

City Council of the City of Carbondale, Illinois  
Regular Meeting  
June 15, 2004

The City Council of the City of Carbondale, Illinois, held a regular meeting on Tuesday, June 15, 2004, in City Council Chambers of the Carbondale Civic Center, 200 S. Illinois Avenue. Following a meeting of the Local Liquor Control Commission, Mayor Brad Cole called the meeting to order at 7:06 p.m. with the following-named members of the City Council present/absent:

1. Roll Call

Present: Councilman Steven N. Haynes, Councilman Lance D. Jack, Councilwoman Sheila Simon, Councilwoman Corene McDaniel, Councilman Chris Wissmann and Mayor Brad Cole

Absent: Councilwoman Margaret Flanagan

Also present were City Clerk Janet M. Vaught, City Manager Jeffrey W. Doherty and various members of the City's administrative staff.

2. General Announcements and Proclamations

Councilwoman McDaniel announced that the African American Museum of Southern Illinois would be sponsoring a Juneteenth Celebration beginning on Friday, June 18, at 6:00 p.m. at Hopewell Missionary Baptist Church. Participants will proceed to Woodlawn Cemetery for a service honoring the slaves and the only African American Civil War soldier buried in the cemetery. The celebration will continue on Saturday at Attucks Park with activities from 10:00 a.m. through 4:00 p.m.. There will be gospel music, food, dancing, games and activities. All are invited to attend.

Mayor Cole announced that there had been a request for a public hearing on the usage and possible regulation of motorized scooters. A public hearing has been scheduled for the July 6 Council meeting.

Mayor Cole noted the passing of former President Ronald Reagan on June 5, 2004. A moment of silence was observed in honor of the former President.

Mayor Cole also noted that passing of lifelong Carbondale resident Jerry Baine. Baine was a regular viewer of the Council meetings on CityVision Channel 16.

3. Citizen Comments and Questions

Walter Steele of the Southern Illinois Libertarians invited all to attend the Southern Illinois Libertarians Annual Picnic at the Red Oak Pavilion at Evergreen Park on Saturday, June 19, at 12:00 noon. The speaker will be Tamara Millay, Libertarian Party candidate for Vice President.

4. Consent Agenda

Presented for Council approval on the Consent Agenda were the following items and corresponding recommendations:

1. Approval of Minutes. Recommendation: Approve minutes of the Regular City Council meeting, the Public Hearing on the Annexation Agreement with Gerald and Hwy Young Dunn for Arbor Hill Subdivision and the Public Hearing on the proposed vacation of an alley right-of-way between North Washington/North Marion Streets and East Birch/East Chestnut Streets, all held on June 1, 2004, and the minutes of the Special City Council meeting held on June 4, 2004.
2. Warrant. Recommendation: Approve Warrant #924 for the period ended May 24, 2004 (FY 2004), in the amount of \$131,232.99. (Exhibit A-6-15-04)
3. Warrant. Recommendation: Approve Warrant #925 for the period ended May 24, 2004 (FY 2005), in the amount of \$1,194,968.15. (Exhibit B-6-15-04)
4. Acceptance of Minutes of Boards, Commissions and Committees. Recommendation: Accept Fire Fighters Pension Board of Trustees of May 11, 2004 and Mayoral Review Panel on the Eurma C. Hayes Child Care Center of April 1, April 15, April 29 and May 13, 2004.
5. Removed from Consent.
6. Resolution Approving and Authorizing City Manager to submit a Contract Renewal Request and Execution of an Annual Contributions Contract for the period July 1, 2004 through June 20, 2004, for the Mill Street Apartments. Recommendation: Approve. (Res. 2004-R-54; Exhibit C-6-15-04)
7. Appointments to Boards and Commissions. Recommendation: Concur in appointments of Patricia Brigham to the Library Board through June 30, 2007, James Wall to the Carbondale Information and Telecommunications Commission through June 30, 2005 and Preservation Commission through October 31, 2006.
8. Illinois Municipal League Legislative Bulletin 2004-14. Recommendation: Accept and place on file.
9. Approval of Budget Adjustment and Amendment to the Five Year Capital Improvements Program to include the Sunset Bridge Repair Project (SW0401). Recommendation: Approve a BA transferring \$75,000 from the Local Improvement Fund Fund Balance to the Sidewalk Improvement Program (CIP SW0401) to pay for a portion of the project costs for the Sunset Bridge Repairs and amend the FY 2005 Five Year Capital Improvements Program to include CIP SW0401 in an amount not to exceed \$75,000.
10. Removed from Consent.

