

MINUTES
CITY COUNCIL ADJOURNED MEETING
MONDAY, JULY 20, 2009
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, David Hoversten, Ann Hokanson, Kim Underwood, and Paul Philipp.

OTHERS PRESENT: Austin Post Bulletin, Austin Daily Herald. Public. Roger Derrick.

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

One item was added to the agenda: a resolution receiving bids for the Cedar River Pedestrian Bridge.

Moved by Council Member-at-Large Anderson, seconded by Council Member King, approving the agenda as amended. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, approving the minutes of July 6, 2009. Carried.

Bob Clark, Oak Park Village, spoke to Council. He said he has spoken to Craig Hoium again about trash coming from the WalMart strip mall and said the problem was solved.

Tim Olson and other members of I.A.F.F. Local 598 spoke to Council, along with MDA representative Betsy Kroll. Olson asked Council for permission to allow the firefighters to participate in the Fill-the-Boot campaign for MDA. The firefighters will stand at street corners (tentatively 4th Street NW & 1st Drive NW and 12th Street & Oakland West) and ask passers-by for donations. This will take place August 5, 6, and 7 from 3:00 pm to 7:00 pm. Those hours are the last two hours of one shift and the first two hours of the next shift.

Moved by Council Member Pacholl, seconded by Council Member-at-Large Anderson, adopting a resolution allowing I.A.F.F. Local 598's participation in Fill-the-Boot campaign on August 5, 6 and 7 during work hours. 7-0. Carried.

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

Licenses:

- Food – temporary: Mower County Relay for Life (American Cancer Society, Mill Pond, August 1
- Food – temporary: Super Fresh Produce @ Re-fest, Riverland, Sept. 19
- 3.2 Beer On-sale – temporary: Grand Meadow Lions, Grandstand at Mower Co Fair, August 11-16
- Master Plumber: Route 52 Plumbing & Heating, Chatfield, MN

Claims:

- a. Pre-list of bills
- b. Finance Report and Investments

Carried.

A public hearing was held on the revocation of a liquor license issued to Jim Fisher.

City Attorney David Hoversten said Jim Fisher has signed a consent form agreeing to have his liquor license revoked and waiving the right to a hearing. Council should pass a resolution revoking the license.

Moved by Council Member Pacholl, seconded by Council Member King, adopting a resolution revoking liquor license for Jim Fisher. 7-0. Carried.

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

A public hearing was held for a variance requested by Larry Dahlen, 900 6th Street NW, for the proposed construction of a 24' x 28' detached garage in the corner side yard. This property is for a single family dwelling zoned R-1 and is surrounded by similar uses. Community Development Director Craig Hoium showed a site plan for the proposed garage. Maximum lot coverage allowed for the property in R-1 Residential District is 40%. With the proposed structure, the lot coverage would be at 31%. The Planning Commission reviewed and recommended approval of the variance by a 5-0 vote.

Mr. Hoium confirmed for Council Member Pacholl that the existing garage would be removed.

Moved by Council Member Austin, seconded by Council Member McAlister to approve the variance. Carried.

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

A public hearing was held for rezoning petitioned by Steve Sollie for property located at 1400 10th Drive SE. The petitioner has requested to rezone his property from R-1 to an I-1 Limited Industrial District. Mr. Hoium said businesses north and south of the property are zoned R-1, to the east is commercial property, and to the west is undeveloped property. He explained that the use of the property is similar to adjacent properties. It is currently zoned residential due to the R-1 requirement of all annexed properties. All annexed properties must come in as R-1 despite future use of a property, but landowners may petition for rezoning as Sollie is doing. The business involves auto towing, repair, storage facility, plus he would like to expand to include a sale lot. The Comprehensive Plan designates this property for future commercial land use. Adjacent landowners were notified as required and a notice was published. No comments were stated at the Planning Commission, and they recommended approval by a 5-0 vote.

Mr. Hoium said he was not sure of the property's zoning classification before it was annexed. Council Member McAlister questioned the zoning requirement for a used car lot and the maximum number of vehicles allowed. Mr. Hoium said those permits are issued by the Department of Commerce; it is state regulated. There would be no limit as far as the city is concerned. Mr. Hoium said the land use for auto sales is B-2, but they are also permitted in I-1.

Moved by Council Member Pacholl, seconded by Council Member Austin, for preparation of the ordinance. Carried.

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

A public hearing was held for the preliminary review regarding a requested amendment to the existing Planned Development Residence District known as Fox Pointe Addition, petitioned by Roger Derrick.

