

M I N U T E S
CITY COUNCIL MEETING
November 5, 2012
5:30 PM
Council Chambers

MEMBERS PRESENT: Mayor Stiehm. Council Members Jeff Austin, Brian McAlister, Steve King, Roger Boughton, Judy Enright and Marian Clennon (5:33). Council Member-at-Large Janet Anderson.

MEMBERS ABSENT: None

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

OTHERS PRESENT: Austin Daily Herald. Austin Post Bulletin. Matt Simonson. Marv Repinski. Peter Plunkett, Nancy Ulwelling, Jan Gravelle, Arik Anderson, Patricia Dahl, Carter Wagner, Grace Gravelle. Public.

Mayor Stiehm called the meeting to order at 5:30 pm.

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

Moved by Council Member Boughton, seconded by Council Member King, approving the minutes of October 15, 2012. Carried.

Matt Simonson, 607 7th Avenue SE, spoke to Council about a Newsweek article which he said referred to 70% of people under the age of 35 being 70% poorer than they were in 1984. He stated there is "corruption in city council" who wants to "tax, loot and swindle."

Marv Repinski, 1004 4th Street SW and chair of the HRA Board, said the HRA has agreed to hire Jon Erichson. The details are yet to be worked out. He has spoken to Craig Oscarson and said the grandstand *is* coming down. Mr. Repinski noted Hormel's generosity by donating four trailer-truck loads of product to Storm Sandy victims.

Council Member Clennon questioned the \$3000 in the Consent Agenda bills, noting that the money was for the purchase of a K9 unit which is in the 2013 budget. Finance Director Tom Dankert said it was scheduled for next year's budget but due to their last dog passing away, the Police Department was in need of a replacement K9 unit so the expenditure was authorized now. He explained that this is similar to car maintenance. The plan was to make it through this year but the department needed the advance funding in order to start training. He added that with the \$14 million budget, some departments are under, some go over. Had there been a need, for example, of a large purchase such as the dispatch counsels, then Council approval would have been asked for.

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

Licenses:

Temporary Gambling: Austin Morning Lions Club at Eagles Aerie 703, 107 11th Street NE, January 25, 2013

Massage Therapist: Brittney Komlan, Austin

Exempt Gambling Permit: Riverland Community College Foundation at Riverland Community College, January 26

Claims:

- a. Pre-list of bills.
- b. John Benjamin Arett. This claim was forwarded to the city attorney to protect the city's interest.
- c. Kathleen Row. This claim was forwarded to the city attorney to protect the city's interest.

6-1. Carried. Council Member Clennon voted nay.

A public hearing was held on a conditional use permit request from Peter Plunkett, 309 21st Street SW, for a proposed bed and breakfast land-use in an R-1 Single Family District. This request was reviewed and approved by the Planning Commission on October 9. That decision has been appealed by 15 residents, stated Community Development Director Craig Hoium, which is in accordance with City Code 11.56 Subd. 4(f). Mr. Hoium stated that in an R-1, and in the case of all districts, there are permitted uses and conditional land uses. Mr. Hoium stated that R-1 is residential, but certain land uses are also conditionally acceptable and include schools, churches, recreational uses, twin homes, mining, and LP tanks. Mr. Hoium referred to 11.56 Subd 1, items A-H, which lists considerations for approving a conditional use. Mr. Hoium noted that at the Planning Commission meeting, the petitioner addressed each item, specifically that the use would not create an excessive burden on existing parks, schools, street other public facilities and utilities in the area, there will be screening from a five-foot hedge, required offsets are provided, and the use will positively impact business. Mr. Hoium said a number of neighboring property owners expressed objection to the CUP. A petition was submitted by 31 neighboring property owners objecting to the request. He noted that the petition was incorrect in that it stated that Mr. Plunkett was asking for a change in zoning. A letter was received by the CVB in support of the request. Another letter was submitted by Steve and Dorothy Krob, 2203 W. Oakland, in support. The Planning Commission voted 5-3 in favor of the CUP with the following conditions: no signs, a maximum of two guest cars, no on-street parking, no children under the age of 12, no pets, and no parties or special events.

Council Member Clennon asked if there would be a firepit in the backyard and asked if tour buses would be able to drive by. Mr. Hoium said that in his opinion, they would not be allowed.

Mayor Stiehm asked for a call of the audience in opposition and in favor of the petition. The audience was divided roughly in half, for and against.

Peter Plunkett addressed Council. He said there would be no firepit. There was a tour in cooperation with the Frank Lloyd Wright Conservancy given this summer – the first since 1968 – but there was no money involved, he said. Mr. Plunkett gave a Powerpoint presentation on “Chez Elam”, the name of the house. It is one of 13 Frank Lloyd Wright homes in Minnesota, one of four in southern Minnesota. Mr. Plunkett stated that he would define this use as a guest house rather than a bed and breakfast as no breakfast will be served. He contended the guest

house would stimulate Austin's tourism; there is a lot of interest in the house, even internationally. Mr. Plunkett clarified that he is not seeking a rezoning as is stated in a petition against the proposal. This request, he added, is allowed under the conditional use city ordinance *if* it meets the eight conditions spelled out in the code. He noted that Austin has already made the decision that bed and breakfasts are allowable in R-1 districts. He believes he meets all the requirements. He does not believe surrounding homes will see depreciation. Mr. Plunkett listed off some work he has done to the home, adding that he would fix up the home further as time goes on so he said the use will increase the value of the surrounding properties, if anything. Mr. Plunkett stated he would only be renting out the back portion of the house. No alterations will be done to the home, and no signs will be erected. He believes the additional development standards would be in conformance with City Code 11.56, Subd 1, A-H. In addition, the request has been recommended by the Planning Commission, plus an unsolicited letter was sent on his behalf from neighbors Dorothy and Steve Krob who live behind Plunkett. Mr. Plunkett confirmed that he would continue to reside in the home; the home is not for sale.

Nancy Ulwelling, realtor, who said she has been in real estate over 20 years, said bread and breakfasts are traditionally in residential areas. She believes it would improve the area and sees no downside.

Jan Gravelle, 313 21st Street SW, asked Council to consider the health, safety and welfare of the citizens. She believes that none of the eight additional development standards would be met: not screening as the hedge does not provide adequate screening, there would not a measurable increase in tourism as only one room would be used, the use would not be consistent with the zoning district, a traffic hazard may result, along with an increase of drive-bys, and the question of depreciation to surrounding neighbors has not be sufficiently addressed. Ms. Gravelle said the architect should have no bearing on granting the conditional use. She noted that the Seth Peterson Frank Lloyd Wright home in the Wisconsin Dells referred to by Mr. Plunkett should not be compared to the Austin home as that home is in a state park whereas this home is on a narrow, quiet street.

Arik Anderson, 200 20th Street SW, stated he moved to the neighborhood for one reason, and that is the quiet. He said he has children and his concern is that different people will be coming on the weekends and he wouldn't know if they were supposed to be there or not.

Patricia Dahl, 311 21st Street SW, who lives next door said she is "very concerned." A concern of hers is that Mr. Plunkett will not follow through with his stated promises. She is concerned what the neighborhood will turn into. Before you know it, she said, we will have other businesses in the neighborhood. Ms. Dahl said the welfare of the community should be more important than income and asked Council to consider the effect this would be on an R-1. Residential use is what it was created for, she said.

Mayor Stiehm asked Community Development Director Craig Hoium for any comments he might have. Mr. Hoium said specific types of land uses are allowable in a conditional use or R-1. Two-family dwellings are allowable in an R-1. Twin homes, churches and schools are also allowed and have been discussed by the Planning Commission and the City Council.

Carter Wagner, 909 36th Street NW, stated he is friends with Mr. Plunkett but also with some of the people opposing the request. Noting his having been in the building business for 30 years, Mr. Wagner said having a Frank Lloyd Wright home, which is one of 400, is a big deal. The

home is the first thing his architect brother-in-law wanted to see when he first came to Austin. He understands that neighbors are concerned with a “hotel” moving in across the street, but the homeowner has done what he needs to do to mitigate any potential problems.

Mayor Stiehm noted it was one of the first things he was shown when he first came to town.

Mr. Plunkett referred to a petition signed by 35 people. The petition refers to a zoning change, which is incorrect. Also, he has talked to some of those people and there are 18 signatures from people who do not oppose him now. Mr. Plunkett referred to a plat drawing of people in his neighborhood who do not oppose the conditional use so, as he stated, it is not a unanimous opposition. Some had thought that a zoning change was being requested. There is no evidence that there will be any house depreciations. Mr. Plunkett refuted the argument about strangers in the home, noting that there would be no difference of visitors paying a price and staying there and his friends staying at his home for a weekend.

Jan Gravelle said the neighbors were now well aware that the request was not for a change in zoning. More importantly is that the petition is from those who are within 350 feet of the property.

Community Development Director Craig Hoium asked Council to reference the requirements of the conditional use when taking their action, whether it be denying or approving.

Council Member-at-Large Anderson asked City Attorney David Hoversten on what legal basis the conditional use could be approved or denied. Mr. Hoversten said the conditional use needs to be approved according to the standards set forth in the ordinance, and both parties have addressed those standards. Council can only consider the evidence produced regarding those standards; Council’s determination should not be weighted by public opinion. If Council determines that the evidence for the conditional use is not met, then that is proof enough.

Patricia Dahl told Council that the neighbors had only two weeks in which to plan and could have planned better had they had more time. *(The application was filed on September 24. Notices for the Planning Commission public hearing were sent 10 days prior to the hearing on September 28, according to state law. A public notice was also published on September 28.)*

Matt Simonson recalled a Mr. White who lived by Turtle Creek some 50 years ago and sold Lionel trains out of his house with customers coming and going.

Council Member McAlister stated that Mr. Hoversten has made it clear on what basis Council may approve or disapprove. The fact that this is a Frank Lloyd Wright home is irrelevant. Council needs to base its decision on the ordinance’s requirements; if it meets the conditions, Council has to approve. The petitions really have no relevance rather than bringing the questions to Council.

Mr. Hoversten said that the District Court would review the evidence and facts and decide whether to grant the conditional use if the matter is appealed, or remove it on the same basis. They have the power to overturn the ruling. The City would not incur a liability, just the legal expenses.

Council Member King said this requires a lot of thought and this is mixed with a level of emotion. He agreed that quietness of the neighborhood is a fact, but this needs to be separated from the facts. The more he read, the more he learns, and he noted that, as Mr. Hoversten stated, if all conditions are met – and it does appear that they have been met – he would be hard-pressed to not vote in favor of the conditional use.

Council Member-at-Large Anderson said she came with mixed feelings. She thought the matter could be delayed for more research but this can't happen due to the 60-Day Rule. She does respect the opinions of the neighbors in favor and in opposition. She agrees with Council Members McAlister and King that certain criteria have been addressed, but thinks it is appropriate to require permanent fencing.

Council Member Boughton said he has heard the two different viewpoints on meeting the standards but will vote no due to the impact on the character of the surrounding area. Nor does he believe that there has been evidence shown that there is a demonstrated need. As to the argument that this will increase or decrease the value of surrounding homes, he has not been convinced of either.

Council Member Clennon asked Mr. Hoversten if the decision could be reversed were the conditional use granted. Mr. Hoversten said that in that case, it would be considered an ordinance violation which could be prosecuted. The court could enjoin, or stop, the practice.

Council Member Enright said she is in agreement with Council Member Boughton in that she does not feel the use is sufficiently compatible for the neighborhood. "I would like to preserve our residential neighborhoods," she stated. Also, she does not see a need for this for the city. She does not see that the conditional use would be consistent with what is in that neighborhood.

Council Member King spoke in opposition of Council Member Boughton's contention that the character of the neighborhood would be diminished. He noted Mr. Plunkett's comment about having 5-6 friends could be more intrusive than guests in the proposed guest house. One or two guests, he said, are not going to disturb the neighborhood.

Council Member McAlister added that the owner will be there. It's not like he is going to let things get out of hand, he noted. As for demonstrated need, who is to say that there wouldn't be a need? For example, if there are two hardware stores, who is to say that we don't need another one?

Moved by Council Member King, seconded by Council Member Austin, approving the conditional use on the basis that it meets the standards as set forth in §11.56, Subd. 1, A-H, with the six additional conditions set forth by the Planning Committee. (The motion did not include fencing.) 3-4. Motion failed. Voting nay: Council Members Boughton, Enright, Clennon and Council Member-at-Large Anderson.

Moved by Council Member-at-Large Anderson, seconded by Council Member Austin, approving the conditional use on the basis that it meets the standards as set forth in §11.56, Subd. 1, A-H, with the six additional conditions set forth by the Planning Committee and included a fencing requirement. (Council Member Austin later withdrew his second, and the motion died for lack of a second.)

Mr. Hoium asked Council to require more direction on the fencing: a minimum height, solid fencing or some type of coniferous plantings, and also, where the fencing would be required (back property?). He stated that the rear and side boundaries would require 500 feet of fencing. Council Member-at-Large said a vegetative fencing, a hedge would be sufficient perhaps if it was refurbished.

Mr. Hoversten said this requirement does not cause any effect with regard to the site. To ask for a 500-foot fence or vegetative border would not be permitted. Council should make a correlation on the need for the screening to the activity which you are allowing. There is no correlation in my opinion, he stated.

When asked about the screening at Walmart, Mr. Hoversten explained that each conditional use request must be individually evaluated in this request, the physical characteristic of this property is not changing. The Walmart conditional use required screening between a commercial and residential properties.

Mr. Plunkett said he was planning on thickening some of the vegetation and redoing the fencing anyway; he does not have a problem with that.

Moved by Council Member-at-Large Anderson to reconsider approval of the conditional use permit on the basis that it meets the standards as set forth in §11.56, Subd. 1, A-H, with the six additional conditions set forth by the Planning Committee. Motion seconded by Council Member Austin. 4-3. Carried. Voting nay: Council Members Boughton, Enright and Clennon.

No other comments were made.

Moved by Council Member King, seconded by Council Member Austin, approving the conditional use on the basis that it meets the standards as set forth in §11.56, Subd. 1, A-H, with the six additional conditions set forth by the Planning Committee. 4-3. Carried. Voting nay: Council Members Boughton, Enright and Clennon.

A public hearing was held on a plat to be known as The Wunderlich Addition. The plat plan was reviewed by the Planning Commission and Council in October and was approved with 10 conditions. Also included with the plat is a 15-foot easement on the north section of Lot 1, Block 1, and a 10-foot utility easement adjacent to the right-of-way of East Oakland Avenue.

No other comments were made.

Moved by Council Member King, seconded by Council Member Austin, adopting a resolution approving a plat to be known as *The Wunderlich Addition*. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member King, adopting a resolution approving senior deferment of a special assessment for Genevieve Arndt. 7-0. Carried.

Moved by Council Member-at-Large Anderson, seconded by Council Member King, adopting a resolution accepting September gifts to the Austin Public Library. 7-0. Carried.

Moved by Council Member King, seconded by Council Member Austin, approving requests from Sterling State Bank in connection with “Christmas in the Southwest”. Carried.

Moved by Council Member-at-Large Anderson, seconded by Council Member King, approving requests from Chamber of Commerce in connection with “Christmas in the City”. Carried.

Moved by Council Member Austin, seconded by King, adopting a resolution setting a public hearing for November 19 to rezone property located in the 200 block of 14th Street NW. 6-1. Carried. Council Member Boughton voted nay.

Moved by Council Member Austin, seconded by Council Member King, setting a public hearing for November 19 for preliminary plat approval for the replatting of Dobbins Creek Estates. Carried.

Moved by Council Member Boughton, seconded by Council Member Austin, adopting a resolution authorizing an amendment to the Flexible Benefits Plan to comply with the Patient Protection and Affordable Care Act. 7-0. 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 1008 Oakland Avenue W., Drees 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 1007 5th Avenue NE, Janning property. Carried.

Moved by Council Member King, 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 1005 8th Avenue NE, Wentzel property. Carried.

Moved by Council Member King, 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 1005 5th Avenue NE, Crews property. Carried.

Moved by Council Member King, seconded by Council Member-at-Large Anderson, adopting a resolution approving the subdivision of property petitioned by Matira Balsley & David Champlin, for property located at 501 1st Street SW. Carried.

REPORTS

Council Member Clennon strongly encouraged Council to pursue collaborations and then submit a grant application to the Hubert Humphrey Institute which awards grants to cities, counties and school boards who have been innovative with collaborations. The top award is \$25000. The deadline for this year was November 2.

Council Member Clennon asked Chief Krueger if the K9 unit had been obtained yet. He said it had.

Council Member-at-Large Anderson thanked the utilities crews who have responded to the victims of Hurricane Sandy. There are several from our area who have gone. Also, she reminded everyone to vote.

Council Member King thanked city staff, in particular Mr. Hoiium and Mr. Hoversten for their good advice and reports regarding tonight's conditional use hearing.

Council Member Austin reminded everyone to vote. He also thanked staff for their excellent work.

Council Member McAlister thanked Park & Rec Director Kim Underwood whose department has met the needs of a citizen by removing a stump from their boulevard.

Reporting on the parking issue around the Hormel Historic Home, Chief Krueger said he met with the HHH staff on October 22. The next step will be to survey neighboring residents and businesses north of 4th Avenue. Once they receive the results of the survey, staff will make a determination.

Chief Krueger stated that the new K9 unit's name is Sonic. It is a Belgian Malamute who is approximately 11 months old.

City Administrator Jim Hurm did send in an award on collaboration to the Hubert Humphrey Institute. The grant describes the Austin Main Street Project.

Mayor Stiehm noted that St. Paul Mayor Coleman visited Austin with representatives from the League of Minnesota Cities for a Thank LGA event. Albert Lea representatives were also on hand.

Mayor Stiehm also stated that the fundraiser for Vision 2020 held at the Austin Country Club last weekend was a success. Several committee members were there.

Moved by Council Member Enright, seconded by Council Member Austin, adjourning the meeting to November 5, 2012. Carried.

Adjourned: 7:38 pm

Approved: November 19, 2012

Mayor: _____

City Recorder: _____