

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Regular Meeting

September 10, 1981  
3:00 P.M.

Council Chambers  
301 West Second Street

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The meeting was called to order with Mayor Pro Tem Trevino presiding.

Roll Call:

Present: Mayor Pro Tem Trevino, Councilmembers Deuser, Duncan,  
Mullen, Urdy

Absent: Mayor McClellan, Councilmember Goodman

INVOCATION

The Invocation was given by Reverend B. E. Moore, pastor, United Pentacostal Church of Christ.

SANITARY SEWER AND WATER LINE EASEMENTS

Council had before it for consideration a resolution to consider approval of a certain tract of land as street right-of-way or sanitary sewer and water line easements.

Mr. Bill Bulloch, Director of Water and Wastewater, showed maps of proposed Upper Walnut Creek wastewater system improvements. He said the action requested is for dedication of easements through the park. Councilmember Deuser asked if any consideration had been given to keeping the line out of the creek bed. Councilmember Duncan told him the Environmental Board had approved the proposed alignment. Mr. Bulloch said if Council wishes they can pursue the suggestion of Councilmember Deuser to see about cutting across land rather than through the creek. Councilmember Duncan said the Environmental Board can be asked to review. Councilmember Deuser said he would also like

to see Phase II and III reviewed. ED WENDLER, JR., appeared before Council and requested Council to review Phase II soon because there is already a line on one third of it and they are getting ready to award a contract on Wells Branch. Dr. McReynolds, Director, Environmental Resource Management, said the sub committee has reviewed Phase II and has given their recommendation to the Environmental Board.

Council agreed to send this back to the Environmental Board and Subcommittee to review and bring back on September 16, 1981.

#### WATER APPROACH MAINS

Council had before it a resolution to consider approval of the following water approach mains:

#### N.P.C. REALTY COMPANY

- To construct a 12, 16 and 24-inch water approach main to serve the Villages at Western Oaks, Sections III-A, IV and VII through XI. Total estimated to be \$956,152. (No City cost participation)

Mr. Bulloch, Director of Water and Wastewater, showed a map to Council and stated, "City Council previously approved a 24-inch water approach main with associated pumping facilities at the Davis Lane Reservoir, along Davis Lane up Brodie Lane to Maple Run as a part of the improvement of Maplewood Subdivision. The line being constructed is 24-inch through the intersection of Davis Lane and Brodie Lane and then a 16-inch line into Maple Run.

"First portion of the approach main you are being asked to consider is to upgrade this section of a 16-inch line in Brodie Lane to a 24-inch line, then to continue the upgraded 24-inch line from this point on to McCarty Lane to come west across McCarty with a 16-inch line to the point where McCarty intersects Convict Hill Road. At that point it downsizes to a 12-inch line to feed into the existing portions of the Village at Western Oaks.

"The items on the agenda is an approach main request by NPC for the Village at Western Oaks, Sections VII through XI. The staff is recommending the approach main be considered not only for these portions of the Village at Western Oaks but also for another portion of Western Oaks and the remaining portion, which would satisfy all the legal commitments the City has to water service for the Village at Western Oaks as specified that the City entered into with J. W. Smith in 1976. So we recommend all of these be considered at one time for the reason it would be foolish to do one and then come back later and do another.

"There are several issues that have been raised about cost participation ...whether or not the City is obligated to participate in the pumps based upon the original 1976 contract, whether or not the City is obligated to participate in the line sizing to serve Section VII because Section VII has been released for final based on previous discussion with Mr. Smith and what the City's

further obligations are on cost participation on the lines themselves. Based on the legal opinion concerning the contracts and the cost participation policy, we are recommending that City Council consider satisfying the legal commitments in these areas to Western Oaks, the Village at Western Oaks and based upon the legal opinion of the cost participation policies that there be no cost participation concerning the pumps and line size. However, since there are some questions about that we will be more than happy to work with the applicants and representatives to further refine that information and come back to Council at a later date."

MR. J. W. SMITH appeared before Council and stated, "I delivered a letter to each of you detailing my thoughts and I also asked that Grace Monroe include a copy of this letter and a copy of the letter from the law firm of Booth, Lloyd and Simmons in the Minutes of this meeting. All of you know I have discussed this matter individually with you over the past several years. ... This contract has been dragging since 1976. Mr. Trevino and some others were on the Council that voted for that termination agreement. I still don't have all the water. Don't even have a small portion of the water that I was promised, and I think the rules of the game have changed in the last year. I didn't know you could change the rules of legal commitments but it is being attempted. To put it short and factual, the City had an obligation to furnish me 1800 water taps. I gave up that right at the City's request based on the assurance I would receive all the water I needed to finish up my development in that area, and now the City is trying to tell me I have to do that at my expense.

"This is the first time I've ever heard of a subdivision that's been on the ground and existing having to come in for an approach main to haul water 2-1/2 miles to finish out the development of that subdivision, especially one of this size. They both are relatively small. I have 80 acres remaining to finish mine and the Village, which NPC owns has 200 acres. They are being required to front something like \$900,000.00 and that wasn't the deal. The deal with the City was we would have the water, the City would get it to us, we'd put the water lines in the ground to accommodate the water, you pay us the oversize for those lines to accommodate the water and they are just sitting there and don't have water in them because the City failed to live up to its agreement.

"If this Council would honor not only the moral but the legal obligation ...you have the time to take care of it. We are not in a pressing need for that water overnight. If it requires financial planning on your part, then you have the prerogative and we are happy to give you plenty of time to work that out.... I want a firm commitment from the Council that you are going to honor that legal commitment; otherwise, I think the letters from myself and my attorney are pretty well self-explanatory." (See Letters - Attachment A)

Councilmember Deuser said he thought they should find out what obligations the City has from a contract that was previously rescinded. Councilmember Duncan asked if enough of the 24-inch line can be approved to get construction going and wondered if later Mr. Smith's property was brought in, if we would be capable of serving it or if it would have to be upgraded. Mr.

ATTACHMENT "A"



5424 Hwy 290 West, Suite 108  
Austin, Texas 78735  
(512) 892-1612

September 10, 1981

The Honorable Carol McClellan, Mayor  
and Members of the City Council  
Austin, Texas

Re: Water Service in Western Oaks  
and The Village at Western Oaks  
Subdivisions and a 27-acre tract  
fronting Convict Hill Road

Dear Mayor and Council Members:

I would like to call your attention to a contract between the City of Austin and J. W. Smith dated August 23, 1976, which called for certain improvements to be made to the City's water system in return for the explicit right to 1800 permanent water taps. When the November 20, 1976 water bond package was passed by the voters of Austin, the City determined it was in their best interest to terminate the above contract. This was done by a termination agreement dated November 29, 1977, pursuant to an action by the City Council on November 19, 1977. I have attached copies of both of these agreements for your consideration. I believe present members who voted for approval of the termination agreement are Mayor McClellan, Mayor Pro-Tem Trevino, Council Member Mullen and Council Member Goodman. Council Member Duncan should be very familiar with this contract since he has made reference to it on several occasions publicly and was Council Member Hoffman's Aide at the time of both contracts.

You will note in Paragraph 4 that the city agrees to issue to J. W. Smith water taps that will be required for the development of all phases or sections of both J. W. Smith's Western Oaks Subdivision and the Village at Western Oaks Subdivision as the same now exists or may exist in the future. Had the City completed the proposed water lines in the area that were proposed by the Water Department in 1976, then there would presently be sufficient water to all of my properties, because there was more than adequate capacity in the Davis Lane Reservoir immediately after it was constructed. Mr. Bullock's contention that there is no longer capacity in the Davis Lane Reservoir to serve my 27 acres and the balance of Western Oaks would not hold water.

Western Oaks Subdivision was started during 1974 and there was no water approach main required because there was an 8" line contiguous to the subdivision. A wastewater approach main was required which we completed. To this date, I know of no subdivision which has ever been required to run a new approach main to serve the balance of its property after the first sections were already developed. The Village at Western Oaks Subdivision was started in 1977. Both of these subdivisions are in the Austin city limits; Western Oaks has been in the city limits since 1975. Western Oaks has a tax base in excess of \$20 million. The Village at Western Oaks has a tax base in excess of \$10 million, yet the City of Austin has spent almost nothing for improvements to properly serve these two subdivisions

September 10, 1981  
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ATTACHMENT "A"

with water. Had an approach main been required by the City of Austin to serve Western Oaks or the Village at Western Oaks, this would certainly have been completed during 1975, 1976, or 1977, or 1978, or 1979, when there was a provision for 100% refunds by the City of Austin on approach main completions. Now Mr. Bullock, since he has become Water and Wastewater Director, has decided that two existing subdivisions must spend \$1 million to serve themselves. If this is not discrimination in water services, I do not know what is.

I do not agree with the "slim" legal interpretation of Mr. de la Rosa which Mr. Bullock attempts to hang his hat on. I would recommend that you approve the approach main to the Village at Western Oaks, but with a specific stipulation that this main be sized to accommodate all remaining properties for proper land use of J. W. Smith's remaining properties, which would be for 324 units of multi-family on the 27-acre tract and approximately 650 units on the remaining 60 acres which would be the completion of Western Oaks. It should also be a proper size to accommodate the 120 acres owned by Mr. Gary Bradley and the 130-acre City park site.

Today you have the opportunity to honor the City's commitments to the residents of the Southwest "A" service area made during the attempt to pass the 1976 bond election and honor your legal commitments made in the contract with J. W. Smith and complete the water grid network in this immediate area which should have been completed in 1978. In an attempt to keep this letter from being too lengthy, there has been a lot of detail alleviated. This additional detail would support my contention the City has failed to honor its legal commitments and dispute Mr. Bullock's short and uninformed contentions that the City is not obligated to serve certain parts.

As an afterthought, I would like to call attention to Marsha Slaughter's memorandum to the Planning Commission of September 3, 1981, instructing them that their options for providing service to Western Oaks would be to provide service for 91 living unit equivalents on one tract and 52 living unit equivalents on another tract, which is a total of 143 living units. The existing disapproved final of Western Oaks Section 3A provides for a total of 182 living unit equivalents if built out as duplexes, which the existing zoning - put into effect since 1975 - allows. The remaining 60 acres to be developed as Western Oaks is zoned "A" and could have as many as 360 living unit equivalents if built out as duplexes which the zoning allows.

Since when has the Water and Wastewater Department gotten into the business of dictating land use as it appears they are trying to do in that proposal?

I have been delayed year in and year out since this agreement was consummated in 1976. I have suffered hundreds of thousands of dollars in damages as a result. Should you see fit to approve a water line to the Village at Western Oaks in sufficient capacity to serve the balance of my properties, which totals 87 acres, at no cost to me, so I may use the property as I've planned, then I will consider the matter closed. If it is not approved, I have retained counsel to protect my rights and recover my losses.

ATTACHMENT "A"  
BOOTH, FLOYD AND SIMMONS  
A PROFESSIONAL CORPORATION  
302 SAN JACINTO BUILDING  
8118 SAN JACINTO  
AUSTIN, TEXAS 78701  
512 478 9606

FRANK R. BOOTH  
ROBERT H. FLOYD  
LUTHER B. SIMMONS  
PAUL G. GOSSETTINK  
SKIP NEWSOM  
PATRICK W. LINDNER  
BRENT W. RYAN  
DOUGLAS G. CAROOM

September 10, 1981

Honorable Carole McClellan  
Mayor, City of Austin  
P.O. Box 1088  
Austin, Texas 78767

RE: J.W. Smith - Water Supply -  
Southwest A Service Area

Dear Mayor and Members of the Council:

This firm has been retained to represent J.W. Smith in a matter pending before the City Council pertaining to obtaining water service from the City of Austin in an area known as Western Oaks, the Village at Western Oaks, and a 27 acre tract fronting Convict Hill Road adjacent to Western Oaks. In an accompanying letter of this date, Mr. Smith has recited the facts. Therefore, further recitation of the facts is unnecessary.

We have reviewed the history of the dealings between the City and J.W. Smith, and have concluded that the City has an obligation to provide Mr. Smith with water service as requested. This is based on a written obligation of the City dated November 29, 1977, which has been loosely referred to as the termination agreement. If Mr. Smith does not receive water service to this tract, he has instructed us to file suit in Travis County District Court to compensate him for damages he has incurred as a result of the City's failure to perform.

I wish to make it clear that both Mr. Smith and this firm feel that failure by the City to comply with its obligation will result in significant additional liability by the City. We request that the City Council recognize its existing obligations and provide Western Oaks, the village at Western Oaks, and a 27 acre tract contiguous to Western Oaks with water service.

Very truly yours,

  
Robert H. Floyd

RHL/nlm

Bulloch said it could be approved because the section under construction is to Alexandria Drive and then the Council would have ample time to pursue the rest at a later date. Mr. Smith returned to say he has an emergency. He has a contract on a 27-acre tract that fronts Convict Hill Road, and it is contingent on the City committing water. The closing date is September 15. If it does not close, he said he will be damaged in the amount of \$408,000.00.

Mr. Bulloch stated, for the record, "The action that the staff has recommended that you take that is on the agenda satisfies the legal commitments of the City to all the property that was talked about in the 1975 contract. The other properties that Mr. Smith is discussing were not a part of the 1975 contract." Mr. Smith said that is a matter of disagreement between the Water and Wastewater Department and himself and his attorneys as to what properties are to be served under the contract.

#### Motion

Councilmember Duncan moved that the Council adopt a resolution approving a 24-inch main beginning at Davis and Brodie to Alexandria Drive, where the proposed 16-inch line starts. The motion was seconded by Councilmember Urdy.

DAVID ARMBRUST, representing the Village of Western Oaks, asked Council to adopt Councilmember Duncan's motion.

#### Roll Call on Motion

Ayes: Councilmembers Duncan, Mullen, Urdy, Mayor Pro Tem Trevino  
Noes: None  
Abstain: Councilmember Deuser  
Absent: Councilmember Goodman, Mayor McClellan

#### CURFEW AT FIESTA GARDENS

Mayor Pro Tem Trevino and Councilmember Mullen had introduced an item to Council on September 9, 1981 to discuss the directive to the Parks Director to extend the curfew at Fiesta Gardens until midnight for the dates of September 13-16, 1981 in honor of the 16th of September and discussion of other possible dates. Also before Council was a resolution concerning the curfew.

MARCUS DELEON appeared before Council and said the neighborhood feels if Council makes one exemption, they will also make others. He said the neighborhood wants some type of control, and the neighborhood should take precedence over business interest.

MR. GILBERT VELASQUEZ, chairman of September 16th celebration, said they have gone to 65 residents of the area concerning the fiesta and they have been in favor of the midnight extension of the curfew.

MARTINS MIGUEL said he does not want a racial issue but that this is a neighborhood issue. He said the mid-week festivities would effect the neighborhood and suggested the whole fiesta be moved somewhere else.

A man who did not identify himself addressed Council in Spanish.

Discussion followed.

(At this point, 4:20 p.m., Councilmember Goodman entered the Council Chamber)

#### Motion

Councilmember Duncan moved that the Council deny the extension of the curfew at Fiesta Gardens until midnight for the dates of September 13-16, 1981 in honor of the 16th of September. The motion, seconded by Councilmember Goodman, carried by the following vote:

Ayes: Councilmembers Goodman, Urdy, Deuser, Duncan  
Noes: Councilmember Mullen, Mayor Pro Tem Trevino  
Absent: Mayor McClellan

Mayor Pro Tem Trevino said the music can be moved inside at 10:00 p.m.

#### ANNEXATION POSTPONED

Council had before them for SECOND and THIRD readings an ordinance annexing the following:

IH-35 Southwest Corridor (512 acres) C7a-80-023.

No action was taken. Alternatives are to be studied.

#### ZONING HEARING

Mayor Pro Tem Trevino opened the public hearing on amendment to the restrictive covenant which has been recommended by the Planning Commission. Council heard and approved amendments.

RANDY MORINE  
By James Huffcut  
C14-79-215

4501 Spicewood  
Springs Road

Amendments to Restrictive  
Covenant

Mr. Lillie reviewed the application. No one appeared to be heard.

Councilmember Goodman moved that the Council approve the Amendments to the Restrictive Covenant. The motion, seconded by Councilmember Urdy, carried by the following vote:

Ayes: Mayor Pro Tem Trevino, Councilmembers Deuser, Duncan,  
Goodman, Mullen, Urdy  
Noes: None  
Absent: Mayor McClellan



**RENEWABLE ENERGY RESOURCES COMMISSION**

Mayor Pro Tem Trevino announced the Renewable Energy Resources Commission had requested to report on permitting tankless gas-fired "instant" water heaters in Austin, but this was going to be sent back to the Plumbing Board.

**BANNER APPROVED**

Councilmember Mullen moved that the Council approve the request of Mr. Matthew Coates, for permission to place a banner across Martin L. King, Jr., Boulevard at Brazos Street from September 21, 1981 through October 5, 1981. The motion, seconded by Councilmember Duncan, carried by the following vote:

Ayes: Mayor Pro Tem Trevino, Councilmembers Deuser, Duncan, Mullen, Urdy

Noes: None

Absent: Mayor McClellan

Not in Council Chamber when roll was called: Councilmember Goodman

**WATER AND WASTEWATER SERVICE IN GREAT HILLS**

MR. DAVID B. ARMBRUST appeared before Council to request consideration of a revision of the water and wastewater service area boundaries to include the Great Hills Subdivision. He said they are continuing development and are now outside of the service area and want to know where they stand.

**Motion**

Councilmember Mullen moved that the Council refer to the Planning Commission the request to consider a revision of the water and wastewater service area boundaries to include the Great Hills Subdivision. The motion, seconded by Councilmember Duncan, carried by the following vote:

Ayes: Councilmembers Duncan, Goodman, Mullen, Urdy, Mayor Pro Tem Trevino, Councilmember Deuser

Noes: None

Absent: Mayor McClellan

**CITIZEN DID NOT APPEAR**

Mr. Art Brown, University Hills Homeowners Association, had requested to address Council, but did not appear.

**REQUEST TO SELL BEER APPROVED**

Councilmember Mullen moved that the Council approve the request of MS. SUSAN BERLINER, executive director, Austin Community Nursery Schools, for permission to sell beer at Williams Field September 26, 1981, from 4:00 to 6:00 p.m. The motion, seconded by Mayor Pro Tem Trevino, carried by the following vote:

Ayes: Councilmember Deuser, Duncan, Goodman, Mullen, Urdy,  
Mayor Pro Tem Trevino  
Noes: None  
Absent: Mayor McClellan

**CITIZEN DID NOT APPEAR**

Ms. Pam Thompson, who had requested to present a bicycling petition to Council, did not appear.

**AMENDMENT OF UTILITY SERVICE  
REQUESTED**

Councilmember Mullen, moved that the Council refer to the Planning Commission Mr. John Meinrath's request for an amendment of the utility service area to include proposed Mission Bend subdivision (approximately 177.4 acres). The motion, seconded by Councilmember Duncan, carried by the following vote:

Ayes: Councilmembers Duncan, Goodman, Mullen, Urdy, Mayor  
Pro Tem Trevino, Councilmember Deuser  
Noes: None  
Absent: Mayor McClellan

**REVISION TO WATER AND WASTEWATER SERVICE REQUESTED**

MR. IRA YATES appeared before Council to request consideration of a revision of the water and wastewater service area boundaries to include the southern portion of the Williamson Creek watershed within Area IV as originally recommended by the Planning Commission.

**Motion**

Councilmember Mullen moved that the Council refer the request to the Planning Commission. The motion, seconded by Councilmember Duncan, carried by the following vote:

Ayes: Councilmembers Duncan, Goodman, Mullen, Urdy, Mayor  
Pro Tem Trevino, Councilmember Deuser  
Noes: None  
Absent: Mayor McClellan

## MINUTES APPROVED

Councilmember Mullen moved that the Council approve the Minutes for the Regular Meeting of August 20, 1981. The motion, seconded by Councilmember Goodman, carried by the following vote:

Ayes: Councilmembers Goodman, Mullen, Urdy, Mayor Pro Tem Trevino,  
Councilmember Deuser  
Noes: None  
Absent: Mayor McClellan  
Abstain: Councilmember Duncan

## ADJOURNMENT

Council adjourned its meeting at 4:45 p.m.

APPROVED:

  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk