

TUESDAY, FEBRUARY 04, 2014
BOARD OF ALDERMEN MINUTES
7:00 P.M.

Mayor Rhorer called the special meeting to order on February 04, 2014 at 7:00 p.m. at 109 East Broadway, Ashland, Mo. was to appoint Alderpersons to fill the vacant seats on the Board of Aldermen and Swear the new members into office.

Mayor Rhorer called the roll:

- Ward One: Louise Martin-here, vacant seat
- Ward Two: Jeff Anderson-here, vacant seat
- Ward Three: Tony Taggart-here, vacant seat

Mayor Rhorer presented George Campbell as Alderman for Ward One. Mayor Rhorer called for questions to Mr. Campbell. The Board asked Mr. Campbell various questions about his desire to serve as Alderman and his background. Mr. Campbell gave a brief overview to the Board. Mayor Rhorer called for a voice vote. Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye. Mayor Rhorer stated Mr. Campbell is confirmed to the appointment.

Mayor Rhorer presented Jim Fasciotti as Alderman for Ward Two. Mayor Rhorer called for questions to Mr. Fasciotti. The Board asked Mr. Fasciotti various questions about his desire to serve as Alderman and background. Mr. Fasciotti gave a brief overview to the Board. Mayor Rhorer called for the vote. Mayor Rhorer called for a voice vote. Alderwoman Martin-aye, Alderman Anderson-aye, Alderman Taggart-nay. Mayor Rhorer reported 2/3 is enough to confirm James Fasciotti to the Board of Aldermen.

The City Clerk swore into office George Campbell as Ward One Alderman and James Fasciotti as Ward Two Alderman.

Mayor Rhorer called for a short recess and presented the Board with Roberts Rules of Order, Chapter 2, City Organization of the City Code and Missouri State Statute Chapter 79-Fourth Class Cities.

Mayor Rhorer called the regular meeting to order at 7:30 p.m. on February 4, 2014.

Alderman Anderson gave the invocation.

Mayor Rhorer led in the pledge of allegiance.

Mayor Rhorer called the roll.

- Ward One: Louise Martin-here, George Campbell-here
- Ward Two: Jeff Anderson-here, James Fasciotti-here
- Ward Three: Anthony Taggart-here, vacant seat

Staff Present: Josh Hawkins, City Administrator, Darla Sapp, City Clerk, Lyn Woolford, Police Chief, Travis Davidson.

Mayor Rhorer presented the agenda for February 4, 2014 for consideration. Alderwoman Martin made motion and seconded by Alderman Fasciotti to approve the agenda as presented. Mayor Rhorer called for the vote. Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Campbell-aye, Alderman Fasciotti-aye. Motion carried.

Mayor Rhorer presented the minutes of January 13, 2014 for consideration. Alderman Taggart made motion and seconded by Alderman Anderson to consider the minutes as presented. Mayor Rhorer called for changes or amendments. Mayor Rhorer called for the vote. Alderman Fasciotti-abstained, Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Campbell-abstained. Motion carried.

Mayor Rhorer presented the bills to be paid for consideration. Alderman Taggart made motion and seconded by Alderman Anderson to approve the bills as presented. Mayor Rhorer called for questions or comments. The Board asked various questions relating to the bills. Mayor Rhorer called for the vote. Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Fasciotti-aye, Alderman Campbell-aye. Motion carried.

Lyn Woolford, Police Chief gave his monthly report to the Board. He explained the report to the new members of the Board. Alderman Taggart questioned the number of tickets and the breakdown of Officers that wrote the tickets. He presented a vehicle maintenance report that they will start using. Alderman Anderson questioned the change in job titles for Captain Toalson to Deputy Chief Police. Chief Woolford reported it was for change in command and it was an in house change and did not go before the Board. Alderman Anderson suggested adding the use of patrol cars in the personnel manual. There was discussion of uniform allowance for the police department.

Travis Davidson presented his monthly report. He updated the Board on new sign installation, fixing pot holes, getting bids on street repair and snow removal. There was discussion on the Salinda Drive street project and where the project was. Mr. Davidson discussed the Caspian Circle lift station and storm water detention.

Mayor Rhorer asked if anyone in the audience wished to appear before the Board.

Mayor Rhorer presented Fred Boeckmann as City Attorney. He asked if anyone had questions for Mr. Boeckmann. Alderman Anderson asked to read a statement and asked for it to be inserted in the minutes.

