

**MINUTES**  
**CITY COUNCIL ADJOURNED MEETING**  
**MONDAY, JUNE 21, 2010**  
**5:30 P.M.**  
**COUNCIL CHAMBERS**

MEMBERS PRESENT: Mayor Stiehm. Council Members McAlister, Austin, Pacholl, King, Clennon and Martin; Council Member-at-Large Anderson.

MEMBERS ABSENT: None.

STAFF PRESENT: Jon Erichson, Craig Hoium, Tom Dankert, Jeanne Howatt, Craig Byram, Brian Lovik, Brian Krueger, and Kim Underwood.

OTHERS PRESENT: Austin Post Bulletin, Austin Daily Herald. Public. Bob Allen, John Howe, Jim Davis, Mike Schuster, Al Layman, Rose Srock.

The meeting was called to order at 5:30 pm.

Moved by Council Member Austin, seconded by Council Member King, adopting the agenda. Carried.

Moved by Council Member-at-Large Anderson, seconded by Council Member Pacholl, approving the minutes of June 7, 2010. Carried.

Moved by Council Member Austin, seconded by Council Member McAlister, approving the consent agenda as follows:

Licenses:

3.2 Beer Temporary: Marcusen Park Baseball Assoc., Marcusen Park, June 24-27

Cigarette: Sudanese Community International Market, 807 9<sup>th</sup> Street SE, Austin

Food Mobile: Custodio Serrano dba Tienda Taqueria Guerrero, Austin

Food Mobile: Penny Seguin dba Penny Seguin Mobile Food Unit (Swank Concessions), Austin

Food Temporary: Rotary Club @ St. Edward's Church, August 3

Food: Sudanese Community International Market, 807 9<sup>th</sup> Street SE, Austin

Master Plumber: Route 52 Plumbing & Heating, Inc., Chatfield, MN

Master Plumber: Wayne Dornack dba Owners Plumbing, Rochester, MN

Master Plumber: Christianson Plumbing & Heating, Albert Lea, MN

Outside Liquor: VFW Post 1216, 300 4<sup>th</sup> Avenue NE, Austin

Premise Amusement Device: National Entertainment Network, Shopko

Premise Amusement Device: National Entertainment Network, Walmart  
Sign Installer: Magic Media, Inc. dba Fairway Outdoor Advertising, Rochester, MN  
Sign Installer: David Bentzen dba Quality Sign, Onalaska, MN  
Temp 3.2 Beer On-Sale: Austin Jaycees @ Bandshell Community Park, July 3 & 4  
Temp 3.2 Beer On-Sale: Torge's parking lot, July 2  
Tree Removal: Pat Tree Service, Austin, MN  
Food: Apollo Groceries, 3011 W. Oakland Avenue  
Cigarette: Apollo Groceries, 3011 W. Oakland Avenue  
Gas Station: Apollo Groceries, 3011 W. Oakland Avenue

Claims:

- a. Pre-list of bills
- b. Finance Report and Investments
- c. State Farm Insurance/Malinda Duncan. This claim has been referred to the city attorney to protect the city's interest.
- d. John Karnes, 605 12<sup>th</sup> Street NE. This claim has been referred to the city attorney to protect the city's interest.

Carried.

A public hearing was held on the Lansing Township annexation area sanitary sewer project assessments.

Public Works Director Jon Erichson opened the public hearing by saying that the object of the project was to provide sanitary sewer which would be 100% assessed. In working with the project, the Engineering Department came up with a formula of residential equivalent units for assessing; there are a total of 209 residential equivalent units. The City adopted an assessment policy to address some of the issues of the property owners, including: 1) deferring empty lots for a period of five years or until the property is developed, whichever is earlier. The deferred period would incur a 3% annual interest rate; and 2) Properties that have compliant systems would not be required to connect to the sanitary sewer infrastructure for five years. The final assessment cost has been determined based on actual bid costs using the Residential Equivalent Parcels; there are 209 Residential Equivalent Parcels. The final costs are \$15,590.17 for a gravity system and \$17,090.17 for a low pressure system. The cost of the project is lower than the 2006 estimate. Friday through Monday, Mr. Erichson has received approximately 40 written objections. In reviewing the number of objections to the project, the City has the following options:

**Option #1**

Proceed with the project as identified and resolve the objections through District Court.

## **Option #2**

Council can drop the project and allow for the property owners to resolve individual sanitary sewer needs on their own. Some of the problems associated with this include the following:

- a) Some existing properties have significant sewer issues that are causing environmental damages.
- b) MPCA has enforcement actions against parcels.
- c) There are a number of parcels that are not large enough to support individual sewer systems.
- d) The City of Austin has incurred approximately \$185,000.00 of costs to date that we could not recover at this time. If there would be a future project we would have the opportunity to include these costs.
- e) Bids received on the project were below the estimates and final assessments were lower than what was projected in 2006.

