

**IN THE MISSOURI COURT OF APPEALS  
SOUTHERN DISTRICT**

**No. SD28083**

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**CITIZENS FOR THE PRESERVATION OF BUEHLER PARK, a non-profit corporation; THOMAS J. SAGER; LINDA MARIE NOVAK; EDIE GALE HAYS; NEIL ELFRINK; and EILEEN LUNSFORD,**

**Plaintiffs-Appellants,**

**v.**

**CITY OF ROLLA, MISSOURI, a municipal corporation; WILLIAM S. JENKS, Mayor; and MONTY JORDAN; TERRY RUCK; STANLEY G. SPADONI; DONALD Z. BARKLAGE; SUE EUDALY; GARY HICKS; JUDY JEPSEN; LOUIS MAGDITS; JIM WILLIAMS; JIM WATERMAN; RICHARD D. SIBLEY; and CHARLOTTE WIGGINS, Members of City Council,**

**Defendants-Respondents.**

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**On Appeal from the Circuit Court of Phelps County  
Cause No. CV305- 0352CC  
The Honorable Tracy L. Storie, presiding**

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**REPLY BRIEF OF PLAINTIFFS-APPELLANTS**

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**ORAL ARGUMENT REQUESTED**

**May 17, 2007**

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## ARGUMENT

### I.

**THE COURT BELOW ERRED IN ENTERING JUDGMENT FOR DEFENDANTS, RULING THAT THE LANGUAGE IN THE 1958 DEED FROM THE ROLLA CHAMBER OF COMMERCE TO THE CITY OF ROLLA DID NOT DEDICATE THE PROPERTY TO PUBLIC USE, BUT RATHER GAVE THE PROPERTY TO THE CITY OF ROLLA SUBJECT TO A DEFEASIBLE FEE RETAINED IN THE ROLLA CHAMBER OF COMMERCE, BECAUSE PLAINTIFFS PROVED ALL THREE ELEMENTS OF A DEDICATION**

In their opening brief (pp. 10-12) plaintiffs showed that the evidence establishes all three elements of a dedication.

Respondents in their brief assert (pp. 20-21) that the Hon. Jack O. Edwards previously heard the same evidence, and ruled that the 1958 deed did not dedicate the property to public use. First, the argument is irrelevant. On appeal, in *Ours v. City of Rolla*, 965 S.W.2d 343 (Mo. App. S.D. 1998), only Judge Garrison, in his dissenting opinion, addressed the issue of whether Buehler Park was dedicated to the public for use as a park.<sup>1</sup> Accordingly, after the decision of this Court in *Ours*, there is no ruling from Judge Edwards on the merits. *E.g.*, *In re Delany's Estate*, 258 S.W.2d 613, 616 (Mo. 1953); *Lomax v. Sewell*, 50 S.W.3d 804, 810-11 (Mo. App. W.D. 2001); *Cheatham v. Walsh*, 669 S.W.2d 587, 589-90 (Mo. App. E.D. 1984).

Second, the evidence before *Ours* Court was not the same evidence as that now before this Court. The *Ours* Court never saw the grantor's records regarding the transfer. The *Ours* Court did not have before it the evidence that the Chamber intended that Buehler Park be used "from now on" as a Park in memory of Chief

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<sup>1</sup> Judge Garrison believed that Buehler Park was dedicated to the public. 965 S.W.2d at 346.

Buehler. Minutes of the Rolla Chamber of Commerce, January 3, 1958, LF 100.<sup>2</sup>

Next (pp. 21-22), respondents rely upon *State ex rel. Missouri Coalition for the Environment v. Conservation Commission of the State of Missouri*, 940 S.W.2d 527 (Mo. App. W.D. 1997) and, in particular, the court's holding that there was no language in a deed that purported to create a right in the public to use certain land. In *State ex rel. Missouri Coalition for the Environment*, a deed concerning the disputed land had been executed in 1984. 940 S.W.2d at 528. Eight years earlier, however, that same property had been the subject of a consent judgment. This earlier consent judgment required that the property be maintained as "an unimproved 'green belt' area," and that it be "available to be used without charge by members of the public ... for purposes of hiking, bird watching, nature observation, family picnics and fishing." *Id.* The sole basis for the court's holding in *State ex rel. Missouri Coalition for the Environment* was that the deed "merely reiterated the restrictions set forth in the federal decree." *Id.* at 530-31. The court explained:

These public rights set forth in the Ford deed are the same public rights that were created in the 1976 federal decree. Because the deed did nothing more than reiterate the rights, which had been created years before, we cannot say that the deed unequivocally demonstrated a purpose to create a right in the public to use the land.

940 S.W.2d at 530.

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2 These minutes are admissible to show the Chamber's position at the time the transfer was made. See, e.g., *Coale v. Hilles*, 976 S.W.2d 61, 66 (Mo. App. S.D. 1998) (parol evidence may be used to explain the positions of the parties at the time an agreement is made so the court may better understand the force and application of the language employed); *Horrighs v. Elfrank*, 727 S.W.2d 910, 915 (Mo. App. S.D. 1987) (parol evidence may be used to show how each of the parties to a dedication treated the dedication).

*State ex rel. Missouri Coalition for the Environment* supports, rather than refutes, the conclusion that the 1958 deed here dedicated Buehler Park to public use. Before execution of the deed in 1958 the public had no right, via judgment or otherwise, to use Buehler Park. It was the 1958 deed that gave the public the right to use the land. LF 37.

Respondents next argue (p. 22) that the deed here does “grant, bargain and sell, convey and confirm” the property to the City of Rolla, and that language is inconsistent with an intent to set aside property for public use. This language in the Buehler Park deed is identical to the language that was before the Missouri Supreme Court in *Pierce v. Chamberlain*, 82 Mo. 618 (Mo. 1884). The deed before the Court in *Pierce* likewise did “grant, bargain and sell, convey and confirm” the property. The Court in *Pierce* held that it was the intention of the owners to dedicate the ground.

Respondents characterize (p. 22) the statement in the Chamber’s minutes that “maintaining the grove was a moral obligation to the memory of Chief Buehler” as a “gratuitous comment.” This statement comes from the Chamber’s official minutes. These minutes are the best evidence of the Chamber’s actions. E.g., *Industrial Loan & Investment Co. v. Boul*, 627 S.W.2d 919, 922 (Mo. App. W.D. 1982). In light of all that Chief Buehler gave to the Rolla community (see LF 101-109), there is a rational basis for the Chamber’s desire to see that the Park be maintained in memory of Chief Buehler, but there is no basis for characterizing the Chamber’s statement as a “gratuitous comment.”

Next, respondents assert (p. 23) that the reference in the Chamber’s minutes to “definite plans” to maintain the park can just as easily be read to indicate that the City would not accept the property until it was on the City’s terms that it be able to improve and maintain the property to its satisfaction. That is one strained interpretation. In July, 1957, it was the Chamber, not the City, that was

contemplating the transfer of the park so that the City, through the Park and Recreation Board, could “maintain and improve” the park. LF 96. At that point, the Chamber had not yet met with the Board for its opinion. *Id.* The following month, after having met with the Park Board, the Chamber was looking for “definite plans for improvement and maintenance.” LF 98. Four and one-half months later (the month before the transfer) the Chamber voted to deed the property to the City “from now on as a Park.” From the inception of the transaction to its conclusion, the Chamber required from the City “definite plans” to maintain Buehler Park “from now on.” The Chamber’s records cannot rationally be read to show that it was the City, and not the Chamber, that required definite plans to maintain the property on terms that supposedly would allow the City to one day sell the property for use as a restaurant district.<sup>3</sup>

Respondents’ proffered interpretation of the Chamber’s minutes is further refuted by the language in the Buehler Park deed - language that is consistent with the Chamber’s desire to dedicate the park property to public use “from now on.” The Buehler Park deed recites not only that the grantor desires that the property be used “for Park purposes only and none other . . . FOREVER,” but also that the grantor has reviewed this with the grantee, and has exacted an agreement from the grantee, and “It is understood” by both the grantor and the grantee that the property is to be used “for Park purposes only and **none other**, and to be known as Buehler Park” (emphasis added). “It is understood” recites a mutual agreement, an intent of the grantor and a commitment of the grantee.

