

MINUTES OF A MEETING OF
THE GOVERNING BODY OF
THE CITY OF HAYS, KANSAS
HELD ON APRIL 12, 2001

1. CALL TO ORDER BY CHAIRMAN: The Governing Body of the City of Hays, Kansas met in regular session, Thursday, April 12, 2001, at 7:30 p.m.

Roll Call: Present: Henry Schwaller IV
Larry Schmidt
Howard Rome
Wayne Billinger
Absent: Troy Hickman

Vice-Mayor Schwaller declared that a quorum was present and called the meeting to order.

2. SWEARING-IN CEREMONY: City Clerk Carol Sue Berger administered the oath of public office to Sunell Koerner and Dick Bedard.

Vice-Mayor Schwaller read a statement from Troy Hickman apologizing for his absence. Mayor Hickman extended his congratulations to the new Commissioners and thanked Wayne Billinger and Howard Rome for their years of service on the City Commission.

Vice-Mayor Schwaller presented Wayne Billinger and Howard Rome with plaques and thanked them for their service to the community.

3. REORGANIZATION OF GOVERNING BODY: **A.** Larry Schmidt moved, Sunell Koerner seconded, that Henry Schwaller IV be nominated for Mayor.

Vote: Ayes: Henry Schwaller IV
Larry Schmidt
Sunell Koerner
Dick Bedard

B. Henry Schwaller IV moved, Sunell Koerner seconded, that Larry Schmidt be nominated for Vice-Mayor.

Vote: Ayes: Henry Schwaller

Larry Schmidt
Sunell Koerner

No: Dick Bedard

4. MINUTES: Larry Schmidt moved, Henry Schwaller IV seconded, that the minutes of regular meeting held on March 22, 2001, be approved.

Vote: Ayes: Henry Schwaller
Larry Schmidt
Sunell Koerner
Dick Bedard

5. CITIZEN COMMENTS: Mayor Schwaller recognized Joe Obholz, Water Treatment Plant superintendent, as the "2001 Municipal Operator of the Year", presented by the Kansas Rural Water Association.

Henry Hartman, 2301 Donald Drive, expressed concern about conditions at the Lazy River at the Hays Aquatic Park. He also stated Clearwater Pools, which he owns, was not contacted about bidding for the solid chlorine system for the pool. He would like the opportunity to bid.

City Manager Hannes Zacharias stated he didn't think the project has been bid yet. He will check with the Park Director.

Melanie Miller, director of the Hays Public Library, extended thanks on behalf of the Library Board to the City Commission for allowing the voters the opportunity to vote on the ½ cent sales tax issue which will provide funding for the library expansion.

6. CONSENT ITEMS: A. The Traffic Advisory Committee recommended the striping of the centerlines on the streets coming into the intersection of 12th Street, Elm, and Hall Street.

Commissioner Schmidt suggested that Elm Street north of 12th Street not be striped. Cars parked on the west side of the centerline would cause a problem because of the width of the street.

Larry Schmidt moved, Dick Bedard seconded, that Hall Street from 12th Street to 13th Street and Elm Street from 11th Street to 12th Street be striped.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt
Sunell Koerner
Dick Bedard

B. The Traffic Advisory Committee recommended to keep the traffic lights at 11th, 12th, and 13th Streets on Main Street and to upgrade them to be in compliance with the Manual on Uniform Traffic Control and Design. There have been three reported accidents in the past five years at the intersection of 11th and Main. There have been 14 reported accidents in the past five years at the intersection of 12th and Main. It would cost approximately \$140,000 per intersection to upgrade the lights.

Commissioner Schmidt stated there are other traffic signals that take precedence over these lights.

Mayor Schwaller stated he understood the safety concerns, but they are a historic part of downtown Hays and right now they don't seem to be an excessive safety problem.

Director of Engineering Kurt Hassler agreed and stated this project should be put on the five-year capital improvement plan.

Larry Schmidt moved, Sunell Koerner seconded, that an upgrade of the traffic signals at 11th, 12th, and 13th Street at Main Street be put on the five-year capital improvement plan and funded when the City can afford it.

Vote: Ayes: Larry Schmidt
Sunell Koerner
Dick Bedard

No: Henry Schwaller IV

C. & D. Larry Schmidt moved, Henry Schwaller IV seconded, that the lease agreement with A. J. Bolesky for the use of Municipal Park May 9-10, 2001; and the lease agreement with David Pilatus for the use of Municipal Park on June 2, 2001, be approved.