## **Option #3**

The city could continue the hearing process and review the objections and determine if the project could be modified to only one side. This would be based on the locations of the objections.

## **Option #4**

The city could continue the hearing process, meet and review with the property owners their objections to determine if any of the objections could be resolved. Based on the outcome of the individual meetings the above option would still be available for council action.

Mr. Erichson noted that the objections were primarily from residents who he/the Engineering Department has had no prior communication. He recommends Option #4 based on the following:

- 1) The annexation was petitioned by property owners.
- 2) MPCA has determined there are existing properties violating existing laws.
- 3) The City of Austin received very competitive bids and future costs could significantly increase.
- 4) Future property development will be impacted.
- 5) The environment is being impacted by existing land uses.

He noted that Options 1,2, and 3 would still be available on July 6.

Council Member McAlister questioned how long the bid quotes were in effect. Mr. Erichson replied the bids are effective to August 9.

Council Member Clennon said she is opposed to the Option 4, saying that these people were told all along. If we continue with the individual meetings, the general public won't

know the opinions given during the process. She added that these people came here for a reason (the public hearing).

Mr. Erichson said he was more than willing to hold another informal informational hearing. He added that there was an informal meeting addressing just the assessments about two weeks ago. Approximately 25 people attended that meeting; it was straightforward, and it moved quickly.

Council Member Austin said that by continuing the hearing, we would not be taking away the people's right to speak. They would still have an opportunity to speak at that time (July 6).

Mayor Stiehm questioned when the objections were filed. Mr. Erichson noted that approximately 98% were filed Friday through today.

Bob Allen said Mr. Erichson's plan is to assess for only sewer and not water and would be more than what some properties are worth.

Council Member-at-Large Anderson questioned how the individual meetings would be set up. Mr. Erichson said he would contact the residents and schedule meetings with them. He added that he would be very flexible with his time and would accommodate their schedules. He reiterated that he is willing to do another informational meeting.

Mr. Allen asked the audience to raise hands if they are against the project. Mayor Stiehm said he is, too, but we (the City) didn't initiate this. There are no winners, he said, but we will try to resolve this to the best of our ability. Not everyone is going to be happy.

Mr. Erichson said the proposal was put before the Lansing Township Board and the City Council as an orderly annexation, but it did not pass. Following that, the request to be annexed was petitioned by some of the residents. (Mr. Erichson stressed that it was a request of the residents, not the City.) He said the sewer issues need to be addressed by some entity. If they cannot be addressed locally, other agencies will need to address it.

Council Member Clennon said she was confused that we have called a public hearing, the public came, and now we're not going to have the hearing.

Council Member Austin replied that we will still have the hearing. But this is a way to have individual concerns addressed that may not be of the whole group. Everyone may want to speak tonight, but we are not going to be able to hear everyone anyway.

Council Member King said he had no problem with continuing the hearing. His concern is that only 39 of the 209 are voicing their concerns. We need to look at the greater good, which is to be in compliance with the septic sewage. He said he would like to hear from the silent majority.

John Howe, property owner in the annexation area and the mayor of Red Wing, spoke to Council. Mr. Howe said he sent a written objection which was a very detailed letter. He does not object to the merits of the project, but questions why and how the special

assessment amount was determined. The project needs market value appraisals and the value of the properties with the project added. The City can only legally assess the amount the properties are benefitting.

Council Member Pacholl asked if there was a possibility that the citizens could get together with the Township Board and asked what their reasons were. (Audience vocally objected to this.) Mayor Stiehm replied that this not possible as the area has been annexed in now.

Mr. Erichson said Mr. Howe's questions would be part of these discussions. He noted that of the objections, only two – one which was Mr. Howe's – were very specific. The other approximately 38 objections were on the same form. Mr. Erichson recalled a similar situation a number of years ago when someone went door-to-door asking the assessed people to sign the objection forms. A similar number of objections were received. That assessment roll was passed and later Mr. Erichson met with those objecting and found that there was some miscommunication. Eventually 75%-80% went through with the assessments after issues were explained. In looking at other costs for sanitary sewer projects, Mr. Erichson recalled the Norman Park sanitary sewer project. Those assessments were \$19,000 to \$21,000, and there were no objections. When reviewing septic systems for the newly annexed area, the costs for a mound septic system would run \$13,000 to \$17,000 for the newly annexed area. Plus, in looking at the lot sizes, many would not support septic systems. When the Engineering Department developed the assessment policy involving the residential equivalent units for this project, many things were taken into consideration, including vacant lot properties, compliant septic systems, and the geographical make-up.

Jim Davis, Royal Manor Addition, said he just found out about the hearing last Thursday. The property owners have had some advice and feel it is good advice. Mr. Davis asked if the deadline could be waived so that others could be contacted. Mr. Erichson replied that the delay would automatically happen if the hearing is continued to July 6.

Mike Schuster, Royal Manor Addition, submitted to Council a letter of objection. Mr. Schuster stated that he bought his property as one parcel, and now he is being charged for two parcels. He noted that there would be a cost to replat lots prior to a sale. Plus it is not prime property, according to certified assessors with whom he has talked. Mr. Schuster said his lots are bare lots that are competing with lots in the city that have sanitary sewer and water. He added that he is confused why some can tap in to the city water but don't have to do sewer. He said he is not going to come out financially.

An unnamed resident from the annexation area said he objected to the City charging a 5 percent interest rate.

Al Layman, 24069 547<sup>th</sup> Avenue, thanked Council for allowing the citizens to voice concerns. He said he has been involved with this project for ten years now. There have been several public hearings, discussions and meetings to get to this point. One point he said he wanted to make is that the landowners were given the option to go with the City or the Township; they chose the City. After the vote, the ones who objected, who were the minority, suggested they canvass the ones who didn't vote so that perhaps they could

create a majority in opposition. He said it frightens him that they would have the right to conversations and then a public hearing all over again while people are suffering with noncompliant systems right now. He recalled that during the initial vote, forty people chose not to get involved, didn't care or didn't vote, and perhaps these here tonight are those 40.

A negative response was given by the audience to which Mayor Stiehm responded that he was pleased with the all those in attendance. He noted that he sympathizes with them, especially people who have multiple lots. If it was myself being assessed, he said, it would be a tremendous financial issue. He said that he hopes everything works out. He added that this process will not start over again.

Council Member McAlister said he thinks it is necessary to go with option 4. It seems we have a situation of price vs. a problem. He added that if this project were free, no one would be here; it is a real burden for some. The other thing, he noted, is the "problem", the City doesn't want this problem. But if the objectors think the problem will go away if the City drops the project, then Lansing Township would need to deal with the problem, and if not the Township, then the State. *Someone* will deal with the problem, and it will not be free.

Rose Srock, 54710 236<sup>th</sup> Street, objects to the assessment, stating that the law states that the City cannot assess more than what you are going to benefit.

Council Member McAlister made a motion to approve Option 4: Continuing the hearing process (to July 6), then meeting individually with property owners to review their objections to determine if any of the objections could be resolved. Motion was seconded by Council Member King. 5-2. Council Members Clennon and Martin voted nay.

Chris Hogan, Woodhaven Addition resident, stated that there is no easy answer. He reminded everyone that, as reported in the newspaper from a recent study, the Cedar River is one of the five worst contaminated rivers in the country. Ten years is a long time to wait; we can't keep prolonging this. The property owners have had six or seven public forums on this. It is a big mistake not to go forward, he stated.

No more comments were made.

The draft wind energy conversion system ordinance was on the agenda for a second reading which requires a simple majority vote. Community Development Director Craig Hoium stated that the draft is unchanged from the last council meeting where it was denied. By our City Charter, unanimous approval is required at the first reading, but the second reading requires only a simple majority vote.

Council Member Clennon said that during the last two weeks, she has had more phone calls and emails on this ordinance, and she has since done some research. She has obtained the ordinance that the City of Willmar passed. It includes the exception for rooftop units. Also in the Willmar ordinance, the maximum height for units in commercial districts shall not exceed 55 feet and shall not exceed 35 feet in residential

districts. Our draft ordinance states that blades shall not be higher than 35 feet. She believes more research needs to be done for the City of Austin.

Council Member Austin questioned when the moratorium expires if Council does not pass the ordinance. Mr. Hoium stated that the first moratorium was adopted in July of 2009. Once this last moratorium expires, we will not be able to extend another moratorium. The current moratorium ends at the end of this month or the first part of July.

Council Member Austin stated that while this draft is not perfect, we need to get something in place. As technology goes forward, we can always revise.

Mayor Stiehm confirmed with Mr. Hoium that the ordinance could be amended at any time.

Council Member Martin believes that it is always harder to change something once it is approved. Council Member Austin agreed, but said if it is approved the way it is now, we still have the ability to throw it out and give it back to the Planning Commission for something more appropriate for our community, such as the Willmar version. If we don't deal with this now, we're setting ourselves up for the inevitable. Council Member-at-Large Anderson agreed, saying Mr. Hoium said we could revisit this later and revise it. Council Member King said if this is not approved now, we are up against "analysis paralysis".

Council Member McAlister motioned to prepare the ordinance. Seconded by Council Member Austin. 5-2 voice vote. Council Members Clennon and Martin voted nay.

Moved by Council Member Austin, seconded by Council Member King, for adoption and publication of the ordinance. 5-2. Council Members voted nay. Carried.