In the instant case, the “Warranty Deed” states that the park property “is conveyed to the City of Rolla, Missouri for Park purposes only and none other, and to be known as Buehler Park.” It continues, “TO HAVE AND

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<sup>3</sup> The City provided no records of its own concerning the 1958 transaction. Legal File.

TO HOLD the premises aforesaid ... FOREVER.” This language unambiguously transfers the park property to the City “forever.” . . . The deed restricts the City's use of the property to “park purposes,” going so far as to bestow a name on the park. . . . The intent of the Chamber of Commerce to dedicate the park property to public use is clear from the language of the deed.

*Ours v. City of Rolla*, 965 S.W.2d 343, 347 (Mo. App. S.D. 1998) (Garrison, J., dissenting).

Respondents assert also (p. 22) that if the land is to be dedicated to public use, it seems unnecessary to “appoint a committee to handle the negotiations.” LF 100. At the very least, the Chamber’s committee was needed to negotiate a price, and did negotiate a price of “Ten and no/100” dollars for the property. LF 37. The nominal consideration paid by the City for property apparently worth \$1,000,000.00 today further shows that the property was dedicated to public use, rather than conveyed to the City in fee.

Respondents emphasize (p. 22) that in January, 1958, the Chamber decided to deed the land “to the City.” That is of no consequence. A public body, like the City of Rolla here, may hold title to the property in trust for the benefit of the public. E.g., *Hand v. City of St. Louis*, 59 S.W. 92 (Mo. 1900) (deed to city for public market); *Board Regents Normal School District No.3 v. Painter*, 14 S.W. 938 (Mo. 1890) (deed to city for public school). These cases are in keeping with the principle that [t]here need not be any particular “grantee” in existence at the time of dedication, although a municipal corporation or other governmental agency representing the public is usually in existence and capable of accepting the dedication when it is made.

O. Browder, R. Cunningham, G. Nelson, W. Stoebuck, and D. Whitman, *Basic Property Law*, p. 808 (West Pub. Co., 5<sup>th</sup> ed. 1989).

Next, respondents cite (pp. 23-25) several cases and urge that these may serve as examples of language “traditionally used in dedicating property to public use.” The varied language set out in these various deeds and plats exemplifies the rule that there is no pattern language to show an intention to dedicate land to public use. Further, the language in the Buehler Park deed is far more specific and more limiting than the language that was before these courts.

In *Hand v. City of St. Louis*, 59 S.W. 92 (Mo. 1900), for example, the deed conveyed to the City a piece of land “for the purpose of a public market, to be called ‘Shepard's Free Market.’ Absent from the deed in *Hand* was any statement that the real estate was conveyed for public market purposes **only and none other**, a restriction that appears in the Buehler Park conveyance. LF 37. Similarly, in *Cummings v. City of St. Louis*, 2 S.W. 130 (Mo. 1886), a plat provided that the property “is to be and remain a common forever.” Missing from the plat is the condition that the land is to be used for this purpose only and none other. This condition likewise is absent from the conveyance in *Haertlin v. Rubin*.

And, for example, in *Coffey v. State ex rel. County of Stone*, 893 S.W.2d 843 (Mo. App. S.D. 1995), the deed provided: “Grantee agrees maintenance of road in suitable condition for school bus to travel.” The language here also is not as restrictive as that in the Buehler Park deed. Although respondents assert (p. 25) that the ruling in *Coffey* essentially “estopped” appellants from denying the public character of the road, what this Court in fact said was that “the recitals in the 1974 deed manifest the owner's intent to dedicate the road to public use.” 893 S.W.2d at 847.

