

The Carl Junction City Council met in regular session on Tuesday March 2, 2010 at 7:00 PM at City Hall. Mayor Mike Moss called the meeting to order with the following present: Richard Zaccardelli, Don Marshall, Carl Skaggs, Mark Powers, Steve Daniels, Dee Lynn Davey and Walter Hayes. Alderman Wayne Smith was absent. Also present were City Administrator Steve Lawver, City Clerk Maribeth Matney and City Attorney Mike Talley.

AGENDA

Mayor Moss asked that the agenda be amended to add the closed minutes of the 2/16/10 meeting. Carl Skaggs motioned to amend the agenda as requested. Steve Daniels seconded. All in favor. No opposed. Carl Skaggs motioned to approve the amended agenda. Richard Zaccardelli seconded. All in favor. No opposed. Carl Skaggs motioned to approve the consent agenda. Steve Daniels seconded. 6 (Zaccardelli, Marshall, Skaggs, Powers, Daniels, Davey) in favor. 1 (Hayes) abstained since he was not in attendance.

PUBLIC FORUM

Mary Schillaci, 706 Springhill Drive, stated that she had read the article last week in the Citizen. She stated that the notary is not legal and she questions the City Clerk's ability. She also stated that a public entity is not allowed to operate in the negative and their budget shows that they will the 1st year. She questioned the city's liability if the CID fails and the signatures of some of the LLC's. She said that the people voted in April and turned it down. With Plan B they will pay 3 times more and the legal issues she has raised are not resolved. She then thanked the people who stood up for what they believed in. A lot of people got involved and that is a good thing.

Stan Lewis, 114 Anita, lives in Ward III. He stated that 70% of the people do not golf that live in Briarbrook. He knows of only 5 people on his street that do. He thinks people will continue to play at Schifferdecker because it is cheaper. He thinks that the people who play golf should pay the tax but not the people who don't golf.

Mayor Moss called twice for other speakers. No one came forward.

CITIZENS FOR BETTER LIFE BOARD

Pat Smith then addressed the council. She introduced her board. They were Zelda Fowler, Betty Ware, Nina Knoblach and Richard Zaccardelli. She stated that they have held the breakfast collecting money for the Center. She then presented the City with a \$10,000 check to go toward the new Senior Center in the Community Center. She also thanked everyone who attended the breakfasts for their support. Mayor Moss thanked them for their support and contribution.

KAREN RUTLEDGE

Karen Rutledge, 702 Springhill Drive, addressed the council. She stated that there was more than 1 one reason to live in Carl Junction. It is not only the schools or the golf course. Over ½ of the people voted in April 2009 for the golf course. She doesn't golf but does value the community. Mike Talley had been asked to research the notary question. She stated that the notary was just for the verification of the identity of the person signing the document. She stated that the notaries were mostly professional people. They did not call on people a 2nd time if they did not sign after being asked unless it was an oversight. She also had one party asked if Mary would find out that they had signed the petition. She stated that Mary had set neighbors against neighbors. She then stated that an anonymous lady called State Farm about Karen notarizing documents that were a conflict of interest. She stated that she is an independent agent with her own notary from the Secretary of State. She stated that the opponents are using intimidation to get their way. Karen then ended with reminding the council of their vision and mission statements. She then read them both to the council.

CHAMBER OF COMMERCE REPORT

Gary Stubblefield addressed the council and reported that they are on target for their new membership drive. They have 2 new members. One is the Show Me magazine and the other is the Briarbrook Golf Course. He reported that our entrance sign is now completed and thanked everyone for their support in finishing that project. He ended with reminding everyone that their next meeting is Thursday 3/4/10 at 7:30 AM.

APPROVAL OF BUSINESS LICENSES FOR UPCOMING YEAR

Mark Powers motioned to approve the business license renewal list. Richard Zaccardelli seconded. All in favor. No opposed.

