

NOTICE OF PUBLIC HEARING

September 7, 2010
6:30 p.m.

CALL TO ORDER

At the appointed time, Mayor Hark called the public meeting to order.

JEFF LAGARCE – CITY MANAGER

Re: Public Acquisition, Reuse and Reinvestment of Condemned Property

City Manager LaGarce presented the topic of the evening's public hearing, discussion of a proposed ordinance regarding public acquisition, reuse and reinvestment of condemned property within the City. LaGarce went on to explain that there is a large amount of irresponsible property owners within the community who have properties that have been condemned and in need of demolition.

He said that, recently, a structure located near Grand Avenue collapsed, had to be demolished, and a lien placed on the property. Situations, such as this create an unfair burden on taxpayers that they cannot afford over a long term, according to LaGarce. Ultimately, 99% are tax-forfeited, since the City does not accept partial payment of taxes. When this happens, the City can not recoup the expense that has been incurred during demolition. At this point, the County Trustee will take these properties, and they will be sold. Whether or not any reinvestment occurs on the property is random chance.

About a year ago, the Building Commission began developing a policy to be proactive in dealing with problems of this nature. Terms would include the possibility of avoiding the need to demolish some properties and instead seek to rehabilitate. For those that have been demolished, to be placed into the hands of responsible property owners who will make a commitment to reinvest the property within a six (6) month period of time, with completion of the project in an eighteen (18) month period.

The purpose of this bill is to:

1. Convert blighted, condemned property for infill development and/or neighborhood reinvestment within a period of six (6) months.
2. Avoid costly demolition of property when property can be conveyed to a responsible rehab entity.
3. Give the City control over most condemned property, as opposed to sitting and collecting leaves and debris.

To accomplish these goals, a list of priorities was established. LaGarce detailed this list, which consisted of:

Rehabilitation – City would not be forced to demolish a property, instead, property would be transferred to responsible entities. Responsible entities that are subject to this include:

- *Hannibal High School Historic Preservation Trades Program* (nominal fees involved)
- *Habitat for Humanity* (currently do not rehabilitate but would be open to consideration vs. building a new structure.)
- *Licensed Contractor*

New Starts (Construction) – If rehabilitation options are not viable.

- *Habitat for Humanity*
- *Hannibal School District Building Trades Course*
- *Qualified home builders*

Public Amenity

- *New Parks/Pocket Parks* (Would place assets back into the neighborhoods)
- *Public Parking Areas/Localized Commuter Parking* (Option for neighborhoods within the community that do not have driveways or garages. Better alternative to on-street parking, which would improve traffic/motor safety)
- *Stormwater Detention* (Option to eliminate down-stream flooding and create a pond/lake)
- *Public Open Spaces, Monuments or Park-Like Attractions* (Some options subject to funding by property owners for specifically-requested improvements)
- *Re-forestation*

Private Amenity

- *Two Adjacent Property Owners* (Resale to adjacent property owners at a nominal fee for expansion of yard area, etc.)
- *One Adjacent Property Owner* (Resale to adjacent property owner at a nominal fee for expansion of yard area, etc.)

Land Bank – if all other options fail (Not the City’s most favorable option)

- *Bank Properties Over Time* (accumulated properties for possible future large-scale development or redevelopment of new neighborhoods within the City)

The City Manager explained that he is not an advocate of the City taking possession of properties; however, in this case, the City’s possession is merely a temporary holding pattern

with the intention of placing properties back into the private sectors or re-investing in them, publicly. He added that the biggest pitfall, in his opinion, would be the possibility of drastically increasing the City's mowing responsibilities; but compared to the liabilities that the City is currently facing with these blighted properties, this is the more favorable option. He concluded by saying that he was not speaking to specifically advocate this bill, since it is just one idea; however, it is the best idea, to date.

PUBLIC COMMENTS

Mayor Hark stated that he is in favor of these options, adding that the Building Commission also believes this is a good idea. He added that, currently, the City is stuck with lots, following demolition, that have an extremely high price tag attached, which no one wants to purchase. He thinks this option makes perfect sense.

Council Member Barta agreed with the Mayor, inquiring whether this would include the potential for acquiring property with no remaining heir. LaGarce responded that this bill does not address this scenario, stating that an issue, such as that, would need to be addressed by the City Attorney.

In response to a question posed, City Manager LaGarce responded that the bill was written primarily for residential property issues; but could also include commercial property, as well.

LaGarce stated that one of the provisions included at the request of the Building Commission is a qualifying potential recipients based on the medium income table, distributed by the State.

ADJOURNMENT

There being no other comments for or in opposition to the proposed ordinance regarding peaceful transfer of property for reinvestment, Mayor Hark adjourned the public hearing.

**NOTICE OF PUBLIC MEETING
COUNCIL AGENDA**

**September 7, 2010
7:00 p.m.**

ROLL CALL

Present: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker – 7

Absent: -0-

CALL TO ORDER

There being a quorum present, Mayor Hark called the meeting to order.

