:41 PM.

### **DISCUSSION OF APD AND CITY'S SEWER RATES**

Dean Willis from Allgeier-Martin & Associates is here to answer any questions that the council may have. He explained that out of town rates follow a format set out by EPA. We use that as a model to update our user fees. He also informed the council that several years ago the former council made a decision to allow APD to hook into our lines and we would treat their sewer at our plant. He then went through the methodology of how they figure our rates and Airport Drive rates. The council also in the past made a decision to bill APD at a flat rate to make it easier. The proposed rates will generate the revenue we need to offset their costs. APD will also need to adopt this ordinance for these rates. Mayor Wisdom explained that every January we renegotiate new rates. Mike Palmer expressed concern that in treating their sewage we will use up our capacity sooner than expected. Dean said they take that into consideration when they propose a plant expansion. Right now they are still on target with another 15 years to go. Mike Palmer asked if our bond issues are taken into consideration. Dean replied yes. Dean also explained that we are spreading the cost out more due to a bigger customer base. There was more discussion about future expansions and whether it cost our residents more to allow APD to be on our system. Mayor Wisdom then stated that our resident's rates would go up 32 cents per 1000 with this increase. Dean explained that EPA supplied Carl Junction with a grant for their treatment plant and then APD asked for treatment for them. Dean stated that he feels they pay their fair share. Mike Talley explained that they have an effective date of 8/1/04 on this rate structure. It was also pointed out that we need to negotiate new contracts with Airport Drive, Fountain Rd Park Village and HOUSE Inc. We will try to have those by next meeting.

### **ORDINANCES**

Walter Hayes motioned to put "AN ORDINANCE ANNEXING 403 W WALNUT, CARL JUNCTION, JASPER COUNTY, MISSOURI, OWNED BY WILLIAM L KING AND THERESA D KING, HUSBAND AND WIFE, AS MORE FULLY DESCRIBED IN THE BODY OF THIS ORDINANCE" on first reading by title only. Barbara Evans seconded. Walter Hayes motioned to put it on second reading by title only with a roll call vote. Barbara Evans seconded. Zaccardelli-y, Evans-y, Moss-y, Stover-y, P Smith-absent, Palmer-y, Hayes-y, W Smith-y. Motion on Ordinance #04-43 was approved by roll call vote, signed by the Mayor, attested by the City Clerk and made a part of the permanent records of the City of Carl Junction.

Next was the Ordinance approving a contract with Jeff Asbell Excavating Inc. replacing the sewer line between Verbryck & Broadway. Mayor Wisdom asked if the ordinance has to be passed before the project starts. Mike Talley stated that the City would have no legal obligation to pay the contractor if he started without the ordinance being passed first. The City is not at risk. Joe Barfield stated that it was a private line we are taking over. It was damaged during the tornado and was crushed. We did not know this until the new houses were rebuilt and hooked back onto the line. He had the equipment available and in the area so he has started the project but is not completed. Mike Talley thought that due to the line being crushed it needed repaired as soon as possible. Mike Palmer motioned to put "AN ORDINANCE APPROVING AN AGREEMENT BY AND BETWEEN JEFF ASBELL EXCAVATING & TRUCKING, INC., AND THE CITY OF CARL JUNCTION, MISSOURI, TO REPLACE THE SEWER LINE BETWEEN BROADWAY & VERBRYCK IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THE CONTRACT DOCUMENTS; PROVIDING FOR THE PAYMENT OF THE SUM OF \$37,127.70, OR AS SHOWN IN THE CONTRACT DOCUMENTS ; AND, AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT FOR AND ON BEHALF OF THE CITY OF CARL JUNCTION, MISSOURI" on first reading by title only. Walter Hayes seconded. Mike Palmer motioned to put it on second reading by title only with a roll call vote. Barbara Evans seconded. Zaccardelli-y, Evans-y, Moss-y, Stover-y, P Smith-absent, Palmer-y, Hayes-y, W Smith-y. Motion on Ordinance #04-44 was approved by roll call vote, signed by the Mayor, attested by the City Clerk and made a part of the permanent records of the City of Carl Junction.

