

**MINUTES**  
**CITY COUNCIL ADJOURNED MEETING**  
**TUESDAY, JANUARY 20, 2009**  
**5:30 P.M.**  
**COUNCIL CHAMBERS**

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

MEMBERS ABSENT: Council Member John Martin

STAFF PRESENT: Jon Erichson, Craig Hoium, Tom Dankert, Jeanne Howatt, David Hoversten, Kim Underwood, Paul Philipp and Ann Hokanson.

OTHERS PRESENT: Austin Post Bulletin, Austin Daily Herald. Craig Jones, Nick Endres, John McMasters. Public.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, approving the agenda. Carried.

Moved by Council Member King, seconded by Council Member Clennon, approving the council minutes of January 5, 2009. Carried.

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

**\*Licenses:**

Cab Driver: Daniel Rumroy

Cab Driver: Terry Arens

Cigarette: Freedom Valu Center, 101 4<sup>th</sup> St. NW

Concrete: Mark Lang Construction, Blooming Prairie

Concrete: Roger and Sons, 3701 4<sup>th</sup> Street NW

Excavation: Roger and Sons, 3701 4<sup>th</sup> Street NW

Exempt Gambling: Austin Area Chamber of Commerce @ Bandshell Park,  
July 4

Exempt Gambling: Austin Area Chamber of Commerce @ Elks Lodge 414,  
Mar 6

Food: Freedom Valu Center, 101 4<sup>th</sup> St NW

Food: The Savory Skillet, 107 11<sup>th</sup> Avenue NE

Gas Station: Freedom Valu Center, 101 4<sup>th</sup> St. NW

Massage Therapist: Lauren Kirby, Austin

Master Plumber: Dave's Plumbing, Heating & Refrigeration, Rose Creek  
Master Plumber: Harty Mechanical, 1600 1<sup>st</sup> Avenue NE  
Water Softener: Culligan Water, 1308 8<sup>th</sup> Street NE

\*Claims:

- a. Investment Report.
- b. Pre-list of Bills.

Carried.

A public hearing was held for the vacation of a portion of 3<sup>rd</sup> Avenue NE in relation to the jail/justice center project. The acquisition of property along 3<sup>rd</sup> Avenue is not yet complete; therefore, the street vacation must be continued.

Moved by Council Member Austin, seconded by Council Member McAlister, continuing the hearing to February 2, 2009. Carried.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, resolving the City Council into the Board of Adjustments and Appeals. Carried.

A public hearing was held on a variance from the minimum sideyard setback of five feet in an R-1 Single Family Residential District, requested by Greg Hackensmith, 112 13<sup>th</sup> Street NE. The request is for the construction of an attached garage and home addition for property at 1807 3<sup>rd</sup> Avenue NE. Community Development Director Craig Hoium said the current existing dwelling is relatively small. The property is in an R-1 district and is surrounded by residential property. The lot area is approximately 8900 square feet, and the proposed building footprint is 1891 square feet. Mr. Hoium said a setback of five feet is required for the east property line; the petitioner is requesting a 1-foot variance. Mr. Hoium said that to comply, the petitioner could reduce the garage addition and the house addition each by one foot. If Council approves the petition, the buildings would be four feet from the east property line. Mr. Hoium received no objections for or against from adjacent property owners. The Planning Commission recommended approval.

With the motion, the Planning Commission noted the following:

1. The variance is in keeping with the spirit and intent of the Ordinance, and
2. "Undue hardship" is shown, meaning:
  - a. The landowner would like to use the property in a reasonable manner that is prohibited by the Ordinance, and
  - b. The plight of the landowner is due to circumstances unique to the property not created by the landowner, and
  - c. The variance will not alter the essential character of the locality.

Moved by Council Member McAlister, seconded by Council Member-at-Large Anderson, Council Member-at-Large Anderson, approving the variance. Carried.

A public hearing was held on a variance from the minimum corner sideyard setback of 12 feet 6 inches in an R-1 Single Family Residential District, requested by the Austin Congregation of the Jehovah's Witnesses Kingdom, 2115 5<sup>th</sup> Avenue SE. The location of

this property is located within and is completely surrounded by an R-1 District. The Planning Commission has approved an amendment to the existing Conditional Use Permit for this property. There is currently a 15 days' appeal period before the amendment is final. The property is located at the northwest corner of Highway 218 and 5<sup>th</sup> Avenue; 5<sup>th</sup> Avenue is a deadend. The request is for a proposed carport addition in the front of the building off of 5<sup>th</sup> Avenue SE. For zoning purposes, the corner sideyard is along 5<sup>th</sup> Avenue. The petitioners' request is to achieve two things: 1) to make the facility more accessible, and 2) to provide access that would protect from weather. The proposed canopy is 18'8" x 20', which would require a 1-foot, 4-inch variance. The proposed building footprint is less than 4000 square feet. Community Development Director Craig Hoium relayed concerns from Craig Jones, 2112 5<sup>th</sup> Avenue SE, who objected at the Planning Commission meeting. Mr. Jones' concerns related to the setback nonconformity with the building along 5<sup>th</sup> Avenue. Mr. Hoium said the petitioners' argument is that the canopy design is relatively open. The Planning Commission recommended approval by a vote of 6-0. With the motion, the Planning Commission noted the following:

3. The variance is in keeping with the spirit and intent of the Ordinance, and
4. "Undue hardship" is shown, meaning:
  - a. The landowner would like to use the property in a reasonable manner that is prohibited by the Ordinance, and
  - b. The plight of the landowner is due to circumstances unique to the property not created by the landowner, and
  - c. The variance will not alter the essential character of the locality.

Craig Jones spoke to the Council and shared pictures of the building as seen from the south. His argument rested with the variance size of (approximately) one foot as he believes the requested area is truly the *front* of the building, not the side yard. He said 2<sup>nd</sup> Avenue SE has a turn-around, and he is not sure if this street would be consistent with that. Mr. Jones noted the elevation difference and that there has been no plan for a retaining wall. Another point, he said, is the question of where the snow would be placed. He also believes the parking lot is a questionable size for what they are doing. He argued that there are always a number of cars parked off-street, and with their proposed plans, he believes they will lose some spaces.

Mr. Hoium said that regarding Mr. Jones' objection to the front yard/side yard issue, the way a property faces the public right-of-way does not mean that it is the front yard. That is not the way development standards are enforced – with any project. For zoning, the frontage facing the highway is considered the front yard; however, with any future development, the petitioner cannot designate the east side as the front and then designate it as something different later on. As for the cul de sac question, that is a Public Works project that takes place within the right-of-way; this has nothing to do with this project. As to the question of off-street parking, the property currently has 26 stalls. They are required to have one stall for every 5 seats. The church's current attendance is at 60-80, so the parking far exceeds their requirement.

John McMasters, 2111 5<sup>th</sup> Avenue SE, lives directly west of the petitioner. He noted his objection with the designation of the proposed addition area as being in the side yard

corner. He believes this is using the law to their own advantage. He said they built facing 5<sup>th</sup> Avenue. The other properties along 5<sup>th</sup> Avenue are all in a straight line. He said the east side has no doors or windows so he doesn't think that the corner side yard designation is a fair use of the ordinance. He noted that there were 21 cars in the lot the previous Sunday, and it was full; they probably lost some spaces because of the snow. Also, there is no place to put the snow. He said both sides of the street are full on Sundays, and if they put in a drive-through, they will lose 3-4 stalls. If they leveled the property, they would need some type of retaining wall because the land is about four feet above the sidewalk. He said that less than a year ago, they were trying to sell the property as residential or rental property. Mr. McMasters considers the variance to be a 15-foot request. He added that the church has been a good neighbor.

Nick Endres, 2103 7<sup>th</sup> Avenue NW, said their request to acquire some other property was turned down so the congregation is proposing this addition instead. He noted that the church has received permission from Jon Erichson and Dan Wilson regarding the concept of having two driveway openings. He said they want to stay within the law, and they are within the law. At this time, they are not looking to sell. They did speak to neighbors, who objected to selling the property for apartment use; he believes this is a better solution.