INVOCATION

Mayor Pro Tem Knickerbocker gave the invocation.

PLEDGE OF ALLEGIANCE

Council Member Louderman led the Pledge of Allegiance to the Flag.

**APPROVAL OF MINUTES
Special Call Meeting – August 5, 2010
Special Call Meeting – August 11, 2010
Regular Council Meeting – August 17, 2010**

Motion was made by Mayor Pro Tem Knickerbocker to approve the minutes of the last regular Council meeting that was held on August 17, 2010 and Special Call Meetings held on August 5, 2010 and August 11, 2010. Motion was seconded by Council Member Hark.

Motion carried.

**APPROVAL OF PAYROLL AND CLAIMS
Second Half – August, 2010**

Motion was made by Council Member Louderman to approve the payroll and claims for the second half of August, 2010. Motion was seconded by Council Member Barta.

Motion carried.

RICH LILIE – MISSY’S TRANSPORTATION
Re: Request, Waive Window Tenting Restriction on Taxi Cab

Mayor Hark explained that a request had been received to table this agenda item, he asked City Clerk Vance for details. She stated that Mr. Lilie had contacted the Clerk’s office earlier in the day, expressing a desire to postpone his request until the next Council meeting date of September 21, 2010, since he was ill. Motion was made by Mayor Pro Tem Knickerbocker to table this agenda item until September 21st, per Mr. Lilie’s request. Motion was seconded by Council Member Barta.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Member Lyng and Mayor Pro Tem Knickerbocker – 5

No: Council Members Louderman and Hark - 2

Absent: -0-

Motion carried.

CRAIG BUCK – HANNIBAL HIGH SCHOOL BAND BOOSTERS

Re: Request, Street Closure – Annual Band Day Parade

October 12, 2010

Since Mr. Buck was absent from the meeting, the City Clerk explained his request for street closure and Council approval of the Band Day Parade event, scheduled for October 12, 2010. This request was similar to past requests for this event. Motion was made by Council Member Dobson, to approve this request. Motion was seconded by Council Member Lyng.

Motion carried.

GEORGE “BLUE” JOHNSON – COMBAT VETERANS MOTORCYCLE ASSOCIATION

Re: Request, Police Escort - Veterans Motorcycle Parade

October 9, 2010 – 10:30 a.m. – 11:30 a.m.

City Clerk Vance explained that Mr. Johnson had contacted her earlier in the day, informing her that he would be unable to attend the meeting because of illness. He expressed his regrets but asked that his request be presented, in his absence. He requested a police escort for a motorcycle parade to bring awareness to the Citizens of Hannibal and Northeast Missouri of the Combat Veterans Motorcycle Association, CVMA, and their mission of outreach to combat veterans. CVMA, through motorcycle events, raises funds to support various veteran issues. Streets can remain open.

Since the parade route is extremely long (from Holiday Inn express, continuing on Market Street, Broadway to Main Street, north to North Street, back to Broadway to the Hannibal Nutrition Center on 10th Street), it was noted that the request will require HPD overtime for traffic control. The parade will consist of approximately 75 to 100 participants/motorcycles.

Motion was made by Mayor Pro Tem Knickerbocker to approve Johnson's request. Motion was seconded by Council Member Barta.

Motion carried.

ROY G. HARK – MAYOR
Re: Appointment, Planning & Zoning Commission

- Mike Dobson

Since there was a vacancy on the Planning & Zoning Commission for a Council Member, Mayor Hark made a motion to appoint Council Member Dobson to the Planning & Zoning Commission. Motion was seconded by Council Member Louderman.

Motion carried.

Re: Recommendation of Appointments

Mayor Hark made the following recommendation:

HANNIBAL CONVENTION & VISITOR'S BUREAU

- Beth Knight – Re-appointment for a term to expire September, 2015

This nomination will be considered for approval at the next regular Council meeting. Then Mayor Hark made another recommendation:

TREE BOARD

- Ed Tamerius – Re-appointment for a term to expire September, 2013

This nomination will also be considered for approval at the next regular Council meeting.

JEFF LAGARCE – CITY MANAGER
Re: Confirmation of Appointment, Parks & Recreation Director
Andy Dorian

City Manager LaGarce expressed his pleasure in recommending the appointment of Andrew Dorian as the Parks & Recreation Director. LaGarce explained that Andy had served as Recreation Director since August, 2007 and detailed his prior experience with several other Parks organizations in developing and/or managing parks activities and facilities. He added that Dorian has bachelor's degrees in both Recreation Administration and Political Science, also holding a Master Degree in Business Administration. He desires to appoint Andy as Director of Parks & Recreation Director; and, as the City Charter specifies, this position is appointed by the City Manager, subject to confirmation by the Mayor and Council. Motion was made by Mayor Pro Tem Knickerbocker to approve the City Manager's request. Motion was seconded by Council Member Louderman.

Motion carried.