It was stated that this raises our resident's rates but we will have another contract with APD at the next meeting that we will need to approve. Mike Talley will contact them to start the process and after some discussion it was decided that the City Administrator could contact HOUSE Inc and Fountain Rd Park Village to start those negotiations. Mike Palmer motioned to put "AN ORDINANCE AMENDING TITLE VII. UTILITIES: CHAPTER 720: USER CHARGE SYSTEM BY ADOPTING A NEW APPENDIX A TO SEWER USE CHARGE ORDINANCE (ACTUAL USE RATE STRUCTURE) AND BY AMENDING SECTION 720.040 USER CHARGE RATES TO REFLECT SAID CHANGES IN RATES; AND ESTABLISHING AN EFFECTIVE DATE FOR SAID NEW RATES" on first reading by title only. Mike Moss seconded. Mike Palmer motioned to put it on second reading by title only with a roll

call vote. Mike Moss seconded. Zaccardelli-y, Evans-y, Moss-y, Stover-y, P Smith-absent, Palmer-y, Hayes-y, W Smith-y. Motion on Ordinance #04-45 was approved by roll call vote, signed by the Mayor, attested by the City Clerk and made a part of the permanent records of the City of Carl Junction.

Next the council reviewed the ordinance with the Carl Junction Special Road District. Walter Hayes is acting as a dual agent. The properties will close back to back this Friday. We need to sign the contract so that the title company can prepare the documents. Mike Talley stated that we have the right to inspect the property and we should for environmental safety and due diligence. It reads 30 days on the last page. It was asked if it could be a contingency. There was some discussion on this issue. It was also stated that they would have to do an environmental study on their property. (Mike Palmer stepped out of the meeting for a brief period – 9:00 PM) Walter Hayes motioned to add 30 days inspections and change the closing date to August 9, 2004. Mike Moss seconded. All in favor. No opposed. Walter Hayes motioned to put “AN ORDINANCE APPROVING THE REAL ESTATE CONTRACT BETWEEN THE CITY OF CARL JUNCTION, MISSOURI, AND THE CARL JUNCTION R-1 SPECIAL ROAD DISTRICT, AUTHORIZING THE CITY TO PURCHASE ALL OF LOTS NUMBERED 76, 77, AND 78 IN THE ORIGINAL TOWN OF CARL JUNCTION, IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 28 NORTH, RANGE 33 WEST, JASPER COUNTY, MISSOURI, OTHERWISE KNOWN AS 209 NORTH MAIN STREET IN CARL JUNCTION, MISSOURI; AUTHORIZING THE CITY TO ACCEPT A WARRANTY DEED TO SAID PROPERTY FROM CARL JUNCTION R-1” on first reading by title only. Mike Moss seconded. Walter Hayes motioned to put it on second reading by title only with a roll call vote. Mike Moss seconded. Zaccardelli-y, Evans-y, Moss-y, Stover-y, P Smith-absent, Palmer-absent, Hayes-y, W Smith-y. Motion on Ordinance #04-46 was approved by roll call vote, signed by the Mayor, attested by the City Clerk and made a part of the permanent records of the City of Carl Junction.

### **REPORTS**

The council went over Joe’s report.

Memo #1 – RR property North & South line – Redwood Development has purchase land from Cecil Brill and they would like to purchase the RR land that runs north and south there. It is a strip 100’ wide. We have sold other pieces of this property. Mayor Wisdom stated we shouldn’t give up our easement. Joe stated they are planning on developing that area. The council agreed to proceed with the sale of this property and send the request to P&Z.

Memo #2 – Thom’s Station – Joe reported that when he got his building permit he stated he would be building a shell of a building with no plans. He stated that when they did the individual units he would have plans since they did not know what was going to go into the sections. Now they are having a pro shop, beauty shop and liquor store. We now need plans for this location. It is difficult to inspect if there are no plans. We are concerned with the fire codes. Joe will be meeting with the developer to set down and resolve these issues until they are all satisfied. This is the first commercial structure the city has. Joe said they would work out their differences. Richard Zaccardelli would like to attend that meeting. (Mike Palmer returned at 9:20 PM)

### **COMMITTEE REPORTS**

Wayne Smith reported that the Nuisance Committee met and our code on weed violations is their main concern now. He passed out a rough draft with some information that they had discussed. He said it mainly needs clarification and some discussion on abatement. Joe had given them a lot of information from other towns in the area. He thinks the clarifications will help the code officer. There was discussion about safety and health hazards. There is some gray area on vehicles that they will be addressing. Richard Zaccardelli stated that Misty is doing a good job. He suggested we invite her to a meeting. Joe stated that she had 315 citations and 75% of them have been completed.

