



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
Fax: (414) 479-8989

COMMON COUNCIL
Regular Meeting, Tuesday, April 19, 2005

PRESENT: Alds. Sullivan, Treis, Bruderle -Baran, Becker, Birschel, Casey, Grimm, Herzog, Jenkins, Kopischke, Krill, Krol, Maher, Purins - 14

EXCUSED: Alds. Stepaniak and Subotich

ALSO PRESENT: Mr. Wontorek, City Administrator; Mr. Braier, Finance Director; Mr. Kesner; City Attorney; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Director; Police Chief Weber; Dr. Kreuser, Health Officer; Ms. Aldana, Asst. City Attorney/Personnel Admin.; Ms. Jacobsen, Admin. Asst.; Ms. Ledesma, City Clerk; Ms. Williams, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:30 p.m.

City Clerk Carla Ledesma swore in R. Jeffrey Krill as Third District Alderman.

It was moved by Ald. Grimm, seconded by Ald. Kopischke that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. - 14

PUBLIC HEARING

The first item of business was a public hearing to consider the two following issues:

RESOLUTION

WHEREAS, Craig Dillman, Milwaukee County, has petitioned the City of Wauwatosa requesting that the City vacate the entirety of that right-of-way in the 8400 block of Gridley Avenue within the City limits of Wauwatosa; and

WHEREAS, the owners of the properties abutting this public way have been notified;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa hereby abandons and vacates that street right of way of a portion of the 8400 block of Gridley Avenue in the City of Wauwatosa in accordance with Sec. 66.1003 of the Wisconsin Statutes;

ORDINANCE

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF WAUWATOSA BY REZONING 8410 AND 8420 GRIDLEY AVENUE FROM AA SINGLE FAMILY RESIDENCE DISTRICT TO MEDICAL CENTER AND INSTITUTIONS DISTRICT

The Common Council of the City of Wauwatosa do ordain as follows:

Part I. The Official Zoning Map of the City of Wauwatosa is hereby amended to reflect the following change:

Certified Survey Map 4552, a division of lands in the northwest ¼ of Section 28, in Township 7 North, Range 21 East, City of Wauwatosa, County of Milwaukee, State of Wisconsin, is rezoned from AA Single Family Residence District to Medical Center and Institutions District

Part II. The City Administrator is hereby directed to change the Official Zoning Map of the City of Wauwatosa to conform to the provisions of the Ordinance, and said Map is declared amended accordingly.

Part III. This ordinance shall take effect on and after its date of publication.

Proof of publication is in the file.

TO THE COMMON COUNCIL, CITY OF WAUWATOSA, WI,

The City Plan Commission, to whom was referred the request by Milwaukee County to vacate a portion of the 8400 block of Gridley Avenue, and to change the zoning from AA Single Family Residence District to Medical Center and Institutions District at 8410 and 8420 Gridley Avenue, recommends to the Common Council that both requests be approved.

Dated this ninth day of February 2005.

Nancy L. Welch, Secretary
City Plan Commission

Ms. Welch introduced the two proposals. Three homes at the west end of Gridley Avenue had originally been constructed by the Milwaukee County Medical Complex to house bone marrow program participants and have been used for other institutional uses as well. The properties have been part of the county grounds as long as the city has been in existence. The applicant wishes to rezone two of the parcels, raze these homes, and vacate that portion of the street that would no longer be needed to serve those properties. A new turn-around will be constructed at the west end of Gridley Avenue.

Two of these parcels are zoned AA Single Family Residence District. (They had been rezoned to AA Single Family Residence District from Medical Center and Institutions District in the 1980's with the thought that they might be sold.) The request is being made to return the parcels to their original zoning.

The Chair inquired whether anyone of the public present wished to be heard in favor of the proposed ordinance.

Thomas Brophy, Director of Community Relations at the Medical College of Wisconsin, and Kathryn Kuhn, Director of Government Relations, were present. Mr. Brophy stated that the Medical College has tried to create a campus environment while being respectful of adjacent residential neighborhoods. Many meetings have been held with area residents since the beginning of the year.

Ms. Kuhn distributed a document detailing the reasons for the requested actions, efforts made by the College to address neighbors' concerns, plans for the subject properties should the rezoning and vacation be approved, and maps showing current and proposed uses for the land in question.

In November 2004 the Medical College secured a lease with Milwaukee County for 15.2 acres of land directly east of the College. Much of this land had been used by the College since the 1970's for parking. Included in the lease are the three houses at the west end of Gridley Avenue. All had once been zoned institutional. As explained previously, two were rezoned to residential zoning in the 1980's with the thought of selling them. This did not occur and the homes were used for years by patients seeking long term health care from the College. Since new housing options for patients have developed, these houses are no longer needed; they will soon be razed.