Vote: Ayes: Henry Schwaller IV
Larry Schmidt
Sunell Koerner

Dick Bedard

OLD BUSINESS

7. PUBLIC WORKS VEHICLE BIDS: Draft specifications were delivered to local vendors on January 30, 2001 asking them to critique the specifications and make edits or exceptions to the way the specs were written. The purpose of this was to get information from the vendors and incorporate their requested changes, if applicable, to the specifications before the actual bidding process began. Written response from each vendor was requested and all draft specifications were collected by February 12, 2001.

The original specifications and a tabulated sheet on modifications were sent to the City Manager for City Commission review. It was expected that any changes by the City Commission would be given at the February 22, 2001 meeting. There being no discussion or direction given to staff, the City Manager gave staff the directive to proceed with mailing the specifications on February 23rd. On February 26th, the City Manager notified the Public Works Director that Commission Schmidt has questions about how the specifications were written on three line items. Written responses to these questions were emailed to the City Manager on February 26th. Receiving no Commission directive to alter distributing the specifications, they were hand delivered on March 2, 2001.

The following bids were opened on March 15, 2001.

| | | |
|--------------------------------------|------------------|----------------|
| ½ ton regular cab pickup: | Conklin Chevy | \$18,130.50 |
| | Hays Ford-Toyota | 16,644.10 |
| | Lewis Chrysler | 22,179.08 |
| ¾ ton 4X2 regular cab and chassis | Hays Ford-Toyota | 26,701.70 |
| | Lewis Chrysler | incomplete bid |

medium duty 4X2 cab Hays Ford-Toyota *33,549.95
and chassis w/utility
dump bed and hoist

*Hays Ford Toyota bid a 9 foot long dump bed instead of the 8 foot long dump bed. There will be a \$60 deduct to their bid.

Commissioner Schmidt questioned why the vehicle and equipment bids weren't separated.

Public Works Director Elden Hammerschmidt stated that by asking for combined bids they have found that things work much better; the experts that sell the beds and the people who sell the trucks talk to each other to make sure that nothing falls through the cracks. All the local vendors had a chance to express their concerns about the specifications.

Mayor Schwaller stated the people who sell the beds are not the experts, the City is the expert; the City knows what it wants. If a truck vendor picks out the wrong bed, it's a custom job and they don't get a refund if it is wrong.

Mr. Hammerschmidt stated the specifications for the bed were included and staff put the bid together the way they felt was best and that was how it was presented in the Commission Informational Memorandum packet for the February 22nd meeting prior to sending out the specifications. Staff did not receive any calls from any dealers during the bid process to question any item.

Mayor Schwaller stated the City wants the best value for the money. Two agencies of major manufacturers have stated they don't want the liability for buying and installing beds on the back of trucks. One vendor doesn't want to do it because of problems they have had in the past, and other says they cannot get vendors to give a quote for modifications. This disturbs him. Staff uses these vehicles everyday and knows what bed works best and what configuration is needed.

City Attorney John Bird stated bids don't have to be taken. Cities can just go out and buy what they want; what staff is doing is more than the law requires.

As long as the bidding process is fair and has a level playing field, there shouldn't be much for anyone to complain about. The process used in this case certainly gave the vendors the opportunity in advance of soliciting bids to point out if the bids were slanted toward a certain manufacturer or vendor. In his opinion, vendors are not bidding because vendors do not want their names bandied about on TV. It is such a controversial process. There are no deficiencies in this particular bidding process.

Dick Bedard moved, Sunell Koerner seconded, that the bids received from Hays Ford-Toyota for a ½ ton regular cab pickup in the amount of \$16,644.10, a ¾ ton 4X2 regular cab and chassis in the amount of \$26,701.70, and a medium duty 4X2 cab and chassis with utility size dump bed and hoist in the amount of \$33,549.95, with a \$60.00 deduct, be accepted.

Commissioner Schmidt stated that until we get this bid system worked out the vendors in Hays aren't going to have a fair shot.