The deed in *Board Regents Normal School District No.3 v. Painter*, 14 S.W. 938 (Mo. 1890), was “for the convenience and encouragement of the inhabitants of the town of Cape Girardeau, and owners of lots in or near the same,” and provided that the property conveyed “shall remain forever affected and appropriated to the

public use to which they are respectively intended.” The limitations in *Board Regents* are comparable to those set forth in the Buehler Park deed, except that the Buehler Park deed goes further, bestowing a name on the property conveyed.

Finally, in *Weakley v. State Highway Commission*, 364 S.W.2d 608 (Mo. 1963), the conveyance said nothing other than the property was “dedicated to public use forever.” There was nothing in the conveyance that restricted the property to a particular designated use (compare the Buehler Park deed at LF 37 (“Park purposes”)), no restriction that the use be for the designated use “only and none other,” and no name (e.g., “Buehler Park”) bestowed upon the designated property. LF 37.

The language in the Buehler Park deed is more restrictive than the language in the deeds and plats before the courts in the cases discussed above. The language in the Buehler Park deed more closely resembles the language in the deed before the court in *Nichols v. City of Rock Island*, 121 N.E.2d 799 (Ill. 1954) (deed conveyed property for “the purpose of a public park . . . and for no other use or purposes whatsoever”). Cf. *Pierce v. Chamberlain*, 82 Mo. 618 (Mo. 1884) (deed does “grant, bargain and sell, convey and confirm”).

Appellants proved that Buehler Park was dedicated to public use. The court below should have entered an order enjoining the City of Rolla from selling Buehler Park.

## II.

### **THE COURT BELOW ERRED IN FAILING TO ENTER JUDGMENT FOR PLAINTIFFS, BECAUSE THE UNDISPUTED FACTS SHOW THAT THE CITY HOLDS BUEHLER PARK IN TRUST FOR THE PEOPLE, AND CANNOT LAWFULLY VIOLATE THAT TRUST BY SELLING THE PARK, IN THAT THE PARK WAS DEDICATED IN 1958**

At pages 15-17 of their opening brief appellants showed that because the City holds Buehler Park in trust for the public, to be used for the purpose for which it was dedicated, the City has no power to sell any part of Buehler Park for use as a restaurant district.

For their response, respondents assert that appellants failed to meet their burden of proof, citing several cases. The facts before these courts are far-removed from the facts presented here. These cases do not support respondents.<sup>4</sup>

In *McIntosh v. City of Joplin*, 486 S.W.2d 287 (Mo. App. 1972), cited by respondents at page 28, plaintiffs had built and paid for a private sewer. The City of Joplin claimed that plaintiffs had made a dedication of the sewer to the City by requesting and receiving sewer maintenance. It was in this context that the court said that “when divestiture of a citizen's property in favor of the public is sought to be established in pais, the proof should be so convincing, full, persuasive and cogent as to leave no reasonable doubt of the existence of the owner's consent or intent . . .” *Id.* at 290. The court went on to conclude that a ‘To Whom It May Concern’ letter

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<sup>4</sup> Respondents assert (p. 28) that, if the 1958 conveyance placed the Buehler Park property in trust, the City is obligated to maintain the public trust in perpetuity. There is no such absolute requirement. If it becomes impossible to fulfill the terms of the conveyance, the City will be relieved of its obligations to maintain the park. See, e.g., *Hand v. City of St. Louis*, 59 S.W. 92, 95 (Mo. 1900) (discussing the possibility of maintaining the designated use).

written by the City's director of public works was not sufficient to establish an intent on the part of the plaintiffs to dedicate the sewer for public use, particularly in view of plaintiffs' continuing objections and attempts to prevent such a use. *Id.*

In *State ex rel. Missouri Highway and Transp. Com'n v. London*, 824 S.W.2d 55 (Mo. App. E.D. 1991) (respondents' brief, p. 28), plats before the court set forth the word "reserved." Affirming the dismissal of the suit, the court of appeals held that there was nothing in the petition that would require the court to construe the word "reserved" as a dedication to public use. *Id.* at 61.

