

M I N U T E S
COMMON COUNCIL ADJOURNED MEETING
NOVEMBER 15, 1999
5:30 P.M.

MEMBERS PRESENT: Mayor Rietz, Council Member-at-Large Chaffee, Council Members Fedson, Jorgenson, Penske, Poppe, Nordin and Lang.

MEMBERS ABSENT: None.

OTHERS PRESENT: KAUS. KAAL. KTTC. Austin Daily Herald. Austin Post Bulletin. Oscar Haddorff. Amy Baskin. Linnea Burtch. Robert Helmers. Bresnan and Charter Communications representatives.

Moved by Council Member-at-Large Chaffee, seconded by Council Member Nordin, approving the agenda.

Moved by Council Member Fedson, seconded by Council Member Penske, approving the minutes of November 1, 1999.

Mayor Rietz presented a proclamation to Oscar Haddorff proclaiming November 15, 1999 as "Oscar Haddorff Day."

Amy Baskin, Director of United Way of Mower County and Mayor Rietz held the drawing for the City employee United Way campaign. Merrilyn Moetsch won the year-long YMCA membership; Gayle Heimer won "Mayor for a Day"; and Jim Samuel won the day off of work.

Linnea Burtch, 1716 36th Street SW (Oak Park Mobile Home Park), informed Council that 104 out of 148 residents have not signed what they believe to be illegal leases and these 104 have been threatened with eviction. Ms. Burtch said she received a reply from the Attorney General that stated that the owners were in compliance with all of the City requirements. Planning and Zoning Administrator Craig Hoium said there were some issues that needed to be altered with the emergency shelter. Mayor Rietz thanked Ms. Burtch for the report and hoped the City could help the issue be resolved.

Robert Vietor, 701 1st reported a safety hazard between 6th and 7th Place NW on 1st Drive. This is an area where there is an upgrade. The City has placed a handicap access in the middle of the block which, he believes, will freeze and be hazardous in the winter. Mayor Rietz asked City Engineer Jon Erichson to look into the potential problem.

Motion by CM Penske, seconded by CM Poppe, approving the consent agenda.

Licenses:

Food: Karen Lorenzen dba Wildewood Cottage Inc., 808 West Oakland Avenue Hollywood Video #023-748, 1801 14th Street NW, Suite B

Claims:

- (a) Financial and Investment Reports.
- (b) Pre-list of Bills.
- (c) Terry Nystel, 710 13th Avenue SW, referred to the City Attorney to protect the City's interest.
- (d) Dorothy Stern, 1700 1st Avenue NE, referred to the City Attorney to protect the City's interest.

A public hearing was held on the proposed transfer of control of the cable franchise from Bresnan Telecommunications Company to Charter Communications Holding Company. City Administrator Pat McGarvey explained that Bresnan is in the process of being sold to Charter which is owned by Paul Allen of Microsoft. The sale will most likely be in the early part of next year. John Wade, Vice President of Midwest Development said that Bresnan has done everything it said it was going to do. The owner of Bresnan built the company and is being very careful whom he sells it to. Mr. Wade stated that no one else is as committed to state of the art technology as Charter Communications is. Tim Voll of Charter Communications said that Charter is at the top of the technology for communications. Charter will be committed to all of the promises and timelines that Bresnan has promised. The change of ownership will have no impact on rates. No comments were made by citizens.

Moved by Council Member Penske, seconded by Council Member Nordin, to continue the hearing to December 6. Carried.

Public hearings were held on the proposed assessments. City Engineer Jon Erichson gave a general overview of the projects. Mr. Erichson said that the improvements will be assessed on the benefit. Mr. Erichson also explained how the assessments were calculated and what percentages were paid by whom. Options for payment were explained.

Public hearing held on sidewalk repair in various parts of Austin, Project 4-C-99 at a cost of \$12,292.88. The amount to be assessed is \$12,292.88 at 7% interest for 5 years. No objections received.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adopting the resolution in favor of the assessment, Project 4-C-99. 7-0. Carried.

Public hearing was held on the sidewalk and street lighting on North Main Street, Project 1-C-98 at a cost of \$90,944.29. The amount to be assessed is \$45,463.24 at 7% interest for 15 years. No objections were received.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adopting the resolution in favor of the assessment, Project 1-C-98. 7-0. Carried.

Public hearing was held for street improvement on 3rd Avenue from 12th Street to 15th Street SW, Project 4-A-99 at a cost of \$112,474.96. The amount to be assessed is \$53,062.56 at 7% interest for 15 years. City Engineer Jon Erichson named benefits to the street: New street – improved ride and appearance, improved drainage, renewed underground utilities, pedestrian access improved with handicap ramps, and maintenance costs decreased. Gordon Harder, 1907 2nd Avenue SW, stated that the residents who are objecting have no quarrel with the need, the job construction, timeliness or the fact that only some sidewalks were redone, but rather with the assessment process. Mr. Harder stated that there is no increase of value asking what would a willing buyer pay before and after the improvements. City Attorney David Hoversten stated that it is the position of

the City that there is a recognizable improvement. Mr. Hoversten said that legally, the position of no benefit received is incorrect and cited a *prima facia* case arguing no benefit to the property owner. The Supreme Court ruled that there are benefits as the City Engineer is stating the benefits for each project during the hearings. Council Member-at-Large Chaffee said that the benefit is evident and that the assessment process is a very legitimate way to do assessments. Mr. Hoversten said all those property owners who have filed written objections will have their hearing adjourned to some future date. Each property owner will have the chance for evidence, witnesses and testimony to prove that he or she did not receive benefit. The City will also have the same legal chance for opinion and facts. Each case will have the opportunity at a full and subsequent hearing. If not satisfied with the decision, the property owner may appeal.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adjourning the Project 4-A-99 assessment objections to a subsequent hearing. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adopting a resolution in favor of the assessment, Project 4-A-99. 7-0. Carried.

Public hearing held on 1st Drive NW from 8th Place NW to Main Street, Project 2-A-99 at a cost of \$331,171.60. The amount to be assessed is \$63,776.88 at 7% interest for 15 years. This project is a continuation from 1998. The street was widened in two places from 40 to 44 feet. Credit was given for the age of the street and some of the curb and gutter saved. City Engineer Jon Erichson named benefits to the street: New street – improved ride and appearance, street widened to improve safety, street geometrics changed to improve safety, improved drainage, renewed underground utilities, pedestrian access improved with handicap ramps, and maintenance costs decreased. Robert Vietor, 701 1st Drive NW, objected to the manner in which the bids for the improvement projects are taken because the City tells the contractors what amount they expect. Mr. Vietor stated that the price per linear foot much higher than last year's price but the price for concrete remained the same, the price for fuel was down and labor did not go up that much. City Attorney David Hoversten said that under state law, the City is obligated to provide to the Council the amount expected to determine if the project is reasonable. Mr. Erichson said that the bids are advertised in trade magazines at length and the bids are received in a competitive environment. If a contractor wants the work, he must bring forth a low bid.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adjourning the Project 2-A-99 assessment objections to a subsequent hearing. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Poppe, adopting a resolution in favor of the assessment, Project 2-A-99. 7-0. Carried.

Public hearing was held on street improvement on 19th Street SW from Oakland Avenue to 8th Avenue SW, Project 3-A-99 at a cost of \$227,020.85. The amount to be assessed is \$102,969.10 at 7% interest for 15 years. City Engineer said that the existing concrete was removed and asphalt and concrete curb and gutter put in its place. The street is 36 feet wide. Mr. Erichson named benefits to the street: new street – improved ride and appearance, improved drainage, renewed underground utilities, storm sump lines provided to property owners, pedestrian access improved with handicap ramps, and maintenance costs decreased. Names of objections to the assessment were called.

Moved by Council Member Jorgenson, seconded by Council Member Penske, adjourning the Project 3-A-99 assessment objections to a subsequent hearing. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Penske, adopting a resolution in favor of the assessment, Project 3-A-99. 7-0. Carried.

Public hearing was held on street improvement on 4th Avenue SE from Ellis Middle School to TH 218, Project 1-A-99 at a cost of \$749,565.54. The amount to be assessed is \$175,061.02 at 7% interest for 15 years. City Engineer Jon Erichson named benefits to the street: new street – improved ride and appearance, improved drainage, renewed underground utilities, storm sump lines provided to property owners, pedestrian access improved with handicap ramps, and maintenance costs decreased. Doug Zhradnik, 2007 4th Avenue SE, objected to the assessment saying that there is now water in his basement and every time it rains, more water comes in. Mr. Zhradnik also said that during construction, up to three feet of water was standing in the street. Mr. Zhradnik had previously written a letter to Mr. Erichson and has made a claim to the city. Mr. Erichson said that the City has a disclaimer that says it cannot be sued for work done by the contractor which, in this case, is Doyle O'Connor. Mayor Rietz asked Mr. Erichson to talk to Mr. Zhradnik and resolve the situation. Council Member Lang reminded Mr. Zhradnik that he is his council member and to contact him. Tom Titus, 2009 4th Avenue SE, stated that 4th Avenue is 90% funded by the State but is paid for by the public three times, by School District 492, by the State and by the owner. Mr. Erichson stated that 4th Avenue is a State Aid street and that the city can declare up to 20% of its streets as State Aid streets. Austin receives \$800,000 for street construction and maintenance which is funded by the gas tax. It is Austin's policy to treat every street the same, a policy which has been held up in Court. The \$800,000 pays a portion on other city projects. Council Member Nordin asked everyone to take in consideration community pride. Council Member Jorgenson noted that she lived in a city that did no street improvements and is happy to live in Austin.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, adjourning the Project 1-A-99 assessment objections to a subsequent hearing. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, adopting a resolution in favor of the assessment, Project 1-A-99. 7-0. Carried.

Public hearing held on sanitary sewer construction in Austin Acres, Project 1-B-99 at a cost of \$167,259.68. The amount to be assessed is \$98,740.03 at 7% for 15 years. No written objections received.

Moved by Council Member Jorgenson, seconded by Council Member Penske, adopting a resolution in favor of the assessment, Project 1-B-99. 7-0. Carried.

Public hearing held on water construction in Austin Acres, Project 1-B-99 at a cost of \$84,254.50. The amount to be assessed is \$74,160.88 at 7% for 15 years. No written objections received.

Moved by Council Member Jorgenson, seconded by Council Member Penske, adopting a resolution in favor of the assessment, Project 1-B-99. 7-0. Carried.

Public hearing held on sanitary sewer construction in Norman Park, Project 1-B-93. The amount to be assessed is \$6,617.00 at 7% for 9 years. The assessment is for nine years because that is the remaining life of the bond.

Moved by Council Member Penske, seconded by Council Member-at-Large Chaffee, adopting a resolution in favor of the assessment, Project 1-B-93. 7-0. Carried.

Public hearing held on water construction in Norman Park, Project 1-B-93. The amount to be assessed is \$1,265.00 at 7% for 9 years.

Moved by Council Member Penske seconded by Council Member Jorgenson, adopting a resolution in favor of the assessment, Project 1-B-93. 7-0. Carried.

Public hearing held on junk and trash removal. Costs incurred by the City will be assessed to the property owner. According to City Code, certain property owners are being assessed due to failure of payment of services.

Moved by Council Member Lang, seconded by Council Member Nordin, adopting a resolution in favor of the assessment. 7-0. Carried.

Public hearing held on snow removal. Costs incurred by the City will be assessed to the property owner.

Moved by Council Member Lang, seconded by Council Member Jorgenson, adopting a resolution in favor of the assessment. 7-0. Carried.

Public hearing held on weed removal. Costs incurred by the City will be assessed to the property owner.

Moved by Council Member Lang, seconded by Council Member Nordin, adopting a resolution in favor of the assessment. 7-0. Carried.

Public hearing held on deferred assessments. Costs incurred by the City will be assessed to the property owner. These assessments are for the Austin Acres. Assessments will be paid in the future by the benefited property owner when property owners are annexed.

Moved by Council Member Fedson, seconded by Council Member Jorgenson, 7-0. Carried.

