

MINUTES
CITY COUNCIL ADJOURNED MEETING
MONDAY, AUGUST 15, 2005
5:30 P.M.
COUNCIL CHAMBERS

MEMBERS PRESENT: Mayor Rietz, Council Members Jorgenson, McAlister, Scott Pacholl, Dick Pacholl, Hecimovich and Nordin. Council Member-at-Large Christopherson.

MEMBERS ABSENT: None

OTHERS PRESENT: Austin Daily Herald. Austin Post Bulletin. Dorothy Johnson. Darcy Winter and two other representatives for Walmart (attorney and civil engineer). George Dahl. Tom Besterfeld. Bob Clark. Public.

Added to the agenda: Granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 801 15th Street NE, Leuning property; granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 409 2nd Street SW, Janning property; and Authorizing additional funding of the airport lighting system contingent upon securing federal or state grant funding.

Moved by Council Member Hecimovich, seconded by Council Member Nordin, approving the agenda as amended. Carried.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, approving the council minutes of August 1, 2005. Carried.

Dorothy Johnson spoke to Council regarding the Mower County Senior Citizens Center. Ms. Johnson said she gathered 200 names in support of the Center. She said it is very important for friendships and well-being and noted that Albert Lea and Owatonna's senior centers are funded through their Park and Rec Departments. Ms. Johnson noted that the Senior Center has been funded by the city for 13 years and in its original location for 14 years. She expressed hope that it would not be shut down permanently.

Mayor Rietz assured her that the Center would not close. She said the Senior Center Board Chair has been meeting with the City Finance Director and City Administrator on this matter. The Board is expected to make a proposal to the City Council at a September work session.

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

Exempt Gambling (raffle): Austin Morning Lions Club, 102 1st Ave NE, Oct. 28
Exempt Gambling (raffle): Austin Area Chamber of Commerce @ Austin Country Club, Oct 19
Temporary 3.2 Beer: Lawrence Foundation for Fantasia I@ Lafayette Park, August 27-28

Claims:

- a. Pre-list of bills.
- b. Finance Report and Investments
- c. Bette Arthur, 310 2nd Avenue NE. This claim has been referred to the city attorney to protect the city's interest.
- d. Austin Medical Center for Daniel Alaniz. This claim has been referred to the city attorney to protect the city's interest.

Carried.

A public hearing was held for a rezoning of property owned by Burton J. Plehal Combined Disclaimer Trust/John V. Plehal, Trustee, 7150 Soutag Way, Springfield, VA, from an R-1 Single Family Residential District to a B-2 Community Business District at their property located at 1010 18th Avenue NW.

City Attorney David Hoversten opened the public hearing with explanations of what would be discussed tonight. Only the two rezoning requests (from an R-1 to B-2) would be discussed. All restrictions for a conditional use permit and subdivision requirements and development standards (infrastructure, streets, traffic control, sewer and water) would be discussed at a later time. The standards for the rezoning requirements are set forth in the Minnesota Statutes and through court interpretations. He said certain elements are relevant to the rezoning requests and certain items are irrelevant. Ownership is irrelevant. The law says that everyone should be treated equally. Store prices and employee practices are irrelevant. Mere neighborhood or community opposition is not a reason to deny the rezoning. This may be disappointing and surprising to some, but the standards are set forth in appeals cases. Also, Mr. Hoversten said the burden is on the opposition to provide evidence that the rezoning would not meet the standards set forth by the city in regards to the health, safety and general welfare of its citizens. There must be demonstrable evidence. The standards are well established by Minnesota corporate law. Additionally, Austin has a Comprehensive Plan. The Plan was devised for development standards – what should be encouraged in a certain area. This is a very important document, and if the rezoning would be inconsistent to the area, there must be application to change it. He reiterated Craig Byram's statement said at the recent Planning Commission meeting that the public has a misconception that the City is the instigator of the petition to rezone. This is unlike a situation where the City, HRA, or Port Authority own the property. In that instance, they would have the opportunity to choose and pick. Mr. Hoversten also noted that there are no subsidies, i.e. economic incentives. The Council must make its decision under these standards, and the vote requires a two-thirds majority. In this case a 5-2 is needed. Mr. Hoversten also noted that property must be annexed into a city with R-1 zoning. It would then be changed to the Comprehensive Plan if it is rezoned.

Community Development Director Craig Hoium said the preliminary plat hearing would be continued to September 19 as it was tabled by the Planning Commission with no recommendation to the City Council yet.

Mr. Hoium said there are two parcels requesting rezoning: the Plehal property and the Dolan property. The Plehal property has one single-family home on it. The Dolan property was acquired two years ago. There had been a single-family home on the property. This property is currently part of the Dolan's landscaping business. Not included in the rezoning is the Wagner Hardware property.