The Mayor asked if anyone would like any items removed from the Consent Agenda. Councilman Haynes asked that items 4.5 and 4.10 be removed from the Consent Agenda.

C. McDaniel moved, S. Simon seconded, that the Council approve Consent Agenda Items 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, 4.8 and 4.9. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

4.5 Authorization for City Manager to Enter into a Grant Agreement with Illinois Clean Energy Community Foundation for Improvements to Eurma C. Hayes Child Care Center Lighting

S. Haynes moved, C. Wissmann seconded, that the Council authorize the City Manager to accept a grant from the Illinois Clean Energy Community Foundation to replace lights at the Eurma C. Hayes Child Care Center with more energy efficient lights. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

4.10 Purchase of New and Rebuilt Water Meters from Sensus Metering Systems

S. Haynes moved, S. Simon seconded, that the Council determine that it is in the best interests of the City to waive the formal bid process for a five-year period and approve the purchase of new and rebuilt water meters from Sensus Metering Systems of Uniontown, PA. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

5. Public Hearings

1. Public Hearing on Annexation Agreement with Joyce Hesketh for a 1.01 acre parcel located at 4055 Chautauqua Road

The minutes of this public hearing were transcribed separately.

6. General Business

1. Ordinance Regulating Recovery in Medical Malpractice Suits

Mayor Cole presented an ordinance regulating recovery in medical malpractice suits. Specifically, the ordinance (1) provided that the venue for medical malpractice action as a result of treatment which may occur in Carbondale shall be commenced in Jackson County and (2) provided for a limit of liability for non-economic damages of no more than three times the actual economic damages awarded in a medical malpractice action.

MOTION: C. McDaniel moved, S. Haynes seconded, that the Council approve the Ordinance Regulating Recovery in Medical Malpractice Suits. DISCUSSION: Councilman Wissmann noted this issue is of paramount importance, adding that the discussion needs to be about public policy, not personalities. He asked that discussion remain focused on the facts and not get personal. Councilwoman Simon expressed concern about the section of the ordinance restricting venue to medical malpractice suits to Jackson County, adding that venue is heavily regulated by the State. She opined that the City would be exceeding its authority under home rule and for that reason she could not support the ordinance. She said, however, that she supports doing something comprehensive at the state or national level to address this important issue. Councilwoman McDaniel said that because nothing has been done by state legislators, it is good to be proactive. She said she

understood Councilwoman Simon's concerns and suggested that perhaps the ordinance could be revised to eliminate the stipulation that cases be tried in Jackson County.

Following the Council's comments, Mayor Cole invited comments from the audience. Debra Tindall, President of the Carbondale Chamber of Commerce, presented a resolution urging the City to take action to (1) develop opportunities to curb escalating medical malpractice crisis that will encourage Carbondale physicians to keep their practices open and allow for recruitment of quality physicians to the City; (2) work with the medical, insurance and legal communities to develop a City ordinance that will assist with the retention of physicians, maintain quality of life and maintain an attractive business environment; and (3) do all it can to draw state-wide and national attention to the growing crisis. George Maroney, Administrator of Memorial Hospital of Carbondale, spoke in support of the ordinance. He said that a message needs to be delivered that citizens' access to medical care is threatened and will continue to be threatened until State leaders solve the problem. He noted that where this problem has been solved in other sections of the country, caps on non-economic damages have been a component of the solution. He said that the structure for paying attorney fees should also be addressed. John Womick, Carbondale attorney, agreed with Maroney's concern about access to medical care and agreed that something needs to be done to solve the problems. Womick spoke in opposition to the ordinance, however, particularly with respect to capping non-economic damages based on the amount of award for economic damages. Paul Matalonis, attorney with Land of Lincoln Legal Assistance, complimented the quality of the physicians who practice in Carbondale, adding that it is only 5% of the doctors who actually receive malpractice suits. He also commended the Mayor for getting the City involved in these policy issues. Matalonis spoke in opposition to the ordinance, particularly with respect to capping awards and limiting access for victims. He presented handouts showing statistics on how caps have affected insurance rates in other states. Matalonis suggested that instead of passing an ordinance limiting victims from receiving compensation, the Council pass a Resolution supporting insurance rate reform in Illinois. Richard Whitney, Carbondale attorney and candidate for State Representative from the Green Party, appreciated the presentation of an ordinance which has created a forum on a vital community issue and an opportunity for the exchange of ideas. He spoke in opposition to the ordinance, opining that the ordinance tramples on judicial functions, violates the constitution and doesn't have a chance of surviving a court challenge. In his opinion, the ordinance also has problems with fairness and equal protection because it couples economic and non-economic damages. He also agreed with Matalonis that legislation is needed which would regulate insurance companies and deal with anti-trust issues. He suggested that the Council establish a Carbondale Department of Insurance with authority to review and repeal rate hikes. He acknowledged that this, too, would probably be struck down by the courts but it would be another symbolic gesture to the public. Dr. Joseph Rubelowski, a Carbondale physician, said in response to Councilwoman Simon's comments that he and other doctors do not care where a medical malpractice trial is conducted. However, he opined that the lawyers quite often do not really care about their clients but only about the money they can make off their clients. He shared two personal stories of patients and families that he cared for. He concluded that the