Vote: Ayes: Henry Schwaller IV

Sunell Koerner

Dick Bedard

No: Larry Schmidt

8. PUBLIC WORKS TRAILER PURCHASES: A. & B. Bids were received for the purchase of two tilt trailers for the Service Division as follows:

| | | |
|---------------------|------------------------|-------------|
| Heavy Tilt Trailer | Hays Mack Sales | \$19,493.00 |
| | Rental Service Corp. | 27,499.00 |
| | Vernie's Trux-n-Equip. | 20,264.00 |
| Medium Tilt Trailer | Rental Service Corp. | 8,949.00 |
| | S & S Trailer Sales | 6,300.00 |
| | Vernie's Trux-n-Equip. | 8,053.00 |

The bid from S & S Trailer Sales for the medium tilt trailer did not meet specifications.

Sunell Koerner moved, Dick Bedard seconded, that the bid from Hays Mack Sales in the amount of \$19,493.00 for the heavy tilt trailer and the bid from Rental Service Corp. in the amount of \$8,949.00 for the medium tilt trailer be accepted.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

NEW BUSINESS

9. ORDINANCE REZONING LOTS 17 AND 15, BLOCK 17, ORIGINAL TOWN OF HAYS, FROM "C-3" TO "C-0": Robert Schibi, owner of the property located at 1201-1205 Fort Street requested the zoning be changed to allow the property to be used for professional usage, rather than retail purposes. The Hays-Ellis County Planning Commission recommended the zoning change as requested.

Dick Bedard moved, Henry Schwaller IV seconded, that Ordinance No. 3553, being an ordinance rezoning a tract of land situated in Lots 17 and 15, Block 17, in the Original Town of Hays City, now the City of Hays, Ellis County, Kansas, from "C-3" Central Business District to "C-0" Office and Institution District, be approved.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

10. FUELING OF POLICE VEHICLES: Coastal Mart notified the City of Hays that they would no longer accept Coastal Fleet Fuel cards, effective at midnight February 16, 2001. They recommended the City change to Wright Express cards as an interim step, since Coastal would take that card. At this time Coastal Mart does not accept Wright Express Fleet Fuel cards; though they do accept Wright Express cards that are not fleet fuel cards.

After further checking, it was found that the Wright Express card is accepted nationwide at numerous different locations and locally at 20 different locations. Wright Express provides a breakdown on the monthly billing, as well as deducting the federal gas tax prior to the billing.

Fueling bids were solicited from 17 local vendors; only four submitted bids. Since so few stations returned bids and the fact that the Wright Express card can be used at so many locations, Police Chief Lawrence Younger suggested that the Wright card be used at the various locations throughout the City, taking care to use the lowest cost locations to fill fuel. There is no charge to use the card.

Sunell Koerner moved, Dick Bedard seconded, that Wright Express cards to fuel City police vehicles at various locations throughout the City be approved.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

11. GAS UTILITY ASSISTANCE PROGRAM REPORT: In March 2001, First Call for Help accommodated 162 clients for gas utility payments. March allocations of \$37,283.64, coupled with February allocations of \$11,476.91, including administrative costs of \$2,400, brings the total program allocation to \$51,160.55 thus far. The former City Commission has allocated \$50,000 from excess gas franchise fees to fund this program. Due to administrative costs not being deducted in March, there is a negative balance of (-\$1,160.55).

In reviewing incoming gas franchise receipts, the City is showing an increase of \$58,556.17 for the first quarter of 2001 compared to the same time frame in 2000.

The City's gas utility bills for the first quarter of 2001 show an increase of \$25,226.14 compared to the same time frame in 2000. In taking into account the increase in gas utility franchise fees collected and the Gas Utility Assistance Program, this leaves a deficit of (-\$16,669.97) to cover the City's gas utility bills.

The City will receive a check in about a week from Midwest Energy for franchise fees in the amount of \$46,851.25. This amount is approximately

\$26,000 more than was received in April 2000. April gas bills for the City are expected to be about \$8,000.

Pam Blau, Director, First Call for Help, presented information about the Kansas Weatherization Assistance Program. The application process is very long and is only available to low-income individuals.

Commissioner Schmidt suggested the City operate this program for one more month and revisit the issue next year.