Public hearing held on request from the City of Austin for a rezoning from an "R-2" Multi-Family Residential District to a "B-1" Neighborhood Business District of property located immediately south of the intersection of 4th Street NW, 10th Avenue NW and 1st Drive NW. With the reconstruction of 1st Drive NW and the realignment of the 4th Street and 1st Drive NW intersection, approximately 20 parking stalls were eliminated. The City has requested the rezoning for necessary parking needed for a business adjacent to this property (The Point). David Engels, 1011 4th Street NW, was okay with the rezoning as long the property would not change how it currently exists. Planning Commission recommended approval by a 6-0 vote. Robert Helmers also spoke against the rezoning saying that it was unethical and violated City Codes.

Moved by Council Member Lang, seconded by Council Member Nordin, adopting a resolution addressing the Findings of Fact with recommendations given by the Austin Planning Commission. 7-0.

Moved by Council Member Lang, seconded by Council Member Nordin, for the City Attorney to prepare the ordinance. Carried.

Moved by Council Member Lang, seconded by Council Member Nordin, to move the ordinance to the first reading. Carried.

Moved by Council Member Lang, seconded by Council Member Nordin, for adoption of the first reading. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Nordin, to move the ordinance to the second reading. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Nordin, to move the ordinance to the third and final reading. Carried.

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

Public hearing held on 4.15 acres which are to be platted into ten residential lots requested by Hester Rhodes. Planning Commission recommended approval by 6-0 on condition that the City Council and Park and Rec Department dedicate property or finances for a park.

Moved by Council Member Penske, seconded by Council Member Poppe, approving the preliminary plat. 7-0.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, approving the purchase of flower baskets from Berg and Dolan Nurseries for years 2000, 2001 and 2002. Carried.

Four annexations have been requested with the sanitary sewer and water construction jobs completed in Austin Acres this summer.

Moved by Council Member Lang, seconded by Council Member Jorgenson, adopting a resolution approving the orderly annexation request from Charles Schubert, 1804 22nd Street SW. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Nordin, adopting a resolution approving the orderly annexation request from Shirley Dallmann, 1902 22nd Drive SW. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Poppe, adopting a resolution approving the orderly annexation request from Troy and Diana Holtz, 1906 22nd Drive SW. 7-0. Carried.

Moved by Council Member Lang, seconded Council Member Poppe, adopting a resolution approving the orderly annexation request from Henry M. Bartesch, 1810 22nd Drive SW. 7-0. Carried.

Moved by Council Member Penske, seconded by Council Member Poppe, adopting a resolution setting a hearing for final plat review on plat to be known as Rhodes Estates. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Fedson, adopting a resolution granting off-sale liquor licenses, club on-sale licenses and wine on-sale licenses. 7-0. Carried.

Moved by Council Member Lang, seconded by Council Member Poppe, approving a contract with Riverland Community College to employ students for work study. 7-0. Carried.

City Engineer Jon Erichson asked Council's approval to reconvey tax forfeited property back to the State. The property, part of the old railroad on 10th Avenue SE, was acquired for the speculative 4th Street SE extension which never came to be. The property must be reconveyed back to the State after five years.

Moved by Council Member Lang, seconded by Council Member Fedson, approving the reconveyance of said property. Carried.

Reports:

HRA – Council Member Lang reported that St. Paul's Church will be saved. Park and Rec is working on a plan currently.

Moved by Council Member Lang, seconded by Council Member Nordin, removing Item #2 from Matters in Hand.

Truth in Taxation meeting is scheduled for Monday, November 29, 1999 to discuss the State's levy limits.

CVB: Director Jeanne Sheehan has recently attended the National Tourism Conference. Lodging tax is up 21% again in October. Also, the space in the CVB office is available to sublet.

Bike Committee meeting set for Monday, December 1 at 5:15 p.m.

Mayor Rietz announced the opening on the Utility Board with the resignation of Ken Regner.

Moved by Council Member Penske, seconded by Council Member Nordin, adjourning the meeting.

Adjourned: 7:50 P.M.

Approved _____

Mayor _____

City Recorder _____