ordinance may be symbolic but he would be happy that there was support for what physicians do. Mr. Ed Dorsey, who identified himself as an officer in a Carbondale civil rights organization, stated that he opposed the ordinance for the same reasons as the other speakers. He stated that he also opposes the ordinance because of the adverse effect it would have on minority residents and the poor. Mr. E.G. Hughes, 509 S. Eason, stated that although medical malpractice insurance rates are increasing, there are also 44 million Americans who are too poor to afford health insurance, include 1.7 million in Illinois. He suggested that the ordinance might be the incentive to get the doctors, lawyers and insurance companies together. However, their interest may not be in the public's interest or in the public good. He suggested that the Council vote on an ordinance for a single-payer health care system which would be available to everybody. He encouraged the Council to take both actions. Ms. Priscilla Pimentel, Pecan Street, said that the insurance companies have already raised their rates and have said they are going to raise them again. As a result, she does not see how the ordinance will help since it doesn't directly affect what needs to be changed, which is how the insurance companies raise rates every year. She also spoke in opposition to caps on non-economic damages, adding that juries need to decide how much pain and suffering is worth. Cornelius Crane, Cedar Creek Road, said that it is not the doctors that are paying the malpractice insurance premiums, but the patients who are paying the premiums every time they visit a doctor. This pool of resources is to be used to compensate the injured patients. However, the problem with caps is that the caps effect what the injured people are awarded but do not limit what the insurance companies or the lawyers make. Dr. M Stalls, Robert A. Stalls Avenue, spoke in opposition to the ordinance, adding that there has been no talk of caps on the price of a doctors visit or caps on doctors salaries and noting that the cost of everything is rising significantly. She also expressed concern about the lack of diversity in the court system of Jackson County, yet the ordinance provides that cases just be tried in Jackson County. She said that caps on non-economic damages should not be considered and asked the Council to go back to the drawing board. Dr. William Hamilton, a physician in Carbondale for many years, commended the Mayor and Council for considering this action. He noted that medical students and an entire generation of physicians are going to be reluctant to practice in Illinois because of the costs.

Mayor Cole thanked the citizens for their comments and opened the topic up for Council discussion. Councilwoman Simon asked City Attorney Deborah Nelson asked if either of the two parts of the ordinance - the section on venue and the section on limitation on damages - are within the realm of what can be regulated by a home-rule city. Attorney Nelson said the courts would apply a three-part test in making the determination: (1) the nature and extent of the problem; (2) the units of government which have the most vital interest in a solution; and (3) the role traditionally played by local and statewide authorities in dealing with the problem. Councilwoman Simon asked if when considering the third test regarding local and statewide authorities, both venue and damages are things that are highly regulated by the State. Attorney Nelson said that venue is definitely highly regulated, adding that caps are not, but insurance and other things are regulated by the State. Councilwoman Simon asked if Attorney Nelson was aware of any other municipalities that have restrictions on venue or limitations on damages. Attorney