Re: Establishing Criterion, Future Use of Voluntary Transfer & Acquisition Procedures for Condemned Properties

LaGarce presented his next item on the agenda, an ordinance establishing criterion for the peaceful transfer of properties from a property owner to the City, which had been the subject of the previous public hearing. He explained that a draft of this proposed ordinance was attached to the agenda for Council consideration and opinion.

Mayor Pro Tem Knickerbocker commented that he was in favor of adding guidelines, as LaGarce had suggested during the public hearing. These guidelines would serve to insure that property owners, who are financially able to maintain the property in question, will not use this ordinance, merely to abandon property that they no longer wish to upkeep. He questioned whether the City Manager intended to make these guidelines a part of the Building Commission process or build it into this ordinance.

City Manager LaGarce responded that it was his suggestion that the Building Commission establish their own set of guidelines; then, if that set of guidelines should be changed, the ordinance would remain the same. Knickerbocker explained that he would like to see this formalized into the ordinance, that the Building Commission 'would establish guidelines'.

Mayor Pro Tem Knickerbocker made a motion that the City Manager include this in the proposed ordinance. Motion was seconded by Council Member Louderman.

Motion carried.

Re: Accepting Conveyance of Property – Trustee’s Warranty Deed
708 South Main Street – Marion L. & Charlotte L. Culp
(Resolution No. 1679-10, to follow)

The City Manager explained that his final agenda item regarded a piece of property located in the flood buyout area on the South Side. Marion and Charlotte Culp, Ralls County residents own this property at 708 South Main Street which lies south of Ogden’s Garage. LaGarce added that in making this donation, Mr. & Mrs. Culp are seeking to avoid future tax liability on property that they do not intend to develop or use in any way. He assured Council that all current taxes are paid and there are no delinquencies.

LaGarce stated that acceptance of this property would further the City’s objective for this area, to acquire flood-impacted property and convert it for permanent outdoor recreation space. The City’s acceptance of this property allows assembly of greater usable land, and eliminates checker-boarding. A trustee’s warranty for conveyance of the property has been prepared by City Attorney Lemon and would be approved with Resolution No. 1679-10 that would authorize the Mayor to execute it. He concluded by stating that there will be on cost to the City except the filing fees.

BEAU HICKS – DIRECTOR, HANNIBAL CONVENTION & VISITOR’S BUREAU
Re: Mark Twain Boyhood Home & Museum Joint Partnership

Beau Hicks, the Director of the Hannibal Convention and Visitor’s Bureau, came before Council regarding an item that had been put on hold at the last meeting, pending further examination of the request’s constitutionality. Since that time, Hicks stated that he had done further research and was returning to share his findings. He said that he had recently been

working with the City Attorney and Representative Rachael Bringer to find a solution to possible problem with the HCVB making a donation to the Mark Twain Boyhood Home & Museum. He added that Council Member Lyng was correct when he questioned whether any of the suggestions were in conflict with Article 6 of the Missouri Constitution, *placing limitations on the use of credit and grant of public funds by local governments, pensions and retirement plans for employees in certain cities and counties.*

As a result, he researched how other CVB's do this without violating any state statutes. Hicks discovered that HCVB was founded based upon 1975 legislation which authorized collection of a bed tax, included in this legislation is a condition, (from HB 218, whereby bed tax may be used on conjunction with other agencies, bills, boards or associations to promote convention's and tourist's business through the use of contract, publicly or privately within an agency, individual, partnership or non-profit organization for services or supplies that promote such civic activity.

According to the Missouri Legislation, on which the basis for the Hannibal CVB Bed Tax was authorized and created, these special projects and the Bureau's support falls well within the mission and accepted use of the Bed Tax funds. In light of this information, Hicks again asked for Council approval of his proposal allowing HCVB partner with the Mark Twain Boyhood Home & Museum to the tune of \$5,000 on a CD project to commemorate Mark Twain's life, which would help propel the Home's fund-raising efforts.

Hicks noted that Henry Sweets and Cindy Lovell were also present to support this project. He explained that, recently, Ms. Lovell had traveled to Nashville to meet with Brad Paisley, who was included in the CD. Proceeds from the CD will go to the Boyhood Home, after the record company receives their portion.

Hicks' second half of the proposal regarded the partnership with the Home/Museum for the Ralph Stanley Concert that was also discussed at the Council meeting on August 3, 2010.

Motion was made by Mayor Pro Tem Knickerbocker to approve Hicks' recommendation. Motion was seconded by Council Member Barta.

Motion carried.

Re: Request, City Cost Share – Hannibal “Welcome Signs”

Hicks then presented his next agenda item regarding a request for a City cost share of Hannibal “Welcome Signs”. He explained that, approximately a year ago, the City Manager had been approached by Council Member Louderman, who asked why there were no “Welcome Signs” on the outskirts of Hannibal. Hicks said that the City Manager LaGarce had asked him to research this project and the HCVB advised that Hannibal needed something more than the normal “Welcome Signs”.

As a result, Hicks began the process of trying to develop something “unique and different” that would reflect the community well and tell people, not only that we welcome them, but that Hannibal must be a unique place. A problem arose in finding an appropriate place to construct welcome signs; and if large signs were constructed (possibly four signs), then lease agreements would need to be approved with the appropriate land owners and the signs would require periodic upkeep.

An alternative was sought. It occurred that the HCVB had been involved in the billboard business for a number of years, proving to be highly successful. This type of advertising is the Bureau's largest expense per year.

He presented a proposal from Lamar Company, partnering with them to take over three billboards in Hannibal area. These would be located at:

- US61 South – across from Warren Barrett Drive
- US 61 North – in front of Lamar Company
- Highway 36/I72 – in the vicinity of TJ's Supper Club

This project, according to Hicks, has an initial cost of approximately \$13,900 to erect and an annual cost of approximately \$4,400 for maintenance. Mr. Hicks noted that Lamar would construct the boards; however, the special effect supplies will be purchased directly from the Barbazon Company of Hollywood, CA. Lamar has requested a disclaimer on the billboards since these could not be built for anyone else at this cost. He added that, since his Board believes that "Welcome Signs" for Hannibal are important, they will be undertaking the project, regardless of the City's decision; however, his request was that Council approve a cost-sharing with the HCVB Board for start-up cost of this project. The annual cost would then be absorbed by the HCVB.

At this time, He made a presentation of the projected billboards, explaining that the boards would smoke every ten minutes for a one-minute increment. The smoke stacks are 3-D built around the side of the billboard and would require a temperature above 45 degrees to have the smoke effect. The vinyl background would need to be replaced approximately every five years at a cost of about \$7,800. Other events could be displayed on the flip board, and he mentioned the possibility of carrying on the smoke stack idea at a later time with other billboards.

DOUG WARREN – FINANCE DIRECTOR

Re: Approval for Payment, MIRMA Employment Practices Deductible

Doug Warren, the Finance Director, presented the next request, which was approval for payment to MIRMA for the deductible incurred as the result of an employment practices lawsuit, Sexton v. City of Hannibal, since the City is being billed for the deductible portion of the legal fees incurred to date. The amount due, according to Warren is \$10,000. This expense, which was not included in the original FY 2010-11 Budget, would be charged to account number 10.43.850 – Insurance Expense. Motion was made by Council Member Louderman to approve Warren's request. Motion was seconded by Council Member Hark.

Motion carried.

Re: Request, Bid Waiver - Emergency Structure Demolition

1241 Church Street – Sutton Container Service

Warren explained that his second agenda item concerned a request for bid waiver regarding an emergency structure demolition for property located at 1241 Church Street. He continued by explaining that on June 16th, this building collapsed with one wall falling against a residence directly adjacent to this collapsed structure. Since the property owner did not have funds for the demolition, and since the immediate danger to the health, safety and welfare of persons living next door was an urgent concern, emergency measures were taken to remove the dangerous building.

The original fee was reduced nearly 30%, to \$9,995.00, according to Warren, following negotiations between him, Building Inspector Joey Burnham and Mr. Sutton. Warren stated that the agreement was made with the knowledge of the City Manager, the Mayor and two Council Members. Work began on schedule and was completed of schedule. Warren explained that now steps must be taken to address the bill from Sutton Container Service for this demolition. He asked Council consideration of this request and approval of his recommendation to waive the bidding process. Motion was made by Mayor Pro Tem Knickerbocker. Motion was seconded by Council Member Barta.

Motion carried.

Re: Request, Set Public Hearing - 2010 Tax Levy Rates

September 21, 2010 – 6:45 p.m.

Warren, the Director of Finance, addressed Council with a request to set a public hearing regarding the 2010 Tax Levy on September 21, 2010 at 6:45 p.m. Warren stated that all property assessments have now been completed by Marion and Ralls Counties and the State Auditor's Office has calculated the tax ceilings for all governmental taxing entities. Warren stated that the proposed levy is \$1.2250 per \$100 assessed values for 2010. Motion was made by Mayor Pro Tem Knickerbocker to approve Warren's request to set the public hearing on September 21, 2010 at 6:45 p.m. Motion was seconded by Council Member Louderman.

Motion carried.

BILL MADORE – ACTING FIRE CHIEF

Re: Mutual Aid Agreement

Missouri Water Patrol

(Resolution No. 1678-10, to follow)

Acting Fire Chief Bill Madore presented the next item on the agenda, approval of a mutual aid agreement with the Missouri Water Patrol. Approval of Resolution No. 1678-10, to follow, would authorize the Mayor to execute this agreement between the Water Patrol and the City of Hannibal Fire Department.

Madore explained that this is a standard mutual aid agreement similar to those between the Fire Department and other departments. He noted only one significant change in this agreement, *“The Patrol shall be entitled to utilize the Hannibal Fire Department boats and related equipment upon reasonable notice and approval by the Hannibal Fire Department, and shall be entitled to use equipment and even if utilized outside of the City Limits of Hannibal”*.

