

**CITY COUNCIL
CITY OF RICHMOND HEIGHTS,
MISSOURI**

REGULAR MEETING, September 2, 2008

A regular meeting of the City Council of the City of Richmond Heights, Missouri was held on Tuesday, September 2, 2008 at 7:30 P.M. at The Heights Community Center, 8001 Dale Avenue. Present were Mayor James J. Beck, Council Members Ed Notter, Mike Jones, Tim Gallagher, Paul Lore, Camille Greenwald, Connie Williams, Jim Thomson and Gina Mitten. Also present was Amy Hamilton, City Manager and Michael Kern, substituting for City Attorney, Ken Heinz.

ANNOUNCEMENTS

Mayor Beck stated that Tim Berry of Michelson-Hadley Heights Development LLC would update the Council on the Hadley project.

Mr. Berry stated that he had told the Council they were not in position to give the notice to the residents and City on the August 29 due date to being unable to produce contingent financing at that time. Mr. Berry noted the Council had amended the notice date to September 5 to give time for Council's additional consideration to extending the date for an additional 60 days.

Mr. Berry stated they still intended on closing the land acquisition by the end of the year, and by this amendment, would set the date to give notice to October 29 as they continue to work with these banks to get the project done.

Mr. Thomson asked about the \$1000.00 payment.

Mr. Berry stated they would extend the post-closing occupancy to all residents through the end of the school year, and also with this amendment modification, that Michelson would be making an additional payment for the owner-occupied units in both the residential area and southern commercial area, on top of the existing contract price of \$1000.00 per home, payable when the amendment is approved.

Mr. Berry stated that the property owners go through the title company, as done previously and available within five working days and could be picked up through the title company located in the Michelson building.

Mr. Gallagher stated with the amendment passing tonight as an emergency measure, and the money would be available within the five working days, or Tuesday, September 9.

Mr. Beck reviewed the proposed amendment in Bill 5225, stating the Council would consider extending the notice to close to October 29, 2008. Mayor Beck stated they are not extending by the end of the year, the notice closing date, so instead of having the 90 days, between the time they send out the notice to close and the time of closing, it will be adjusted to 60 days, to the same December 29, 2008. Mayor Beck stated the June 15, 2009 date to stay in your homes rent free is still in the Agreement.

Mayor Beck stated the City is still behind Michelson in this project as they go through the financing process. Mayor Beck stated he personally feels this project gave the best deal for the residents of Hadley project area and felt that with the market conditions the way they are today, this decision makes sense.

OTHER ANNOUNCEMENTS

Mr. Jones noted recent mailings by utility companies have been announcing rate increase requests; from Mid-American Water Company, Ameren UE, and November ballot issues which if passed, may end in a tax increase. Mr. Jones stated these hearings were an opportunity to voice opinions on the tax increases and was particularly concerned about how these increases would affect Richmond Heights' seniors on fixed incomes.

CITIZEN COMMENTS NO. 1

Alex Hogue-7913 Hicks-asked if Michelson can't make good on the August 29 commitment, how can you make the payments of \$1000 now and the \$5000 payment in two months. Mr. Hogue stated he preferred that the City move on to the next bidders of the project. Mr. Hogue asked if there was a backup plan if the Michelson plan fell through.

Mayor Beck stated the Amendment would allow the developer to continue to move forward with the financing process and curtailing it now would be a detriment to the residents. Mayor Beck stated there isn't a back up plan, noting it could not be the same deal that was chosen two years ago. Mayor Beck stated that it was doubtful another developer would come in and offer the same terms.

Mr. Hogue stated he did not think the \$1000.00 payment was enough to accommodate the residents for their trouble. Mr. Hogue stated he would not give this developer one day more and would vote no for any extension.

Ms. Mitten stated that whether this current redevelopment agreement does not move forward because Council does not approve the extension or despite a granted extension the financing process is not successful, there is no other "iron in the fire". Ms. Mitten noted the TIF laws have changed, and would make the area more difficult to redevelop on the whole and the City would have to start from square one with different terms and conditions.

Ms. Williams stated that the pricing of homes have gone down in the last two years, and if another developer would come along, the offers for the homes might be considerably less.

Mr. Hogue stated that was true, but for homes to be purchased by the displaced residents would be less expensive as well.

Mr. Lore stated that the drop in home values also affects the pricing on the new homes in that area and that same drop in price would affect the financing for the project as a whole.

Erma Nevels-1627 Berkley-asked if Michelson was actually going to buy her property and if so, when?

Mayor Beck, said we hope so, on December 29.