Mr. Mayor,

I recommend that you appoint an experienced and competent City Attorney.

The appointed City Attorney Search Committee went through a thorough process of examining and interviewing the best possible attorney applicants to represent our city. We were extremely

fortunate to have two (2) such attorneys, Dale Roberts and Fred Boekman, both of which have years of legal experience. Our Search Committee, after careful deliberation, voted unanimously to recommend Dale Roberts for appointment as City Attorney (fee for service \$90.00 per hour) and informed you on August 28, 2013 of our decision.

However this Board, for reasons unexplained, failed to appoint either one of these two excellent attorneys. The Board, by questioning his qualifications in print and disrespecting his presence at our meetings, caused Dale Roberts to withdraw from consideration. The Board then voted down, by 4 votes, Fred Boekman's appointment without comment, discussion or deliberation, even though he is eminently qualified, having served as the City Attorney for Columbia for the past 26 years (fee for service ~~\$120.00~~ \$125.00 per hour). (amended 2-18-2014)

Since then, for the last 6 months, this Board retained three (3) attorneys, at the cost of \$330.00 an hour, all of whom failed to provide our city with adequate legal counsel.

Interim City Attorneys Ahern and Bach (A&B), (fee for service \$130.00 per hour):

1. At least on one (1) occasion, September 16, 2013, A&B allowed the Board of Aldermen to violate Section 610.022.3 and 610.021(3) of Missouri Sunshine Law.
2. A&B advised the Board it had statutory and case law authority to suspend an elected Alderman. A Boone County Circuit Court judge held the Board's action was illegal.
3. A&B had over 30 days to prepare the Articles of impeachment, during which A&B neglected to meet with the full Board to discuss the substance and veracity of the allegations contained in the Articles. Though repeatedly asked to do so, they refused to explain to the Board how the Articles were produced.
4. A&B failed to counsel the Board as to the history of Missouri jurisprudence regarding what constitutes "cause shown" and what actions warrant impeachment, actions wholly absent in the Articles of impeachment.
5. The Articles were poorly written, making general accusations and providing little to no specifics regarding the nature of the allegations contained therein, rendering most of the Articles either un-prosecutable or impermissibly vague. The Articles were an insufficient legal document, which should have been composed in a manner so as to stand up to legal challenge, which A&B should have foreseen and prepared for.
6. A&B discussed impeachment issues with Alderman Hills no less than 12 times for over 7 hours, though he was not authorized by the Board to do so, which resulted in A&B billing the city \$923.00. A&B should have restricted their communications regarding impeachment issues to the full Board unless directed by same to do otherwise, which they were not.

*Total estimated costs of A&B services regarding suspension and impeachment: **\$8,465.00***

Special Prosecuting Attorney David Bandre (DB), (fee for service \$200.00 per hour):

1. DB was quoted (BCJ) as saying the cost of impeachment typically runs \$2,500-3,000.00. The City has spent \$10, 000.00 for his impeachment services to date. There were opportunities to end the reckless action of pursuing impeachment, but they were rejected by DB without discussion with the Board.
2. DB represented the City before the Boone County Circuit Court attempting to defend its actions in suspending a duly elected official. In doing so, DB cited inapplicable case law, and then Roberts Rules of Order, all of which the court flatly rejected. This is the same type of legal work which caused the Board not to reappoint DB in May 2013. The cost to

the City for his ineffective defense was over \$3,000.00.

3. DB has failed to provide adequate legal counsel regarding suspension and impeachment in same ways as described regarding A&B.

4. DB provided false and misleading information to the Board on 10/29 2013 regarding the compilation of the Articles of impeachment. DB told the Board that A&B compiled all the Articles. When A&B was questioned, they said they worked in conjunction with DB. On 10/8, 10 & 16/2013 DB charged the City \$500.00 to prepare, amend, and edit Articles of impeachment, clearly showing that he contributed to compiling the Articles.

5. On 12/3/2013 DB sent an email to some members of the Board warning that a negotiated financial settlement of impeachment issues by the Board would "almost certainly expose the City to a taxpayer derivative suit for misuse of tax dollars." As is often the case, he didn't bother to substantiate his assertion, which is ridiculous considering the Board certainly exposed the city to the same, misusing taxpayer dollars on an illegal suspension, a wrongful attempt of impeaching a duly elected official, and Sunshine Law violations.

