

MINUTES
CITY COUNCIL ADJOURNED MEETING
TUESDAY, FEBRUARY 18, 2003
5:30 P.M.
COUNCIL CHAMBERS

MEMBERS PRESENT: Mayor Rietz, Council Member-at-Large Goodnature, Council Members Jorgenson, Koch, Pacholl, Christopherson, Nordin and Chamberlain.

MEMBERS ABSENT: None.

OTHERS PRESENT: Eugene Wolschlager. Kevin Schammel. Attorney Scott Richardson. Media. Public.

Added to the agenda: A resolution approving a change order for biosolid removal at the Wastewater Treatment Plant.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, adopting the agenda as amended. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, approving the council meeting minutes of February 3, 2003. Carried.

Eugene Wolschlager (address unknown) asked for an update on the Knauer building. (At the December 16, 2002 meeting, Council approved the removal of a hazardous building at 104 W. Oakland, owned by Robert Knauer.) Community Development Director Craig Hoiium stated that the matter had been brought to the City Attorney's office to begin legal action approximately two to three weeks ago. A contract has been signed for demolition, but actual demolition is expected to be held back a few weeks for warmer weather. Mr. Hoiium said demolition could happen within thirty days. He added that there is a notification to the MPCA for that type of building, which also requires a 10- to 14-day waiting period.

Moved by Council Member Jorgenson, seconded by Council Member Pacholl, approving the consent agenda as follows:

Licenses:

- Concrete: Steve Hutchinson dba Hutch & Sons Builders LLC, PO Box 632
- Exempt Gambling (raffle): AAUW @ Holiday Inn, April 4
- Master Plumber: Randall Holtan dba K&S Heating & Plumbing, 4205 Hwy 14 West, Rochester, MN
- Food: Mi Tierra, 400 N. Main St.
- Food: Sinclair Food Mart, 900 N. Main Street

- Cigarette: Sinclair Food Mart, 900 N. Main Street
- Cab Driver: Raymond McAlister, 115 Graham St., Austin for AB Taxi
- Excavation: Sorenson Bros., Inc., 2046 Sorenson Road, PO Box 246, Albert Lea, MN
- Master Plumber: Tonna Mechanical, 1935 N. Broadway, Rochester, MN
- Commercial Hauler: Waste Management, RR #1, Box 181, Clarks Grove, MN
- Excavation: Harty Mechanical, 1015 2nd Avenue NE
- Garbage Hauler: Stewart Sanitation, PO Box 321, Owatonna, MN
- Commercial Hauler: Stewart Sanitation, PO Box 321, Owatonna, MN
- Concrete: Klouse Concrete Construction, 54872 160th St.
- Master Plumber: Voigt Plumbing & Heating, Box 86, Grand Meadow, MN
- Master Plumber: Quality Plumbing & Heating, 6301 Bandel Road NW, Ste. 605, Rochester, MN

Claims:

- (a) Financial and Investment Reports.
- (b) Pre-list of Bills.
- (c) Dave Palmquist, 803 Glen Lane, Winona, MN. This claim has been referred to the city attorney to protect the city's interest.
- (d) Dennis Wiechmann, 800 6th Street NW. This claim has been referred to the city attorney to protect the city's interest.
- (e) Jeff Bawek, 107 21st Street NW. This claim has been referred to the city attorney to protect the city's interest.

Carried.

A public hearing was held for a conditional use permit to allow for a change of nonconforming use from an elderly nursing care facility to a 24-unit multifamily rental housing complex located in an R-1 Single Family Residence District, petitioned by Schammel Properties. This matter was reviewed and denied by the Planning Commission on February 4, with the following three motions: 1) Recommending that the nonconforming use was discontinued as of October 1, 2002; 2) Recommending the denial of the change of nonconforming use; and 3) Recommending four conditions if Council should allow the nonconforming use. The four conditions are: 1) Providing modular playground equipment for complex; 2) Providing screening from all adjacent yard areas which currently do not have screening; 3) Identify parking stall by apartment number and for visitor parking; 4) Give consideration to what Phase I, II, and III completion dates may be. Mr. Hoiium said there was discussion relative to the legality of changing the nonconforming status according to State Statute and City Code. Mayor Rietz referred to City Attorney David Hoversten, who referred to the City Code on changing one nonconforming use to another nonconforming use. He said that in this case, the R-1 District was established after the establishment of the nursing home. The nonconforming use has to be in effect in order to change it to another nonconforming use, he said. Whether the nonconforming use was voluntarily discontinued for one year is the question. It would be improper and illegal to grant the petition for another