Further, neither *Duncan v. Academy of Sisters of the Sacred Heart at St. Joseph, Mo.*, 350 S.W.2d 814 (Mo. 1961), nor *Catron v. Scaritt Collegiate Institute*, 175 S.W. 571 (Mo. 1915), cited by respondents at pp. 28-29, dealt with the question of whether property had been dedicated to public use. In *Duncan*, the court had before it the issue of whether a deed gave to the grantor's heirs a right of reentry or, in the alternative, whether the deed created a restrictive covenant which ran with the land. The court held that there was no right of reentry. 350 S.W.2d at 819.<sup>5</sup> The court assumed that a condition in the deed constituted a restrictive covenant which ran with the land, but the court denied the requested relief because the plaintiffs had not alleged that they had an interest in any estate which might be benefitted by the continued enforcement of the restrictive covenant. *Id.* Neither *Duncan* nor *Catron* supports respondents' assertion that appellants failed to meet their burden of proof.

In *Ankrom v. Roberts*, 126 S.W.3d 798 (Mo. App. S. D. 2004), cited by respondents at p. 30, the evidence put forth by plaintiffs in support of their claim of common law dedication consisted of the following phrases contained in a deed: "except that part for public roads," and "South of the public road." This Court held that there was insufficient evidence to prove the intent necessary for dedication. The

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<sup>5</sup> The *Catron* court held that there was no condition subsequent annexed to the grant of an estate. 175 S.W. 571, 572.

facts in *Ankrom* are far-removed from the facts presented to the Court here.<sup>6</sup>

The cases put forth by respondents are distinguishable from the facts here. For the reasons set out in section I above, appellants have met their burden of proof.

### III.

#### APPELLANTS HAVE STANDING TO CHALLENGE THE ABUSE OF THE PUBLIC TRUST

Respondents argue (pp. 14-18) that appellants lack standing to object to the sale of Buehler Park.<sup>7</sup> Appellants have standing to challenge the proposed sale on each of three grounds.

##### A. As taxpayers, appellants have standing

Some of the appellants reside in the City of Rolla, own property there, and pay real estate taxes to the City of Rolla. LF 34, 35, ¶¶ C, E. Almost all of the goods purchased by the appellants are purchased within the City of Rolla, and they pay sales taxes to the City of Rolla. LF 34-36, ¶¶ C - G. Further, the City of Rolla has spent public funds in pursuit of its effort to sell Buehler Park. LF 31, ¶ 7. But for the effort to sell the park, these funds would not have been spent. *Id.*

As taxpayers, the individual appellants have standing because, “[t]o establish standing, [appellants], like all Missouri taxpayers, need only show ‘that [their] taxes went or will go to public funds that have been or will be expended due to the challenged action.’” *National Solid Waste Management Ass'n v. Director of Dept. of*

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<sup>6</sup> Respondents also rely upon (p. 30) *Business Men's Assur. Co. of America v. Graham*, 984 S.W.2d 501, 506 (Mo. banc 1999). That was a suit for negligence and breach of contract after some marble panels fell from the side of a building.

<sup>7</sup> Respondents say (p. 18 n. 3) that the interests of the amici are more tenuous than those of appellants. The amici have particular interests in the preservation of Buehler Park. Further, the amici are concerned about the impact of the City's actions on organizations which rely upon charitable donations.

*Natural Resources*, 964 S.W.2d 818, 819 (Mo. banc 1998), citing *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 98 (Mo. banc 1993); *Citizens for the Preservation of Buehler Park v. City of Rolla*, 187 S.W. 3d 359, 362 (Mo. App. S.D. 2006). See also *Missouri Coalition for the Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125, 132 (Mo. banc 1997); *Harris v. Missouri Gaming Commission*, 869 S.W.2d 58, 60 (Mo. banc 1994); and *Eastern Missouri Laborers District Council v. St. Louis County*, 781 S.W.2d 43, 46 (Mo. banc 1989).