Human Resource committee will meet 7/27/04 at 3:30 PM.

Public Facilities committee met and made an inventory of all our facilities. They will next try to set goals and objectives. Their next meeting is 7/28/04 at 3:30 PM.

Code Review committee has not met yet but will meet 7/15/04 at 3:30 PM.

### **UNFINISHED BUSINESS**

Walter Hayes stated that the modular home going in at 211 S Cowgill looks like a doublewide manufactured home. It is on a frame but is a modular. There was some discussion about if it was a modular and the foundation. It will be on blocks but is supported by the frame. We need to make sure that it is a modular. Joe reported that it has the proper code information and is a modular.

Joe then handed out a letter to update our study on the bridge across Center Creek. To update the information will be \$1750. He has found some funding for the bridge if it involves utilities. Joe is estimating that this bridge will cost \$2-\$3 million. Steve reported that there is funding for the study if it would be a trail way and not a traffic way. Mayor Wisdom stated we should update it for future use. Mike Palmer asked that it be an agenda item.

Joe also reported that the average daily pool attendance is 83.

Mayor Wisdom asked that we look at fireworks in the city limits. He said that we had prepared an ordinance a while back but it was never passed. Right now they can shoot from 6/25 – 7/5. It was stated that bottle rockets are already banned from the city. Mike Palmer stated it might be we just need to educate our residents about our code.

Mike Talley handed out a draft of the minutes of the closed session on 6/15/04. The council reviewed them and Barbara Evans motioned to approve the minutes of the closed session of 6/15/04 as presented. Mike Moss seconded. All in favor. No opposed.

Mike Talley also reported that we had received another lawsuit from Debra Cooney. Joe stated that our insurance company called him and they had paid all her bills from that injury and offered her \$2000 for future bills. That offer is still on the table. Her

attorney did not know of that offer. This happened in 1999 and she filed the last day she could. Mike Talley then sealed and handed the minutes of the closed meeting to the City Clerk.

Mayor Wisdom then stated that it has been 2 years now and we still have not resolved the issue with the Special Road District on the 25% for paving. He has talked to Jim Honey and he doesn't think they owe it. We need a legal opinion. It is hung up between the County Clerk and Commissioners. He met with Carthage and they are ready to go to court. It was reported that the county collects all the money and they keep 20% and give the Road Districts 80%. We need to push this issue. Mike Talley stated that we had an opinion from the Attorney General but Jasper County doesn't think it applies. It was also questioned whether we get 25% of the 80% or 25% of the 100%. Mike Talley prepared an opinion and Bryan Stephenson was going to deliver it but they are waiting on Dean Dankelson to write his opinion. Mike Talley thinks he is stalling. There was a lot of discussion regarding this issue. Mike Talley reported months ago that the City of Jackson sued and won on this issue. Their attorney will be speaking this weekend at a seminar so he plans on talking to him about this.

**NEW BUSINESS**

Gary Stover questioned about doing a complete Phase I, soil testing and underground storage tanks. There was some discussion about this issue.

Joe reported that a dispatcher has resigned effective 7/12/04 and we are running an ad for replacement. He also said we need to find a truck for the building inspector to use. We do not have enough vehicles. The CJFD has 2 vehicles for sale and they are asking \$1500 for one of them. Joe and Ed will look at them and get back with the council. He needs his own vehicle that he can store equipment and information in without sharing with anyone.

**ADJOURNMENT**

Mike Palmer motioned to adjourn the meeting. Richard Zaccardelli seconded. All in favor. No opposed. Meeting adjourned 10:15 PM.

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CITY CLERK

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MAYOR