Mr. Brophy stated that the Medical College, through Milwaukee County, is requesting rezoning to make the zoning on these two northern parcels consistent with the rest of the 15.2 acres included in the lease. That portion of Gridley Avenue which extends onto the medical complex property is sought for vacation. The new cul-de-sac at the west end of Gridley Avenue will be developed by the city, but paid for by the Medical College of Wisconsin. These two actions will create a defined east border from Watertown Plank Road to Connell Avenue. Landscaping will be developed to create a buffer for this eastern border.

Ms. Kuhn acknowledged that area residents are curious about the College's future intentions. No parking structure will be placed on the parcels in question in the future.

Rose Hackbarth, 8322 Portland Avenue, voiced support for the rezoning, noting that the open fields surrounding the houses are weed-filled. The college needs parking, and a nice structure with landscaping is preferable to what is there now.

The Chair inquired whether anyone of the public present wished to be heard in opposition to the proposed ordinance.

Dianna Dentino, 1075 Glenview Avenue, expressed concern over what negative impact these proposals may have on property values. Is there going to be a proposed parking structure in the future? Does the College need more parking? How close to the neighborhood would a parking lot be?

Kathy Cummings, 8124 Gridley Avenue, lives in the second house from Glenview Avenue. Neighbors are concerned about the sense of encroachment by institutional uses into the neighborhood. Can't the city hold the line somewhere? Is it true there will be no parking developed on the parcels proposed for rezoning?

Sandra Klug, 8302 Gridley Avenue, voiced concern over the many "unknowns" of this issue. Before the three county-owned homes were built in the 1940's – 1950's, there were gardens in their place.

After the homes were built, they were used as rentals by the College, and then were used by patients. A concern is the paved parking area to the west of Elm Lawn that is to be developed. Next, plans are adjacent to Gridley Avenue. Is it true that if the rezoning doesn't occur, the razing of the houses can still occur, but the cul-de-sacking and landscaping won't? The houses themselves are still very presentable and children play at the end of Gridley Avenue. There is no reason to raze the houses. What effect will an adjacent parking lot have on property values? Ms. Klug opined that 15% of the properties' values could be lost.

Mary Aschenbrener, 826 Robertson Street, noted that many residents oppose this proposal because of what happened around Wisconsin Lutheran College. The College kept encroaching and encroaching towards the east and into adjacent neighborhoods. She has worked for the County and is familiar with how money can be used so certain people will get money 'under the table.' If it isn't stopped, the County will move to Avon Court and to Robertson Street and will tell the residents, "we need your homes for our parking problem."

Kate Pizzi, 8360 Gridley Avenue, urged the Council to vote against the rezoning. This is the first step by the Medical College to expand into the neighborhood. The rezoning is unnecessary and of no benefit to the city or the residents. The College's lease with Milwaukee County is not contingent upon approval of the rezoning. Residents' homes are their largest investments and home values are based upon many factors. Residents enjoy the breathing room the three county-owned houses provide. The Medical College has stated it does not need this land for its plans, but the proposed parking structure is one-third on the 8410-8420 Gridley Avenue property, according to pictures and a map. Ms. Pizzi showed photographs of the 8410 and 8420 properties noting that they are not in a state of disrepair. The northern parcels have enjoyed residential zoning for some time and supported gardens many years before that. Surrounding properties will be negatively affected by the rezoning and if property values drop, the city will likewise be affected. Ms. Pizzi stated she would not have purchased her home had she known about this proposal.

Ms. Pizzi opined that the Medical College signed the lease with the county knowing two of the three houses were residentially zoned, and had stated previously that it does not need these parcels to develop landscaping in this area. This rezoning will set a precedent for the neighborhood and bring institutional uses too close for comfort.

Mike Pizzi, 8360 Gridley Avenue, noted he is torn about this issue as he is a student at the Medical College and realizes that it needs to progress and prosper so his own career can do the same. However, the intrusion into the neighborhood is too much. Why is there the sudden need for a straight boundary line on the east border?

Kurt Schaaf, 1137 Elm Lawn, stated he is concerned because he is unsure what will go into this area if the houses are razed and the street vacated.

The following registered in opposition to the proposals, but did not wish to speak: Anthony J. Minotte, Jr., 1127 Elm Lawn; Peter Gaveras, 1244 N. 86th Street; Janice Kofler, 8203 Currie Avenue; Thaddeus Tessier, 1143 Elm Lawn; Chris Schaaf, 1137 Elm Lawn; Amy Kerstein, 8348 Gridley Avenue; Debra Dicola Gaveras, 1244 N. 86th Street; Mike Costello, 8316 Avon Court; Betsy Flood, 8332 Gridley Avenue; Conrad Saaman, 8120 W. Gridley Avenue; Jonathan Mark, 8344 Gridley Avenue.