ORDINANCES

Mike Talley then asked if the council had all received his memorandum regarding the notaries. He then asked if they would like for him to summarize it for the public. The council agreed. Mike Talley then stated that the 1st question was regarding the notaries and if they were disqualified if they signed a petition. It was not an idle or easy question. The question is whether signing the petition is a "transaction". He said that his review of Missouri Case Law shows that the term "transaction" is broadly construed, but that no court has ruled on it in the context of notary disqualification. He said that possibly the notary would be disqualified under the statute, but the next question is whether this would impact how the Board handles the CID petition. The answer to whether such possible notary irregularities necessarily impact how the Board handles the petition is clearly, no. Even if the notaries are disqualified the Board does not have to reject the CID. That conclusion is based on three lines of reasoning. First, the CID statutes do not explicitly require the petitions to be notarized although the statute does require the form to contain a place for a notary to sign. It is a

fine technical distinction; however, the Missouri Supreme Court has held that if the statute does not make the failure to properly notarize the petition fatal to the petition, the Court will not do so. Second, a line of Missouri court cases has held that the primary concern when considering the validity of a petition is the authenticity of the signatures on the petition, not the technical requirements of the notary statutes. In this case, the validity of the signatures on the petitions has not been questioned, and even if the notary did not properly notarize them, it does not mean the signatures are not authentic; therefore, it does not make the failure to properly notarize the signatures fatal to the petition. The 3rd reason for his conclusion has to do with what the Board can or can not do once the City Clerk determines the petition substantially complies with the statute. It is the City Clerk that determines if the petitions substantially comply with the state statute. That determination is made before the public hearing is held. It is her duty to determine this and it is a quasi judicial duty not a ministerial duty. The state statute does not have a procedure to challenge the determination made by the City Clerk. It is not the Board's duty, nor the City Attorney's duty to make that determination or to overrule the City Clerk's determination of substantial compliance. However, if the City Clerk were to decide now that her earlier determination was made in error, and if she had a different opinion today, and believed that the petition does not substantially comply with the statute, he would probably recommend that the Board deny creation of the CID. Passage under those conditions would probably be a breach of trust with the constituents represented by the Board, and it would make it much harder for the CID to succeed if it is passed under such a cloud. Mike Talley then asked the City Clerk if she still felt the CID petition substantially complied with the State Statute. She replied, yes, she does. Mike Talley then stated that he saw no reason why the Board should not consider the CID on its merits. Mike Talley then stated that while he had the floor and was on the subject, he wanted to mention that he was embarrassed at the last meeting because of the manner that a member of the public questioned and cross examined the City Clerk. He stated that the public has a right to ask questions and the questions asked were not bad questions. It was the aggressive manner and demeanor, and the hostile and confrontational approach that should not have happened, and hopefully that will not happen again. If it appears that it is starting to happen again, he will advise the Mayor that the speaker should be ruled out of order. This forum is a place for deliberation and debate; aggressive, hostile and confrontational tactics such as employed at the last meeting are inconsistent with that purpose. Lastly Mike Talley then addressed the question of the 2 members of the Board voting for the creation of the CID in the Ward they represent. Although it is not illegal as the conflict of interest statutes have been interpreted by the Missouri Ethics Commission, Board members should weigh the pros and cons of their voting. Mike Talley agreed that the appearance of impropriety is important, and if it doesn't pass the smell test they should consider not voting; however, they also have to weigh in their duty to represent their Ward if they decide to abstain from voting. There is no legal conflict of interest and each council person should make their own decision and vote according to their conscience. Walter Hayes motioned to put "AN ORDINANCE APPROVING A PETITION REQUESTING THE FORMATION OF THE BRIARBROOK COMMUNITY IMPROVEMENT DISTRICT; ESTABLISHING THE DISTRICT AS A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI; AND DIRECTING THE CITY CLERK TO NOTIFY THE MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT OF THE CREATION OF THE DISTRICT" on first reading by title only. Carl Skaggs seconded. Mayor Moss asked for discussion. There was no discussion. Carl Skaggs motioned to put it on 2nd reading by title only. Steve Daniels seconded. Mayor Moss asked for discussion. There was no discussion. Walter Hayes motioned to put it on passage. Steve Daniels seconded. All in favor. No opposed. Zaccardelli-y, Marshall-y, Skaggs-y, Powers-y, Daniels-y, Davey-y, Hayes-y, Smith-absent. Motion on Ordinance #10-10 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.