Larry Schmidt moved, Dick Bedard seconded, that an additional \$30,000 be allocated to the Gas Utility Assistance Program administered by First Call for Help.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

12. 2001 ANNUAL CLEANUP PROGRAM: Brenda Cary, Assistant Director of Public Works and Marvin Honas, Solid Waste Superintendent, addressed the Commission regarding the 2001 Annual Alley Cleanup Program. The Program will run for 10 weeks from June 4 through August 10, 2001. The City will be divided into five zones allowing two weeks in each zone to collect all commodities – white goods, construction and demolition debris, tree limbs and municipal waste.

Last year the increased revenue due to the \$.50 per month per household for this program generated approximately \$34,000. The cost of the 2000 program was about \$44,500, which did not include the value of existing equipment. Salaries were about \$24,000. It is anticipated that this year's cleanup will cost approximately the same as last year's.

Ellis County has agreed to have free disposal of tree limbs and brush only at the Ellis County Transfer Station on two Saturdays – May 5th and May 12th. Tree limbs and brush must be separated from other waste for free disposal.

13. INCREASE FUNDING FOR PARKS “MATCHING FUNDS” PROGRAM:

Each year an amount of \$10,000 is budgeted to “match” the various civic groups

for park improvements. The funds have been sufficient for several years. This year the requests have been substantially more than the budgeted amount. The planned projects for 2001 have an estimated cost of \$43,400. The Rotary and the Kiwanis clubs have agreed to provide a total of \$16,500 for new park improvements. To complete the projects and to apply the \$16,500 from the two groups, plus the \$10,000 budgeted, an additional \$16,900 will be required.

A request from the Lions Club for \$500 to install trees at Dan Rupp Park can be funded out of the regular park budget which has \$4,000 budgeted for tree replacement and/or removal.

Jeff Boyle, Park Director, recommended a request from the Optimist Club for \$5,000 for general park improvements at Aubel-Bickle Park for \$5,000 be funded in 2002 due to the Park and Recreation Master Plan activities taking place at that location.

City Manager Zacharias stated the \$16,900 could come out of cash carry-over in the General Fund.

Larry Schmidt moved, Sunell Koerner seconded, that \$16,900 be set aside for the Parks "Matching Fund" program, the funding to come out of the General Fund.

Mayor Schwaller stated he would be abstaining from the vote. He is the president of the Rotary Club.

Vote: Ayes: Larry Schmidt

Sunell Koerner

Dick Bedard

Abstain: Henry Schwaller IV

14. VINE STREET IMPROVEMENTS, 13TH STREET TO US 183 ALTERNATE:

A.B.& C. This KLINK project is to resurface Vine Street from 13th Street south of US 183 Alternate in 2002. KDOT will pay 50% up to a maximum of \$200,00 of construction costs. The project is a concrete patch job with joint sealing. The City will do as much as \$400,000 will allow. This project is included in the capital improvement plan.

Kurt Hassler, Director of Engineering, stated that another KLINK project is scheduled for 2002. That project is to mill and overlay Vine Street from 27th Street to 13th Street. The street is holding up fairly well and with minimum maintenance, staff believes the life of the pavement can be stretched another year. Mr. Hassler requested that KDOT be asked to put that project off until 2003.

Dick Bedard moved, Sunell Koerner seconded, that the Mayor be authorized to sign a contract with the Kansas Department of Transportation for KLINK funding to resurface Vine Street from 13th Street to US 183 Alternate in 2002; the Mayor be authorized to sign a contract with Bucher, Willis and Ratliff for engineering services associated with the resurfacing of Vine Street from 13th Street to US 183 Alternate in 2002; and that KDOT be requested to delay funding the overlay on Vine Street from 27th Street to 13th Street until 2003.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

15. 2002 MICRO-SURFACING BIDS: The 2001 Budget set aside \$500,000 for the micro surfacing of various streets. Base bids with seven alternates were received from the following:

| | |
|-----------------------|--------------|
| Ballou Construction | \$505,611.44 |
| Salina, Kansas | |
| Beachner Construction | 450,957.49 |
| St. Paul, Kansas | |
| Vance Brothers, Inc. | 406,642.52 |
| Kansas City, MO | |

Larry Schmidt moved, Sunell Koerner seconded, that the bid from Vance Brother, Inc., Kansas City, MO, in the amount of \$406,642.52, be accepted.