A protest petition was submitted containing the names of 31 residents opposing the rezoning.

The public hearing was declared closed.

Some questions had been raised during the hearing: (1) Eastern boundary issue. Mr. Brophy stated that when the College negotiated the land lease with the County, it involves the master lease which has 70 years left and a 50-year renewal option. The 15.2 acres had not been committed to the College through any formal lease agreement, though the College had used it year to year; it was subsequently decided to include it in the master lease. He affirmed that the College does not wish to use Gridley Avenue for ingress/egress. It will be dead-ended at the College's expense. A 50-foot setback with landscaping will be created once the property line is cleaned up and rezoning on the two north parcels reverts to institutional zoning. The rezoned area will be used partly for buffering. Mr. Brophy acknowledged plans to construct a parking structure in the future, but the siting of the building has not been determined, as this is not the only land left for the College to develop. It is proposed to bring the surface lot farther to the east, so some concerns are valid. But this could already be partly done, because part of the property (parcel on the south side of Gridley Avenue) is already zoned institutional.

Ms. Kuhn addressed the question of whether a structure will be situated on the rezoned land, stating that the structure will not be on the residentially zoned properties now containing the two houses. It is proposed for an area north of that. In response to a question by the Mayor, Ms. Kuhn confirmed that there will be at least fifty feet of buffer landscaped area in the area proposed for rezoning.

(2) Plans for the College to expand into the neighborhood. Ms. Kuhn emphatically stated that the College has no plans to expand into the neighborhood; there is enough land with the 15.2 acres for development needs for many, many years. The College will not be offering to buy residents' homes.

Tim Russell, Director of Economic and Community Development, 2711 W. Wells Street, Milwaukee, confirmed that the County does *not* intend to purchase residential parcels in the neighborhood to extend the quadrant to the east, or any direction. The east boundary of this property is proposed to be a straight line so that many parcels can be joined into one for legal purposes. This is a 70-year lease, with a 50-year extension option. Mr. Russell added that the west end of Gridley Avenue has to be vacated in order for landscaping to occur. Landscaping cannot be planted over a platted public right-of-way.

Mr. Russell opined that the Medical College of Wisconsin adds value to surrounding properties, since many people see it as an asset living close to a medical facility.

Ordered held to the next Common Council meeting, May 3, 2005.

APPOINTMENTS BY THE MAYOR

Village BID Board of Directors

Joseph Bartolotta, Bartolotta Restaurant Group
(Term ends 12/31/05)

Information only.

Board of Zoning Appeals

James O'Connell, 2550 N. 85th Street (reappointment)
William Pennoyer, 11222 W. Congress Street (reappointment)

Carolyn Esswein, 1829 N. 69th Street (reappointment as regular)
Brian Randall, 2602 N. 88th Street (appointed as regular)
(Terms end 4/30/08)

Foregoing appointments ordered held as this was the first reading.

Plan Commission

David Perhach, 11637 W. Clark Street
John Albert, 1922 N. 122nd Street (reappointment)
(Terms end 4/30/08)

Board of Public Debt Commissioners

Joel Simpson, 130 N. 89th Street (reappointment)
Brian Randall, 2602 N. 88th Street (reappointment)
(Terms end 4/30/08)

Board of Parks and Forestry Commissioners

Howard Baszynski, 8205 Chestnut Street (reappointment)
(Term ends 4/30/08)

Police and Fire Commission

Calvin Kozlowski, 6936 W. Wisconsin Avenue (reappointment)
(Term ends 4/30/10)

City Attorney

Alan Kesner, 940 Currie Place (reappointment)
(Term ends 7/16/09)
Requested under suspension of the rules

It was moved by Ald. Sullivan, seconded by Ald. Krol
to concur with the foregoing appointments. -14

APPLICATIONS AND COMMUNICATIONS

1. Notice of Lawsuit: Wanda Pedrun, 2050 N. 113th St.
Notices of Claim: Kimberly Burr, 3702 N. 77th Street; Patricia Handel, 4728 Berkeley Blvd., Whitefish Bay
City Attorney
2. Certificate and Canvass of Votes cast at the Spring Election on April 5, 2005
Place on file
3. Annual report of the Board of Public Debt Commissioners for year ended December 31, 2004
Place on file
4. City of Wauwatosa Investment Summary as of March 31, 2005
Place on file
5. Wauwatosa Water Utility Statement of Receipts and Disbursements for month ended March 31, 2005
Place on file