nonconforming use if one was not established. Mr. Hoversten said the Mayor should request testimony on behalf of the petitioner or opposition parties.

Gary Schloo, 1107 3rd Street NW and residing north of the property, asked the City Attorney for clarification. Mr. Hoversten said it was a factual issue that must be determined by Council. Mr. Schloo said that after September 28, (2001), there was no renewal of a nursing home license. It was issued a discontinuance on October 1.

Scott Richardson, attorney for opposition parties, stated the City can't change a nonconforming use to another nonconforming use if the property was lost to abandonment. Mr. Richardson stated the license for the nursing home, according to a state department in St. Paul, was terminated on October 1, (2001). An application was made for a change of use on December 3, 2002, but by this time more than a year had gone by. Mr. Richardson stated the building was vacant for 12-13 months and not being used as a nursing home. Mr. Neitzell, he said, did not request a nonconforming use. His request was for a rezoning. Before this action, he said, there was no other intent (action) shown by the owner. The deed was transferred (to Schammel Properties) on November 25, 2002. Schammel was not the owner until after a year of non-use. Mr. Richardson stated that after one year goes by, the nonconforming use is lost, and the property goes back to the R-1 use.

Council Member Koch asked if the use was discontinued in 2001. Mr. Richardson said that was correct, and the deed was transferred in 2002.

Council Member Jorgenson stated that based on the recommendation of the Planning Commission and the legality of the nonconforming use, she moved to deny the petition.

City Attorney David Hoversten said the Mayor should ask for more discussion from petitioners.

Kevin Schammel, 2201 6th Avenue NW, stated he has studied how to "make this work." The Council, he said, last voted on a proposal in January 2002. That application was filed on October 21, 2001. Mr. Schammel stated that had he known it was an inappropriate application, he would have had a different approach. He said he can always pursue another route.

City Attorney David Hoversten said it was necessary to show the use of the property, not when an application was signed. The City Charter is set up to discourage the use of nonconformance, but those in a nonconformance use do have a right to be there. Mr. Hoversten said this is a matter of voluntary discontinuance or discontinuance for a year. He gave the analogy of a flooded home (in a nonconforming use). If repairs took a year or more, that would be considered voluntary discontinuance or a natural disaster or fire. Mr. Hoversten said there was no effort on anyone's part to use the building for another nursing home. Mr. Neitzell's petition was for multi-housing residential. Mr. Hoium said he believed Mr. Neitzell's petition was for a combination of assisted living care (approximately twenty bed units) and apartments. Burr Oak Nursing Home closed at a

time when the State was reducing nursing home beds. The next use wouldn't have been a nursing home. Mr. Hoversten said Neitzell's request was for an R-2, which would allow any type use (for an R-2). Council Member Goodnature told Mr. Schammel that there was considerable amount of support by Council for his development plans, and he has "as much right as anyone" to pursue them. He suggested Mr. Schammel apply for a Planned Unit Development because this nonconforming use request has been "hung up on a quagmire of zoning." The PUD may have a different set of criteria and laws. He added that "if the development does not take place, the public will pay for the demolition of property." Council Member Goodnature said Mr. Schammel isn't borrowing money (from the City), and he is a respected member of the community who wants to launch a project; the City should encourage that. He commended Mr. Schammel and the neighboring citizens for taking the issue on.

Council Member Nordin said she would like to see a modified plan at the property – possibly not as many units. She agrees with the PUD idea. She added that Austin is growing; things change and it is sometimes painful and not easy to take.