Vote: Ayes: Henry Schwaller IV
Larry Schmidt
Sunell Koerner
Dick Bedard

16. VINE STREET SIGNAL LIGHT REQUEST: Kurt Hassler, Director of Engineering, requested authorization to send a letter to the Kansas Department of transportation requesting State Safety Funds to upgrade signal lights at the intersections of 8th Street, 13th Street, 18th Street, 22nd Street, and 27th Street, all on Vine Street. This request is in response to discussions with KDOT in January 2001 about findings during a traffic safety audit that KDOT performed in Ellis County.

Some of the items that are proposed to take place with this construction project include:

- Install new poles and mast arms where necessary
- Install new signal heads and/or lights where necessary
- Install pedestrian activated controls at all intersections
- Install vehicle activation controls at all intersection w/video detection
- Link all signal lights with fiber optic cable that will be connected to the Engineering Department for monitoring of the signal lights.

Mr. Hassler stated he doesn't know what this project would cost until the project is further defined. It is understood that KDOT would participate in a 90%-10% split for construction and construction engineering costs. \$150,000 is budgeted and the City won't go above that amount.

Dick Bedard moved, Sunell Koerner seconded, that the City Engineer be authorized to send a letter to the Kansas Department of Transportation requesting State Safety Funds to upgrade signal lights at the intersections of 8th Street, 13th Street, 18th Street, 22nd Street, and 27th Street, all on Vine Street.

Vote: Ayes: Henry Schwaller IV
Larry Schmidt
Sunell Koerner

Dick Bedard

17. ADA CURB CUT CONTRACT EXTENSION: On October 12, 2000, the City Commission awarded the base bid for the 2000 Curb Cut Project to J-Corp. They are approximately 74% done with the base bid. As been the case over the past several years, quantities were estimated for the plans and actual quantities are coming in below the estimates. The original bid was for \$224,883.80, the estimated cost at this time is about \$185,000, a savings of about \$40,000. The amount originally budgeted for this project was \$325,000.

Also bid with this project were nine alternates. The bid amount for these alternates was a total of \$112,687.30. With the awarding of all nine alternates, that brings the total contract amount to approximately \$300,000.

The contractor has provided a good service on this project and the City received a good bid on this type of work. The Engineering Department recommends that the City Commission award Alternates 1-9 in the amount of \$112,687.30 to J-Corp to finish an additional 88 ramps.

Larry Schmidt moved, Sunell Koerner seconded, that the 2000 contract with J-Corp to perform additional ADA curb cuts (Alternates 1-9) for a total of \$112,687.30 be approved.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

18. RESIDENTIAL CURB CUT FINANCING RESOLUTION: This resolution officially authorizes the 2001 Sidewalk Ramp Project and allows the City to be reimbursed for any costs incurred prior to the issuance of temporary notes. General Obligation Bonds can be used to finance only sidewalks on designated trafficways. This project includes mostly residential streets. A charter ordinance was passed by the City Commission on January 25, 2001, which allows the City to charter out of the state statute and finance these residential sidewalks with General Obligation Bonds. The estimated maximum principal amount of such

obligation is \$380,000, plus the costs of issuance and the costs of interest on any temporary financing.

Henry Schwaller IV moved, Larry Schmidt seconded, that Resolution No. 365, being a resolution initiating proceedings by the Governing Body for improvements to certain sidewalks in the City of Hays, Kansas, be approved.

Vote: Ayes: Henry Schwaller IV
Larry Schmidt
Sunell Koerner
Dick Bedard

19. TEMPORARY NOTES: Temporary notes in the amount of \$1,965,000 will be used to finance the Vine Street reconstruction, the 2000 sidewalk ramps, Tallgrass Addition, Phase 2, Hall Street engineering, Eastborough Addition alley improvements, and the improvements at the Hays Regional Airport. Bills for the various projects will be paid out of these temporary funds. In about a year, the actual costs will be rolled into a General Obligation Bond, which will have a life span of 15 years for payment. The Tallgrass improvements, the Hall Street improvements, and the Eastborough Addition improvements will be special assessed against the property owners.