Madore noted that the State Water Patrol has a local officer and recommended that, if a situation were to arise on the river that required a prompt response, that officer could use the Hannibal Fire Department equipment vs. waiting for resources to arrive from Mark Twain Lake or another location. He added that his department has trained with their personnel and has responded to various calls with them. He said that the Hannibal Fire Department works well with the Water Patrol and he believes that this agreement is only formalizing a relationship that currently exists between the two entities. Madore assured Council that the Missouri Water Patrol is self-insured; therefore utilization of the Fire Department's resources is not an issue. All other sections of this agreement, which was drafted by the City Attorney, are standard, according to Madore.

Council Member Lyng questioned who would be responsible if equipment is damaged while in use by the Water Patrol. Madore responded that if they are using our equipment, and it is damaged, their insurance will cover the damages.

Council Member Dobson asked if this agreement would continue when the Water Patrol's structure changes, for instance, when they are placed under the jurisdiction of the Highway Patrol. Since Madore did not know the answer, he referred the question to City Attorney Lemon who said that, in his opinion, prudent practice would be to ask them to execute a new document when this occurs. Mayor Pro Tem Knickerbocker stated that, since the merger between the Highway Patrol and the Water Patrol passed during the past legislative session, it has technically already taken effect. Lemon responded that he was unsure of the timeline, since bills take effect when specified. Lemon continued by saying that a big chunk of this agreement was developed at the request of the Water Patrol. He believes that they would be bound by the agreement in any case, adding that the agreement is signed with the State of Missouri and not the individual entities. Knickerbocker contended that he believed this portion of legislature took effect approximately a week ago.

Madore noted that this agreement had been with the Water Patrol's legal team for weeks and during the time of draft, they did not convey to him the need of further altering this agreement.

He recommended Council approval of Resolution No. 1678-10, to follow, which would give the Mayor authorization to execute this agreement with the Missouri Water Patrol.

MARK REES – CITY ENGINEER
Re: Street Vacation – Hawkins Street, Bird to Hill Streets
Mark Twain Elementary School Project
(Bill No. 10-030, to follow)

City Engineer Mark Rees presented the next item on the agenda, a bill requesting Council authorization to close Hawkins Street from Bird Street to Hill Street, in order to construct the new Mark Twain Elementary School. This was brought before the Planning & Zoning Commission recently and they recommend vacation of this portion of Hawkins. (All commissioners were in favor of the request.) Bill No. 10-030, to follow, if approved would give a first reading to this request.

JOHN HARK – EMERGENCY MANAGEMENT DIRECTOR
Re: Request, Bid Waiver – Emergency Warning Siren Installation

Emergency Management Director John Hark explained that on July 7th of this year during a severe thunderstorm, lightning struck an emergency warning siren on Meadow Ridge Drive in Pioneer Village. Hark stated that he received a quote in the amount of \$15,865 for repair of the damaged siren; however, the quote for replacement only totaled \$14,923. In working with MIRMA, the company who administers the City's property insurance, it was deemed most cost effective to replace, rather than repair this siren. Replacing, rather than repairing, this siren triggers the bid limit issue.

Since the whole emergency warning network are interconnected, which requires compatible equipment at each location, Hark made a request to Council to waive bids and make this purchase from Global Technical Systems, the company who provided the original sirens, in order to maintain this compatibility when the broken siren is replaced. Motion was made by

Council Member Dobson to approve Hark's request and waive the bidding process, allowing him to purchase the replacement siren from Global Technical Systems for \$14,923. Motion was seconded by Council Member Barta.

Motion carried.

JOHN W. ROURKE – NIEMANN ROURKE
MICHAEL BROSS – BROSS CONSTRUCTION COMPANY
Re: 2009 Chipseal Project

Mr. John Rourke of Niemann Rourke came before Council to address the situation involving the chipseal project that was completed by his client, Mike Bross and his company, Bross Construction. Mr. Rourke stated that he was unsure why the City of Hannibal was pursuing a claim. He explained that he had practiced construction law for over twenty years; he added that he had personally written several chapters of the Missouri Bar CLE's and Construction Law. He continued to list his credentials then stated that, in reading the contract, he finds no basis for the lawsuit, adding that it is a colossal waste of time and fees that the City will have to pay.

According to Rourke, when the suit was filed, Bross Construction hired a consultant from Florida who, after reviewing the case and walking the project, could find nothing wrong. Rourke continued by saying the claim seems to be that the City is unhappy with some of the roads that were chipsealed; however, Rourke added that his client constructed the project according to the plan and specifications that the City detailed in the contract, using the materials chosen by the City.

Rourke stated that the problem lies with the chipseal. Anyone in the industry knows that chipseal is only used on certain types of roadway. In this case, Rourke alleged that the City contracted with Bross to construct on roads rated as 3, 4 and 5, when 6 is the minimum rating for roads to be chipsealed, and all the claims of defects are on roadways that are rated 3 and 4. He noted that even the bonding company is unsure why the claim is being pursued. He then asked what provision of the contract Bross failed to follow.