6. Letter from Ronald Haward, Milwaukee Area Domestic Animal Control Commission, and rebate in the amount of \$1,549.33 from dog and cat license revenues
Place on file
7. E-mail from Kate Pizzi, 8360 Gridley Avenue, opposing the proposed rezoning of 8410-8420 Gridley Avenue
Add to existing file
8. E-mail from Tom Schoen, 7937 Jackson Park Boulevard, opposing the proposed rezoning of 8410-8420 Gridley Avenue
Add to existing file
9. E-mail from Danielle Lennie, 1143 Robertson Street, opposing the proposed rezoning of 8410-8420 Gridley Avenue
Add to existing file
10. E-mail from Jennifer McKanry, 11120 W. Clarke St. in favor of the proposed rezoning of 8410-8420 Gridley Avenue
Add to existing file
11. Letter from Delbert Reynolds, Director of the Milwaukee Field Office, U.S. Dept. of Housing & Urban Development informing the city of HUD's approval of the 2005 Annual Action Plan
Place on file

FROM THE COMMITTEE ON TRAFFIC & SAFETY FOR INTRODUCTION

1. Ordinance amending Section 11.32.080 of the City Code by removing parking restrictions in front of 2544 Wauwatosa Avenue
Re-refer to originating committee

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT FOR INTRODUCTION

1. Ordinance amending Section 15.20.010 of the City Code pertaining to foundation removal
Re-refer to originating committee
2. Ordinance amending the Zoning Code by rezoning 22 acres at the northeast corner of N. 124th Street and W. Burleigh Street from AA Light Manufacturing District to AA Business District
Re-refer to originating committee

FROM THE COMMITTEE ON EMPLOYEE RELATIONS

ORDINANCE O-05-10

AN ORDINANCE REPEALING AND RECREATING SECTION 2.58.021 OF THE CODE OF THE CITY OF WAUWATOSA PERTAINING TO EXECUTIVE LEAVE

The Common Council of the City of Wauwatosa do ordain as follows:

Part I. Section 2.58.021 is hereby repealed in its entirety and recreated as follows:

- A. A full-time exempt employee who is pay range 10 or higher at the time of hire may be entitled to five days paid executive leave each calendar year until the employee has completed six years of service with the city. The city administrator shall determine which employees are eligible for executive leave at the time of hire based on whether the employee has a total of seven years of previous management experience or other equivalent factors deemed appropriate by the city administrator based on the recruitment needs of the city.
- B. A full-time exempt employee who is awarded executive leave under (A) and is pay range 14 or higher at the time the employee has completed six years of service with the city shall continue to receive five days of paid executive leave until the employee has completed twenty-one years of service with the city.
- C. Executive leave shall not vest with the employee and shall not be paid out upon separation of employment with the city.

Part II. This ordinance shall take effect on and after its date of publication.

FROM THE COMMITTEE ON EMPLOYEE RELATIONS

RESOLUTION R-05-91

WHEREAS, the Common Council amended the executive leave ordinance;

WHEREAS, the amendment extends five days of paid executive leave per year to eligible employees who were awarded executive leave at the time of hire until those employees have completed 21 years of service with the city;

WHEREAS, the intent of the amendment is to restore eligibility for five days of paid executive leave per year to eligible employees who were awarded executive leave at the time of hire, but who are not now eligible for executive leave under the current ordinance because they have been with the city more than six years;

NOW, THEREFORE, BE IT RESOLVED by the Common Council THAT the executive leave ordinance shall be implemented to restore eligibility for five days of paid executive leave per year to employees who were awarded executive leave at the time of hire, but for whom it has elapsed because they have been with the city more than six years if the employees are now at pay range 14 or higher, and have completed less than 21 years of service with the city.

It was moved by Ald. Jenkins, seconded by Ald. Kopischke to adopt the foregoing ordinance and to approve the foregoing resolution. - 14

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-05-92

WHEREAS, William Poull of the Club Tap, 8828 W. North Avenue, has requested a temporary extension of the licensed premises to include the patio in front of his bar and the parking lot of his business on June 4 and 5th, 2005, for his annual corn roast;

NOW, THEREFORE, BE IT RESOLVED THAT the licensed premises of the Club Tap be extended to include the parking area in the rear of the building on June 4 and 5, 2005, between the hours of 12:00 and 8:00 with live music from 2:00 PM to 6:00 PM, on the condition that refuse resulting from the event will be thoroughly cleaned by the premises owner and any outdoor music will be kept to a minimal volume.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-05-93

WHEREAS, Tara L. Cerfus, 2963 N. Newhall Street, Milwaukee, WI, applied for an operator's license in conjunction with her employment at Maggianos, 2500 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE BE IT RESOLVED THAT Tara L. Cerfus is hereby issued an operator's license for the period ending June 30, 2005.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-05-94

WHEREAS, Daniel A. Haefemeyer, N85 W14978 Knoll Terrace, Menomonee Falls, WI, applied for an operator's license in conjunction with his employment at Buffalo Wild Wings, 2635 N. Mayfair Road, Wauwatosa; and

WHEREAS, applicant failed to disclose past convictions on either form filled out, which failure is materially related to his ability to perform the tasks required of a licensed operator;

NOW, THEREFORE, BE IT RESOLVED THAT the operator license application for Daniel A. Haefemeyer is hereby denied;

BE IT FURTHER RESOLVED THAT the City Clerk is hereby directed to notify the applicant of the denial in writing and the reasons therefor.

