

M I N U T E S
CITY COUNCIL ADJOURNED MEETING
MONDAY, JULY 19, 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. Mayor Stiehm.

MEMBERS ABSENT: None.

STAFF PRESENT: Jon Erichson, Craig Hoium, Tom Dankert, Jeanne Howatt, David Hoversten, Ann Hokanson, Mickey Healey, Brian Krueger, and Kim Underwood.

OTHERS PRESENT: Austin Post Bulletin, Austin Daily Herald. Public. Bob Allen, David Larson, Mark Hansen, John Howe, Marv Repinski, Bob Hoffman, Roger Jorgenson, Dan Franklin, Jim Davis, Phil Erickson, Scabby Robe Parnett, Terry Miller, Cheryl Dunlap, Harlan Griesel, Lyndon Leining.

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

Added to the agenda: Sidewalk café license Bobee Jo's 435 10th Street NE.

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

Moved by Council Member-at-Large Anderson, seconded by Council Member Austin, approving the minutes of July 6, 2010. Carried.

Matt Simonson, 607 7th Avenue SE, talked about the public being afraid of government. Mr. Simonson continues to dispute his cars being confiscated and that an assessment was put on his property for the parked cars.

Mayor Stiehm recognized the new fire chief, Mickey Healey, who is attending his first council meeting. Chief Healey began with the City on July 12.

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

Licenses:

Cab Drive: Jamie Wiebrand, Austin, MN
Master Plumber: Kasper Plumbing, Inc., Owatonna, MN
Sidewalk Café: Bobee Jo's, 435 10th Street NE, Austin
Sunday Liquor: Hormel Historic Home, 208 4th Avenue NW, Austin
Temp 3.2 Beer On-Sale: Grand Meadow Lions, Fairgrounds, Aug 10-15
Temp 3.2 Beer On-Sale: Mower County Ag Society, 700 12th Street SW, Aug 10 & 15
Temp Food: American Cancer Society/Relay for Life, Veteran's Pavilion, Aug 7 & 8
Temp On-Sale Liquor: Mower County Ag Society, 700 12th St SW, Aug 11-14

Claims:

- a. Pre-list of bills
- b. Finance Report and Investments
- c. Mary Dickman, 1200 18th Avenue NW, #132. This claim has been referred to the city attorney to protect the city's interest.

Carried.

The continued public hearing was held on the sanitary sewer project, 1-B-07. The amount to be assessed is \$3,035,066.74 at 5%. Public Works Director Jon Erichson gave a brief history on the project. Annexation occurred February 2009. The reason for the continued hearing was the number of objections on the amount of the assessments. There are currently 62.5 objections, which is down from the previous total of 73.5 objections.

Mayor Stiehm asked for comments from the public.

Bob Allen, resident of Blooming Prairie who owns property in the annexed area (77185 135th Street), said he attended the previous work session, but there was no mention of excluding the Ramsey Park Addition. Only two residents there want the sewer. Mr. Allen said he would file a class action suit to include "emotional distress and mental anguish." He said only Council Member Clennon has asked some good questions but received no answers. He said people in the Ramsey Addition "never knew there was a vote." He said the City did an end-run and that he would be digging into the matter.

Mayor Stiehm said he didn't think that was an accurate portrayal.

The Mayor then asked for a raise of hands for and against the project, to which the room was fairly divided.

David Larson, 54676 245th Street (Woodhaven Addition), referred to a Letter to the Editor in the Austin Daily Herald printed 10 days ago. He said some of the comments were in error. He said the letter referred to dismay over sewer being shoved down their throats, indicated that they thought their taxes would be raised, and stated that if people in Woodhaven had taken care of their problem initially, maybe they wouldn't be in the mess they are currently in. He said twenty years ago he was asked by a member of the board of supervisors of Lansing Township to sign a petition for sewer, and he's been working on this for twenty years. The Township received enough signatures on the petition to pursue action. But then an elevator problem in Lansing Township occurred which polluted the ground water. The Township applied for a federal grant and received a