Rourke explained that previously, his client had tried to work with the City Engineer, with whom they thought that they had a pretty good working relationship and who, according to the contract was the City's designee. His client and the City Engineer drove the project for three days; and, at the end of that time, as a result, there were some issues that were raised by the City. Rourke and his client did not believe there was a breach of the contract; however, as a matter of customer service, they agreed that the matter could be resolved, based upon the rules stated by the City Engineer. There is now some question whether the City Engineer has the proper authority to speak in the City's behalf. Rourke added that, if there were any questions regarding the contract and/or the technical aspects of the project that the audience, the Council or the Mayor has, they will try to answer them. He said that they (his client Bross Construction or Niemann Rourke) have no desire to enter into litigation, because, in his opinion, it serves no purpose.

City Attorney Lemon confirmed Mr. Rourke's and his client's position that there is no defect in the streets and none of the streets are defective. Lemon then questioned Rourke whether he believed it was in the contemplation of the contract, that those streets were going to peel-up. Rourke responded that his client, Bross Construction, constructed according to the contract. He added that there was no defect. Lemon implored Mr. Rourke to answer his question then

restated the question, "Was it within the contemplation of the contract that those streets were going to peel-up?" Rourke responded by stating that eventually they would peel-up. Lemon asked if this would happen within three months after they were installed. Rourke answered that he did not know because he did not see that it was addressed in the contract, but what is addressed in the contract is the means and methods of his client.

Lemon questioned Rourke regarding the consultant from Florida, adding that the City, until this time, was unaware of this consultant. He asked if the consultant had prepared and provided a written report. Rourke stated that the consultant was prepared to provide a written report.

Lemon asked if he would provide this report to the City, to which Rourke responded, "It depends on what occurs. If we're in litigation, we will." He stated that he would be happy to have the City Attorney discuss this possibility with him. Mr. Lemon clarified Rourke's position that, at this point in time, he was unwilling to provide a report from this consultant, showing what he was claiming - that this is not a defective product? Rourke then advised that their consultant had not prepared a written report at the current time, since it costs money to have professionals do work.

Lemon now stated that it was his understanding that Bross Construction, Rourke's client, had a written report on the analysis of the oil which they utilized, and that has already been provided to Rourke and his client, Bross Construction. Lemon continued by saying that he had asked for a copy of this report on several occasions in his correspondence with Rourke and/or his client. He questioned whether or not, Rourke was prepared to provide that report at this time. Rourke answered that Mr. Lemon was mistaken because they did not have a report such as this. Lemon clarified Rourke's statement by asking if he was denying that they (Rourke and his client, Bross Construction) had any analysis done on the oil utilized. Rourke responded that he was denying the existence of a written report done on the oil.

Lemon asked if there was an analysis done on the oil, and Rourke responded that, to his knowledge, there had not been an analysis done on the oil. At this time, the consultant has been asked to prepare an analysis, according to Rourke.

Rourke asked, specifically what about the oil was incorrect in Lemon's opinion. Lemon responded that, specifically, the City's concern was that Bross, with the City's permission utilized some of the oil which was planned for Hannibal's project in another city and that city is experiencing the same problem with the streets peeling-up, as a result. Lemon said that the City of Hannibal would like to know whether or not the oil has been analyzed and Lemon said the City has information that would lead them to believe that Bross has had it analyzed and is aware of whether or not there is a possible defect in the oil. Rourke stated that he was not aware of that, and called on Mike Bross, of Bross Construction for an answer.

Lemon clarified an earlier statement of Rourke's where he said that he was unsure why the City of Hannibal was pursuing a claim. When Rourke affirmed that statement, Lemon answered that the streets are defective and the asphalt is peeling-up. He continued by stating that under Section 6.19 of the contract states, [the contractor] warrants and guarantees to owner, engineer and engineer's consultants that all work will be in accordance with the contract options and will not be defective. Lemon explained that this was Bross' guarantee that the work would not be defective and it is the City's contention that streets that peel-up are defective streets.

Rourke stated that Lemon should read the definition of 'defective' in a contract. Lemon responded that he was aware of the definition of defective. He went on to say that if it was his [Rourke's] client's position that the streets are not defective, his suggestion would be that perhaps they need to come forward with specific reasons why they believe it is within the scope of work, that these streets wouldn't peel-up within a few short months of being installed. Lemon advised that the City has not threatened, nor have they sued Rourke's client. Based on Bross' refusal to honor their guarantee, which was stated in the contract, the City is asking that the bonding company pay the bond. The City is not trying to sue Bross Construction, but Bross, Rourke's client, does not want to live up to their guarantee. According to Lemon, this was a bonded project, and it is a bonded project for a reason, so that someone would cover the guarantee.

Rourke respectfully suggested that Lemon did not understand what bonding is. He explained that a bond is attuned to the co-signature on a loan. The person receiving the funds is the principle obligor of the bond and the bonding company is the secondary obligor of the bond. The first liability is against the principle, which is Bross.

Lemon countered that when Rourke's client refused to honor their guarantee and refused to repair the streets when they began peeling-up, at that point, they were in violation of the contract, and the bond kicks in.