Ernest Brooks-1612-1614 Booker Place-asked if the Council still thought the plan would go through and noted that even though financing was difficult to get, would Michelson be able to get the financing.

Mayor Beck stated that with the financing picture the way it is right now, time to allow for institutions to make financing decision is longer and the recent changes in the Agreement were made to help the developer get to a positive financing answer.

Mr. Brooks stated the TIF Commission initially stated the Hadley Township was not ready for eminent domain, but it was the Council's choice to apply eminent domain. Mr. Brooks stated it appears if no one has looked into the possibility to see if anyone else wishes to develop the area.

Mayor Beck stated if this project does not go through, he believes there are others interested in the project, but the process would be different and no doubt would not be able to offer the same square foot price Michelson is offering. Mr. Beck stated he felt this was the best choice.

Mr. Brooks asked for the Council's word on not voting any other extensions or redrafts..

Ms. Mitten stated she would not vote for any other extensions.

Mayor Beck stated he would make a decision as the information comes to him and not give his "word" until all the facts are in.

Reggie Finney-7920 Hicks-stated the whole process has been stressful and particularly learning that a vote to extend , continues a process residents have hoped would be final and a successful finish. Mr. Finney stated he would vote for an extension, hoping this would move the process along. Mr. Finney stated he had issues with giving checks only to those who owner-occupied homes. Mr. Finney pointed out an example where a property owner died and relatives who do not live in the house now are not able to get that \$1000.00 payment.

Ricky Cochran-7923 W. Bruno-asked about his family's property which is currently boarded up. Mr. Cochran stated the house is condemned due to problems with floor joists and he chose not to rehab the house to be live-able. He stated he was one of those property owners where there were multiple heirs, but cannot receive the payments because no one lives in the house.

Mayor Beck stated he would look into the situation and how property owners in these situations are handled.

Sylvester Dunn-7909 Hicks-stated he lived in RPA 2 area of the redevelopment area and asked that since this area was not part of the current plan, could the City remove RPA 2 designation from his area, and as it not part of the project, and not mentioned in a "buyout" or considered, could it be removed.

Mayor Beck stated he would look into it.

APPROVAL OF MINUTES

Regular Meeting August 18, 2008

Mr. Gallagher moved, Ms. Mitten seconded, a motion for approval of the minutes of the Regular Meeting of August 18, 2008. Carried unanimously.

CITY MANAGER'S REPORT

Conditional Use Permit-No. 2008-08 Masonry Center-1429 Big Bend Boulevard

Ms. Hamilton asked if the Council wished to call up for review, the petition for a CUP for a private club at the Masonry Center at 1429 Big Bend. Ms.

Hamilton stated the new area would serve their members with larger meeting areas, training program areas for those in the masonry and bricklaying field.

Mr. Gallagher asked the definition of "club" and if the new area would be selling alcohol.

Ms. Hamilton stated she felt if there were any organizational meetings that were more social in nature, that a caterer would be used as the Masonry Institute does not have a liquor license.

The Council indicated they did not wish to call the Petition up for review and approved the Conditional Use Permit and its conditions.

**Liquor License
California Pizza Kitchen-
Saint Louis Galleria**

Ms. Hamilton asked if the Council wished to grant approval of a liquor license for the California Pizza Kitchen whose application is up for review due to a change in store management. Ms. Hamilton indicated the requirement to re-apply is both a State and City guideline.

Council approved the application for a liquor license for California Pizza Kitchen.

Bill No. 5225 Emergency Measure

Ms. Hamilton stated that it was Staff's recommendation that the City grant a one-time extension to Michelson and if there were any further questions to ask of Michelson.

CITY ATTORNEY'S REPORT

None.

BILLS PREVIOUSLY INTRODUCED

**Bill No. 5223; second reading
Amends Ord. No. 4788, the Municipal Code,
Chapter 215: Offense, Article VI, Offenses Concerning
Property, by adding new Section 215.640; Possession of
Prohibited Theft Devices.**

Mr. Gallagher moved, Ms. Mitten seconded, a motion for the second reading of Bill No. 5223. Carried unanimously. Bill No. 5223 was presented and read.

AN ORDINANCE AMENDING ORDINANCE NO. 4788, THE MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, CHAPTER 215: OFFENSES, ARTICLE VI., OFFENSES CONCERNING PROPERTY, BY ADDING NEW SECTION 215.640; POSSESSION OF PROHIBITED THEFT DEVICES.

Mr. Lore stated he would vote against the Ordinance as he feels it is too vague.

Mr. Notter stated he would vote for the Ordinance, but noted that he had a "device" (small plier tool) that could be interpreted as a theft device without it really being carried for such purpose.