This development was initially approved in 2004. The Planned Unit Development is an approximately 28-acre site planned for 99 condo units. The council initially approved Phase 1 of the development. An amendment was petitioned for the Phase II addition in July of 2008. Both the Planning Commission and City Council denied that request due to the incompleteness of Phase I of this development. Since these public hearings, staff has met with the petitioner to discuss the proposed Phase II of this development and also the amendment to the boundaries of Phase I. The petitioner requested an amendment to Phase I and development agreement, and these have been approved. The amendments reduced the land area for Phase I and also allowed the developer to place temporary drives in place for access to the completed condo units. In addition, the Comprehensive Plan was amended as it had shown that this area should be low density. The amendment to the PUD from July 2008 is similar to tonight's request. That amendment also included 4-plex structures, twin homes and 6-unit structures. City Council directed staff in July of 2008 to work with the developer to complete the outstanding items of the phases.

The initial Phase I extended the road to 24th Avenue. The entire site was planned for 4-plexes. The amendment includes a combination of twin homes, 3-plexes and redesigned 4-plexes. All units would be side by side, and driveways would be off the adjacent public right-of-way. Mr. Hoium said city staff has expressed concerns relating to the changed transportation plan, as well as a change to the wetland delineation area which one of the units is close to. Mr. Hoium also noted that the original exterior of the units were to be of stone; city staff recommends the units would be the same as the other 4-plexes. The developer has also requested a change for the right-of-ways to be private rather than public, as was originally approved. In order to do this, the petitioner would need to go through the vacation of public right-of-way process. Mr. Hoium said no application has been received at the SWCD for the wetland delineation. Staff also has concerns with 21st Avenue NW. That street is now a state aid street so design standards would need to be okayed through MnDOT. Mr. Hoium said staff has concerns relating to the finished floor elevation of structure #1 in relation to the storm water retention pond, as well as questions relating to the finished elevation of others. Mr. Hoium said there was much discussion at the Planning Commission meeting. Many items were discussed both by the commissioners and the audience. Some concerns at that meeting revolved around purchase prices. Others talked about the grass not being mowed and the garbage not being picked up. Also there were concerns expressed that some units are now being rented rather than owner-occupied, as well as discussion of those rental rates. Mr. Hoium added that those issues are not the function of this public hearing or of the community planning process, but there are other city ordinances that pertain to those issues.

City Engineer Jon Erichson discussed the grading plans and the storm water retention pond and said that those plans have not been submitted yet. He reiterated concerns of a request for the public road to be made private, adding that the property owners had an understanding that the road would be public and are not necessarily in support of that change. He also reiterated concerns with the wetland impacts. Mr. Erichson said the requested reports for wetland delineation must be submitted and approved. He noted one house and a part of the road that possibly encroaches the wetland. Mr. Erichson said a professional traffic study was performed and is included with the agenda packet. However, he did take exception to the 'less than 3000' estimate for the 8th Street NW corridor. Erichson said traffic studies are "somewhat hazy", but he believes the count will be higher, especially in consideration of 21st Avenue connecting to 218 and the future planned realignment of 27th Avenue. He noted the eight feet of separation Derrick has proposed between Fox Pointe and the Cooperative development. Mr. Erichson believes that eight feet should be closer to 60 feet, saying it is "potentially somewhat dangerous." He added that the site distances are not adequate for the curve.

Council Member Pacholl questioned access to the south. Mr. Erichson said that that was not a possibility because of the private road to the south.

Mr. Hoium noted that as part of the last agreement, the City allowed for a temporary driveway off 7th Street. Those issues have been resolved. A temporary driveway has been put in.

Mr. Hoium reminded Council that when the Development Agreement was first signed, the developer per the agreement provided security to assure that Phase 1 would be completed. With the final payment, there is \$30,000 in the account. There are still some outstanding issues: final grading of the storm pond, elevation questions for building #1, and some excavated areas need grading. Mr. Hoium said the Planning Commission on July 14 recommended denial of this amendment. Part of that motion was to direct city staff to use the remaining security to finish the undone items.

Council Member McAlister said that it seemed like it was a “reasonable request to deny” until those outstanding issues are resolved.