Rourke stated that he thought Lemon was out of his league, because he did not understand what a bond guarantees. It guarantees that the work is not defective and in order to understand what 'defective' is, it has to be in accordance with the plans and specifications. It has to be a violation of those. Rourke contended that his client provided the materials that were specified by the City of Hannibal. The material were applied, according to the specifications. He posed the question, "What did we do wrong? You are asking for a Cadillac when you paid for a Ford!"

Lemon argued that, if Bross did not wish to stand behind their work, they should not have given a guarantee. Lemon took issue with the fact that Rourke was lecturing him in regard to the contract, but added that he did know how to read a contract, and the bonding documents. He then suggested that Rourke was the one in error, stating that the City does have a right to make a claim on the bond, and that is what they have done.

Rourke asked what response had been received from the bonding company. Lemon answered that the bonding company had not yet responded, adding that Rourke's claim, in which he offered that the bonding company did not understand the claim and/or has disallowed the claim, etc. They simply have not responded yet.

Rourke stated that he had spoken with the bonding company, who do not understand the claim and agree with his client, Bross Construction. Lemon stated that they have a right to take that stand if they wish; however, the City, then, has a right to file a claim on the bond or take such other action that is deemed necessary. This is within the City's rights. According to Lemon, if Rourke's client does not believe that the roads are defective; he suggested that perhaps they need to provide a little more evidence besides just a denial and speculation with regard to why the road surface is peeling-up. Lemon continued by saying that no expert opinion had been provided, even though Rourke claims there is an expert opinion. He added that he believes there is an oil report and he wished to see it.

Lemon said that, if Rourke and his client believe they have proof that these roads and/or project is not defective, then he would be happy to consider it. Lemon explained that, to date,

nothing had been provided. When it was requested, it was never received. Rourke argued that, in this country, it is incumbent upon a plaintiff to prove his case. It is not incumbent upon government to make a demand. There has been no lawsuit filed and it is not his or his client's responsibility to prove this. He went on to say that his client constructed the project, the engineer accepted the project and paid for that project. If he was not going to accept the project (and if you look at the significance of accepting a project), then why did he pay? That is the best opportunity for review, before payment is made.

City Attorney Lemon suggested that under the Section regarding payment, it provides, "final payment should constitute a waiver of all claims by the owner, **other** than those arising from unsettled means **or** from faulty work", appearing thereafter as provided for in Article 13. Lemon concluded that Rourke's argument is invalid if the work is faulty, pursuant to sub-part 13.

Rourke questioned, under what authority Lemon said the work was faulty and/or defective. Lemon responded that if an individual has a car that does not work, and he makes a claim on the warranty of that vehicle, that individual is not required to prove why its not working, just that it isn't. In the same way, the City, according to Lemon is under no obligation to prove why the streets are peeling-up, only that they are.

Rourke countered that the first requirement is to read the warranty in order to discover whether the claim is covered. He added that, in this case, it is not. It only covers defects in the work; and, as defined in the contract, there has to be a violation of the contract for the warranty to stand. Secondly, according to Rourke, he has traveled on the streets and sees no problems. He reminded City Attorney Lemon that he had been in construction for twenty years. Lemon contended that the citizens of Hannibal would disagree with Rourke's statement that there is no problem. Lemon read the portion of the contract that addressed the issue at hand, "Contractor warrants and guarantees to the owner, engineer and engineer's consultants that all work will be in accordance with contract documents **and will not be defective**". Rourke responded that defective is defined in the contract and that must be examined to determine "defective".

Rourke explained that approximately two months ago, his client had asked for a copy of the alleged list of the questionable work, to be provided. To date, this list has not been received. He suggested that the request was ignored. Lemon corrected Rourke's statement, noting that the list that was to be prepared was not actually a list, but an analysis prepared by the City Engineer, documenting the condition of the streets. It is the City's belief, based upon a review of the streets, that there will be no good road surface, because the road surface is going to continue peeling-up; therefore the analysis is pointless. According to the City Attorney, the product is peeling-up from all road surfaces, whether rated 3, 4, 5 or even 6. The City believes the surface is peeling-up because of the quality of work being done. Lemon stated that if Rourke disagreed with this decision, and he has an explanation the City officials will be happy to look at it. Lemon concluded that, since the City has been continuously asking for something to be done for seven or eight months about this project, and nothing has been done, to date, they filed the claim on the bond.

Bross stated that the City Manager and the City Engineer had known about the expert, so the idea that this expert has been hidden is wrong. Secondly, the City appointed the City Engineer to be the arbiter of issues under this contract, this being included in the contract documents. He accomplishes this task coming up with a list of the streets that are supposedly wrong and since he is an engineer, he should provide that, but he does not.

Lemon stated that, according to 9.01(a), the engineer shall be the owner's representative during the construction period. This period is concluded, and even though the City Engineer is not pleased with the results and agrees that the work is defective; however, the negotiations must now be done with the City Council – not the City Engineer. The City Engineer has no authority to negotiate a settlement with Bross Construction.