Ms. Greenwald stated that she felt the possession of such devices was in tandem with being used in an attempt of theft.

Ms. Williams stated that she felt the Ordinance covered it adequately if persons were caught stealing in the act with these tools.

Mr. Gallagher stated he did not feel the same concerns as Mr. Notter about a case of mistaken intent just because one possessed an item such as a small tool, but thought the ordinance adequately addressed the issue of intent.

Mr. Lore stated the Police Department likes to write the law as tough as they can, but stated he feels it is the City Council's job to define what is legal vs. what could be considered ordinary.

Michael Kern, standing in for City Attorney Ken Heinz, stated that prosecution has the burden of proof to say the particular use of the tool or device was in the person's possession with the intent to use it to steal.

Mayor Beck asked for a vote of approval of Bill No. 5223. AYES: Mr. Thomson, Ms. Greenwald, Mr. Jones, Ms. Mitten, Mr. Notter, Mr. Gallagher, Ms. Williams, and Mayor Beck. NAYS: Mr. Lore.

Mayor Beck stated Bill No. 5223 was approved 8-1.

INTRODUCTION OF NEW BILLS

Bill No. 5225; Emergency Measure
An Ordinance authorizing the execution of a
Fifth Amendment to the Redevelopment Agreement
with Michelson-Hadley Heights Development, LLC,
as an Emergency Measure.

Mr. Gallagher moved, Ms. Mitten seconded, a motion for a reading in title only of Bill No. 5225 as an Emergency Measure. Carried unanimously. Bill No. 5225 EM was presented and read.

AN ORDINANCE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI APPROVING A FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN MICHELSON-HADLEY HEIGHTS DEVELOPMENT, L.L.C. AND THE CITY OF RICHMOND HEIGHTS, MISSOURI, FOR THE HADLEY TOWNSHIP REDEVELOPMENT AREA AS AN EMERGENCY MEASURE.

Mr. Gallagher moved, Ms. Mitten seconded, a motion for a reading in entirety of Bill No. 5225 as an Emergency Measure. Carried unanimously. Bill No. 5225 EM was presented and read in its entirety.

AN ORDINANCE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI APPROVING A FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT BY AND BETWEEN MICHELSON-HADLEY HEIGHTS DEVELOPMENT, L.L.C. AND THE CITY OF RICHMOND HEIGHTS, MISSOURI, FOR THE HADLEY TOWNSHIP REDEVELOPMENT AREA AS AN EMERGENCY MEASURE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, AS FOLLOWS:

SECTION 1. The Fifth Amendment to Redevelopment Agreement attached hereto as Exhibit "A" is approved and the Mayor and Clerk of the City of Richmond Heights, Missouri are hereby authorized and directed to sign and attest to same on behalf of the City of Richmond Heights.

SECTION 2. The Amendment authorized for execution and attestation shall be in substantially the form and contain the words and figures as per Exhibit "A" which is attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION 3. This Ordinance shall take effect and be in full force immediately following its passage and being signed as provided by law. This ordinance is deemed an emergency measure necessary for the immediate preservation of the public peace, health or safety of its residents because it is needed to allow purchase of residences from property owners who desire to move elsewhere and have commitments for other properties.

PASSED and SIGNED this 2nd day of September, 2008.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: September 2, 2008 EMERGENCY MEASURE
Second reading: September 2, 2008 EMERGENCY MEASURE

EXHIBIT A
[Fifth Amendment to Redevelopment Agreement]

FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT
THIS FIFTH AMENDMENT TO REDEVELOPMENT AGREEMENT (this “Fifth Amendment”) is entered into as of the 2nd day of September 2008 (the “Effective Date”), by and between the CITY OF RICHMOND HEIGHTS, MISSOURI, an incorporated political subdivision of the State of Missouri (the “City”), and MICHELSON-HADLEY HEIGHTS DEVELOPMENT, LLC, a Missouri limited liability company (the “Developer”). *(Words and phrases having a defined meaning in the herein-defined Agreement shall have the same respective meanings when used herein unless otherwise expressly stated herein.)*

1. **Section 3.1.1** is hereby amended by adding a new paragraph (g) to read as follows:
 - (g) No later than five (5) business days after the Effective Date, the Developer shall cause another \$1,000 to be released to the owners of each Owner Occupied Property subject to such agreements, with such appropriate modifications as may be reasonably required by the Developer to carry out the intent of this Ordinance.

