

CITY OF MUSCATINE
SPECIAL CITY COUNCIL MEETING
MINUTES

JUNE 16, 1987

4:30 P.M.

- PRESENT: Mayor Waltman, Councilmembers York, Harder, Phillips, Amerine, Powell and Kemp
- ABSENT: Councilmember Sayles
- ALSO PRESENT: Soren Wolff, City Administrator; Harvey Allbee, Jr., City Attorney; Don LeMar, Streets and Grounds Director and John Stevens, Attorney

Mayor Waltman indicated this was the time set for the public hearing requested by Don LeMar on the elimination of the position of Streets and Grounds Director in the 1987-88 City Budget. It was noted Section 372.15 of the Code of Iowa provides as follows, "except as otherwise provided by State or City law all persons appointed to City office may be removed by the officer or body making the appointment but every such removal shall be by written order and the order shall give the reason and be filed in the Office of the City Clerk and a copy shall be sent by certified mail to the person removed, who upon request, may file with the Clerk within 30 days of the date on the mailing shall be granted a public hearing before the Council on all issues connected with the removal."

It was noted the City Administrator had notified Mr. LeMar by certified mail that his last day would be Friday, July 3, 1987 as a result of the elimination of the position in the 1987-88 City Budget. It was further indicated that on May 26, 1987 the City Administrator had received a letter from Mr. LeMar requesting the public hearing before the City Council.

The Mayor indicated the issue before the City Council was the elimination of the position of Streets and Grounds Director and this was the time for Mr. LeMar or his representative to address the City Council.

Mr. John Stevens, Attorney, representing Don LeMar, addressed the City Council and indicated Mr. LeMar had been employed by the City for over 19 years and had performed his job diligently and well over those years. He further noted there are two procedures recognized in the Code of Iowa for removal of City employees. He indicated the first was under Section 372.15 which had been used by the City Administrator in notifying Mr. LeMar of his termination. Mr. Stevens noted the second procedure is under Chapter 400 of the code of Iowa which involves the Civil Service Code. Mr. Stevens then reviewed the provisions of Chapter 400 and noted that all appointed permanent full time employees in cities having a population of over 15,000 people with certain exceptions are covered by the Code. The exceptions included "Heads of Departments and the Principle Assistants of each Department and the Head of each Division." Based on Section 372.15 of the Code, it was Mr. Stevens opinion that Mr. LeMar was covered by Civil Service and should have been notified of his termination under those procedures. Mr. Stevens further noted that Mr. LeMar has been appointed by the City Council and therefore can only be removed by the City Council if Section 372.15 of the Code is utilized for the elimination of the position.

Mr. Stevens further indicated that the letter discharging Mr. LeMar did not claim neglect of duty, does not claim disobedience, does not claim misconduct, nor failure to properly perform his duties.

Mr. Stevens further indicated that the City Code and Personnel Regulations require that a position can only be eliminated by resolution of Council and that Mr. LeMar is covered by Civil Service. It was Mr. Stevens position that there had been no resolution by the Council eliminating the position and the City's Personnel Regulations states "all permanent full time employees are covered by Civil Service with the exception of Department Heads, Library Employees, Secretaries, unskilled positions and part time employees". Therefore, Mr. Stevens indicated that Section 400.28 of the Civil Service Code would dictate procedures for eliminating employees. He further indicated that Mr. LeMar is not an elected official, he is not a head of a department nor the assistant head of the department. He concluded that the City Council has no jurisdiction and the entire matter must be submitted to the Civil Service Commission.

Mr. Art Howe, 16 Colony Drive, then addressed the City Council and indicated he had served on the City Council when Mr. LeMar was hired by the City Council. Mr. Howe indicated that he felt Mr. LeMar had done a good job while he was on the City Council and did not feel Mr. LeMar should be dismissed from City employment.

Joan Hilton Baker, 2103 Hershey Avenue, former Councilmember, then addressed the City Council and read a letter which was provided to the City Council outlining her support for Mr. LeMar and that he should not be terminated from employment with the City.

Mr. Cal Purdy, 921 Webster Street, indicated he had known Mr. LeMar since he came to Muscatine 19 years ago and indicated he felt the City would be losing an employee with experience and expertise and an asset to the City.

The Mayor then requested the City Administrator to respond. The City Administrator indicated that the Civil Service law had been amended which became effective July 1, 1986. Under those changes he did not believe Mr. LeMar was covered under Civil Service. It was noted as a result of the changes in the State Law the Civil Service Commission had reviewed all City positions and designated those which were covered and not covered by Civil Service in accordance with the legislation. It was noted the City Administrator does not make the decision as to who is and who is not Civil Service as that is done by the Civil Service Commission.

Harvey Allbee, Jr., City Attorney, then indicated that Mr. Stevens had quoted the proper section of the Civil Service Code as far as exceptions and covered covered under Civil Service and that "the Head and the Principle Assistant of each Department and the Head of each Division are not included in the Civil Service Statute". The City Attorney further indicated it was his opinion, based on the statute, that Mr. LeMar fits the exception and is not covered by Civil Service. He further indicated there was no question that Mr. LeMar had initially been appointed by the City Council, but since that time the City has established the position of City Administrator who now has the appointment and removal authority as outlined in the City Code.

The City Administrator indicated that the hearing on the dismissal of Mr. LeMar is not an issue of satisfactory or unsatisfactory performance but a result of directions given by the City Council to present a budget within the guidelines established during the planning and goals and objectives sessions for the 1987-88 Budget Process. It was noted that five additional positions were eliminated in Fiscal Year 1988 making it a total of 30 positions eliminated in the last seven years. It was further noted the City Budget is approved by resolution of the City Council and the adoption of that budget includes additions and/or deletion of positions for the Fiscal Year.

Mr. Stevens again replied that in his opinion there were no documentations to support the elimination of this position and indicated he had received no copies of such documentation. Mr. Stevens again indicated that Mr. LeMar is not exempt from Civil Service and the job elimination should come through the Civil Service Code Section 400.28.

The Mayor then asked if there were any Councilmembers who had questions concerning the issue of eliminating the position of Streets and Grounds Director.

Councilmember Kemp questioned the City Attorney as to his position on the designation of Civil Service or non-Civil Service. The City Attorney replied he was confident that his opinion was correct that the Streets and Grounds Director is not covered under Civil Service. Mr. Allbee further indicated that to resolve this issue, Mr. Stevens could submit an appeal to the Civil Service Commission and then could further appeal the decision of the Commission to the District Court for interpretation. Mr. Kemp felt the issue of Civil Service status should be resolved before any further action.

Councilmember Kemp raised questions about eliminating the position of Streets and Grounds Director as part of the Public Works reorganization and indicated it was his recollection there had been no time period set in the budget for the elimination of the position. Mr. Kemp also raised the question concerning the possibility of providing an early retirement or lateral movement for Mr. LeMar.

Councilmember Harder questioned whether any action was necessary. The City Attorney indicated non was required unless the City Council was going to change or amend the previously adopted budget.

Councilmember Harder indicated he did not want to see the issue come before Council and then no action taken. He felt Council should confirm their previous decision.

#10414. On motion by Councilmember Harder, it was moved to affirm the previous decision of the City Council concerning the elimination of the position of Streets and Grounds Director by the City Administrator and the City Council. The motion was seconded by Councilmember Phillips.


Councilmember York indicated the position of Streets and Grounds Director was excessive supervision but hoped there was someplace Mr. LeMar could fit into the organization. He noted it would be up to the City Administrator to make the personnel changes as a result of the budget approvals by the City Council.

Councilmember Powell indicated the elimination of the position was done as part of the budget process and this was a matter of economics but indicated this was a difficult situation because of the personality involved.

The City Administrator indicated there are no lateral positions or other supervisory positions vacant which Mr. LeMar can be placed in without causing a domino effect. He further pointed out that Council had directed him to draft an early retirement program a week ago and he was in the process of preparing that information for the City Council. It was emphasized that an early retirement program should be used on a City wide basis and not for a particular individual.

The Mayor then called for the question and Councilmember York requested it be a roll call vote. Voting Yes - Phillips, Harder, Powell and York. Voting No - Amerine and Kemp.

#10415. On motion Kemp, seconded by Councilmember York, it was moved to adjourn the meeting. The motion was approved unanimously.


Richard Waltman, Mayor


Soren Wolff, City Clerk

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PUBLIC HEARING ON
TERMINATION OF
STREETS AND GROUNDS DIRECTOR POSITION

June 16, 1987

4:30 p.m.

PRESENT: Mayor Waltman, Councilmembers Amerine, Powell, Kemp, York, Harder and Phillips

ABSENT: Councilmember Sayles

ALSO PRESENT: Soren Wolff, City Administrator and Harvey Allbee, Jr. City Attorney

Mayor Waltman called the hearing to order, read the proposed procedure and recognized John Stevens, attorney for Donald LeMar to proceed with his presentation.

Mr. Stevens presented his oral statement outlining his position that Mr. LeMar has been a very good employee for over 19 years, the procedures that must be followed and stated that it is the Civil Service Commission that must determine this entire matter.

Mr. Stevens then presented Arthur Howe, Joan Hilton Baker and Cal Purdy, all of whom made a statement in support of Mr. LeMar.

Mayor Waltman then recognized the City Administrator to make his reply.

Soren Wolff, City Administrator stated that it was his understanding that Mr. LeMar was not covered by Civil Service, that although Mr. LeMar was appointed by the City Council, thereafter the position of City Administrator was established and it is the City Administrator who is charged with this responsibility.

The City Administrator further explained the budget process and the steps taken in connection with the elimination of Mr. LeMar's position.

Mayor Waltman then recognized Mr. Stevens for a rebuttal.

Mr. Stevens re-stated his position that Mr. LeMar is a civil service employee.

Mayor Waltman then stated the presentations and the replies and rebuttal have been completed, now the chair recognizes any member of the City Council for discussion or action, if any to be taken. The issue before the Council is the elimination of the position of Streets and Grounds Director and therefore any action to be taken would be a motion to reinstate the position of Streets and

Grounds Director beginning with the 1987-88 Fiscal Year and to direct the City Administrator to recommend other arrangements to accommodate the reduction in the budget by the elimination of this position. The Chair will recognize any Councilmember if they care to make any comments here.

Larry Kemp, Councilmember raised the question on the civil service jurisdiction.

Harvey G. Allbee, Jr., City Attorney, responded if Mr. Stevens is of the opinion that this comes within the Civil Service then the appropriate appeal should be filed with the Civil Service Commission and then the Civil Service Commission can address that issue and then depending upon how that is resolved then it can be appealed to the District Court for interpretation.

Mr. Kemp further commented in support of possible lateral movement for Mr. LeMar or early retirement benefits or some other position in the City organization.

Councilmember Jim Harder moved to affirm the previous decision concerning the position of Streets and Grounds Director by the City Administrator and the City Council.

Clair York, Councilmember stated that he hated to see a loyal employee of 19 years eliminated and would hope that there is someplace he could fit in the organization. But the Council should not be involved in moving personnel around.

Jeanette Phillips - I second it.

Gerald Powell, Councilmember spoke in support of the decision to eliminate the position and expressed hope that a lateral position or one or two steps down could be made for Mr. LeMar.

Soren Wolff, City Administrator responded there are no lateral positions, movements, there are no supervisory positions that are vacant at this point and if you want to start a domino effect and that is exactly what would happen. Then you are dealing with several employees instead of one.

Larry Kemp again raised the possibility of an early retirement program.

Soren Wolff, City Administrator replied that the Council had asked that an early retirement program be put together and that it should be City wide to deal with similar situations in the future.

A roll call vote was requested by Councilmember York.

Mayor Waltman stated it has been moved by Harder, to affirm the previous decision concerning the Streets and Grounds Director Position made by the City Administrator and City Council. Seconded by Phillips. Roll call vote:

Phillips - aye; Amerine - no; Harder - yes; Powell - aye; Kemp - no; York - aye (the elimination of the position and not Mr. LeMar)

Motion is approved four to two.

Councilmember Powell stated he would like to see the Civil Service question answered by experts, notwithstanding, we have two reputable Attorneys aboard,

but I would like to have the City Civil Service question answered.

Wolff - That issue has also been discussed not specifically concerning Streets and Grounds Director but it was discussed very extensively with the changes in the legislation with our Labor Attorney, Mr. Bill Sueppel, who is also the attorney to the Iowa Municipal League and I think he is very much the same opinion that the City Attorney is. Again, I don't think his opinion is going to mean anything as far as the City is concerned, I think the avenues have been laid out for that appeal process, that can be taken.

Kemp - I think that is an alternative of Don and his attorney to appeal it through that process and I think also the Council should be acting hopefully, very quickly on that early retirement which would be offered to all people. I don't know what Don's feelings are at this time, if that is an alternative or is there someplace within the organization whether it be supervisory or non-supervisory that he would fit into.

Councilmember Amerine moved we adjourn the hearing. Seconded by York. Motion carried.

Richard Waltman, Mayor

Soren Wolff, City Clerk