Again Rourke referenced the “list” that was withheld by the City. City Attorney Lemon contended that the City withheld nothing, but what actually occurred was that Rourke's client made it clear that, regardless of what the list said, they had no intention of moving forward on any type of repairs. Since, at the current time, the City believes that every street will ultimately peel-up, the list is a moot point. Lemon said that if Rourke could provide an example of why this statement was not correct, the City would take another look.

Rourke concluded that it was clear that the City Attorney and Council intended to “start a war with Bross”, and, in his opinion, that is a shame and a terrible waste of taxpayer money. Lemon restated the Council's position, which was, “The Roads are peeling-up. You [Bross] gave a guarantee. Fix the roads or pay the bond.” That is the nature of the claim. No one is trying to start a war with Chester Bross Construction; in fact, the City has been trying to negotiate for months and months, to no avail.

The argument grew continually more heated until Mayor Pro Tem Knickerbocker asked to be recognized. He stated that since there was on resolution in sight, he wished to make a motion to cease discussion on the issue at hand. Motion was seconded by Council Member Louderman.

Motion carried.

RESOLUTION NO. 1678-10

AN AGREEMENT PROVIDING FOR THE PROVISION OF MUTUAL AID BETWEEN THE CITY OF HANNIBAL AND THE MISSOURI WATER PATROL

Motion was made by Council Member Louderman to have the City Clerk read Resolution No. 1678-10, and call the roll for adoption. Motion was seconded by Council Member Barta.

Motion carried.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Resolution No. 1678-10, duly approved and adopted on this date.

RESOLUTION NO. 1679-10

A RESOLUTION ACCEPTING CONVEYANCE OF PROPERTY LOCATED AT 708 SOUTH MAIN STREET FROM THE MARION L. CULP AND CHARLOTTE L.

**CULP LIVING TRUST AND AUTHORIZING THE MAYOR TO EXECUTE A
TRUSTEE'S WARRANTY DEED FOR SAME**

Motion was made by Council Member Baarta to have the City Clerk read Resolution No. 1679-10, and call the roll for adoption. Motion was seconded by Council Member Louderman.

Motion carried.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Resolution No. 1679-10, duly approved and adopted on this date.

BILL NO. 10-030

**AN ORDINANCE VACATING A TRACT OF LAND LYING IN PART OF
HUBBARD'S ADDITION IN THE CITY OF HANNIBAL, MARION COUNTY,
MISSOURI**

FIRST READING

Motion was made by Council Member Dobson to give Bill No. 10-030 a first reading. Motion was seconded by Council Member Hark.

Motion carried.

BILL NO. 10-027

**AN ORDINANCE AMENDING CHAPTER 12, ARTICLE II, OF THE CODE OF THE
CITY OF HANNIBAL, REGARDING QUALIFICATIONS OF MEMBERS FOR THE
HANNIBAL FIRE DEPARTMENT RELATING TO RESIDENCY REQUIREMENTS**

SECOND AND FINAL READING

Motion was made by Council Member Barta to give Bill No. 10-027 a second and final reading and call the roll for adoption. Motion was seconded by Council Member Louderman.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Bill No. 10-027 duly approved and adopted on this date.

BILL NO. 10-028
(as amended)

AN ORDINANCE AMENDING CHAPTER 32, ARTICLE XII OF THE HANNIBAL CITY CODE BY CREATING A NEW DIVISION 5 PERTAINING TO TREE PRESERVATION AND PLANTING, PARKING LOT LANDSCAPING REQUIREMENTS, AND LANDSCAPED BUFFERS

SECOND AND FINAL READING

Motion was made by Council Member Hark to give Bill No. 10-028, as amended, a second and final reading and call the roll for adoption. Motion was seconded by Council Member Barta.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker - 7

No: -0-

Mayor Hark declared Bill No. 10-028, as amended, duly approved and adopted on this date.

CLOSED SESSION

In Accordance with RSMo. 610-021 (1) & (12)

Potential Litigation

Contract Negotiations

At this time, Mayor Hark entertained a motion to go into closed session in accordance with RSMo 610-021, sub-paragraphs one (1) and twelve (12), admitting himself, rest of Council, City Manager Jeff LaGarce, City Attorney James Lemon, City Clerk Vance, Police Chief Davis and City Engineer Rees. Motion was made by Council Member Louderman to go into Closed Session, as directed by Mayor Hark. Motion was seconded by Council Member Dobson.

Roll Call

Yes: Council Members Dobson, Barta, Mayor Hark, Council Members Louderman, Hark, Lyng and Mayor Pro Tem Knickerbocker - 7

No: -0-

Motion carried.

OPEN SESSION

Motion was made by Mayor Pro Tem Knickerbocker to return to open session at this time. Motion was seconded by Council Member Hark.

Motion carried.

ADJOURNMENT

Motion was made by Council Member Louderman to adjourn the meeting. Motion was seconded by Council Member Lyng.

Motion carried.