Consistent with these decisions, in *Ours v. City of Rolla*, this Court held that “[a]llegations and proof of the illegal expenditure of public funds or the prospect of such illegal expenditures,” apart from “general operating expenses which would be incurred whether or not the challenged transaction took place,” are sufficient to confer standing. 965 S.W.2d at 346. The expenditures made by the City here to mail out requests for proposals and to advertise the request are the types of expenditures this Court had in mind in *Ours*. They are not “general operating expenses which would be incurred whether or not the challenged transaction took place.” Rather, the expenditures arose only because of the plan to sell Buehler Park. LF 31, ¶ 7. These expenditures confer taxpayer standing.

Respondents say (p. 17) that part of this Court’s decision in *Citizens for the Preservation of Buehler Park v. City of Rolla* is inconsistent with this Court’s decision in *Walker v. City of Springfield*, 172 S.W.3d 857 (Mo. App. S.D. 2005). *Walker* was not a taxpayer standing case. There is no inconsistency. Further, this Court’s decision in *Citizens for the Preservation of Buehler Park* is entirely consistent with the holdings of the Missouri Supreme Court governing taxpayer standing. In *Missouri Coalition for the Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125 (Mo. banc 1997), for example, the expenditures made by the Joint Committee on Administrative Rules (JCAR) would have been legal if the actions under challenge would have been legal. However, because the challenged actions of

the JCAR were held to be unlawful, the expenditures of funds in pursuit of these actions were unlawful as well. See also, e.g., *Moynihan v. Gunn*, 204 S.W.3d 230, 233 (Mo. App. E.D. 2006) (in analyzing issue of taxpayer standing, it was necessary to analyze at the same time the legality of the actions under challenge).

Respondents assert further (p. 15) that there will be no expenditure of public funds because the City is to be reimbursed. Whether the City obtains reimbursement is not relevant to what the plaintiffs must prove for this suit to go forward:

“Taxpayers only need to show that ‘taxes went or will go to public funds that have been or will be expended due to the challenged action.’” *Citizens for the Preservation of Buehler Park v. City of Rolla*, 187 S.W. 3d 359, 362 (Mo. App. S.D. 2006), quoting *O’Reilly v. City of Hazelwood*, 850 S.W.2d 96, 98 (Mo. banc 1993). Here, appellants showed that the City has made the expenditures.

Finally respondents argue (pp. 17-18) that if appellants’ standing depends on the legality or illegality of the City’s action, the courts invite government by lawsuit, instead of government by elected representatives. Taxpayer standing provides a mechanism for ensuring that elected officials act within their authority:

The need for taxpayer suits ‘arises from the need to ensure that government officials conform to the law.’ An indispensable need exists ‘to keep public corporations, their officers, agents and servants strictly within the limits of their obligations and faithful to the service of the citizens and taxpayers.’ *Citizens for the Preservation of Buehler Park v. City of Rolla*, 187 S.W. 3d 359, 362 (Mo. App. S.D. 2006), quoting *Eastern Missouri Laborers District Council v. St. Louis County*, 781 S.W.2d 43, 46 (Mo. banc 1989).

For the foregoing reasons, as taxpayers, appellants have standing to sue.

### **B. As users of the park, appellants have standing**

In this case (unlike *Ours v. City of Rolla*, 965 S.W.2d at 345, where this Court held that users of Buehler Park lacked standing to sue) the Attorney General has

determined that his office is unable to devote any resources to enforce the dedication. LF 115-16. For this reason, appellants respectfully request that this Court follow the rule from the cases which uphold the standing of persons who use the dedicated property to enforce the dedication. See *Tracy v. Bittle*, 112 S.W. 45, 49 (Mo. 1908); *Whittom v. Alexander-Richardson Partnership*, 851 S.W.2d 504 (Mo. banc 1993); and *Coffey v. State ex rel. County of Stone*, 893 S.W.2d 843, 844, 845 (Mo. App. 1995). There is good reason for this rule:

If a dedication is a "contract" between the dedicator and the public, it is meaningless if the public cannot enforce it. If the entities who traditionally have the authority to enforce dedicated uses of public property do not do so, the public who use the facilities should have standing to present the issue to the courts.