limited amount. They asked the citizens for help, and also promised that when this was over, they would get their sewer. Then the board changed and those who were voted in said they would take Lansing out of the sewer business. Mr. Larson said that was the end of it, which upset him and many of the neighbors. Then a Citizen Sanitation Committee was formed in the Township. He said they met and did lot of work and ended up pursuing a grant. But they would have had to pay for sewer and double the ponds. So then the committee went to the City of Austin and asked the City's help. The city engineer, Jon Erichson said absolutely not. He said the City had the facilities and the capacity, but he was saving them for the city – especially in light of the recent developments at the time, including Walmart, Seven Springs development, and the Menard's proposal. Mr. Erichson said that if they wanted to, they could become annexed. The committee decided that was the thing to do. A vote was taken and they overwhelmingly voted for annexation. But the township would not release them, which is not surprising considering the \$200-500K tax base. The committee spent more time visiting with state officials and then went to mediation for annexation. So this was not decided in the last three years, Mr. Larson said. We have been at this for twenty years. I do not expect anyone to pay for my sewer, he added. Plus, the City of Austin has been more than fair with allowing 15 years to pay, 5% interest and 5 years deferral. This is a fair deal, and I am satisfied with it, he said. Is it being shoved down our throats? He agreed that \$16,000 is hard money to come by, but if you're feeling sorry for someone, feel sorry for those along the river. He recalled "pristine blue" river in Woodhaven from years ago. Today, he added, it is a mud hole. And the pollution didn't come from only Woodhaven but from up and down the river.

Scabby Robe Parnett, 54792 236th Street (Ramsey Park Addition), complained of the City "nitpicking" now because he received a citation for having tall grass. He said the trees were downed from last year's tornado plus it is wet so he can't mow. He said the City has tall grass.

Mark Hanson, 24120 540th Avenue, said he hears about all these petitions and votes but contends he never was invited to any votes. He said there are about 100 people that didn't know about the annexation, asserting that the City totally blindsided them.

Mayor Stiehm noted that the timeline was reviewed on July 6th. He said there were petitions of the citizens, letters sent to the citizens, and finally a mediator brought in.

Mr. Erichson said that the committee that was formed came out of the Southeastern Minnesota Wastewater Initiative to solve wastewater issue in southeastern Minnesota. In other words, the City of Austin was not part of this effort. The committee recruited representatives from all neighborhoods.

Mr. Hanson asked about the vote that was taken. Mr. Erichson further explained that the ad hoc committee had an informational ballot conducted at Ruby Rupner; this was conducted by Southeastern Minnesota Wastewater Initiative. It wasn't initiated by the City of Austin or the Township. The recommendation was for annexation. Following this, the City of Austin did pass an orderly annexation agreement, but it was not passed by the Township. Then a group of citizens petitioned the State for annexation which occurred in February 2009. Since then the City has had a number of meetings and has sent

information to the annexed residents. There were a number of informal, informational meetings and four to six meetings in which residents were invited neighborhood by neighborhood. There has been a (formal) public hearing on the project and informational meetings on the assessments.

Mayor Stiehm asked for order in the Chambers.

The Mayor reiterated that the City did not initiate annexation. A mediator was brought in, and he determined what areas were annexed in.

John Howe, resident of Red Wing and property owner of 54735 237th Street, said he is a proponent of the project – for water and sewer, but he said the assessment for sewer is more than what he paid for the property four to five years ago. He noted that he has provided information to the City on how this project should be assessed. The answer received from the City was that the total amount of the project was divided out among the annexed residents. Mr. Howe objected to this method, saying that it doesn't meet the special benefit (state law) test on assessing. He contended that the whole city is going to benefit with a cleaned river, and, in fact, the entire state is going to benefit so the entire city should help pay for this. Mr. Howe said the City should do an analysis first and then decide if you're going to do the project. He also objects that these properties will be reported to the EPA if they are not going to do the sewer. This shouldn't be a punitive thing.

Mayor Stiehm defended the City, saying that the City's attorneys do not say that our method for assessing is unconstitutional. Just because you (John Howe) say it's not constitutional, doesn't make it unconstitutional. In addition, the City never said we were going to turn people in. That is not accurate. (If the project does not extend to all the annexed properties), they are still going to need to be in compliance and that will be the County's responsibility.

Marv Repinski, 1005 4th Street SW, responded to Mr. Howe, saying he has "dished out misinformation." A lot of people have gone thru many hoops for this project. And now you (John Howe) are recommending a two-year period hiring people to do appraisals.

Mayor Stiehm said this is not the place to get into a debate.

Mr. Repinski said the project needs to commence. He promoted establishing a fund to help with the assessments.

Mr. Howe clarified that he represents himself but that his suggested procedure for assessing is exactly what the League of Minnesota Cities recommends in a 20-page document.

Mayor Stiehm said every community is different; the City of Austin believes this method of assessing is best.