Included in the proposal is property for a storm water retention pond and discharge to wetlands. Wetland mitigation must be double the development. The property designated for this is just to the north of the development site. The Planning Commission referred to the Comprehensive Plan in its decision and noted that the requested action is in compliance. Mr. Hoium then referred to the Future Land Use Map, which indicates commercial use. The surrounding land uses are all commercial.

Mr. Hoium referred to a footprint map and the grove of trees north of The Oaks Condominiums. He said a portion of these trees are expected to be removed. The developer noted concerns of these trees and will amend the initial plan, plus amend the proposed green space. Referring to the proposed landscape plan, he said the standard buffer for this size of a parking lot is 10 feet. That item may be changed with conditions put on the conditional land use. The Planning Commission could actually ask for more of a buffer.

Although not part of the rezoning, Mr. Hoium referred to the elevations. All of the elevations are lower than the elevations at The Oaks Condominiums.

The minimum green space required for this type of development would be 20%. The Walmart plan is now over 14%.

Mr. Hoium noted that there is the area to the north of The Oaks Condominiums owned by Plehals is expected to be petitioned to be rezoned.

Council Member Dick Pacholl questioned the wetlands designation area. Mr. Hoium said this is an eight-acre area to the north.

Council Member Hecimovich questioned what the minimum distance is from The Oaks Condominiums to the proposed parking lot. Mr. Hoium said the ordinance requires a 10-foot buffer. The conditional land use allows for conditions such as this to be changed; the buffer area could be part of this.

Mr. Hoium noted that the buffer is related to the property line. The buffer would not be within The Oaks Condominium property. Council Member Jorgenson said that that issue would be discussed at future public hearings.

Mr. Hoium said that the preliminary plat review at the Planning Commission included 16 conditions, but no recommendation was made yet. There were lengthy discussions on the wetlands mitigation, greenspace, buffer zone, etc., and the developer is aware of these concerns.

Council Member Nordin questioned if these 16 conditions would be put into writing. Mr. Hoium said these 16 conditions are currently in writing, and will be included in the September 13 Planning Commission meeting.

Mr. Hoium said the Planning Commission recommended approval of both rezonings by a 5-0 vote. They made the recommendation because the rezonings are in compliance with the Comprehensive Plan.

Council Member McAlister questioned whether the two parcels to be rezoned are a relative small part of the total parcel to be developed. Mr. Hoium said it was. Council Member McAlister also questioned whether the other four acres of Dolan's is B-2. Mr. Hoium said it was. Additionally, Council Member McAlister questioned the area north of The Oaks. Mr. Hoium said that area would need to be rezoned also and that the total development proposal is 29 acres.

Darcy Winter, representative from D.E. Winter and Associates spoke to Council. She thanked Council and Staff for working through the issues. Ms. Winter said they would like to meet with officials again regarding additional berm and landscaping.

George Dahl, 507 6th Avenue NW, said he spoke to several city officials who all seem to not want Walmart, but they have said they we can't keep them out. Mr. Dahl asked Council why they can't vote 'no'. Mr. Dahl referred to some people, including himself, who would be willing to stand in front of bulldozers to stop the development.

Tom Besterfeld, a previous resident of The Oaks but now a current resident of Maryland, read a prepared statement of strong opposition to the proposed Walmart development. He said there are multiple issues against the development. These are traffic issues, the pollution and environmental impact, and the decline in property value. He said there would be a decline in the condo values. He counted off several empty spaces in Austin and said these are indicative of the business situation in Austin. Regarding ownership at the condos, the residents should have the "quiet right of enjoyment."

Bob Clark, resident at Oak Park Village, said we have enough problems now with decreased business. Mr. Clark also referred to the proposed water pond, noting that it would be equal in size with what the City required at Oak Park Village. He said that it is not big enough.

Council Member Dick Pacholl said the City has rezoned and denied rezoning before. He said the majority of calls he's received have been against the proposed development. He said it is the government's responsibility to listen to the people. If we rezone, Walmart will be here and the downtown and other areas will have closings. The citizens are against this. We need to stick with the people who call us. He said it would be a "slow death to the rest of our city."

Moved by Council Member Dick Pacholl, seconded by Council Member Hecimovich, to deny the rezoning.

Mayor Rietz asked Council for additional comments.

Council Member Scott Pacholl questioned City Attorney David Hoversten if he has heard evidence enough to deny. Mr. Hoversten said he has heard no demonstrable evidence to deny. The determination, he said, should not be from personal conviction. The decision should be based on case law and what's set forth in the statutes. It would be a mistake and not legally supportable to deny the rezoning. He said he has not heard a recognizable reason to reject the rezoning. The decision should not be made on speculation and what may happen. That would not be a proper consideration of whether or not the improvements would satisfy the health, safety and welfare of the citizens. This is not about who the owner is, comments on whether Walmart is a good company, or whether Walmart will be developed. Those comments are objective, not subjective.