Roger Derrick, owner of Cottage Homesteads and developer of the project, spoke to Council saying, “Your engineer is snowing you. I’m getting tired of it.” Derrick noted that there have been conversations and then afterwards, it all changes. He said he has discussed the problem of the access. He had heard from potential buyers that the (original) 4th Street NW access was not desirable. People wanted curb appeal, he said. Then WalMart built in 2005, and he talked with them at that time – as well as city staff – about connecting to their road. He made a deal with WalMart, redesigned the road and dropped it by four feet to accommodate those plans. “I have plans; so does the City,” he said. He tried to do a joint venture with the Cooperative development, but that didn’t work out. Mr. Derrick said he bonded for and completed the pond. After it was finished, the wetland surrounding the area flooded. The plan was reviewed, and it was found that the natural waterway and the other waterway go down. The road then was built and the waterway blocked. The Cooperative put in a pipe. It is now full of debris, and the pipe is not built right. Mr. Derrick then stated that the City Engineer has stated that that was not a city problem. He also said Mr. Erichson told him he had no right to build a basement despite a 2004 report which shows the plan, elevation and basements. Roger Derrick said Mr. Hoium’s report shows the original plan including a basement and elevation. Jones and Haugh’s data showed the elevation as higher; Mr. Erichson’s said the elevation was lower. He was also asked to hire a traffic engineer. That consultant stated that with the future land use, traffic should be less than 3,000. Derrick said they advised 25 mph for the curve. He also hired Jones Haugh for the wetlands area, and they okayed his plan. Derrick said a staff meeting was held last year. It was decided at that time that the driveways could be built closer to the road. They had been planned for 40 and 50 feet long; his current plan is 25-35 feet long.

Mr. Erichson said the City has been working with Mr. Derrick since 2004. He said the original completion date was to have been December 2004, yet it is not completed. The (two) property owners are not satisfied with the development. Mr. Erichson noted that the City did enter into a revised development agreement in early 2009. Conditions of that revised development agreement included revised grading for building number one. As for the traffic projections, Mr. Erichson said those projections are not exact. Along with the amendment to the development agreement, Council also approved an amendment to the Comprehensive Plan which would extend 24th Avenue. Erichson disagreed with the traffic projections supplied, noting this future extension. Mr. Erichson also noted that the Planned Unit Development is very specific, and the plans as submitted encroach into the

wetlands. Mr. Derrick defended himself saying the plans were approved as-is with the elevations. As for the traffic plan, Derrick said Yaggy Colby did take into consideration future traffic plans.

John Dewey of: Stewartville spoke to Council. He spoke for Cheryl and Adam Deiser, property owners in Fox Pointe. Mr. Dewey showed where Deisers and Wegners live. They are the only two property owners in the development. He said they paid approximately \$300,000 in 2005 for their homes. Mr. Dewey said the clubhouse at the development is still just studs with sheetrock. He said the developer is working on renting other units at approximately \$700-\$1000 per unit. Mr. Dewey said Derrick has yet to show any good will. There was no sign of him after the flood, he noted. Dewey said there is always an issue to deal with – mowing, etc.

Council Member-at-Large Anderson said she has seen the sight and said it is a mess.

Jim Wegner, 2201D Fox Pointe, spoke to Council. He and his wife were the first tenants. It took forever to get land surface, he said. There was no proper grading or sod placed when they moved in. Then right before a blizzard came, the sod was laid so now there is uneven terrain. Mr. Wegner refuted Mr. Derrick's contention that the pond was finished, noting that there are a few rocks around the perimeter and some heaped-up gravel terrain. The rest is shoulder-high weeds and trees.

Mr. Derrick agreed the property owners are victims. As for finishing the clubhouse, that cannot happen until there are more sales. Mr. Derrick said he was supposed to have stubbed in for sanitary sewer and water, and that was done. He agreed that the pond is a mess but the elevation of the area lends itself to flooding problem, and that needs to be corrected.

Mayor Stiehm said he did not accept excuses. The City's arguments are backed up by the citizens who have spoken.

Council Member McAlister noted much animosity between the parties, and that both parties should sit down and clear everything up. He said, "The fact of the matter is, I am not an engineer". He said council should ask the city attorney, David Hoversten, what the city's responsibility is per the Developer's Agreement. There should be a clean cut understanding derived from that agreement.

Mr. Hoversten said Council Member McAlister was correct. He said the contractual relationship between the developer and property owners are covered under the covenants, bylaws, and agreements. Though he appreciates their (the property owners') frustration, those issues are not a problem of the city. Council should rely on city staff comments, outside engineering consultants, ordinance statute compliance, and the Planned Unit Development and subdivision requirements. Council should refer to the fact that certain elements in the plan do not conform to the city engineer's recommendation.

Council Member Austin said he does not see how he can approve the amendment. The City has worked with Mr. Derrick, but according to the Planning Commission report, he has not met conditions from Phase I.