Bob Hoffman, 23752 540th Avenue, said he is "gung ho" on the project, but objects to the cost, especially in light of the 2009 tornado and its resulting costs. Mr. Hoffman said

a realtor told him his increase in value would be half of the assessment. In addition, his taxes and insurance have risen. These assessments are going to kick some of the people out of their houses, he said, and that's reality.

Mayor Stiehm said the City is still trying to get grants. And we can also address age and income concerns. He learned in talking with a gentleman that Rotary offered money to the Nicolville residents in 1930 for a new sewer system. And that area is finally getting new sewer now.

Roger Jorgenson, 3416 11th Street NE (Ramsey Park Addition) said he has lived at his residence for 55 years. The area used to be a beautiful place. Then the County put a road in and the residents were hit with sewer and threatened with fines. We were forced to put in a new sewer system at that time, he said, and now we're being forced to put in another. He said he didn't think that was fair. He noted that when the utility plant was going to be built, the Utilities said there would be no pollution. That has been nothing but headaches, he noted. Mr. Jorgenson said there was one resident who needed sewer and was not included.

At this point, someone from the audience told the Mayor to "shut up and listen". Mayor Stiehm replied that he would be removed if there was another outburst.

Mayor Stiehm told Mr. Jorgenson that the mediator left that resident out of the annexed area, not the City. Mr. Erichson confirmed this; it was a decision of the mediator from the metro area who was appointed by the State.

Dan Franklin, 24558 546th Avenue (Woodhaven Addition), said he is totally in support of the Council adopting the assessments. He has worked hard for five years on this project, and it is the best system at the lowest cost. He reiterated that the mediator made the final decision, the final cuts on the annexation area. He added that neither side is totally happy with the outcome. Sheila Craig from the Southeastern Minnesota Wastewater Initiative sent letters to everyone in the ultimate service area. The response (letters returned) was 85-90% wanting to annex to the City of Austin. He said Sheila Craig was totally impartial. All the members on committee weren't totally happy with the result, but the committee tried to be democratically responsible all the way through.

Jim Davis, 54239 236th Avenue (Royal Manor Addition), questioned the legality of the assessment procedure; even though it seems to be the City's opinion, we think differently. He stated that an application has been sent to the American Civil Liberties Union on the legality of the assessment procedure. He questioned the opinions of the people purporting the legality of the assessment process (attorneys), noting they are the ones who would benefit from the legal fees. If the people prevail, the City will be on the hook for over \$1 million. Then it wouldn't be just us (the other annexed area residents) paying for Woodhaven; the City would be paying a share.

Phil Erickson, 54778 237th Street, said he didn't know how anyone could not know how this has been going on. He apologized for some of the rude behavior at tonight's meeting. Mr. Erickson said his house has a clay pot system. He said it has been sold three times yet no one has replaced the septic system. He said people out there have new cars, etc. but

some people still buy lots there and dump trash. He said he has spent a lot of money on his place. He said he is “all for the septic system,” adding that “I know it’ll raise value of my house considerably.” He believes that unless something is enforced, nothing is going to change. Mr. Erickson said the house next door had an outhouse. Again he noted the poor behavior of the citizens to the Council. He noted that some of these people bought their lots for \$180 and brag about it. As for mound septic systems, he said he was in construction for 40 years and they are not dependable. Mr. Erickson said he doesn’t go to other cities and tell them how to live. Back when these systems were \$6700, the people complained in similar fashion. Those who are filing lawsuits have misinformation. Mr. Erickson contended that the annexed residents all received something in mail. They may have thrown it in trash, but they received it.

Scabby Robe Parnett accused the City of saying they nothing about plans to annex them in 1988. He accused the City of not listening to the residents. Robe Parnett also said he has attended other meetings but has been told that the purpose was not for this. “We’re getting railroaded,” he said.

Terry Miller, 23910 540th Avenue, asked if the assessments were “in stone” if the City were to be awarded a grant for helping in funding the assessments once they are passed. Mayor Stiehm said the assessments would stand if passed tonight. If the City were to be awarded grant money, he believed the assistance would be based on income and ability to pay.

Cheryl Dunlap, 54147 238th Street, said we stand between a rock and hard place. The problem isn’t going to go away, she stated. E. coli has been found by the Minnesota Pollution Control Agency. We’ve received extra time by the agency to correct this. These checks started a number of years ago. She guesses that 80% of the homeowners would need to put in a septic system within 5-10 years or they would need to pay for the sewer. It would be the same cost.