*Ours v. City of Rolla*, 965 S.W.2d at 348 (Garrison, J., dissenting). Indeed, some commentators have pointed out that, "as public attention to laxity in the enforcement by the Attorney General increases, courts have begun to expand standing to enforce charitable trusts." R. Chester, G. Bogert, *The Law of Trusts and Trustees* §411 (3<sup>rd</sup> ed. Thomson/West 2005). Appellants respectfully request that this Court do so here.<sup>8</sup>

Appellants have shown injury suffered by them, beyond the injury suffered by

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<sup>8</sup> The facts also support the standing of the plaintiff organization. Citizens for the Preservation of Buehler Park is a membership organization, organized and existing under Missouri's not-for-profit corporation laws for the purpose of promoting and preserving historic Buehler Park. LF 34, ¶ B, LF 114. The members of the organization are frequent users of the Park. LF 34-36, ¶¶ C, E, F, G. All of the organization's members have an interest in promoting and preserving historic Buehler Park for park purposes. LF 34, ¶ B. See, e.g., *Citizens for Rural Preservation v. Robinett*, 648 S.W.2d 117,133 (Mo. App. W.D. 1982) (discussing organizational standing).

the general public. Even if this case did not involve the public interest, the use of the Park by appellants should be sufficient to confer standing.<sup>9</sup>

**C. As inhabitants and property holders of the city, appellants have standing**

As with section III.B above, because the Attorney General has elected not to enforce the dedication (see pp. 12-13, supra), appellants respectfully request the Court to adopt the rule from the decisions which uphold the standing of an inhabitant and property holder to enforce the dedication. See *Gaskins v. Williams*, 139 S.W. 117 (Mo. 1911); *Cummings v. City of St. Louis*, 2 S.W. 130, 132-33 (Mo. 1886); and *Price v. Thompson*, 48 Mo. 361 (1871).

Appellants Sager, Hays, and Lunsford reside in the City of Rolla. LF 34-36, ¶¶ C, E, G. Appellants Sager and Hays are owners of real property in the City. LF 34, 35, ¶¶ C, E. As inhabitants and property holders of the City, these appellants should have standing to sue.

**CONCLUSION**

Buehler Park was dedicated to the City of Rolla for use by the public as a park. For the reasons set forth above and in appellants' opening brief, this Court should reverse the judgment of the court below and remand this case with instructions that the circuit court enter judgment for plaintiffs declaring that the City of Rolla has no lawful authority at this time to sell Buehler Park for use as a restaurant district and

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<sup>9</sup> Because the facts establish the standing of the individual appellants as taxpayers, this Court need not address the question of whether appellants have standing as users of Buehler Park. See *Kinder v. Holden*, 92 S.W.3d 793, 804 (Mo. App. W.D. 2002) (because plaintiffs have alleged taxpayer status, it is unnecessary to address the other types of standing alleged by them). See also *National Solid Waste Management Ass'n v. Director of Dept. of Natural Resources*, 964 S.W.2d 818, 819 (Mo. banc 1998) (where one plaintiff taxpayer has standing, the court need not address the standing of the other plaintiffs).

enjoining the City of Rolla from alienating Buehler Park.<sup>10</sup>

Respectfully submitted,

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<sup>10</sup> Respondents make references to paving over the park to store park equipment there (p. 23), as well as entertaining future, gratuitous proposals (p. 18) to develop the park. Appellants trust that respondents would abide by the ruling of this Court.

## Certifications

The undersigned certifies that on the 16th day of May, 2007, two copies of the reply brief of plaintiffs-appellants, together with an electronic copy, were sent to counsel of record via next day delivery to the following addresses:

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The undersigned further certifies that the brief contains the information required by Rule 55.03, the brief complies with the limitations contained in rule 84.06 (b), and that there are 5,656 words (all inclusive) in the brief.

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