Council Member-at-Large Anderson asked Mr. Hoversten if it was valid to talk about good faith. Mr. Hoversten said he did not want to quibble. The relevant factor is compliance with the agreement: past deadlines, past requirements. Usually, we would like to be within certain parameters. That could be one thing to consider. Council could consider Mr. Derrick's testimony also.

Moved by Council Member Austin, seconded by Council Member Clennon, to deny the amendment to the Planned Development Resident District. Motion carried.

A public hearing was held for final plat approval of property to be known as *Hangge Third Addition*. This is a single-family, 4.56-acre parcel on 12th Avenue NE. The petition is for possible future development. The petition was reviewed as a preliminary plat by Council in April 2009 with four conditions. Conditions are as follows:

1. All easement shall be entered into the plat per the Austin Utilities' request.
2. Developer must acquire all easements outside the plat which are necessary for the extension of utilities to the plat.
3. Lot 1, Block 1 of this proposed subdivision shall meet all the development standards set forth in City Code Section 11.30, Subd. 5. Provide survey to confirm compliance to this section.
4. Proposed plat shall meet all conditions set forth in the attached comments from Jon Erichson, City Engineer, and Keven Maxa, Austin Utilities.

All conditions have been completed. Community Development Director Craig Hoium said both the detached garage and dwelling far exceed the required setbacks. Notices were sent to adjacent property owners. One question was raised regarding the southern portion as a designated floodplain. There are a number of downed trees in the area that do go through the floodplain area; there are concerns of obstruction. Mr. Hoium said city staff will be reviewing that, but there is no regulation or ordinance to enforce.

Council Member Martin said he attended the Planning Commission meeting and heard some opposition. Mr. Hoium noted that was a different public hearing meeting. The property owner to the east had an agreement to use the property for recreational fires. That is a civil matter, Hoium said, and nothing to do with the platting. Mr. Hoium then referred to the plat map and identified portions in the floodplain. One condition of the pre plat was the designation of an easement for a stormwater system. There are specific development standards for this property. Only a portion can be developed. No rezoning is considered; it would remain R-1. Mr. Hoium also confirmed that the Hangees would be responsible for property taxes.

Moved by Council Member McAlister, seconded by Council Member-at-Large Anderson, adopting a resolution approving final plat of property to be known as *Hangge Third Addition*. 6-1. Council Member Martin voted nay.

Moved by Council Member Austin, seconded by Council Member McAlister, approving requests of the Mower County Fair Board in exchange for services during the Mower County Fair August 11-16. Carried.

Moved by Council Member Pacholl, seconded by Council Member Austin, adopting a resolution approving 2009 Budget Adjustment #1. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution which adopts the temporary voluntary furlough program. The policy is as follows:

1. Definition of furlough - The voluntary taking of unpaid time off from work.
2. Up to 48 hours of unpaid leave (furlough) during the remainder of 2009.
3. 48 hours or less will not affect benefit accruals.
4. Additional time over 48 hours will fall under the unpaid leave policy.
5. City would continue to pay employer portion of insurance benefits during the designated furlough time off.
6. For a furlough, PERA is not affected. The employee has the option to pay their portion of PERA that they would have normally paid based on their regular salary. Such a determination then requires the City to pay its share as well.
7. Hourly (non-exempt) employees may take their furlough in full days or half days; and do not need to be consecutive days.
8. Salaried (exempt) employees – it is preferred that exempt employees take their furlough days consecutively; however they can be taken nonconsecutively as long as the exempt employee knows that they cannot incur overtime during the week they choose to use furlough time (as during this time period they are considered non-exempt).
9. Needs to be approved jointly by the department head, city administrator and human resources director.
10. Cannot interrupt the regular operation of the department.
11. Cannot create additional overtime – for the employee taking the furlough (before or after the furlough) or for other employees during the furlough (covering shift, hour, duties, etc.).
12. Time needs to be designated as furlough on the employee's time sheet.

Roll call: 4-3. Council Members Clennon, Martin and McAlister voted nay. Council Member Martin said he voted nay “because it’s a band-aid to long-term problem.”

Moved by Council Member Austin, seconded by Council Member Pacholl, suspending hiring for the assistant fire chief position. 6-1. Council Member McAlister voted nay.

Moved by Council Member Austin, 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 604 7th Avenue NW, Calderon 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 1601 6th Avenue NW, Waldo property. Carried.

