

MINUTES OF THE CITY COUNCIL
CITY OF AUSTIN, TEXAS
Special Called Council Meeting

April 7, 1981
5:30 P.M.

Council Chambers
301 West Second Street

The meeting was called to order with Mayor McClellan presiding.

Roll Call:

Present: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Mayor Pro Tem Trevino

Absent: None

Mayor McClellan opened the meeting scheduled for 5:30 P.M., stating that this was a Special Called Meeting for the following purposes:

5:30 P.M. - Hearing Zoning Case No. C14r-81-226

7:30 P.M. - Public hearing on Cable Television

Consider a request from Ms. Whatley of the NAACP to keep a banner placed at 1704 East 12th Street until May 4, 1981.

ZONING HEARING

Mayor McClellan opened the public hearing scheduled for 5:30 p.m., on the following application: Pursuant to published notice thereof, the following zoning was publicly heard:

JENNE S. ATKINSON
ET AL.
By William Carson
C14-81-226

7531 N. Capital
of Texas Highway

From Interim "AA" Residence
and "AA" Residence District
1st Height and Area
To "O" Office
1st Height and Area
RECOMMENDED by the Planning
Commission "O-1" Office to
be tied to site plan ele-
vations

Mr. Lillie reviewed the application by use of slides. He also presented a history of Loop 360 corridor activity since May, 1980 when the Council authorized its annexation from the north end to Ben White Boulevard on the south. At that time the Council set a 90-day moratorium to allow study of the corridor. The study was completed and presented to the Planning Commission in December, 1980, with public hearings held in January. Upon receipt of the study, the Planning Commission appointed a subcommittee to develop some guidelines for development along the 360 corridor. The study suggested that development along the corridor be restricted to planned unit developments, that clustering be used, that density be low and that development on steep hills be discouraged.

After reviewing the various development ordinances in existence, the committee felt that no new ordinance was required for the corridor, but recommended a set of policies which the Planning Commission adopted. Council had received the policies last week and accepted them in principle. The subject zoning application had been reviewed under those policies. The Planning Department did not make a recommendation on the application.

The Planning Commission in its recommendation on the application in support of "O-1" zoning for offices only, felt that the applicant made a commitment to meet the requirements of existing development ordinances as well as the new Loop 360 development policy. The Planning Department concurred with the applicant's commitment, but expressed concern that the cost of land not be priced out of range for residences in the area. Mr. Lillie did not think that there would be a continued strip development of high intensity along the corridor.

Mayor McClellan stated that the Council had annexed the corridor area to control development and she was surprised at the Planning Commission's recommendation because the area was environmentally sensitive.

Councilmember Goodman asked Mr. Lillie why the Planning Department recommended against the proposed change, particularly the points in the project that related to the corridor study.

Mr. Lillie responded that the application came in during the time the study was in process and the Department did not feel that it was appropriate to make a recommendation before the Planning Commission had set a policy on the corridor area. After the Commission had set a policy, the Planning Department reviewed the application and concurred that the applicant had met those requirements or would meet them before the ordinance was passed. Under the policy, it was not required that "O" Office zoning be located near major arterial streets.

Mayor McClellan felt that "O" Office zoning in the area would be precedent setting. Councilmember Goodman also agreed that it would be precedent setting.

Bill Carson, representing the applicant, stated that the project met all City requirements and that the corridor policy encouraged mixed uses in the area. Of the 26½ acres in the tract only 8 acres would be used for the corporate offices of the Continuum Corporation, while the rest would be open space. He felt that the planning that went in to the project would be setting a precedent for other developments along the Loop 360 corridor.

Alan Taniguchi, the architect for the developer, stated that the proposed design for the site met or exceeded the requirements of the newly formulated guidelines and conformed to the Lake Austin Watershed Ordinance and the Creek Ordinance.

Gary Duck, an employee of the Continuum Corporation, expressed his anger over propoganda put out by opponents of the project. He asked the Council to consider the zoning change request favorably.

Hamilton Richards spoke in support of the zoning change.

Jean Atkinson Clark, owner of the subject tract, felt that the office park would be the best thing for the area.

Lynn Lang, who owned a home in Lakewood PUD, supported the proposed plan because of its sensitivity.

Terry Blankenship, representing Blankenship Development, stated that he was developing the adjacent property and was in support of the proposed zoning change.

Jack Holford expressed concern about another project pending in the area, but supported the subject project.

Charles Meek, resident of the Courtyard, spoke in support of the zoning change and felt that free enterprise could do a better job of locating projects than government.

Councilmember Mullen expressed reservations about buying the property for a park. Other members of the Council agreed with him.

Melvin Driskill, president, Northwest Austin Civic Association, spoke in opposition to the zoning change.

Jim Landrum, zoning chairman, Northwest Hills Civic Association, spoke in opposition to the change and stated that what was needed was planned growth, not no growth.

John O'Neal, a Lakewood resident, by use of slides showed pollution and environmental damage to the area. He stated that ordinances were not being enforced to protect the area. He felt that all development along Capital of Texas Highway should be stopped until such ordinances were enforced.

Mayor McClellan asked staff to check out the problems pointed out by Mr. O'Neal, come back to Council and share the information with the neighborhood association.

Motion

Councilmember Goodman moved that the Council deny "0-1" Office 1st Height and Area zoning and grant permanent "AA" Residence District 1st Height and Area zoning for the tract. The motion was seconded by Mayor McClellan.

Don Grissom, a resident of Lakewood, felt that growth should be directed away from environmentally sensitive areas and that there was a unique opportunity to preserve the area.

Dr. Karen Duffy showed a map of the Lake Austin Watershed and said that about one-half of the water coming into Lake Austin came from Bull Creek. She discussed toxic substances in the area of Bull Creek and stated that the levels were high for a number of metals as well as herbicides and pesticides.

Responding to Councilmember Himmelblau's question, Dr. Duffy stated that the filtration ponds proposed by the developer of the subject tract would not work.

Councilmember Cooke pointed out that the current pollution problems stemmed more from residential development than from office or general retail development.

Dan Pike expressed concern over the scarring of land in the area and asked the Council for action to prevent it.

William P. Danforth was concerned and worried about pollution in the area.

Morris Beachy showed slides of the area before there was much development in the area, and stated that destruction of the creek began with the building of Loop 360.

Phillip Blackerby, 1400 Foxwood Cove, stated that the proposed project was outside the preferred growth area and asked the Council to vote against it.

Jo Ann Richards, a resident of Lakewood, proposed a new ordinance whereby there would be a moratorium on building in any watershed in the City until a satisfactory level of pollutants was established in the watershed.

Mildred Bugg commented on the quality of the water in Bull Creek and stated that the creek had been ruined by construction.

In summation, Bill Carson stated that he agreed with area residents who objected to pollution of Bull Creek, damage to the environment and littering and felt that it was a matter of control. He thought that degradation of the area began with the construction of Loop 360. He said, though, that degradation of the creek should be separated from the proposed project and the impervious coverage for his project would be no higher than for a residential development on the same property. He urged the Council to look at the development as it respected the property as opposed to a broken up development.

Restatement of Motion

Councilmember Goodman restated his motion that the Council include closing the public hearing, deny "O-1" Office, 1st Height and Area District, and grant permanent "AA" Residence, 1st Height and Area District. The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Councilmembers Himmelblau, Mullen, Mayor Pro Tem Trevino,
Mayor McClellan, Councilmember Goodman
Noes: Councilmember Cooke

PUBLIC HEARING ON CABLE TELEVISION

Mayor McClellan opened the public hearing scheduled for 7:30 p.m. on the proposed cable television franchise award.

Assistant City Manager Daron Butler reviewed developments which had taken place since the last meeting. He stated that one of the problems facing the Council was under either a 54-channel or 84-channel system, were there enough slots to cover all known needs of potential users? He felt that the material which had been distributed to Council would meet those needs. The City Attorney had also prepared another version of the franchise ordinance which incorporated comments and suggestions from public hearings, comments from Professor Botein and comments from Mr. Harold Horn.

City Attorney Jerry Harris next highlighted major changes in the ordinance as follows:

1. Company would have to pay publication and notice costs and in addition pay up to \$100,000 for the study preparation and award of the contract, or more, if necessary.
2. Individuals would not be required to sign a form allowing the Company to monitor viewing habits and release the names and addresses to the public.
3. Added new language to cover deregulation.
4. Availability of additional access channels - Modified language to say that if access channels in the opinion of the City Council become fully utilized then the City Council can give notice and within 3 months the Company must provide additional access channels, as dictated by the City Council.

Councilmember Goodman asked that the section referring to "economic waste" be omitted since it was vague.

5. The Company would provide lease channels in accordance with rates set by the City Council.

6. The Company would have to provide service to areas with at least 30 homes per strand mile instead of 40 homes per strand mile.
7. The Company would be required to work with the City on remote handling of traffic lights and metering for utilities.
8. The Company would be incorporated in the State of Texas and could only incorporate elsewhere with City Council approval.
9. During the 1st, 2nd, 3rd, and 4th evaluation sessions the City Council would do a rate and rate of return review on the Company to determine whether to raise or lower rates.
10. Penalty amounts for various violations were raised to \$1,000/day.
11. Franchise fee should be paid more often than quarterly.
Councilmember Goodman favored a monthly payment of the fee.
12. Any renewal after the first 15-year period would be for 5 years.
13. Added language allowing creation of Austin Cable Authority.
Councilmember Cooke felt that the Austin Access Authority was the preferable way to handle the matter.
14. Individual could provide a converter rather than buy it from the Company.
15. Added additional services to AISD.

Councilmember Goodman made the following comments:

1. Suggested eliminating the provision that franchise fees being paid by other cities be examined to set the Austin franchise fee.
2. Regarding adjustment of the franchise fee, the City Council should make the decision based on federal law on whatever other regulations might evolve.
3. Wanted the Company to have limited authority if any at all to monitor what subscribers were watching.

Mr. Joe Collins stated the primary reason the Company needed to know what was being watched was for billing purposes. The same would be true for in-home shopping by use to television. Names of individual subscribers could not be collected, but only on a system-wide basis for statistical purposes.

Councilmember Cooke stated that the Council was trying to protect the fundamental right of privacy.

Councilmember Goodman felt that some type of reporting procedure should be included so that users would know when monitoring was occurring.

Mayor McClellan then opened the hearing to discussion from the public.

Jean Nipper, representing AISD, expressed appreciation for the 400 hours of Time-Life Library for the school district and hoped that the present Council would be able to act on the new franchise.

Paul Smolen, the City's ascertainment consultant, made the following points:

1. Access channels should be provided on every tier of programming.
2. An 84-channel network was a prerequisite to meet the demands of Austin's community and institutional cable use requirements beyond 1986.
3. Contribution to community programming for capital expenditures should be increased by one-half of the amount in the equipment package listed under origination on the pro forma sheet.

Discussion followed as to the amount of money involved. Mr. Smolen stated that he would review the figures and respond in writing to the Council.

4. Central access studio - Expand from 2,500 square feet to 6,000 square feet.
5. Funds from the franchise fee should be allocated from the beginning to test the system with the City's money and commitment to find out whether it should support an energy monitoring program, signal control, traffic routing system and the feasibility of other projects.

6. A one-year transition period should take place immediately after signing of the franchise ordinance.

Mr. Smolen felt that four items remained which were not in the franchise ordinance:

1. Organization and implementation of the Austin Access Authority.
2. Allow Mr. Smolen's group to serve as staff for the Authority until a permanent staff is developed.
3. Organization and implementation of the City's Office of Telecommunications.
4. Hold additional workshops to provide more information.
5. Consider other needs besides the present commercial needs of the Company and the present access needs expressed. Cost would be \$84,000 for a 12-month period.

In closing, Mr. Smolen emphasized the need for a monitoring process in the early stages of development.

Al Golden pointed out that since competitive bidding was not used in Austin, the City did not receive as much public education as cities which used competitive bidding. Speaking for the Cultural Cable Coalition, he emphasized the need for the City to have access to the various cultural programming being proposed or offered by the networks.

Jack Hopper expressed concern that the franchise ordinance was not strong enough to protect the City adequately. He felt that a rate of return should be specified in the rate ordinance.

Discussion followed as to what the rate of return should be. Councilmember Mullen and Goodman expressed that the Council would not have enough information from the Company to determine a fair rate of return.

Mr. Hopper felt that the franchise should be for 10 years instead of 15 years and the ACTV should be included in the franchise. Councilmember Cooke felt that ACTV should be used as an umbrella organization since it had been in operation for 8 years.

Kevin Ferris, Executive Director, Texas Association of Museums, stated that there were 19 museums and related institutions in Austin. He presented a letter to the Council urging support of the proposal made by the Cultural Cable Coalition.

Lindy Mings, a staff member of the Texas Memorial Museum, questioned the wisdom of the non-competitive cable award process. She also objected to the shortness of time allowed for the ascertainment study, and stated that the Museum had not had an opportunity to participate. She supported the proposals presented tonight by the Cultural Cable Coalition and others. She asked that the first reading of the ordinance be delayed and that more input be solicited.

Councilmember Mullen stated that the only reason he did not go with the competitive bidding process was due to the consultant's recommendation.

Mayor McClellan stated that if the present Council wanted to act on the franchise ordinance, then it must be passed through first reading on Thursday. There were still some things in the ordinance which she objected to and the ordinance could be damaged before final passage.

Mayor McClellan requested that staff meet with the Cultural Cable Coalition and the Higher Education Council.

Paul Leche, Chairman, Austin Arts Commission, and Chairman, State Bar Committee on the Arts, stated that the Commission endorsed the proposals of the Cultural Cable Coalition and Paul Smolen.

Lyndon Brown felt that there had not been enough time for input from the citizens of Austin. He then compared the proposed systems for Austin and Fort Worth.

Mr. Rifkin of ATC stated to the Council that his Company was prepared to carry all services available on the satellite provided that they met community standards and provided that they were desirable to the Council.

Richard Craig, an administrator at the Texas School for the Deaf East Campus, asked that cable TV for the deaf students be considered under the new franchise.

Brian Gudinas, representing the Austin Community Movie Company, supported in principle the statement by the Cultural Cable Coalition, but brought up the following points:

1. Expressed concern over possible censorship of original dramatic material on the public access channel for local cultural arts groups.

2. Local cultural arts groups should not be in competition with The University of Texas for the same access channel programming time.
3. ACTV should have representation in the Austin Access Authority due to its long experience with public access as well as continuing to serve as managers of the access production facilities and video training for access users.

Mariann Wizard, Phogg Phoundation for the Pursuit of Happiness, felt that the lack of a clearly defined regulatory authority was the weakest point in the proposed franchise ordinance. Action should be taken now so that the incoming Council would have some direction regarding the new franchise for cable television.

Lawrence Miller, Laguna Gloria Arts Museum, stated that a more effective way was needed to reach the handicapped community through cable television. He asked that on Thursday that the Council vote on the merger and the franchise, but to delay the portion on access television. He asked that a structure for ample input within the next 30 days be set up.

Mayor McClellan requested that staff coordinate the effort and come back to the Council with a plan of operation.

Jerry Pressley, an employee of Daniels and Associates, a Denver-based cable television firm, stated that ATC was one of the best companies in the cable television business and that a mailer which he and others had received regarding ATC was inaccurate.

James Rader, vice president, Dance Umbrella, stated that his Board supported the proposal of the Cultural Cable Coalition, but that resources were needed for cultural programming.

Mark Bryant handed out a proposal for the structuring of the Austin Access Authority. He stated that a degree of cooperation was beginning to emerge among the various access users, and that hopefully a final proposal would soon be forthcoming.

Brenda Trainer, representing Women in Communications, Inc., spoke in support of access television, and stated that it was central to the cable TV issue.

Jack McNamara was concerned over the lack of disclosures regarding the purchase price of Capital Cable by ATC.

Councilmember Goodman stated that he could not vote to approve the transfer or acquisition of Capital Cable unless he knew the terms of the agreement.

Mr. McNamara stated that under the Freedom of Information Act he had requested Capital Cable's financial disclosure records to the FCC about 3 months ago, had not received them and probably would be going to District Court.

Jeffrey Friedman stated that the FCC turned down the request as not being proper.

Mildred Bugg felt that the City owed Capital Cable some allegiance since they had served the City for 18 years.

Bill Arhos, representing KLRU-TV, asked how the interim access channel allocations were made.

Assistant City Manager Daron Butler stated that he looked at all of the written requests received by the City, looked at the available spaces and channels on the lineups and then made the assignments.

Mr. Arhos asked that one subscriber channel be allocated to KLRU. He supported the idea of an access authority.

Burt Ellison, secretary-consultant of Family and Community Educational Seminars, stated that he would like to see the Mutual Black Network included in the first tier, if possible, and if not, be given consideration for the second tier.

Saleem Tawil discussed the options available in a 54-channel and 84-channel system.

Monroe Rifkin, President of ATC, did not think that the access question should be frozen and that an ongoing ascertainment should be conducted. He questioned the part of the ascertainment study regarding initial funding of various groups using the access channels and felt that such groups should earn their way. He stated that the Company would respond to the changes in the new proposal which was distributed today.

Paul Smolen stated that in the ascertainment poll 72% of the respondents did not believe that the cable company should control the access channels.

Mayor McClellan stated that she still had concern about the economy tier and felt that there was a better option on the 84-channel system.

At that point, Mayor McClellan interrupted the public hearing briefly to take the following action.

BANNER HANGING APPROVED

Councilmember Goodman moved that the Council approve the request from Ms. Whatley of the NAACP to keep a banner placed at 1704 East 12th Street until May 4, 1981. The motion, seconded by Mayor McClellan, carried by the following vote:

Ayes: Councilmember Mullen, Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau

Noes: None

Not in Council Chamber when roll was called: Mayor Pro Tem Trevino

The public hearing on cable television then resumed.

Councilmember Cooke made the following points:

1. Supported adoption of the franchise ordinance on first reading next Thursday.
2. Favored an 84-channel system.
3. Supported an Austin Access Authority that would be an umbrella organization.
4. Include AISD and Channal 18 in the system.
5. Did not agree with proposal to increase amounts of money for access.
6. Supported creation of Cable Officer position to be paid for out of proceeds from cable franchise.
7. Supported inclusion of all public buildings and employers with over 100 employees in the cable system.
8. Adopt the 23-channel pricing and leave the rest open to a new Council.
9. Favored applying the 54-channel tiering to an 84-channel system.
10. Fundamentally believed that ATC was a good cable company and would come through with its commitments.

Councilmember Goodman stated that he completely disagreed and that no real options would be taken away from a new Council if the present Council did not vote on the ordinance next Thursday. He felt that the timetable was too fast.

Councilmember Cooke felt that if this Council did not take action on the ordinance then the process could be delayed a year or two, which would not give citizens the quality upgraded system which they deserved.

ADJOURNMENT

The Council adjourned at 11:25 p.m.

APPROVED Carole Keeton Mealler
Mayor

ATTEST:

Grace Monroe
City Clerk