It was moved by Ald. Treis, seconded by Ald. Krill
to approve the three foregoing resolutions. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-05-95

WHEREAS, Jason Krasno, Milwaukee Mudd, has applied for a Conditional Use for a drive-through espresso stand using a 64 sq. ft. prefabricated structure in the AA Business District at 10944 W. Capitol Drive and;

WHEREAS, this request was reviewed and the City Plan Commission recommended denial and;

WHEREAS, the Committee on Community Development determined that the proposed use would be detrimental to the surrounding properties and has recommended denial of the application.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby denies a request for a Conditional Use to Jason Krasno, Milwaukee Mudd for a drive-through espresso stand using a 64 sq. ft. prefabricated structure in the AA Business District at 10944 W. Capitol Drive.

It was moved by Ald. Kopischke, seconded by Ald. Birschel to approve the forgoing resolution. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-05-96

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin THAT a public hearing be held before the Common Council in the Council Chambers at 7:30 p.m. Local Time, on Tuesday, May 17, 2005 in the City Hall of the City of Wauwatosa, Wisconsin at which time all persons interested, or their agents or attorneys, will be heard concerning a proposed ordinance rezoning a 22-acre site at N. 124th and W. Burleigh Streets from AA Light Manufacturing District to AA Business District.

BE IF FURTHER RESOLVED THAT the City Clerk be and is hereby directed to publish the proper notices of said hearing as required by law.

It was moved by Ald. Kopischke, seconded by Ald. Birschel to approve the foregoing resolution. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-97

WHEREAS, the Wauwatosa Health Department has been unable to obtain supplies of influenza vaccine from its preferred vendor; and

WHEREAS, the cost of purchasing through the Minnesota Multi-State Contracting Alliance for Pharmacy is approximately \$21,000.00;

NOW, THEREFORE, BE IT RESOLVED THAT the appropriate City officials are hereby authorized to purchase influenza vaccine from the Minnesota Multi-State Contracting Alliance for Pharmacy at a cost not to exceed \$21,000.00.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-98

WHEREAS, the Wauwatosa Health Department has held the state agent health inspection contract since 1988; and

WHEREAS, the proposed 2005 state agent inspection contract contains virtually no substantive changes from the previous contract;

NOW, THEREFORE, BE IT RESOLVED THAT the Wauwatosa Health Department is hereby authorized to contract with the State of Wisconsin Department of Health and Family Services for state agent inspection services for the continuation of local health inspections on behalf of the State of Wisconsin.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-99

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with Dome Corporation for the work of construction of a salt storage facility and work incidental thereto under contract 05-12, including the "base bid" and alternate bid "A1" at and for their bid price of \$376,913.00, this being the lowest and best bid.

BE IT FURTHER RESOLVED that the budget for this work be amended with \$80,000.00 in additional funds from the unallocated capital projects fund to cover the cost.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-100

WHEREAS, a 3,000 ton salt storage facility is being constructed at the City of Wauwatosa's Public Works yard; and

WHEREAS, in the 2004 season the City has utilized all but \$4,000.00 of its salt purchase budget; and

WHEREAS, the new salt storage facility will allow the department to take advantage of savings from purchasing "early fill" salt supplies at a savings of \$2.00 per ton; and

WHEREAS, the Reserve for Contingencies contains sufficient funds for the purchase of this “early fill” salt supply;

NOW, THEREFORE, BE IT RESOLVED THAT the transfer of \$85,000.00 from the Reserve for Contingencies for the purchase of 3,000 tons of road salt pursuant to the State contract’s early fill provisions is hereby approved.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-101

WHEREAS, the City of Wauwatosa solid waste collection fleet will need to be supplied with newly designed refuse cart dumpers in order to utilize such refuse cart dumpers for new refuse carts which meet ANSI standards, as well as current refuse carts utilized by the City of Wauwatosa; and

WHEREAS, the Fleet Equipment Purchase Account contains funds for the purchase of a 12 inch pump which the department has proposed to forego during the year 2005; and

WHEREAS, the cost of 20 new refuse cart dumpers is estimated to be less than \$30,000.00, including shipping and handling;

NOW, THEREFORE, BE IT RESOLVED THAT a change of purpose in the Fleet Equipment Purchase Account is hereby authorized in the amount of \$45,500.00;

BE IT FURTHER RESOLVED THAT up to \$30,000.00 of this funding in the Fleet Equipment Purchase Account shall be utilized for the purchase of 20 new Bayne Cart Dumpers, and that the competitive bidding process is hereby waived for such purchase;

BE IT FINALLY RESOLVED THAT the balance remaining from this change of purpose be made available for future equipment purchases in said account.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-103

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with Snorek Construction, Inc., for the work of Concrete Sidewalk Repair and work incidental thereto under Contract 05-19 at and for their bid price of \$352,175.00, this being the lowest and best base bid.

BE IT FURTHER RESOLVED that a fund transfer be approved transferring \$130,000 form the unallocated Capital Projects fund balance to Contract 05-19 Sidewalk Repair.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-104

**RESOLUTION AWARDING THE SALE OF \$3,300,000 GENERAL OBLIGATION
PROMISSORY NOTES, SERIES 2005; PROVIDING THE FORM OF
THE NOTE; AND LEVYING A TAX IN CONNECTION THEREWITH**

WHEREAS, pursuant to a resolution adopted on March 15, 2005 (the "Authorizing Resolution"), the Common Council has heretofore found and determined that it is necessary, desirable and in the best interest of the City of Wauwatosa, Milwaukee County, Wisconsin (the "City") to raise funds for the purpose of paying the cost of various public improvements included in the City's 2005 Capital Project Plan, including repairing and upgrading streets, storm and sanitary sewers (the "Project");

WHEREAS, the general nature and location of each element of the Project is set forth in the City's Capital Project Plan which is incorporated herein by this reference;

WHEREAS, the Common Council has heretofore found and determined that the Project is within the City's power to undertake and serves a "public purpose" as that term is defined in Section 67.04(1)(b) of the Wisconsin Statutes;

WHEREAS, cities are authorized by the provisions of Section 67.12(12) of the Wisconsin Statutes to borrow money and to issue general obligation promissory notes for such public purposes; and

WHEREAS, the Common Council now deems it to be necessary, desirable and in the best interest of the City to authorize the issuance of and to award the sale of its general obligation promissory notes to Hutchinson, Shockey, Erley & Co., Milwaukee, Wisconsin.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Authorization of the Notes. For the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(12) of the Wisconsin Statutes, the principal sum of THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000) from Hutchinson, Shockey, Erley & Co., Milwaukee, Wisconsin (the "Purchaser") in accordance with the terms and conditions of its purchase proposal (the "Proposal") attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. Sale of the Notes. To evidence such indebtedness, the Mayor and City Clerk are hereby authorized, empowered and directed to make, execute, issue and sell to the Purchaser for, on behalf of and in the name of the City, General Obligation Promissory Notes, Series 2005 aggregating the principal amount of THREE MILLION THREE HUNDRED THOUSAND DOLLARS (\$3,300,000) (the "Notes") for the sum set forth on the Proposal, plus accrued interest to the date of delivery.

Section 3. Terms of the Notes. The Notes shall be designated "General Obligation Promissory Notes, Series 2005"; shall be dated May 1, 2005; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be numbered 1 and upward; shall bear interest at the rates and shall mature on December 1 of each year, in the years and principal amounts as set forth on the schedule prepared by the Purchaser and attached hereto as Exhibit B (the "Schedule"). Interest is payable semi-annually on June 1 and December 1 of each year commencing on December 1, 2005.

Section 4. Redemption Provisions. At the option of the City, the Notes maturing on December 1, 2013 and thereafter shall be subject to redemption prior to maturity on December 1, 2012 or on any date thereafter. Said Notes shall be redeemable as a whole or in part, and if in part, from maturities selected by the City and within each maturity by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

Section 5. Form of the Notes. The Notes shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit C and incorporated herein by this reference.

Section 6. Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Notes as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the years 2005 through 2013 for the payments due in the years 2006 through 2014 in the amounts set forth on the Schedule.

The direct annual irrepealable tax hereby levied shall be carried onto the tax roll and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected. So long as any part of the principal of or interest on the Notes remains unpaid, the tax hereinabove levied shall be and continues irrepealable except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus in the Debt Service Fund Account created below.

The City has heretofore levied a direct annual irrepealable ad valorem debt service tax in anticipation of the sale of the Notes. Upon receipt, a sufficient sum shall be irrevocably deposited in the Debt Service Fund Account for the Notes and shall be used to pay the interest on the Notes coming due on December 1, 2005 as set forth on the Schedule.

Section 7. Segregated Debt Service Fund Account. There is hereby established in the City treasury a fund account separate and distinct from all other funds or accounts of the City designated "Debt Service Fund Account for \$3,300,000 City of Wauwatosa General Obligation Promissory Notes, Series 2005, dated May 1, 2005", which fund account shall be used solely for the purpose of paying the principal of and interest on the Notes. There shall be deposited in said fund account all accrued interest paid on the Notes at the time the Notes are delivered to the Purchaser, any premium, all money raised by taxation pursuant to Section 6 hereof and all other sums as may be necessary to pay principal of and interest on the Notes as the same becomes due. Said fund account shall be used for the sole purpose of paying the principal of and interest on the Notes and shall be maintained for such purpose until such indebtedness is fully paid or otherwise extinguished, and shall at all times be invested in a manner that conforms with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable income tax regulations (the "Regulations").

Section 8. Borrowed Money Fund; Reimbursement. The proceeds of the Notes (the "Note Proceeds") (other than any premium and accrued interest which must be paid at the time of the delivery of the Notes into the Debt Service Fund Account created above) shall be deposited into an account separate and distinct from all other funds and disbursed solely for the purposes for which borrowed or for the payment of the principal of and the interest on the Notes.

The City declares its reasonable expectation to reimburse itself from the Note Proceeds for expenditures relating to the Project which it pays from other funds of the City prior to receipt of the Note Proceeds no more than 60 days prior to the date the Authorizing Resolution was adopted. The

City may also reimburse itself for preliminary expenditures relating to the Project (such as architectural, engineering, surveying, soil testing, costs of issuance and similar costs but not including land acquisition, site preparation and similar costs incident to the commencement of construction) which are in an amount which is less than 20% of the issue price of the Notes. This declaration and the Resolution of which it is a part, shall be publicly available in the official books, records or proceedings of the Common Council.

Section 9. Arbitrage Covenant. The City shall not take any action with respect to the Note Proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the date of the delivery of and payment for the Notes (the "Closing"), would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

The Note Proceeds may be temporarily invested in legal investments until needed, provided however, that the City hereby covenants and agrees that so long as the Notes remain outstanding, moneys on deposit in any fund or account created or maintained in connection with the Notes, whether such moneys were derived from the Note Proceeds or from any other source, will not be used or invested in a manner which would cause the Notes to be "arbitrage bonds" within the meaning of the Code or Regulations. The City covenants that it will not invest in any obligation if such investment would violate the "prohibited payment" requirement of Section 148 of the Code.

The City Clerk, or other officer of the City charged with responsibility for issuing the Notes, shall provide an appropriate certificate of the City, for inclusion in the transcript of proceedings, setting forth the reasonable expectations of the City regarding the amount and use of the Note Proceeds and the facts and estimates on which such expectations are based, all as of the Closing.

Section 10. Additional Tax Covenants; Two year Expenditure Exemption from Rebate; Qualified Tax-Exempt Obligation Status. The City hereby further covenants and agrees that it will take all necessary steps and perform all obligations required by the Code and Regulations (whether prior to or subsequent to the issuance of the Notes) to assure that the Notes are obligations described in Section 103(a) of the Code, the interest on which is excludable from gross income for federal income tax purposes, throughout their term. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Notes) if taking, permitting or omitting to take such action would cause any of the Notes to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Notes, shall provide an appropriate certificate of the City as of the Closing, for inclusion in the transcript of proceedings, certifying that it can and covenanting that it will comply with the provisions of the Code and Regulations.

Further, it is the intent of the City to take all reasonable and lawful actions to comply with any new tax laws enacted so that the Notes will continue to be obligations described in Section 103(a) of the Code, the interest on which is excludable from gross income for federal income tax purposes throughout their term.

The City covenants that it is a governmental unit with general taxing powers and that the Notes are not "private activity bonds" as defined in Section 141 of the Code.

In accordance with Section 148(f)(4)(C) of the Code, the City covenants that at least 75% of the available construction proceeds of the Notes shall be used for construction expenditures with respect to property owned by the City as provided in Section 148(f)(4)(C)(iv) of the Code. If at least 10% of the available construction proceeds of the Notes (including investment earnings thereon) are expended for the governmental purposes of the issue within six months of the Closing; at least 45% are expended for such purposes within one year; at least 75% are expended for such purposes within eighteen months; and 100% are expended for such purposes within two years, the Notes will qualify for the two year expenditure exception from the rebate requirements of the Code. If for any reason the City did not qualify for the two year expenditure exemption from the rebate requirements of the Code, the City covenants that it would take all necessary steps to comply with such requirements.

The Common Council hereby designates the Notes to be "qualified tax-exempt obligations" pursuant to the provisions of Section 265(b)(3) of the Code and in support of such designation, the City Clerk or other officer of the City charged with the responsibility for issuing the Notes, shall provide an appropriate certificate of the City, all as of the Closing.

Section 11. Execution of the Notes. The Notes shall be issued in typewritten or printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, authenticated, if required, by its fiscal agent, if any, sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery. In the event that either of the officers whose signatures appear on the Notes shall cease to be such officers before the delivery of the Notes, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery. The aforesaid officers are hereby authorized to do all acts and execute and deliver all documents as may be necessary and convenient to effectuate the Closing.

Section 12. Payment of the Notes. The principal of and interest on the Notes shall be paid in lawful money of the United States of America by the City Clerk or City Treasurer.

Section 12A. Persons Treated as Owners; Transfer of Notes. The City shall keep books for the registration and for the transfer of the Notes. The person in whose name any Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Note shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Any Note may be transferred by the registered owner thereof by surrender of the Note at the office of the City Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the Mayor and City Clerk shall execute and deliver in the name of the transferee or transferees a new Note or Notes of a like aggregate principal amount, series and maturity and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk shall cancel any Note surrendered for transfer.

The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Note or Notes necessary to effect any such transfer.

The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Notes. Payment of interest on the Notes on any interest payment date shall be

made to the registered owners of the Notes as they appear on the registration book of the City at the close of business on the corresponding record date.

Section 13. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Notes eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 14. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the holders of the Notes, to enter into a written undertaking (the "Undertaking") required by SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule") to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. This Undertaking shall be enforceable by the holders of the Notes or by the Purchaser on behalf of such holders (provided that the rights of the holders and the Purchaser to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations hereunder and any failure by the City to comply with the provision of this Undertaking shall not be an event of default with respect to the Notes).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Notes, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 15. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

It was moved by Ald. Bruderle-Baran, seconded by Ald. Purins to approve the seven foregoing resolutions. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-05-102

WHEREAS, in 2003 the City of Wauwatosa entered into a three year agreement with Graef, Anhalt, Schloemer & Associates for construction inspection services; and

WHEREAS, the contract anticipated potential annual increases in the rates subject to approval of the City of Wauwatosa; and

WHEREAS, GAS has agreed to limit the new rates to an increase of 3.09% over the amount of the 2003 contract;

NOW, THEREFORE, BE IT RESOLVED THAT the proposed amended hourly inspection rates under the construction inspection contract of Graef, Anhalt, Schloemer & Associates, as described

more particularly in the amendment to the agreement, a copy of which is attached hereto and incorporated herein, are hereby approved.

It was moved by Ald. Bruderle-Baran, seconded by Ald. Purins to approve the foregoing resolution. Ayes 13, Noes 1 (Grimm)

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 4/06/05 – 4/19/05 --

The Committee on Budget and Finance hereby reports to the Common Council that it has examined the accounts of bills and claims and hereby certifies the same as correct and recommends that each of said accounts be allowed and paid.

Total bills and claims for 4/6/05 – 4/19/05: \$821,527.14

It was moved by Ald. Casey, seconded by Ald. Bruderle-Baran that each and every one of the accounts of bills and claims be allowed and ordered paid. Roll call vote, Ayes 14.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-05-105

WHEREAS, the Purchasing Manager reported on proposals received for tree, stump and swell removal of diseased elm trees and other trees in City parkways, right-of-ways, parks, and green spaces; and

WHEREAS, all bids exceeded the original amount budgeted, \$75,000.00, but the contract allows for the scope of work to be limited to that budgeted dollar amount; and

WHEREAS, the low bidder had been awarded the contract for these services in 2003, after which the former Parks & Forestry Superintendent expressed dissatisfaction with the performance of that company under the contract, recommending that the contract not be awarded to that company; and

WHEREAS, the second lowest bid by Dorshak Family Tree and Landscape is from a company which has successfully performed such work for the City of Wauwatosa in the past;

NOW, THEREFORE, BE IT RESOLVED THAT the bid for tree removal services during the 2005 growing season be awarded to Dorshak Family Tree and Landscape Service and that bid is in the best interest of the City, in an amount not to exceed \$75,000.00.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-05-106

WHEREAS, the Purchasing Manager and Public Works Director solicited bids for approximately 208,000 square yards of pavement crack sealing for the 2005 construction season; and

WHEREAS, the bid of Interstate Sealant and Concrete in the amount of \$72,800.00 is the lowest bid and appears to be in the best interest of the City; and

WHEREAS, the amount budgeted for this work was \$80,000.00, sufficient to fund the contract;

NOW, THEREFORE, BE IT RESOLVED THAT the contract for pavement crack sealing for the 2005 construction season shall hereby be awarded to Interstate Sealant and Concrete in an amount not to exceed \$72,800.00.

It was moved by Ald. Herzog, seconded by Ald. Casey
to approve the two foregoing resolutions. -14

There being no further business, the meeting adjourned at 8:35 p.m.

cal

Carla A. Ledesma, CMC, City Clerk