The Austin Port Authority is recommending to the City Council a change in funding formula of Small Cities Development Grant funds. The grant funds are being used for the Main Street Project, Inc.'s projects. The funding is depleting so, in order to avoid not using up all of the grant funds and having to forfeit them back to the State, the Board and the Port Authority are suggesting the formula change. The standard formula has been a 75% subsidy with 25% owner contribution. The suggested change is 80% subsidy with 20% owner contribution. The two projects are adjacent to the fire site and involve the former Nemitz building and the former Marty's Hobbycraft building.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution authorizing a change in funding formula for a Small Cities Development Program grant for the Main Street Project. 7-0. Carried.

A retirement in the Engineering Department has created a full-time opening. The recommendation of the Committee-of-the-Whole at the previous work session is to replace that full-time administrative assistant opening with the current part-time clerk and then proceed to hire for that part-time position.

Moved by Council Member Austin, seconded by Council Member King, approving the replacement of the full-time administrative assistant position with the current part-time clerk and then proceeding to hire for the part-time position. Voice vote. 5-2. Council Members Clennon and Martin voted nay. Council Member Clennon stated that she is not opposed to filling the position with the current part-time clerk, but is opposed to filling the part-time position. Council Member Martin agreed with Council Member Clennon.

The Healthcare Savings Plans for the various unions are adjusted from time to time according to various needs; in this case, the change is for one employee. This request bears no cost to the City.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, amending the terms and conditions for non-contract, non-exempt employees for participation in the Minnesota State Retirement System Healthcare Savings Plan. 7-0. Carried.

Community Development Director Craig Hoium said the City has received a petition for subdivision of property at 2606 West Oakland Avenue (the former Aegean Cheese property). The petition relates to a sale of property to a local business, along with future commercial development. The lot is 1.3 acres and includes two easements. The utilities and MnDOT were notified. The only concern was from MnDOT who said they would prohibit any new access to State Highway 105.

Council Member Martin questioned if this is the same neighborhood where a church wanted to go in. Mr. Hoium said this property is for a commercial district. The other property referred to was on the northerly edge of a residential district and is right along I-90.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution approving the subdivision. 7-0.

Moved by Council Member King, seconded by Council Member Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1013 10<sup>th</sup> Avenue SW, Lawhead property. Carried.

Moved by Council Member King, seconded by Council Member Austin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1908 3<sup>rd</sup> Avenue SE, Mason property. Carried.

Moved by Council Member Pacholl, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1304-1306 10<sup>th</sup> Street SW, Anhorn property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1604 Oakland Avenue East, Burrell property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 901 6<sup>th</sup> Avenue NE, Freese property. Carried.

Moved by Council Member Pacholl, seconded by Council Member McAlister, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 805 11<sup>th</sup> Street NW, Gomez property. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 910 11<sup>th</sup> Street NW, Garcia property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1003 3<sup>rd</sup> Avenue NE, Talamantes property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 800 12<sup>th</sup> Avenue NW, Bastyr property. Carried.

Moved by Council Member King, seconded by Council Member-at-Large Anderson, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1814 3<sup>rd</sup> Avenue NE, Rodriguez property. Carried.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution granting club on-sale hard liquor license to the Hormel Historic Home. 7-0. Carried.

## REPORTS

Council Member Clennon said she attended the City-County Committee meeting on June 16. The discussion was on the justice center and some changes that may be made and how the City and County will decide on that.

Council Member reminded everyone about the upcoming Relay for Life event on August 7 at Bandshell Park. Cops who Care is another Relay for Life event scheduled for August 7.

City Administrator Jim Hurm reported that he did meet with the school superintendent regarding the school crossing guards. He has distributed a draft letter to be sent to the School District which should require no council action. The School District will be taking on the program, but the Police Department will manage it and we would bill the School District for expenses. Council Member Clennon questioned if Council should vote on it. Council Member Austin said he believed the agreement was for the payment of the program. He wondered about the time involved for managing the program. Lt. Sgt. Brian Krueger said that most of the work is in calling substitutes, and that falls to the

dispatchers. The duties of the program management are slim, if any. He noted that once in a great while, CSO will need to fill in.

Council Member Martin said Friday, June 25 marks the beginning of the Korean War. He thanked all who fought in that war, along with all veterans.

Mayor Stiehm asked Council if they wanted a motion on the school crossing program change. It was the consent of the Council that a vote was not needed.

City Administrator Jim Hurm reported that the Mayor has appointed members to serve as the police chief interview committee: Council Members Austin and Anderson. Mayor Stiehm noted that questions to be included for the interview should be submitted to Trish Wiechmann. And he added that the rest of the council, he thought, could be present at the interviews.

Moved by Council Member Austin, seconded by Council Member King, adjourning the meeting to July 6, 2010. Carried.

Adjourned: 6:40 pm

Approved: June 7, 2010

Mayor: \_\_\_\_\_

City Recorder: \_\_\_\_\_