Harlan Griese, 54773 237 Street, said the ground in the area is all clay so a new septic system is not going to cost \$8000. He indicated it would be more considering the \$16,000 quote from seven to eight years ago. Plus it would cost a lot more for a mound system. He would like to see the project approved. And he added he was “sick of all this fighting.”

Lyndon Leining, 54248 236th Street (Royal Manor Addition), believes it is unfair of those who have more to pay (in Royal Manor and Cedardale) but are more distant from the problem area (Woodhaven). He called it a “reverse Robin Hood” system” and thought it too bad that the City can’t relate it to income.

Marv Repinski addressed Council again speaking in favor of “some kind of fund that would address needs.” He thought the residents should go after the salaried county commissioners who receive part of their taxes.

Phil Erickson spoke to Council again, saying that in his dealings with some real estate in Wabasha he had a septic system from 1992. He hadn’t realized all the required codes for loans and he believes that not a house in his (Austin) area would be able to qualify for

those types of loans, even with the newer septic systems because the codes have been updated within the last couple of years.

There were no other comments from the general public.

Council Member King said this project has been put together very well by the Engineering Department. They have very respectfully, very responsibly opened up to the public many meetings on the project. Council Member King said he must go back to the basic need of what would be for the greater good of the city. While he doesn't agree that it is 100% fair and is confident that some will litigate, the City has been forced into this project. He has listened to arguments and proponents but is for the project.

Council Member Pacholl said Council has heard about this issue since 2006 when discussion was brought forth from some of the citizens from Lansing Township. They have wanted in for four to five years. *They approached us (the City), he asserted.* Council Member believes this project is one of the fairest we can offer. It would not be fair to stop the project now or change it in any way. Why should we penalize the ones who want the project for the ones who don't want it? To change the project would require new plans, new assessments, everything. He recalled the 90% of the 167 returned ballots – out of 209 – that wanted the project and annexation to proceed. He said he was in favor of the whole project as designed. And it is not going to get cheaper next year, he added.

John Martin said this is a tough situation, and one in which we don't want to make decisions. Council Member Martin noted that our (the City's) processes and procedures need to change. He referred to a newspaper article about the sewer project, saying that the bottom line is he can believe very little of what is in the papers. The newspapers are about "sensationalism and selling papers – not about truth", he said. He noted that we as council and citizens, don't take enough time to discuss this in work sessions. Council Member Martin stated that he would like to see at least half of the people who are in attendance at all meetings – not just when \$16,000 is involved. For years, he said, council hasn't listened. "I'm not going to say stuff doesn't happen behind closed doors, but I'm not going to say it does either." He said it doesn't matter who initiated this project. The majority of the residents are for this because they want and/or need services. He encouraged people to keep coming to the council meetings.

Council Member Austin stated this is a tough issue and he feels for everyone: the citizens, staff, and council members. He noted that it would be a burden for him if he had the assessment. But, he noted, this project will be solving and providing almost a permanent solution that would not otherwise go away. It is not going to get cheaper. Plus to do the project piecemeal would be opening up a bigger can of worms. He believes the proposed City policy on these assessments is fair. He acknowledged the argument on providing value, but that could be argued about any project, he noted.

Council Member-at-Large Anderson thanked the people who took their time to attend the meetings. It is important to get opinions and see how this will affect different people. We have spent a lot of time studying, and we have been looking at every aspect. And we will

continue looking for funding for assistance. Also, this will help with the concern about our environmental responsibility.

Mayor Stiehm said this is the most discussed issue he has seen since being mayor. This has been an issue that isn't easy for some, and for that he has compassion. That's why this issue has taken such a long time.

Council Member McAlister said this has been a very unpleasant, very difficult experience. He is aware that some people will have difficulties with the assessments. And some people seem to think that if we ditch the project it will go away. The identified problems will go away, but not the issue, he noted.

City Attorney David Hoversten advised that the procedure as noted in the agenda should be followed. He confirmed with City Engineer Jon Erichson that all written objections have been received. Mr. Hoversten said that the property owners who have objected will receive appraisals on their property, and expert witnesses will provide evidence.

Moved by Council Member Austin, seconded by Council Member McAlister to adjourn and continue the hearing on those properties for which written objections to the assessment have been filed. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution declaring the cost. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution adopting the assessment roll. The assessment rolls have been made a part of the resolution. 5-2. Carried. Council Member Clennon voted nay, saying she was not opposed to the project. Council Member Martin also noted he was not opposed to the project but questioned the whole process.