Council Member-at-Large Christopherson questioned if all of the conditions need to be met prior to zoning. Mr. Hoium said no conditions need to be met for the two rezoning petitions. There are a number of recommendations for the preliminary plat and for the conditional land use.

City Attorney David Hoversten said that the law requires that a unique situation exist before denial should be granted. He said the unique situation would be a summary and gave an example of a one-way entrance for traffic which would affect safety. Mr. Hoversten said that in his opinion there is no evidence now. Those issues would be included in a conditional use, and Mr. Hoversten noted that Council amended the ordinance for conditional uses. He said conditional uses are presumed to be proper uses. The question is whether a situation requires additional conditions. The question is what conditions are on the petition to protect the health, safety, and welfare of the citizens.

Bob Clark spoke again with concern of the wetland mitigation. Mr. Clark believes there is not enough dedication for the wetlands.

Mayor Rietz questioned if that would be taken care of in the platting. City Engineer Jon Erichson said the petitioner has not submitted the mitigation plan yet. Ideally, the mitigation would be very close to that area. Also, the pond size would be reviewed and may be deeper. They do not know what size it will be yet. Also, adjacent wetlands need to be factored in.

Council Member Jorgenson said many concerns will be addressed as this continues. We are dealing with only part of the issues now. Speaking to the public, she said, "our concerns are your concerns."

Mayor Rietz noted that there was still a motion and a second on the table to deny the rezoning.

Council Member Nordin wondered if welfare of the citizens would be a factor in the proposed development, which is too large for the lot. If they want to expand, there would be no room. She also noted concerns of the potential flooding issue.

City Attorney David Hoversten noted that the size of a development in excess of 70,000 square feet are permitted and considered as conditional uses. The developer must have the legal right. It would be completely invalid to deny rezoning with that reason.

Council Member McAlister questioned if Walmart could appeal the decision. Mr. Hoversten said they could. The City Council has not provided demonstrable evidence against rezoning. The arguments that most people are against the development, the argument of competition, or the argument of the company itself (Walmart) are irrelevant. There must be written findings to support the reason.

Council Member McAlister asked if any litigation would be at the expense of the taxpayers. Mr. Hoversten said that was correct.

Council Member McAlister, noting that the parcels in question are approximately 4 acres and the Plehal property north of The Cedars yet to be rezoned is approximately 3 acres, there is still 22 acres for the proposed development. If the developer wanted to, they could redesign to fit on a smaller area. He noted that the Albert Lea Walmart sits on 17 acres, the Owatonna Walmart is on more than 15 acres, and the Fairmont Walmart is on – 22 acres. Walmart could still develop on the current 20 acres without any rezoning. Mr. Hoium agreed if the development standards and configuration fit the property. Council Member McAlister said based on this, the best course of action for Council should be to concentrate on doing its best to address the issues, such as traffic, noise and screening because the likelihood of Walmart developing is high. The preliminary plat and conditional land use would be reviewed by the county and city engineers and MnDOT, which would lead to a correct development.

The voice vote was taken to deny the rezoning. 3-4. Motion denied. Voting aye: Council Members Dick Pacholl, Norm Hecimovich and Gloria Nordin. Voting nay: Council Members Jorgenson, McAlister, Scott Pacholl and Council Member-at-Large Christopherson.

Moved by Council Member Scott Pacholl, seconded by Council Member-at-Large Christopherson, for the City Attorney to prepare the ordinance. 6-1. Carried. Council Member Dick Pacholl voted nay.

Moved by Council Member Scott Pacholl, seconded by Council Member-at-Large Christopherson, for adoption and publication of the ordinance. 6-1. Carried. Council Member Dick Pacholl voted nay.

A public hearing was held for a rezoning of property owned by Brian and Kathleen Dolan from an R-1 Single Family Residential District to a B-2 Community Business District at their property located at 1008 18th Avenue NW.

Mayor Rietz opened the public hearing for comments.

Brian Dolan said they purchased their property a couple of years ago from Lansing Township, and they are caught in the middle of the proposed Walmart development. He said according to the Comp Plan, this is the best use of the property.

A motion was made by Council Member Dick Pacholl to deny the rezoning. The motion died for lack of a second.

Moved by Council Member-at-Large Christopherson, seconded by Council Member McAlister, for the City Attorney to prepare the ordinance for rezoning. 6-1. Carried. Council Member Dick Pacholl voted nay.

Moved by Council Member Christopherson, seconded by Council Member Scott Pacholl, for adoption and publication of the ordinance. 6-1. Council Member Dick Pacholl voted nay.

Community Development Director Craig Hoium said the next step would be at the Planning Commission meeting on September 13 when the Planning Commission will decide on the requested rezoning of the parcel north of The Oaks Condominiums. The preliminary plat and conditional land use may be ready for discussion at that meeting also.

The Committee-of-the-Whole has prioritized the Hormel Foundation Grant requests. The City Council must approve this list. The list is as follows:

1. Flood study of the Turtle Creek Watershed – Engineering Department
2. Downtown revitalization –Administration Department
3. New transit facility – AMCAT
4. Home smoke alarms – Fire Department
5. New lights at Bandshell Community Park – Park & Rec Department
6. Emergency response vehicle – Police Department
7. Completing series of newspapers on microfilm – Library
8. Pedestrian trail along 14th Street NW – Engineering Department
9. Computype spine label printing system – Library
- (tie) 10. Splash park at the Municipal Pool – Park & Rec Department
- (tie) 10. Photovoltaic Array Energy System – Nature Center
11. Copy machine – Nature Center
12. John Deere tractor & John Deere loader – Nature Center
13. Three illuminated fountains for Mill Pond – Community Development Dept.
14. Community entrance sign on west side of Austin – Community Development Dept.
15. Portable fire extinguisher simulator – Fire Department
16. Dance pads for the Youth Center – Park & Rec Department

Moved by Council Member Hecimovich, seconded by Council Member Nordin, approving the Hormel Foundation grant requests as prioritized. Carried.

The City Attorney has drafted a resolution and agreement which cements the discussions City Council has had on the refinancing of the bonds for HRA. This agreement is for a loan up to \$200,000 at 6.3% interest. City Finance Director Tom Dankert said the amount needed is closer to \$155,000, but the agreement states more just in case it is needed. By the year 2010, this loan will be fully paid, and the first payment will be made in 2007. This amount is to be taken from the Capital Improvement Revolving Fund, which is an in-an-out revolving fund to help support projects. This is also tax-supported by a small amount.

Moved by Council Member Nordin, seconded by Council Member Jorgenson, adopting a resolution approving the equity loan agreement between the City and the HRA. 7-0. Carried.

The City has approved orderly annexation of three parcels on 10th Drive SE. Projected assessments have been calculated for sanitary sewer and water for these parcels. The orderly agreement will be presented to the township later this evening for their approval. The Council must now approve a resolution receiving the report and scheduling a public hearing for the assessments.

Moved by Council Member Jorgenson, seconded by Council Member Nordin, for adoption of a resolution receiving report and calling a hearing on improvement for sanitary sewer and water on 10th Drive SE for September 6th. 7-0. Carried.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 801 15th Street NE, Leuning property. Carried.

Moved by Council Member-at-Large Christopherson, seconded by Council Member Dick Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 409 2nd Street SW, Janning property. Carried.

The City Council has approved bids for the reconstruction of the existing runway at the Austin Municipal Airport. Part of the project includes the navigational aids for the Instrument Landing System for the Austin Municipal Airport. The FAA has developed new guidelines for funding the systems based on a cost benefit analysis. Now it has been determined that we do not meet that criteria. City Engineer Jon Erichson said we need to authorize a contract to start very soon. He said if we lose the Federal funding, potential MnDOT funding would be a 70/30 share. The City, then, would need to provide about \$85,000 for the project. Mr. Erichson said grants are still being pursued, but Council is requested to approve this action due to the tight timelines.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, authorizing additional funding of the airport lighting system contingent upon securing federal or state grant funding. Carried.

REPORTS:

Representatives from the Farmers Market met last week to review. It was decided that the market on Thursdays downtown should be moved to the west side of the street for shade and for selling produce out of the diagonal parking. No action from Council was required.

Mayor Rietz noted that the Farmers Market is on Mondays at Oak Park Mall from 4:00 to 6:00 and on Thursdays downtown from 4:00 to 7:00.

City Engineer Jon Erichson said he would update Council on the flood plain grants at the work session scheduled for Tuesday, August 16.

Council Member McAlister said he wants to meet with the people at The Oaks Condominiums to determine the real issues and concerns in order to cut the best deal to protect the property from the nuisance of a store.

Mayor Rietz thanked the Fair Board for another good county fair. Mayor Rietz reminded everyone of the Ethnic Festival scheduled for Sunday, August 21 from noon to 8:00.

There will be three weeks before the next meeting on Tuesday, September 6.

Moved by Council Member McAlister, seconded by Council Member Jorgenson, adjourning the meeting to September 6, 2005.

Adjourned: 7:10 pm

Approved: September 6, 2005

Mayor: _____

City Recorder: _____