Bids for the temporary notes were received from the following:

| | <u>Net Interest</u> | <u>Average Interest Rate</u> |
|--|---------------------|------------------------------|
| Country Club Bank Kansas City, MO | \$70,936.50 | 3.61% |
| Gold Capital Management Overland Park, KS | 75,849.00 | 3.86% |
| Commerce Bank Kansas City, MO | 72,312.00 | 3.68% |
| United Missouri Bank | 73,427.84 | 3.736786% |

Kansas City, MO

| | | |
|------------------|-----------|--------|
| TGH Securities | 77,655.00 | 3.951% |
| Philadelphia, PA | | |

Larry Schmidt moved, Henry Schwaller IV seconded, that Resolution No. 366, being a resolution authorizing the issuance and delivery of \$1,965,000 principal amount of General Obligation Temporary Notes, Series 2001-A, of the City of Hays, Kansas, for the purpose of temporarily financing the costs of certain street, utility, airport and other improvements in the City; and prescribing the terms and details of said notes, be approved.

Vote: Ayes: Henry Schwaller IV

Larry Schmidt

Sunell Koerner

Dick Bedard

20. BIG CREEK AND PRAIRIE ACRES LITIGATION: Dave Traster from Foulston & Siefkin, Wichita, Kansas, and City Attorney John Bird, addressed the Commission regarding the recent law suit in Ellis County District Court against Big Creek and Prairie Acres Sewer Improvement Districts that are outside of the city limits.

Mr. Traster stated that normally he would prefer to address the Commission in executive session, however, due to the fact that one of the City Commissioners is an employee of one of the districts, it was decided to present the facts in open session and let the public hear the presentation.

Mr. Traster gave a detailed history of the Districts and the events leading up the City filing suit against the Districts for not paying the full sewer treatment charges that have been billed since the 4th quarter of 1993. The Districts paid all sewer treatment charges at the outside city limit rate as billed from the time the City started treating their sewage in 1984 up to and including the 3rd quarter of 1993. In 1994, when Big Creek paid the sewage treatment bill for the 4th quarter of 1993, they choose to pay at the inside city limit rate, which was indicated on

the statement they returned with their check. To date, they have continued to pay the inside city limit rate. The City filed suit asking for approximately \$160,000 in arrearage from Big Creek Sewer District and \$51,000 from Prairie Acres.

Mr. Traster presented information about proportionality with respect to using federal funds for plant construction, operation, maintenance, replacement and debt repayment. The City of Hays sewer rate ordinances have been reviewed over the years to make sure the charges are proportional and have been approved by both EPA and the Kansas Department of Health & Environment. The districts continued to litigate that issue, however, at trial after the City Manager testified to the facts, that issue was dropped. The sewer rate ordinance is solid; there is no challenge to the proportionality of the rates.

Testimony at trial on April 3rd and 4th presented facts about the contracts between the Districts and the City of Hays. The contracts state that the Districts are responsible for maintaining their meter, the sewer rate they are to be billed and addressed future rate increases. The contract was modified by oral agreement in 1991. The Districts agreed that the contract was orally modified and accepted. There was some disagreement about measured quantities in Prairie Acres; however, data presented at trial proved that to be untrue. It was shown that the Districts breached the contract and the City has incurred significant damages.

The jury returned with a verdict that found the Districts did breach the agreement and agreed with quantities billed. However, they only allocated \$1.00 in damages for the City. There is no mathematical way the jury could have determined the damages based on the quantities generated by the Districts. The verdict doesn't conform to the evidence presented.

Mr. Traster stated the City has several options to pursue. The City can do nothing; the City could continue to do business with the Districts on whatever terms can be negotiated. The City could also give them advance notice that the City wants to terminate the agreement. There are package treatment systems on the market they could buy and hook up to their system to treat their own sewage.

The third option, which is Mr. Traster's recommendation, would be to file a motion with District Court asking the Court for one of three different options. The first would be what is called an "additor", which is a Latin term requesting the judge to add more money to the damages. The second is called a "judgement not withstanding the verdict". Both of those options ask the judge to consider the evidence in a light more favorable to the defendants and against the City, but award the City additional damages. The third option would be to ask for a new trial. If the judge does not grant the City one of those options, the City can take the case to the Court of Appeals as a last resort.

Commissioner Schmidt stated the attorney for the defendants came up with numbers of what they considered the verbal agreement with the City was that resulted in a refund for the Districts. Those numbers show that Big Creek overpaid by \$202 and Prairie Acres overpaid by \$50,000.

Mr. Traster stated that the rate used Mr. Rathbun was \$1.50 per hundred cubic foot. Prairie Acres spokesperson Bill Wierman testified that the agreed upon rate was \$1.70. Their formula was completely wrong.