Moved by Council Member Austin, seconded by Council Member Clennon, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 801 1st Avenue SW, Whalen property. Carried.

City Council is requested to accept a grant award from the Minnesota Department of Employment and Economic Development for flood mitigation. The City is currently working with three different flood mitigation grants. This one is for \$413,025 and would provide for the following: acquisition and demolition of two identified residential structures, lift station construction, reimbursement for construction of East Side Lake berm, Study of Turtle Creek for flood mitigation purposes, and grant administration. The City would be responsible for \$35,000 which would come from the Local Option Sales Tax.

Moved by Council Member-at-Large Anderson, seconded by Council Member King, adopting a resolution accepting the grant award. 7-0. Carried.

Community Development Director Craig Hoium presented a draft ordinance which addresses repetitive loss structures in floodplains. The current ordinance restricts improvements, including general improvements to 50% of market value. Mr. Hoium said some properties – residential, industrial and businesses – are reaching that 50% limit. This has been reviewed by the City Council and Planning Commission, plus he has worked with the city attorney to help satisfy concerns and challenges of this regulation. City staff have provided what they believe is a workable solution which includes a new definition for repetitive loss. The new (draft) ordinance calculates back ten years from damage or when the permits are given.

Moved by Council Member Pacholl, seconded by Council Member Austin, for the city attorney to prepare the ordinance.

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

Virginia Larsen has applied for subdivision of her property at 1818 6th Avenue NE. Ms. Larsen lives on Lot 17 and would like to acquire some property north of the alley. The adjacent neighbor would like to acquire a portion of her property.

Moved by Council Member Pacholl, seconded by Council Member-at-Large Anderson, adopting a resolution approving the minor subdivision of property at 1818 6th Avenue NE. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, resolving into the Board of Adjustments and Appeals. Carried.

Mower County has submitted an off-street parking appeal for the justice center development. Community Development Director Craig Hoium said there are design standards for 90-degree, 60-degree, and 45-degree angle parking. The appeal relates to the aisle width. The City Code minimum width is 22 feet. Mr. Hoium noted a report

from Anderson Johnson PE in which he relays that the requested 20-foot width meets the American Institute of Architects' design standard. He said the amount of stalls to be provided far exceeds the requirement.

Council Member-at-Large Anderson asked if there would be a certain number designated for staff. Mr. Hoium said he did not know. The total spaces provided will be 320. A portion of the Robbins block is also planned to be used for off-street parking.

Council Member Pacholl confirmed with Mr. Hoium that the spaces would be wide enough for vans.

Moved by Council Member Austin, seconded by Council Member McAlister, to approve the off-street parking appeal. 5-2. Council Members Clennon and Martin voted nay.

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

Council is requested to approve the annual agreement with the Austin School District 492 for two police liaison officers. One officer is at the high school, the other at Ellis. Both officers are employees of the city. The agreement provides for use of the officers by the City for the summer months. The agreement lays out responsibilities for each party. Chief Paul Philipp has reviewed this agreement and approves of it.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution approving the agreement. 7-0. Carried.

The City applied for a grant for the pedestrian bridge over the Cedar River in 2004; there is a 5-year lead time so there is much planning. City Engineer Jon Erichson said the department did try to scale back this project. The City received bids and they are \$13,000 less than what was projected last January. The grant consists of 80% federal grant of \$236,312, a Hormel Foundation grant of \$49,400, and \$90,178 to be provided by the City. City Engineer Jon Erichson recommended tabling the matter to August 3.

Moved by Council Member McAlister, seconded by Council Member Austin, tabling the bid award to August 3. Carried.

REPORTS:

Council Member Clennon reported on the League of Cities meeting in LeRoy. Speakers were John Garry from the DCA who spoke on the August 20th Town Initiative Meeting, the county attorney, and a representative from Horizon Enterprise who spoke on wind farms. A regional meeting is planned for October in Stewartville. The next League of Cities meeting will be in Lyle on October 13.

Council Member King announced the groundbreaking for the ARC-Mower County/Senior Center expansion project scheduled for July 27 at 4:00 pm.

Council Member-at-Large Anderson publicly thanked city employees and staff who attended the July 13th special meeting and participated in the budget discussion. She said there were some “some very workable ideas” presented. Mr. Hurm will send notes from that meeting to the department heads and ask for their input.

Moved by Council Member-at-Large Anderson, seconded by Council Member Austin, adjourning the meeting to August 3, 2009. Carried.

Adjourned: 7:28 pm

Approved: August 3, 2009

Mayor: _____

City Recorder: _____