

**MINUTES**  
**CITY COUNCIL MEETING**  
**September 19, 2011**  
**5:30 PM**  
**Council Chambers**

MEMBERS PRESENT: Mayor Stiehm. Council Members Jeff Austin, Brian McAlister, Steve King, Roger Boughton, Judy Enright and Marian Clennon. Council Member-at-Large Janet Anderson.

MEMBERS ABSENT: None

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

OTHERS PRESENT: Post Bulletin, Austin Daily Herald. Matt Simonson. Public.

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

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

Moved by Council Member-at-Large Anderson, seconded by Council Member King, approving the minutes of September 6, 2011. Carried.

Matt Simonson spoke to Council about its policy of taking from the poor and giving to the rich and questioned the \$3M (flood mitigation) project on North Main Street which benefits Kuehn Motors. Mayor Stiehm stated that the flood mitigation project is overwhelmingly supported by the city, and Council Member-at-Large Anderson noted that it is incorrect that the project only benefits Kuehn Motors. She offered to speak with him at another time.

Mayor Stiehm read a proclamation for assisted living week.

Moved by Council Member King, seconded by Council Member Boughton, approving the consent agenda as follows:

Licenses:

    Massage Therapist: Teresa Fogal

Claims:

- a. Financial and Investment Reports.
- b. Pre-list of Bills.
- c. Jean LaMont, 1609 17<sup>th</sup> Street SW, Austin. This claim was forwarded to the city attorney to protect the city's interest.

Carried.

A public hearing was held on a vacation of an easement in Fairview Place Addition. The property owners who own the property on both sides of the six-foot easement have petitioned for the vacation. There are no plans for an originally-intended alley, and the Engineering Department recommends approval.

No other comments were made.

Moved by Council Member Boughton, seconded by Council Member Austin, adopting a resolution to proceed with the vacation and appoint the following commissioners for the vacation: First Ward – Charles E. Fawver, Second Ward – David Bumgarner, and Third Ward – Mahlon Krueger. 7-0. Carried.

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

A public hearing was held for a variance governing the corner side yard setback requirements in a B-2 Community Business District, petitioned by Gary and Serena Brolsma. The petitioners are requesting a 15-foot variance for the construction of a gazebo at their property located at 710 W. Oakland Avenue West. The minimum setback is 20 feet. Community Development Director Craig Hoium displayed site line photos of the area from north and west of the property. He noted that the intent of the ordinance is for uniformity of setbacks and for public safety. Mr. Hoium discussed the surrounding land uses which are commercial and residential. Allowable greenspace for the petitioner is 20%; the property with the proposed gazebo would have 31% coverage. Mr. Hoium stated that the petitioner had a permit for the deck when it was constructed several years ago but that the site plan indicated a proposed setback of 13 feet. The Brolsmas did have a portable gazebo on the deck for a few years. The permanent gazebo, which is currently under construction, is five feet from the property line. The Planning Commission recommended denial of the request by a 6-2 vote with the findings that 1) it was not in harmony with the general purposes and intent of the zoning ordinance, 2) there are no unique circumstances to the property not created by the landowner, and 3) the variance would alter the essential character of the locality in regard to public safety. Mr. Hoium clarified that the public safety issue is limited visibility, and he gave an example of a bicycle traveling north on the sidewalk while the petitioner is backing out of the driveway.

Council Member Boughton questioned if the gazebo could be moved east; Mr. Hoium said he did visit with the petitioner on this.

Gary Brolsma, petitioner, said he was not arguing the point of not having a building permit, but stated he has had the deck for 12½ years and there has never been an issue with visibility. Mr. Brolsma then referred to various area businesses – Elrod & Green, Hoversten Law Office, Bollingberg Chiropractic and American Family Insurance that have signs or other obstructions to visibility. He stated his situation was far safer. He said this was an oversight and he was willing to pay any associated fine.

Council Member King stated he was more concerned with some foliage on the fence as a safety (visibility) issue.

Council Member-at-Large Anderson questioned how the variance would alter the essential character of the locality.

Mr. Hoium referred to the various setbacks near the property as indicated by the petitioner, and stated that the setbacks in residential districts are more stringent. The character in the neighborhood is 25 feet for setbacks.

Patricia Wright, 204 7<sup>th</sup> Street NW, said the temporary gazebo was more open. She is concerned with the visibility with a more solid wood structure.

Lynn Spainhower, Chair of the Planning Commission, stated that the Planning Commission was following a fairly new law pertaining to variances. Five statements must be considered when approving variances. One statement could not be verified with this request: the Planning Commission did not view this particular request as one having unique circumstances. Thus, it did not pass on all five considerations. This is a new request so the law is not retroactive.

Noting that he had safety issues more with the fence, Council Member King moved to approve the variance request. Seconded by Council Member-at-Large Anderson.

Council Member McAlister questioned the various setbacks in the area. Mr. Hoium stated that Oakland Avenue West and 1<sup>st</sup> Avenue were mostly residential years ago. In latter years, this area has transitioned to commercial land uses, which is the reason for the variation in setbacks. Council Member McAlister said he does not view this as a huge safety problem, but he has trouble treating business and residential areas differently when they are within a few feet of each other.

Council Member Austin reminded everyone that this issue went before the Planning Commission and it was denied. This is why we have the Planning Commission. They did their due diligence. Also, the state law has been changed for variances; therefore, we should be very careful in approving them.

Mr. Hoium said that if the gazebo stays or is relocated, the Brolsmas will need a building permit and the structure would be reviewed for zoning and structural soundness.

Council Member King stated that the fact that the area is commercial and adjacent to a residential area could be factored as a “unique circumstance”.

Council Member Enright stated that this residence could also be considered a business since they do have day care there. Also, the current location of the gazebo provides for more place space.

Council Member McAlister questioned whether a temporary gazebo would still need a variance. Mr. Hoium stated that our ordinance allows for a limit of 30 days; however, violations are addressed by complaint usually.

Council Member-at-Large requested to rescind her motion to second. Council Member Clennon seconded the motion. 4-3. Carried. Council Members Austin, Boughton and Anderson voted nay.

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

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

Austin Medical Center has requested a sign appeal for the main entrance of AMC. The sign ordinance limits signage in an R-2 to two square feet and also specifies it be a wall sign fastened to the structure of the property. Mr. Hoium stated that there will be two additional signs (total of 24 if approved). Twenty-two of the signs were approved in 1998 at the time of the last addition. All of the signs for this facility will be re-faced to rename the Austin Medical Center “Mayo Health Systems”.

Moved by Council Member-at-Large Anderson, seconded by Council Member Boughton approving the sign appeal. Carried.

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

Moved by Council Member Austin, seconded by Council Member-at-Large Anderson, adopting a resolution accepting the Minnesota GreenCorps Host Site Agreement with the MPCA and authorizing Kim Underwood and Tom Graff to sign the agreement. 7-0. Carried.

Moved by Council Member-at-Large Anderson, seconded by Council Member Austin, adopting a resolution accepting August gifts to the library. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member Boughton, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 905 17<sup>th</sup> Avenue NE, Morton property. 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 904 7<sup>th</sup> Avenue NE, Palma 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 1405 4<sup>th</sup> Street NE, Mercado/Maldonado property. Carried.

Public Works Director Jon Erichson requested Council approve an acquisition of property at 1305 3<sup>rd</sup> Street NE as part of the flood mitigation project. Mr. Erichson noted that the property owners have requested the acquisition. The acquisition was discussed at the last work session and recommended for approval by a 7-0 vote. Cost of the acquisition, environmental mitigation and removal is estimated at \$150,000. The home will be put up for auction. Funding will come from 50% Local Option Sales Tax and 50% DNR grant funding.

Moved by Council Member Enright, seconded by Council Member Austin, adopting a resolution to acquire the property at 1305 3<sup>rd</sup> Street NE. 7-0. Carried.

## REPORTS

Council Member Clennon said the LMC Policy Committee has finalized their work. Ms. Clennon attended the Regional LMC meeting in Rochester with Jim Hurm and Council Member Boughton. Topics included insurance and public safety. She noted that most cities are going to their own EMS.

Council Member Enright noted the success of the electronics drop-off at Re-Fest. Five semi loads were filled with old electronics. She also encouraged people to attend the Vision 2020 on September 28 at the Holiday Inn.

Council Member-at-Large Anderson said citizens could also visit the Vision 2020 website and submit their ideas online or pick up forms at the library or Chamber of Commerce office.

Carried.

Moved by Council Member Austin, seconded by Council Member King, adjourning the meeting to October 3, 2011. Carried.

Adjourned: 6:26

Approved: October 3, 2011

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

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