Nelson said she was not aware of any. Councilwoman Simon said that although she appreciates the Mayor's efforts, her concern remains with people in poverty and people without means, in addition to the concerns about venue. She said she feels the Council is making a statement about whose life and whose abilities are rewarded in what way. Councilman Jack said that doctors should not interpret discontent about malpractice insurance premiums as a lack of respect for doctors or the work that they do. He said the ordinance is not perfect because it does not address insurance premiums. He also has reservations about an ordinance that places limits on a patient's right to claim malpractice without having the facts. However, he also has great reservations about not doing anything when a problem presents itself, adding that the state legislature should be addressing these issues for the entire state. He said this ordinance might not be the perfect solution but might be the only way to force public debate and eventual state action. He said he is truly torn because action needs to be taken, but has great reservations about how this symbolic gesture is being carried out. Councilman Haynes said he also has reservations, adding that the Mayor should be applauded for bringing this ordinance to the Council out of necessity. He added this is an important issue for the community, adding that whatever happens with the ordinance he would hope that the debate would continue and keep the issue in the forefront. He said that although the ordinance may not be perfect, it will help get the concern out into the public. Councilman Wissmann said that his primary problem with the ordinance is that there are no guarantees that insurance rates will decrease. He said the insurance industry seems to be making staggering profits while the rates for all types of insurance continue to rise. He does not see the ordinance helping the City's doctors. He also said that he sees this type of measure causing people to look to other communities for health care, adding that he thinks the real beneficiary will be the insurance industry. He said he might entertain these suggestions if they were a part of a package which addressed other things such as rate regulation, insurance regulation, etc. and other types of reform. As it is, however, he sees it causing more problems than it solves and creating an effect that might be contrary to its intention. He added that this debate brings attention statewide and nationwide and can be used to foster proposals that can be brought back to the Council. Councilwoman McDaniel said a person doesn't realize how important things are until they're gone. She said the Council hears ideas from the lawyers and the doctors and the citizens, but has to make a decision based on what it believes is best for the citizens of Carbondale. She said for her family and for the families of Carbondale she would like to know that a doctor is only a phone call away, not a helicopter ride to another state. She said doctors do not see a person's color when they treat them, but only the person who needs their care. She said the Council must follow its heart and do what it feels is best for the community. Mayor Cole thanked the Council for considering this matter and thanked the audience for its input. He said there are varying opinions about this topic, adding that there have been so many opinions there has been no ability to reach consensus at any other level of government. He said there are a number of options the Council could take, the first of which would be to do nothing, which is what everyone else is doing. Mayor Cole said this is the least popular to him, adding that it is going to take an accident or illness of someone of significant political, social, or financial background before something happens at the state or federal level. He said until someone gets hurt who is "at the top of the ladder", nothing is going to happen. Mayor Cole said the situation is

hemorrhaging and the community must act. He said access to quality health care is threatened and the responsibility for the Council is to take action now and to find new solutions to old problems. Mayor Cole noted that a question had been raised whether the Council had the legal authority to take this action, responding that since it had never been tried, no one knows. However, if the Council tries it and finds out later than it can't, so be it. But, he said, it may find out that it can. He said that it may be that nothing can help the situation; however, the Council is at a crossroads where it can draw greater attention to the issue. He said the Council can decide to take some action tonight and come back at a later time to discuss additional action or to modify this action, adding that there has to be a starting point. He said the Council has to try something because the community will be better off, the level of attention to this issue will be raised. He added that it is important that the City of Carbondale show its leadership as a medical community, the center for specialty care, and take the action that may be controversial and may be challenged. But, he said, it is definitely worth taking. He noted that action will also continue discussion on a topic that the City cannot let die.

MOTION TO BE VOTED UPON: That the Council approve the Ordinance Regulating Recovery in Medical Malpractice Suits. VOTE: Ayes: S. Haynes, C. McDaniel and B. Cole. Nays: L. Jack, S. Simon and C. Wissmann. Motion did not pass.

Councilman Jack said he would like to keep the ball rolling, noting that this effort has gotten the attention of people in Carbondale and throughout the region. He said he would like to get together with the people attending this meeting to try to work something out and find a way to draft another ordinance that respects victims rights. He said he could support such an ordinance. Councilman Wissmann said he would also like to see the ordinance come back with some other elements added to it that might make it more balanced as Councilman Jack had said. He added that he didn't believe this initial step was sufficient and it would be undesirable to take this step without having the other elements, such as insurance reform, in place. Councilwoman McDaniel agreed with Councilman Wissmann and suggested that input from the medical and legal professions be obtained. She added that no one will be completely pleased with the final product, but the goal should be to satisfy the majority of the people.