Council Member Pacholl said he agrees with Council Members Goodnature and Nordin. He said Mr. Schammel has a good plan, and he (Dick) has received a lot of calls. He added that people have a tendency to be in favor of an issue if it is not in their backyard.

City Attorney David Hoversten recommended making a motion to deny the nonconformance and making a motion approving the denying upon the grounds of the finding that the previous nonconforming use was voluntarily discontinued for more than one year.

Council Member Jorgenson said she was not opposed to *something* rather than having an empty building, but she does not feel this is the best plan for the property.

Moved by Council Member Jorgenson, seconded by Council Member Koch, denying the conditional use permit with findings of more than one year of voluntary discontinuance of the previous nonconforming use. 5-2. Carried. Council Members Wayne Goodnature and Dick Pacholl voted nay.

Gary Schloo, 1107 3rd Street NW, said the neighbors had no animosity toward Mr. Schammel and he hoped Mr. Schammel had no animosity toward the neighbors. He said he would like to see the development "come down to the size of the neighborhood."

The Municipal State Aid System allows the City to designate 20% of the city's total mileage as state aid mileage. Funds are received from the gas tax based on the city's needs and our population. City Engineer Jon Erichson is requesting that Council add the following streets to our Municipal State Aid Street System: 8th Avenue SW from the west property line of 12th Street SW to the west property line of 19th Street SW and 19th Street SW from the north property line of 8th Avenue to the south property line of Oakland Avenue (TH 105). By maximizing the mileage designated, the City will increase its needs, which in turn increases funding. Also, he is requesting Council to

remove the following street from the State Aid system because it no longer meets the minimum criteria for designation: 4th Avenue NE from 10th Street to 11th Street NE.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting a resolution removing 4th Avenue NE from 10th Street to 11th Street NE from the City of Austin Municipal State Aid Street System. 7-0. Carried.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting a resolution adding 8th Avenue from the west property line of 12th Street SW to the west property line of 19th Street SW and 19th Street SW from the north property line of 8th Avenue to the south property line of Oakland Avenue West (TH 105). 7-0. Carried.

The City of Austin has identified the main lift station at the WWTP for an upgrade. Proposal received range in price from \$26,500 to \$58,760 for design work. The proposal of \$26,500 was from Bolton Menk, Inc. City Engineer Jon Erichson is recommending awarding the contract to Bolton Menk.

Moved by Council Member Christopherson, seconded by Council Member Nordin, adopting a resolution awarding the consultant contract to Bolton Menk. 7-0. Carried.

At the recent City Council Retreat, Council reviewed and approved a potential new trail with two options for its location. Actual year for the project would be 2007, and the estimated project cost is \$350,000, of which the City would be responsible for \$70,000. The City would be responsible for engineering and land acquisition. As part of the grant application, the City is required to pass a resolution with the following assurances. This is to demonstrate that a qualified sponsor can provide for the normal project responsibilities. The resolution must address the following:

- Non federal match of 20%
- Agree to operate and maintain the trail system
- The City will be responsible for the preparation and submittal of project plans, specifications and bid documents.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, adopting a resolution approving the grant application for the proposed Todd Park-Wildwood Park trail and citing the City of Austin as qualified sponsor of project responsibilities. 7-0. Carried.

The City of Austin awards a contract for the removal of four million gallons of biosolids from the Wastewater Treatment Plant. In the fall of 2002, the contractor was not able to complete the work pending test results required by the MPCA. These test results were a result of the release from Austin Utilities. The contractor is requesting an additional mobilization/demobilization of \$3000 to complete the work this winter. Council Member Christopherson asked if this money would come from the sewer user fund. City Engineer Jon Erichson said the funds would be split 40-60% from the residential and domestic fees. The City's intent is to recover these funds from Austin Utilities.

Moved by Council Member Christopherson, seconded by Council Member Nordin, approving the change order. 7-0. Carried.

VFW Post 1216 is licensed for pull-tabs and requesting renewal. They are in compliance with all requirements.

Moved by Council Member Pacholl, seconded by Council Member Christopherson, adopting a resolution approving the gambling premises permit renewal for VFW Post 1216. 7-0. Carried.