Moved by Council Member Austin, seconded by Council Member Pacholl, adopting a resolution deferring assessments on undeveloped properties. 5-2. Carried. Council Member Clennon voted nay, saying she was not opposed to the project. Council Member Martin also noted he was not opposed to the project.

City Engineer Jon Erichson said the Minnesota Department of Transportation has been soliciting for the Transportation Enhancement Project grants for 2014 and 2015. For these grants, scenic, landscaping, historic, and trails score well. Our grant application is for a trail, which would run from the Bandshell to the Wastewater Treatment Plant area to 16th Avenue SW to 4th Street. The estimated cost of the project is \$200,000, of which the grant would pay for 80% and the 20% would be funded by the City. Council has reviewed and recommended approval at a previous work session.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution approving the Transportation Enhancement Project grant submission for a pedestrian trail to be constructed from the Bandshell to 16th Avenue SW. 6-1. Carried. Council Member Clennon voted no "in light of the budget cuts".

Farmers Market representatives have submitted a letter requesting expansion for the area provided downtown for the market. There was concern that there would not be enough room as it expands. Their suggestion is to block off the southerly lane and parking lane west of Knauer's and the northerly lane and block parking there except to gain access to the bank or alley. They will also be using some stalls on the south side on private property.

Council Member Pacholl questioned why there was a change of location from last year to which City Administrator Jim Hurm replied that they thought that merchants around the corner were being missed. Mr. Hurm said that the Farmers Market could be moving in the future to the new parking area east of the current courthouse (the former Robbins block).

Moved by Council Member King, seconded by Council Member-at-Large Anderson, approving the requested expanded area for Downtown Farmers Market. Carried.

Council has previously discussed and recommended an amendment to an ordinance to allow camping in public parks for special events only. The camping would be approved at the Park Board level. The amendment would legitimize current practice such as Relay for Life overnight camping.

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

Moved by Council Member Austin, seconded by Council Member Pacholl, for adoption and publication of an ordinance amending regulations for camping in public parks. 7-0. Carried.

The City of Austin has received a \$100,000 Energy Efficiency Conservation Block Grant for a new boiler at Riverside Area. Two mechanical engineering firms have submitted quotes for the design of the boiler:

I&S Group	Design fee	\$ 9,600.00
Bonestroo	Design fee/contract documents	\$11,900.00

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution approving the proposal from I&S Group for boiler specifications. Carried.

On November 1, the City will acquire property bought by the Friends of the Nature Center and donated to the City. The property is currently in a CRP program. The City must re-sign a CRP contract to avoid paying back any dollars received. The City is not entitled to any funds from the program

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution approving the CRP contract in connection with the acquisition of 96.9 acres adjacent to the J.C. Hormel Nature Center. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member Pacholl, setting a public hearing for August 2nd on liquor compliance violations. Carried.

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 1916 3rd Avenue NE, Hemann 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 309 2nd Street SE, Jones property. Carried.

Moved by Council Member McAlister, 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 906 14th Avenue SE, Hansen 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 1814 3rd Avenue NE, Rodriguez 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 506 14th Street NW, Ollman 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 611 11th Avenue NW, JS2 properties. Carried.

The City has received bids for general contracting, masonry, plumbing, electrical and sprinkler system improvements at Riverside Arena. The improvements are being made as part of the agreement with Craig Patrick for rental of Riverside Arena for junior hockey.

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution approving proposals for Riverside Arena renovations. 7-0. Carried.

REPORTS

Council Member Clennon referred to the LMC policy committee she is on, and she will forward information on.

Council Member King welcomed Fire Chief Mickey Healey and his family to the community.

Council Member Austin also welcomed Fire Chief Healey and family. He thanked Council for passing the resolution to pursue a grant to continue the trail beyond the bandshell.

City Administrator Jim Hurm said the City received a thank-you note from Rochester Mayor Ardell Brede. Mayor Brede thanked the City and the public utilities for sending a lineman to their city following a recent storm.

Mr. Hurm announced two street closings: 1) A portion of Main Street on July 2 for Downtown Crazy Days, and 2) the 100 block of 2nd Avenue SW south of Moose Lodge for the Moose on Main Car Show on Saturday, September 18 from 9:00 – 3:00 pm.

Moved by Council Member Austin, seconded by Council Member King, adjourning the meeting to August 2, 2010. Carried.

Adjourned: 7:36 pm

Approved: August 2, 2010

Mayor: _____

City Recorder: _____