2. Ordinance Authorizing a Budget Adjustment for the Increase in the Overall Fiscal Year 2005 Budget to Purchase the Lincoln Middle School and a Resolution Authorizing the City Manager to Enter into an Agreement with White and Borgognoni for Architectural Services

C. McDaniel moved, S. Haynes seconded, that the City Council approve the Ordinance Authorizing a Budget Adjustment for the Increase in the Overall Fiscal Year 2005 Budget to Purchase the Lincoln Middle School and approve the Resolution Authorizing the City Manager to Enter into an Agreement with White and Borgognoni Architects for Architectural Services. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried. (Ord. 2004-42 and Res. 2004-R-55 respectively; Exhibits D-6-15-04 and E-6-15-04 respectively)

3. Award of contract for Grand Avenue/Wall Street Intersection Improvements, CIP No. ST9901, MFT Section No. 02-00111-00-RS

S. Simon moved, C. Wissmann seconded, that the Council award the contract for the Grand Avenue/Wall Street Intersection Improvements, CIP No. ST9901, MFT Section No. 02-00111-00-RS, to E.T. Simonds Construction Company of Carbondale in the amount of \$438,477.98 pending IDOT's concurrence. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

4. Award of Contract for Jackson Street Water Line/Brick Replacement, CIP No. WS0401

S. Simon moved, S. Haynes seconded, that the Council award the Contract for Jackson Street Water Line/Brick Replacement Project, CIP No. WS0401, to Dean Bush Construction Company of Carbondale in the amount of \$153,530.50. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

5. Resolution approving Hesketh Gardens Subdivision and Subdivision Agreement located at 4055 Chautauqua Road

C. Wissmann moved, S. Simon seconded, that the Council adopt the Resolution approving the subdivision plat and subdivision agreement for Hesketh Gardens Subdivision. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried. (Res. 2004-R-56; Exhibit F-6-15-04)

6. Ordinance approving an Annexation Agreement between the City of Carbondale and Joyce S. Hesketh for a 1.01 acre parcel located at 4055 Chautauqua Road

S. Simon moved, S. Haynes seconded, that the Council approve the Ordinance authorizing the execution of an Annexation Agreement between the City of Carbondale and Joyce S. Hesketh. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried. (Ord. 2004-43; Exhibit G-6-15-04)

7. Action on Request that the Planning Commission conduct a Public Hearing on a proposed Zoning Ordinance Text Change relative to Amortization of Non-Conforming Mobile Homes in Zoning Districts other than R-1

S. Haynes moved, C. Wissmann seconded, that the Council initiate a public hearing by the Planning Commission on a proposed Zoning Ordinance text change amortizing over two years nonconforming mobile homes in zoning districts other than R-1. DISCUSSION: In response to Council inquiry, Mayor Cole said the property owners would be notified by certified mail prior to the public hearing before the Planning Commission. VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole. Nays: None. Motion declared carried.

7. Council Comments

Councilman Jack asked what the protocol or procedure would be for revisiting the issue of medical malpractice. Mayor Cole responded that if any Council members have suggestions on future action, please submit those ideas to the Mayor's Office and he will look into developing a new proposal in its entirety.

Councilwoman Simon thanked all the persons who volunteer for boards, commissions and committees. Councilwoman Simon also asked that some thought be given to a swimming pool, adding that this might be something the City can do something about.

8. Closed Meeting

S. Simon moved, C. Wissmann seconded, that the Council hold a closed meeting to discuss the appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body pursuant to 5 ILCS 120/2(c)(1).  
VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole.  
Nays: None. Motion declared carried. Open session recessed at 9:40 p.m..

C. Wissmann moved, S. Simon seconded, that the Council return to open session.  
VOTE: Ayes: S. Haynes, L. Jack, S. Simon, C. McDaniel, C. Wissmann and B. Cole.  
Nays: None. Motion declared carried. Open session resumed at 10:48 p.m..

There was no formal action taken as a result of the closed meeting.

9. Adjournment

There being no further business to come before the City Council, the meeting was declared adjourned at 10:49 p.m..

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Janet M. Vaught, City Clerk

Approved by the City Council on:

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