2. **Section 3.1.5** is hereby amended by:
 - a. Deleting paragraph (a) and replacing it with the following:

(a) No later than October 29, 2008, the Developer will provide notice to all owners of Owner Occupied Property and to all owners of Property within the Residential Phase (excluding properties subject to condemnation proceedings) that the Developer either (i) intends to close on such Properties between November 28, 2008 and December 29, 2008, inclusive (provided that an owner of such a Property may request the closing be delayed until no later than January 15, 2009), or (ii) terminate the Redevelopment Agreement.

Subsections (1) through (4) remain unchanged.

5. **Section 3.5.1** is hereby amended by deleting the first Activity of the Construction Schedule therein and replacing it with the following:

Activity	Maximum Time for Performance (Absent Force Majeure)	Maximum Time for Performance (With Force Majeure)
Submit Notice of Acquisition (all Property described in Section 3.1.5)	December 1, 2007	October 29, 2008

Except as previously modified hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

This Fifth Amendment may be executed in counterparts, each of which shall constitute an original. The parties may sign this Fifth Amendment by facsimile copies, and any such facsimile copy shall be deemed to be an original, and no objections shall be made to the introduction into evidence of any telefaxed copy on grounds related to the telefaxed copy not being an original.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as of the day and year first above written.

**CITY OF RICHMOND HEIGHTS,
MISSOURI**
By:

-
James J. Beck, Mayor

(SEAL)
Attest:

-
**Patricia S. Villmer, Deputy City
Clerk**

**IN WITNESS WHEREOF, the parties hereto have executed this Fifth
Amendment as of the day and year first above written.**

**MICHELSON-HADLEY HEIGTS
DEVELOPMENT, LLC**
By: **Michelson Commercial Realty and
Development, L.L.C., its manager**
By: _____
Timothy L. Berry, Executive Vice President

Mr. Gallagher commented on the Ordinance, stating the Council wants to see this project done. Mr. Gallagher stated at this stage, the majority of the Council feels this additional 60 day extension is in the best interest of the residents and the City Council. Mr. Gallagher stated he did not think anyone could predict the economic uncertainty and changes from 2006 to now and noted that Michelson signed contracts with residents at the peak of residential values. Mr. Gallagher noted the lending market has collapsed, home value market has decreased, and we are still trying to get this done. Mr. Gallagher stated he would have a difficult time granting Mr. Berry any additional time if they cannot get this done by October 29.

Mr. Thomson stated that he was disappointed that residents did not get their \$5000 on August 29, but would vote for the extension tonight only. Mr. Thomson stated the developer did not change the year end closing date and he is giving over \$40,000 to owner occupied residents as a good faith effort.

Mr. Lore stated he cannot imagine the residents' distress over the long period of delays, but feels it is better to try one last time than walk away and thanked them for their patience.

Mayor Beck asked for a vote of approval of Bill No. 5225 Emergency Measure. AYES: Ms. Williams, Mr. Lore, Mr. Thomson, Ms. Greenwald,

Mr. Jones, Ms. Mitten, Mr. Notter, Mr. Gallagher, and Mayor Beck. NAYS: None.

Mayor Beck declared Bill No. 5225 EM, approved.

**Bill No. 5226; first reading
Amends Chapter 350 Parking Regulations
Sec. 350.070 No Parking at Certain times on
Collins Avenue for street cleaning.**

Mr. Gallagher moved, Ms. Mitten seconded, a motion for the first reading of Bill No. 5226. Carried unanimously. Bill No. 5226 was presented and read.

AN ORDINANCE AMENDING ORDINANCE NO. 4788, "THE RECOMPILED MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI", BY AMENDING CHAPTER 350, PARKING REGULATIONS; SECTION 350.070, NO PARKING AT CERTAIN TIMES; SCHEDULE V-NO PARKING, TABLE VK & VL; TO READ NO PARKING FOR THE PURPOSE OF STREET SWEEPING OF COLLINS AVENUE, AND DESIGNATING NEW DAYS/ TIMES.

Mr. Murray stated that a few years ago, the Council had received a petition from that street for regular scheduled street sweeping and the Council designated the specific day and times.

Bill No. 5226 was laid over to the next meeting.

CITIZENS COMMENTS NO. 2

Mr. Brooks commented referring to his previous comments, that his perception of the future on the economy back a few years ago, had concerns then about petroleum products and their cost volatility, and how a future estimate of returns could adequately be foretold in the project's analysis.

At approximately 8:37 p.m., with no further business to come before the meeting, Mr. Gallagher moved, Ms. Mitten seconded, a motion to adjourn the meeting. Carried unanimously.

Mayor Beck declared the meeting to be adjourned.

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED