

CITY OF MUSCATINE
REGULAR MONTHLY SESSION OF CITY COUNCIL
Council Chambers - February 18, 1988 - 7:30 p.m.

The meeting was called to order by Mayor Don LeMar.

Roll Call: Councilmembers York, Harder, Sayles, Phillips, Amerine, and Kemp present.

The opening prayer was given by City Attorney Harvey Allbee.

The Pledge of Allegiance was given.

PUBLIC HEARING

Mayor LeMar announced the public hearing was being held to receive public input on the 1988-93 Muscatine Transit Development Plan.

There were no oral comments for or against the Plan.

There were no written petitions for or against.

#10796. Councilmember Amerine moved to close the public hearing. Seconded by Councilmember Harder. All ayes; motion carried.

#10797. Councilmember Kemp moved to approve the Minutes of the February 4, 1988, Regular Council Meeting. Seconded by Councilmember Phillips. All ayes; motion carried.

#10798. Councilmember York moved to approve the Minutes of the February 11, 1988, In-Depth Meeting. Seconded by Councilmember Sayles. All ayes; motion carried.

#10799. Councilmember Amerine moved to approve the following liquor license renewals: 1) Class "E" Liquor License for The Vintage Choice, 1502 Park Avenue-John Muir; 2) Class "E" Liquor License for Sun Mart Store #308, 1413 Park Avenue - Nash Finch Company; 3) Class "E" Liquor License for Boomer's Beverage Company, 105 Ford Avenue - Liquor and Beverage Store Company, Inc., subject to final inspections; 4) Class "E" Beer and Sunday Sales Permit for Boomer's Beverage Company, 105 Ford Avenue - Liquor and Beverage Store Company, Inc., subject to final inspections; 5) Class "E" Beer and Sunday Sales Permit for Sun Mart #312, 807 Grandview Avenue - Nash Finch Company. Seconded by Councilmember Sayles. All ayes; motion carried.

#10800. Councilmember Kemp moved to approve the proclamation from the Mayor declaring February 21 - 27, 1988 as "City of Muscatine Engineer's Week. Seconded by Councilmember Amerine. All ayes; motion carried.

City Administrator Soren Wolff reported that a request for a new Class "B" Beer License and Sunday Sales Permit for Rudy's Tacos, 2220 Park Avenue - Linda Hopp, has been received.

#10801. Councilmember Amerine moved to table consideration of the request for a new Class "B" Beer License and Sunday Sales Permit for Rudy's Tacos, 2220 Park Avenue - Linda Hopp, until the next regular Council meeting. Seconded by Councilmember York. All ayes; motion carried.

#10802. Councilmember York moved to approve the ordinance on second reading to establish a new S-3 Mixed Use Development District. Seconded by Councilmember Sayles.

Councilmember Kemp stated that he liked the S-3 zoning, unlike other zoning, because it has provisions for preliminary site plan review and buffer zones. He noted his concern on how the new zoning would affect any future expansion of Colorado School particularly with the closing of Montpelier School.

City Administrator Wolff reported that the University of Iowa Foundation had received correspondence from the Superintendent of Schools who expressed the same concerns, but he was not aware of the response the Superintendent received from the Foundation.

Kevin Whittaker, Director of Planning and Community Development, stated that schools are permitted in any type of zoning district, so any future expansion of Colorado School would not be a problem.

Councilmember Kemp asked if it would be conducive to good planning to continue to have a C-1 zoning district located next to a school.

Kevin Whittaker, Director of Planning and Community Development, stated that Colorado School has co-existed with the commercial zoning around them for many years, and was not aware of any problems.

Councilmember Kemp asked if a buffer zone would be provided in the event the school expands.

Mr. Whittaker stated that there would be a site plan review to ensure an adequate buffer zone.

Councilmember Kemp stated that the site plan review goes before Planning and Zoning and asked if the site plan review would be brought before the Council.

Kevin Whittaker, Director of Planning and Community Development, stated that the site plan review would not go before the Planning and Zoning Commission or the Council. He indicated that normally, site plan reviews do not go before Planning and Zoning, but it was felt that in the S-3 District there should be a public review and Planning and Zoning reserved the responsibility for the review process. He noted that if a proposal is presented, Planning and Zoning will meet on demand within a ten (10) day period to review it.

City Administrator Soren Wolff clarified the fact that if the school were to expand, it would be expanding into a C-1 District, not S-3 and stated that the site plan review for all other zoning is normally done by three members of the staff, and if there is not unanimous staff approval, the site plan is

reviewed by the Planning and Zoning Commission. He noted that only the S-3 zoning provides for site plan review by the Planning and Zoning Commission.

Councilmember Kemp asked the reason for changing the zoning before an actual development for the property was planned.

Kevin Whittaker, Director of Planning and Community Development, stated from the standpoint of economic development, the City has a responsibility to foster those conditions which will allow for the expansion of our economic base, and to do that on a competitive basis with other communities in this region, it would be to the City's advantage to have the zoning in place. He noted that if a developer comes to a community and has been looking at four or five other sites, and if one community does not have the zoning in place, it makes it very easy for the developer to cross that community off and go to one that has the zoning in place, because it is one less hurdle from their standpoint. He indicated that from that standpoint, it is a positive step for Muscatine to have a district like the S-3 which is quite flexible because it allows for residential, commercial and industrial uses.

Councilmember Kemp asked if there would be any problem for Muscatine Community College if they wanted to build dorms on the property if the zoning was not changed.

Mr. Whittaker stated that the current zoning in that area is R-L large-scale residential, so there would be no problem if Muscatine Community College decided to build dorms, but there would be a problem if they wanted to build an office on that property next to the dorms under the current zoning.

Randy Besick, R R #1, Box 14E, stated that he lives near the property proposed for rezoning and noted that his first reaction to the proposal was with dismay, but stated he felt that there would be a remote chance for problems in the S-3 zoning. He indicated, however, that he felt the rezoning was being done too hastily. He noted that the property had not been on the market until now. Mr. Besick drew the Council's attention to the undeveloped areas on the south and west sides of the City, and stated that he felt those areas would be better suited for industrial development while the northern area of the City should be left for residential and commercial development. He asked the Council to consider whether the Foundation property was the best suited area as a test site for the new zoning, whether the betterment of the City or the convenience of Mr. Halpin was the reason for the rezoning and if the verbage in the S-3 Ordinance is clear enough to follow the intent of the zoning.

Vote - All ayes: Councilmember York, Harder, Sayles, Phillips, Amerine and Kemp. Motion carried and Ordinance approved on second reading.

#10803. Councilmember Sayles moved to approve the Ordinance on second reading to rezone approximately 238 acres owned by the University of Iowa Foundation from various residential categories to the new S-3 District. Seconded by Councilmember York.

Councilmember Harder stated that he supported an S-3 District on the books and possibly someday in the area being considered, but was not clear that the University of Iowa property should be zoned S-3 at this time and not sure he could support the rezoning for this property.

Councilmember York reported that he had received one letter supporting the rezoning, but had not heard from anyone else.

Vote - Three ayes: Councilmembers Sayles, York and Amerine. Three nays: Councilmembers Harder, Phillips and Kemp. Ordinance failed due to a tie vote.

#10804. Councilmember Amerine moved to approve the Ordinance on second reading to amend the Flood Plain Zoning District in accordance with the requirements of the Federal Emergency Management Agency. Seconded by Councilmember Sayles. All ayes: Councilmembers York, Harder, Sayles, Phillips, Amerine and Kemp. Motion carried and Ordinance approved on second reading.

#10805. Councilmember Phillips moved to adopt the Resolution approving the 1988-93 Muscatine Transit Development Plan. Seconded by Councilmember Kemp. All ayes: Councilmembers York, Harder, Sayles, Phillips, Amerine and Kemp. Motion carried and Resolution duly adopted.

Steve Boka, Building and Zoning Administrator, reported that he has not had any contact from anyone involved with the property at 509 West 5th Street.

Esperanza Martinez Brockert, 910 Nebraska, stated that she has requested two estimates on the repair of the house, but the person who would do the repairs had not contacted her. She also stated that she was to have received a phone call from the loan company, but they had not called her.

Councilmember Kemp stated that he had talked to some of the neighbors who thought the garbage around the residence was supposed to have been taken care of.

Ms. Brockert stated that her sister had gone over to the house to clean up the garbage, but one of the neighbors told her that she was not supposed to be there and if she didn't leave, they would call the police department.

Councilmember Amerine asked Ms. Brockert if she honestly felt she could get enough money to fix the house and the name of the repairman she was planning to hire.

Ms. Brockert stated that his name was Ray Davis.

Councilmember Kemp stated that there are major structural problems with the house.

Councilmember Harder asked if Mr. Davis had worked on the house before.

Ms. Brockert stated that Mr. Davis had not, but one of his workers had.

Councilmember Harder reported that he had looked at the residence last week, and stated he felt the house cannot be saved and it would be cheaper to tear it down and build a new house.

Councilmember Kemp asked Building and Zoning Administrator Boka if the house had been reinspected since the original inspection.

Steve Boka, Building and Zoning Administrator, stated that the residence has had several inspections and has never passed City Code. He noted that his department has tried to work with the owners.

Councilmember York asked if there was still personal property in the house.

Steve Boka, Building and Zoning Administrator, stated that the signs on the doors do not prevent someone from removing personal property or cleaning up the garbage. He indicated that the intent is to prevent anyone from residing at unsafe property. He noted that if there was a problem with neighbors, his staff would be willing to talk to them so that there would be no problem with removing personal property or cleaning up the garbage.

City Attorney Harvey Allbee stated that he felt that the Council had given the residents adequate opportunity to rectify the situation at the residence.

City Administrator Wolff stated that if the Council wanted to take action at this meeting, they could put a thirty (30) day limitation on the demolition, since the legal procedures and the bidding process for the demolition would take approximately that length of time to complete.

#10806. Councilmember Harder moved to adopt the Resolution authorizing the building official to proceed with the demolition of 509 West Fifth Street in an amount not to exceed \$3,500; however, such demolition shall not be conducted until at least thirty (30) days after approval of this Resolution. Seconded by Councilmember York. All ayes: Councilmembers York, Harder, Sayles, Phillips, Amerine and Kemp. Motion carried and Resolution duly adopted.

#10807. Councilmember Amerine moved to approve the Offer to Accept the Real Estate donation from Mr. George Spanier at 804 East 6th Street. Seconded by Councilmember York. All ayes; motion carried.

#10808. Councilmember Amerine moved to adopt the Resolution authorizing the building official to proceed with the demolition of the property at 804 East Sixth Street in an amount not to exceed \$3,500. Seconded by Councilmember Kemp. All ayes: Councilmembers York, Harder, Sayles, Phillips, Amerine and Kemp. Motion carried and Resolution duly adopted.

#10809. Councilmember Amerine moved to recommend the following equipment at the Water Pollution Control Plant be declared as surplus property: 1) Eight (8) 1/3 hp to 1/2 hp mixers; 2) Two (2) large capacity 9 cubic yard manure spreaders; and 3) One (1) 1981 GMC tandem axel dump truck. Seconded by Councilmember Sayles.

City Administrator Wolff reported that Muscatine Power and Water has been using the GMC tandem axel dump truck and is interested in purchasing it. He noted that they would be given the first opportunity to purchase the truck before it is put up for sale.

Vote - all ayes; motion carried.

#10810. Councilmember Amerine moved to award the low bid for the pump equipment at the Isett Avenue Lift Station to Zimmer and Francescon in the amount of \$18,119. Seconded by Councilmember Phillips. All ayes; motion carried.

#10811. Councilmember Amerine moved to approve the purchase of an additional hose cart for the Waste Water Treatment Sludge Disposal Program from Liquid Waste Technology in the amount of \$4,550. Seconded by Councilmember Kemp. All ayes; motion carried.

#10812. Councilmember Phillips moved to approve the Civil Service Certification List for Maintenance Worker I. Seconded by Councilmember York. All ayes; motion carried.

#10813. Councilmember Sayles moved to receive and file Communication Items A through I. Seconded by Councilmember York. All ayes; motion carried.

#10814. Councilmember Kemp moved to approve bills totalling \$429,031.12 and authorize the Mayor and City Clerk to issue warrants for the same. Seconded by Councilmember Amerine. All ayes; motion carried.

#10815. Councilmember York moved to approve the Ordinance amendment on second reading changing the appointment procedures of the Police and Fire Chiefs to state: "Appointment and removal by the Mayor subject to City Council approval." Seconded by Councilmember Harder.

#10816. Councilmember Sayles moved to amend the motion to read that Section 1 of the Ordinance to delete from line six and seven of the first paragraph of the proposed Section 1-9-2 of the City Code the words "Mayor subject to the approval of", so that the Ordinance would provide that the appointment and removal of the Fire Chief and Police Chief shall be by the City Council. Seconded by Councilmember Harder.

Marcus Montagna, 2914 Broadlawn, asked why Councilmember Harder didn't call a meeting with residents in the First ward to discuss the ordinance and why the Council didn't change the ordinance in 1986.

Councilmember Harder stated that he felt that proper notice was given and even though it was the Mayor's prerogative to hire and fire the police and fire chiefs, the Council should be involved, and that this issue would be controversial no matter when it was brought up.

Mr. Montagna stated that he felt the Council had enough to do without running the Police Department, and that a meeting should have been called.

Councilmember Harder stated that the Council has the responsibility for the City's budget and 50% of the budget is committed to the Police and Fire Departments, so the Council should have some say in who heads those departments. He noted that it is hard to make any long-term goals when the heads of those departments could change every two years at the whim of one person. He indicated that he felt the change would be the removal of the last weak link in the system.

Mr. Montagna stated that he felt this issue was a vendetta against the Mayor, and asked if the Las Vegas trip for former Mayor Waltman was necessary.

Councilmember Harder stated that he had tried to eliminate almost the entire City Council travel budget last year during the budget session, so he was not the right person to ask.

Councilmember Amerine stated that the plans for the Las Vegas trip were made in May of 1987, and former Mayor Waltman served on a national committee.

Mr. Montagna noted that former Chief Tesmond received insurance, sick leave, vacation and severance pay. He asked if Mayor LeMar had received severance pay when he was terminated from the City.

Councilmember York stated that Mayor LeMar received 90 days notice that his position was to be eliminated.

Mayor LeMar stated that Mr. Montagna didn't ask about notice, he asked about severance pay.

Councilmember Sayles asked the Mayor if he had given Mr. Tesmond 90 days notice.

Mayor LeMar replied that he had given the former Chief 30 days notice, but the Chief wouldn't accept it.

Mr. Montagna stated that in most small towns, the Mayor appointed the Police Chief and if the Chief was doing his job he wouldn't be replaced by the new Mayor. He noted that they had had that system for years and the former Chief would normally go back into the ranks of the Police Department.

Councilmember Kemp stated that the two departments make up half of the City's budget and the responsibility has been given to the Council for that budget. He recalled that when the Chief of Police was rotated from the ranks in the past, there were problems and a lack of discipline, but the rotation worked at that time because there were a few select people rotated into the Chief's position. He noted that people coming in from outside the community changed the system. He also stated that he did not personally have a vendetta against the Mayor and that he does talk to the Mayor.

Robert Whitlock, 5212 67th Avenue West, stated that the seven Councilmembers and the Mayor are elected by the people, and that was too bad that the Council cannot represent the people the way they want to be represented. He complimented Mayor LeMar on his outstanding start and stated that when the Council spoke, their lips moved, but he could only hear the voice of the City Administrator.

Cal Purdy, 920 Webster Street, stated that he admonished the Council two weeks ago to tread softly in this matter, and that one of the Councilmembers could be the Mayor someday and would be giving away his power. He indicated that it takes a leader to bring out good morale, and that the morale in the Police Department was not good nor was it running efficiently. He noted that the City Administrator hires and fires everyone else, so what is the difference if the Mayor appoints or the City Administrator appoints the Police and Fire Chiefs, because their job is only secure as long as the City Administrator is here and the City Administrator is only here until he finds a better position elsewhere. He stated that all City employees should live within close proximity of the City of Muscatine, and that department heads

should live within the City limits, because they couldn't have the best interests of the City at heart if they do not live in the City. He also wondered how long it takes for a Police or Fire Chief who is shipped in and is a stranger to the City, to put their hearts into the City's best interests.

Jim Meltzer, 921 West Third Street, stated that it is the Council's responsibility to stand behind the Mayor and if the Council supports the amendment, they are not cooperating. He stated he felt that the citizens of Muscatine are behind the Mayor, and he would not have been elected if the citizens didn't feel he was the right person for the job. He noted that the Council should give the Mayor a chance and work with him instead of against.

Paul Brewer, 1420 Howard Avenue, asked the Council to look at their motives regarding why they wanted to change the ordinance. He then related to the 1300 signatures on the petition opposing the change, and asked the Councilmembers to ask themselves why they are doing this.

Robert Weatherman, 408 Chestnut, stated that he felt the 1300 signatures on the petition speak and that the public is watching how the Councilmembers vote on this issue, so their next term for election is in the balance.

Mayor LeMar stated he felt that a division of power was established when the City was chartered to give the public more direct control over the Police and Fire Departments, because if the citizens were not satisfied, they could remove the Mayor in two years, while it would take two trips to the polls over a four year period to replace the Council. He stated he felt this issue had a direct impact on the public and suggested that the question be put before the voters in the next general election.

Councilmember York read a letter supporting the change and stated that it was only one of approximately ten or twelve letters favoring the change. He noted that he had received a few letters against the change.

Councilmember Kemp stated that he had received many calls pro and con and had taken the time to discuss the issue with each of the callers. He noted that the persons present disagreed and he respected their opinion and hoped that they respected his. He noted that he had heard other viewpoints and he also listened to them.

Marcus Montagna, 2914 Broadlawn, stated he felt that he couldn't give the Council his opinion while sitting at home or calling Councilmember Harder, and that Council meetings are the place to bring gripes.

Robert Whitlock, 5212 67th Avenue West, stated that he is not happy with the Council, so he is planning on being involved in the future. He noted that not all of the signatures on the petition opposing the change were from the City, but that those residents come into the City, so they are affected by the issue.

Cal Purdy, 920 Webster, noted that the Council will be criticized regardless of the decision on this issue and asked that the issue be put on the ballot for the public to decide.

Vote - Amendment to Ordinance - Five Ayes: Councilmembers York, Harder, Sayles, Phillips and Amerine. One Nay: Councilmember Kemp. Motion carried and Amendment to the Ordinance approved.

Vote - Ordinance on Second Reading as Amended - Five Ayes: Councilmembers York, Harder, Sayles, Phillips and Amerine. One Nay: Councilmember Kemp. Motion carried and Ordinance as amended approved on second reading.

#10818. Councilmember York moved to adopt a Resolution stating "Be It Resolved, to give former Chief Tesmond an unqualified vote of confidence for his service. Based on information presented to date, including that presented at the hearing on February 16, 1988, we feel there is no basis for his dismissal as Chief of Police." Seconded by Councilmember Sayles. Five ayes: Councilmembers York, Harder, Sayles, Phillips, and Amerine. One Nay: Councilmember Kemp. Motion carried and Resolution duly adopted.


#10819. Councilmember York moved to adopt a Resolution stating "Be It Resolved that the City Council of Muscatine, Iowa, in the future, shall be permitted to reinstate Jerry M. Tesmond as Chief of Police if they so desire." Seconded by Councilmember Phillips.

Mayor LeMar stated that he was made aware of a problem in the Police Department and according to State law, it is the Mayor's duty to hire or fire the Police Chief. He indicated that he did not know that his decision needed to be discussed with the Council. He noted that he was a personal friend of former Chief Glen Axel, and when he was removed, there was no problem. He also noted that when former Mayors Ron Hansen, Evelyn Schauland and Donald Platt removed and appointed Chiefs of Police from office with no apparent reason which was made public, there was no problem. He stated that he has been working with the voters and past chiefs and listening to people, and had proof that former Chief Tesmond was not a leader and did not instill confidence in the Department. He noted that the Police Department needed someone to lead and instill confidence in the Department.

Vote - Five ayes: Councilmembers York, Harder, Sayles, Phillips and Amerine. One Nay: Councilmember Kemp. Motion carried and Resolution duly adopted.

#10820. Councilmember Kemp moved to adjourn the meeting. Seconded by Councilmember Amerine. All ayes; motion carried.

Meeting adjourned at 9:17 p.m.



Don LeMar, Mayor

ATTEST:



Soren Wolff, City Clerk