Council Member King asked if the addition could be built narrower. Mr. Endres said if that were so, it would be harder to get the handicapped out. Also, they would just lose two off-street parking spots for ingress/egress. He agreed that there are snow problems, but noted that we do live in Minnesota.

Council Member Austin asked if there would be a different variance if the property faced east or south. Mr. Hoium said the petitioner could apply for a variance either way, though the setback would be different if it faced south.

Craig Jones said that his objection centered on mostly how this was presented and how it will look after it is done. Other churches in this area have much larger lots; the problem here is that this property is so cramped. A few years ago, he noted, they did receive a variance for their garage. When it was built, it was much larger than they had thought. His concern is if they keep adding, it will devalue the neighborhood somewhat. He requested that Council deny, continue or take the action back to the Planning Commission.

Mr. Hoversten said the action had already been taken by the Planning Commission; therefore, Council cannot refer action back to them. Council must pass or deny.

Council Member King made a motion to deny the variance. The motion denied for lack of a second.

Moved by Council Member Dick Pacholl, seconded by Council Member-at-Large Anderson, seconded to approve the variance.

Council Member McAlister motioned to continue the variance. Motion was denied as there was already a motion on the table.

5-1. Carried. Council Member King voted nay.

Moved by Council Member Austin, seconded by Council Member Clennon, adjourning the Board of Adjustments and Appeals and resolving back into the City Council. Carried.

Moved by Council Member Pacholl, seconded by Council Member Austin, amending the agenda by adding #16, Approving a sign appeal for Steve's Pizza at 421 North Main Street, requested by Steve and Angela Davis. Carried.

A public hearing was held to obtain a revolving loan from the Department of Employment and Economic Development, who will assist with funding for the construction of the Cooperative Response Center (CRC) building expansion. Community Development Director Craig Hoium has discussed the CRC expansion project with the Port Authority and City Council. Their expansion plan includes an addition onto the south side of their current building. Included in the agenda packet are floor plans and conceptual plans. The 9,000-11,000 square foot addition is estimated to cost \$1.4M. A portion of this cost –\$180,000 – is an investment revolving loan from DEED. The City would obtain the \$180,000 for CRC. CRC would pay back the City with interest, and the City would retain 20-25% of this for other projects. A \$200,000 Port Authority loan would be used to privately finance through the CRC. Mr. Hoium said there are 11 to 15 new jobs associated with this project. Construction is projected to begin in 2009. Upon approval, CRC will proceed with the application.

No comments were made.

Moved by Council Member Pacholl, seconded by Austin, authorizing the City of Austin to apply for a DEED loan on behalf of the Cooperative Response Center. 6-0. Carried.

Moved by Pacholl, seconded by Council Member Austin, approving the appointment of Ward Halvorson to the Park & Rec Board, replacing Dave Ruzek. Carried.

Council is requested to approve a resolution to correct the Park & Rec director salary. The increase on July 1, 2009 should be \$64,100; this amount coincides with the current point level.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution approving the adjustment to the Park & Rec director salary, as noted. 6-0. Carried.

City Engineer Jon Erichson is requesting approval to apply for federal grants via District 6 of the Minnesota Area Transportation Partnership. The grant would be for 14<sup>th</sup> Avenue NE (4<sup>th</sup> Street to 8<sup>th</sup> Street), which is between Hormel Corporate offices and I-90. These are annual federal allocations which provide funding of 90 to 95%. Mr. Erichson recommends street improvement, drainage improvement, lighting and pedestrian access

for the street. The grant is for \$600,000. The local cost would come from either the State Aid fund or the adjacent property owner, which is Hormel Foods. The grant would be provided in 2013.

Council Member Austin confirmed with Mr. Erichson that inflation is factored in with the estimate. Mr. Erichson added that sometimes there are unknowns that push up the cost that we cannot forecast, such as was the case with the Roosevelt pedestrian trail bridge project this year.

Moved by Council Member Pacholl, seconded by Council Member Austin, adopting a resolution approving Federal Transportation Project Grant agreement (F.Y. 2013) for 14<sup>th</sup> Avenue NE (4<sup>th</sup> Street to 8<sup>th</sup> Street). 6-0. Carried.

MnDOT will be constructing the new box culvert under I-90, and while doing so, has identified about 3000 square feet of property they need to acquire. Because there is not enough time to acquire the title, they are requesting an easement, and then they will acquire the property. Mr. Erichson recommends approval.

Council Member Clennon asked how close this property is. Mr. Erichson said it is in the area of the water at Dobbins Creek.

Moved by Council Member McAlister, seconded by Council Member Austin, adopting a resolution granting an easement to MnDOT for the Dobbins Creek culvert. 6-0. Carried.

In conjunction with the MnDOT box culvert project, the City has identified a sanitary sewer force main project that needs replacing. This is located at the northeast corner of East Side Lake. The project was identified in the Capital Improvement Plan. The City has received a proposal (\$6000) for professional engineering services from SEH for this project.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution approving engineering services for sanitary sewer force main at Dobbins Creek. 6-0. Carried.

In 2008, the City Council authorized the application of a MnDOT grant for airport improvement but did not actually pass a resolution. The work was originally approved at a reimbursement rate of 90%, and the final grant agreement provides for reimbursement at 95%. The agreement is a 5-year plan.

Moved by Council Member-at-Large Anderson, seconded by Council Member King, adopting a resolution approving the grant agreement with MnDOT for airport improvement. 6-0. Carried.

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

Steve and Angie Davis have requested a sign appeal – as provided in the city ordinances – for Steve's Pizza. They would like to move their sign that goes over the public right-of-way from their current location to their new location at the Granle's building. The current ordinance restricts such signs to 30 inches over the public right-of-way.

Community Development Director Craig Hoium said the sign would be placed towards the top of the building. He relayed a concern from the Planning Commission that it may obstruct the view the signal lights. Mr. Hoium said that because the sign is higher, there would be no obstruction. The sign would be placed diagonally. Their current neon sign would be placed on the north exterior wall, and the electronic message sign would go on the west (alley) side. Those signs are in compliance with the ordinances. Since the City has an easement on the face of the building, the sign would also need to be approved by the Main Street Project. That action is separate. The Planning Commission recommended approval by a 5-2 vote.

Council Member King confirmed with Mr. Hoium that the proposal could be ultimately quashed by the Main Street Project Board.

City Administrator Jim Hurm noted that the Main Street Project acts on behalf of the City. If the Main Street Project dissolves in, say, 20 years, that approval would need to be made by the City.

Moved by Council Member Pacholl, seconded by Council Member Clennon, approving the sign appeal for Steve's Pizza at 421 North Main Street, requested by Steve and Angela Davis. Carried.

Moved by Council Member Pacholl, seconded by Council Member Austin, adjourning the Sign Board of Appeals and resolving back into the City Council. Carried.

#### REPORTS:

The League of Cities meeting was held in Elkton, and Joy Kanne of Mower County Assessor's office spoke. Sheriff Terese Amazi gave an update on the car radios. The next meeting is scheduled for April 16 in Grand Meadow.

Council Member Clennon attended the Austin Area Landlords Association meeting last night. She thanked the Fire Department and Austin Utilities for the work during the downtown fire.

Council Member-at-Large Anderson noted that the trip to St. Paul for the Coalition's Legislative Action Day was a valuable trip. She expressed her thanks to Davis' from Steve's Pizza and to the Mower County Red Cross who provided food during the fire.

Mayor Stiehm thanked the Fire and Police Departments for their work during the recent fire.

The Mayor's State of the City Address is scheduled for next Wednesday, January 28 at 6:00 in Council Chambers.

Moved by Council Member King, seconded by Council Member Austin, adjourning the meeting to February 2, 2009. Carried.

Adjourned: 6:39 pm

Approved: February 2, 2009

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

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