On January 21, 2003, Council approved a rezoning change, petitioned by Jack and Marlys Dunlop. This action should be by ordinance according to the city code. Council is now asked to rescind the resolution.

Moved by Council Member Nordin, seconded by Council Member Pacholl, adopting a resolution rescinding Resolution No. 12213. 7-0. Carried.

Moved by Council Member Nordin, seconded by Council Member Koch, to prepare the ordinance for rezoning, petitioned by Dunlop. 7-0. Carried.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, for adoption and publication of the ordinance. 7-0. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Pacholl, resolving the City Council into the Sign Board of Appeals. Carried.

Hardees Restaurant has requested a sign appeal for a free-standing, changeable copy ground sign. The new sign would be 30 square feet and would be installed directly under the existing Hardees sign, which is 8' x 16' (128'). The new sign would exceed Code by 58 square feet. The Planning Commission has recommended approval by 6-0 and has included conditions for certain clearances.

Moved by Council Member Christopherson, seconded by Council Member Nordin, approving the sign appeal.

Moved by Council Member Jorgenson, seconded by Council Member Pacholl, adjourning the Sign Board of Appeals back to the City Council. Carried.

Last year, the City adopted a resolution for the grant application for land expansion at the Hormel Nature Center. The grant was turned down by the State, and The Friends of the Nature Center is requesting the City to pass another resolution for a new grant application this year.

Council Member Goodnature asked if there would be any matching grants. Parks and Rec Director Denny Maschka said there would not be. Council Member Goodnature said

he would vote no because the City is scaling back, and there remains a question as to long term costs of this project.

Moved by Council Member Chamberlain, seconded by Council Member Nordin, adopting a resolution authorizing the City of Austin to act as legal sponsor and submitter of a \$330,000 Regional Park Matching Grant for the expansion of the J.C. Hormel Nature Center expansion project. 6-1. Council Member Goodnature voted nay.

In May of 1997, a Joint Powers Agreement was adopted for the Austin/Mower County Homeownership Board. This Agreement states the membership of the Board, which includes one representative of the DCA to be appointed by the city council. Director of Administrative Services Tom Dankert said Joe Fuhrman has been reselected by the DCA Board to serve on the Homeownership Board.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, reappointing Joe Fuhrman to the Austin/Mower County Homeownership Board. Carried.

REPORTS:

Council Member Nordin said the Austin Page Turners project for 2003 is underway with *The Things They Carried* by Austin native Tim O'Brien. Dick Flisrand and Wendy Reiter will be teaching basic computer classes. A SELCO grant has provided a personal computer for physically limited people. Council Member Nordin also welcomed the new library director, Ann Hokanson.

Mayor Rietz formally introduced and welcomed Library Director Ann Hokanson.

Council Member Pacholl questioned removing some items from Matters In Hand. No items were removed.

Director of Administrative Services Tom Dankert said he and staff are working on a proposed budget for 2003.

City Administrator said the Governor's proposal involved the reduction of LGA in substantial amounts. He is in contact with the Coalition of Greater Minnesota Cities at this point. There remains a lot of questions. Legislature will need to decide by May 19 unless they go into Special Session. The City is looking at major cuts.

Council Member Koch asked if the 28% reduction is a backloaded situation in subsequent years. Mr. McGarvey answered that the cuts will mean about \$1M for 2003 and more than \$2M for 2004. The House is working on a new LGA formula right now with caps based on revenues.

Council Member Koch asked if department heads are working on their budgets. The Mayor replied they are.

The Council will meet for a work session at 5:30 on Tuesday, Feb 18 and for the Council Retreat Second Session on February 24 at 4:00 – 9:00 pm.

Mayor Rietz noted the passing of Fred Pickett. Mr. Pickett was a “very fine citizen” who provided much leadership in the community. He was instrumental in the forming of the HRA; Pickett Place was named after Fred Pickett.

Moved by Council Member Jorgenson, seconded by Council Member Christopherson, adjourning the meeting to March 3, 2003.

Adjourned: 6:35 pm

Approved: March 3, 2003

Mayor: _____

City Recorder: _____