6. On December 8, 2013 DB counseled the Board to meet in closed session, in absence of full membership to discuss the Articles of Impeachment. The Articles were public business, and as such, should have been considered and voted upon by all the elected members of the Board so that each Ward is fully represented. This was a further attempt, in collusion with other members of this Board, to exclude an Alderman from performing his sworn duties.

7. DB profited by the impeachment process going as far forward as possible, and worked against the members of this Board coming to a negotiated settlement (see email dated 12/3/2013). Cost to the city for failing to negotiate an agreement: over \$20,000.00

*Total estimated costs of DB services regarding suspension and impeachment: **\$17,264.00***

*As of this date, the total combined cost to the city for A&B and DB: **\$25,729.00***

Mr. Mayor, as a member of the City Attorney Search Committee, in order to honor the diligent work by the members of the Search Committee, especially Attorneys Jeff Kays and Christine Kieffer who devoted considerable personal time and attention, I recommend that this Board appoint Fred Boekman as our City Attorney. Based on his considerable knowledge of constitutional law, state statues, and municipal ordinances, Mr. Boekman, will provide vastly greater legal counsel, experience, and wisdom than the city has been getting for 1/3 the cost.

Mayor Rhorer thanked the hiring committee and stated he was glad to make this appointment. Mayor Rhorer called for the vote. Alderman Fasciotti questioned the proposed fees being lower than the previous attorney's. Fred Boeckmann reported he works from his home and does not have any staff so he is able to work at a lower cost.

Mayor Rhorer called for the vote. Alderman Taggart made motion and seconded by Alderman Anderson to approve Mr. Boeckmann as City Attorney. Mayor Rhorer called for the vote. Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Fasciotti-aye, Alderman Campbell-aye. Motion Carried.

Mayor Rhorer asked that Ordinance No. 970 be tabled to allow the new City Attorney and the new Aldermen time to review it. Alderman Anderson made motion and seconded by Alderman Taggart to table Ordinance No. 970. Mayor Rhorer called for questions or comments. Alderman

Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Fasciotti-aye, Alderman Campbell-aye. Motion carried.

Mayor Rhorer presented the Missouri Livable Streets Program. Josh Hawkins, City Administrator asked for this to be tabled. Alderman Anderson made motion and seconded by Alderwoman Martin to table this. Mayor Rhorer called for the vote. Alderman Fasciotti-aye, Alderman Campbell-aye, Alderwoman Martin-aye, Alderman Anderson-aye, Alderman Taggart-aye. Motion carried.

Mayor's Report:

Mayor Rhorer asked that the Aldermen review the State Statute Chapter 79, Chapter 2 and the sunshine law rules and use these as a guideline for professionalism. He reported we needed to implement a code that provides for inclement weather.

Alderman Anderson questioned the snow removal policy for the downtown area.

Board of Aldermen Report:

Alderman Taggart thanked the city staff and police department for the snow removal and working in the cold weather. He welcomed the two members to the board and the city attorney.

Alderman Anderson asked that we revisit the payment of a bond with the financial adviser.

Alderwoman Martin thanked Chief Woolford for bringing her to the meeting tonight in the snow. She thanked Josh Hawkins for helping with the Optimist Pancake Breakfast.

Alderman Fasciotti thanked the Board for appointing him to serve as Alderman.

Alderman Campbell reported he would not be in attendance at the next meeting due to a previous engagement.

Alderman Fasciotti reported he would not be here the first week of March.

City Administrator Report:

Josh Hawkins, City Administrator welcomed the new Aldermen and encouraged them to meet with him and get them up to speed on projects the city is working on. He highlighted the winter storm situation and emergency management. Mr. Hawkins reported the preparation of the fiscal budget is in the process.

Alderman Anderson suggested the Aldermen attend the elected officials conference. The City Clerk reported it is June 12th and 13th in Columbia.

Alderman Anderson questioned the budget process and scheduling budget work sessions.

Mayor Rhorer asked the board to get their city e-mail set up.

Aldерwoman Martin made motion and seconded by Alderman Anderson to adjourn the meeting. Mayor Rhorer called for the vote. Alderman Taggart-aye, Alderman Anderson-aye, Alderwoman Martin-aye, Alderman Fasciotti-aye, Alderman Campbell-aye. Motion carried.

Darla Sapp, City Clerk

Gene Rhorer, Mayor