Steve then reported that he had negotiated a 3 year contract for sludge removal with the prices locked at 28 ½ cents per gallon for 3 years. Carl Skaggs motioned to put "AN ORDINANCE APPROVING A THREE (3) YEAR CONTRACT BETWEEN THE CITY OF CARL JUNCTION AND MID AMERICAN ENVIRONMENTAL CONTRACTORS, INC., TO PROVIDE FOR THE ANNUAL REMOVAL, TRANSPORTATION, AND LAND APPLICATION OF APPROXIMATELY 2,100,000 GALLONS OF SLUDGE CURRENTLY STORED IN THE CITY'S LAGOONS LOCATED SOUTH OF THE WASTEWATER TREATMENT PLANT IN CARL JUNCTION, AND TO PROVIDE FOR SOILS AND RESIDUALS TESTING, AND REPORTING TO ALL LOCAL, STATE AND FEDERAL AGENCIES FOR AN APPROXIMATE SUM OF \$60,000.00 ANNUALLY, AND HAVING A TOTAL CONTRACT PRICE NOT TO EXCEED \$180,000.00; PROVIDING THE TERMS AND CONDITIONS THEREOF, AND AUTHORIZING THE MAYOR TO EXECUTE SAID CONTRACT FOR AND ON BEHALF OF THE CITY OF CARL JUNCTION, MISSOURI" on first reading by title only. Walter Hayes seconded. Mayor Moss asked for discussion. Mark Powers noted that this is in our budget. Walter Hayes motioned to put it on 2nd reading by title only. Carl Skaggs seconded. Mayor Moss asked for discussion. There was no discussion. Mark Powers motioned to put it on passage. Richard Zaccardelli seconded. All in favor. No opposed. Zaccardelli-y, Marshall-y, Skaggs-y, Powers-y, Daniels-y, Davey-y, Hayes-y, Smith-absent. Motion on Ordinance #10-11 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.

The next ordinance is with Tri-State Engineering for the conceptual roundabouts. It is not a full engineering contract. It will have elevations on it. Carl Skaggs motioned to put "AN ORDINANCE APPROVING A CONTRACT BETWEEN THE CITY OF CARL JUNCTION, MISSOURI AND TRI-STATE ENGINEERING INC., JOPLIN, MISSOURI, TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR THE ROUNDABOUT CONCEPTUAL PLANS FOR THE CITY OF CARL JUNCTION, MISSOURI, IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, FOR SUM OF \$3000.00; PROVIDING THE TERMS AND CONDITIONS THEREOF; AND AUTHORIZING THE MAYOR TO EXECUTE SAID CONTRACT FOR AND ON BEHALF OF THE CITY OF CARL JUNCTION, MISSOURI" on first reading by title only. Richard Zaccardelli seconded. Mayor Moss asked for discussion. There was no discussion. Carl Skaggs motioned to put it on 2nd reading by title only. Steve Daniels seconded. Mayor Moss asked for discussion. There was no discussion. Mark Powers motioned to put it on passage. Richard Zaccardelli seconded. All in favor. No opposed. Zaccardelli-y, Marshall-y, Skaggs-y, Powers-y, Daniels-y, Davey-y, Hayes-y,

Smith-absent. Motion on Ordinance #10-12 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 reviewed the Administration report. Steve reported that they had the glass installed inside and they are pouring pads for the walk in cooler. They are doing dirt work and that 15 wells have been drilled. Richard asked about the sewer line being put in. Steve said that the lift station has been removed and that they are getting ready to sod.

Public Works report – there was nothing new to report.

Police Department report – there was nothing new to report.

Court Report – there was nothing to add.

COMMITTEE REPORTS

The Nuisance Committee had nothing to report.

The Long Range Planning Committee had nothing to report.

The Budget/Finance Committee reported that they met Friday with another department head and will be meeting with more this Friday.

The Human Resource Committee had nothing to report.

The Public Facilities Committee had nothing to report.

The Code Review Committee had nothing to report.

The Citizen's for Better Life had nothing to report.

UNFINISHED BUSINESS

Mike Talley asked if the Board wanted to make public his confidential legal memorandum on the notary question concerning creation of the CID, or if he was clear enough in his summary of it. The council responded that his summary was clear enough.

NEW BUSINESS

Steve reported that he has an RFP out for cleaning services for the community center. They are due in 3/12/10 and will have them for the next meeting. He also reported that the High School Youth Empowerment Group put together a video and it is on u-tube. They entered it in a competition and won \$1000 for 2nd place. They are going to help the Seniors Citizens move out of their old building into their new building. They wrote the song and lyrics.

Richard Zaccardelli asked where the rent for the buildings is going. Steve said he thought it would go to General Fund unless the council wants to do something different.

Chief Haase reported that they have been approved for a tower for their radio. It is out on bid now. It will be on the northwest side of the building. They also received an outstanding rating from the State Highway Patrol and he credited the work to Jennifer McCall which is why he wrote her a commendation letter for her personnel file. He also has the bids out on the police cars and they should be ready for the next council meeting.

ADJOURNMENT

Carl Skaggs motioned to adjourn the meeting. Mark Powers seconded. All in favor. No opposed. Meeting adjourned at 8:05 PM.

CITY CLERK

MAYOR