



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, October 17, 2006

PRESENT: Alds. Purins, Stepaniak, Sullivan, Treis, Becker, Birschel, Didier, Donegan, Ewerdt, Grimm, Hanson, Herzog, Krill, Maher, Meaux -15

EXCUSED: Ald. Krol

ALSO PRESENT: Mr. Kesner, Interim City Administrator/City Attorney; Mr. Braier, Finance Director; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Director; Police Capt. Reit; Ms. Ledesma, City Clerk; Ms. Williams, Deputy City Clerk

Mayor Estness in the Chair

The Mayor called the meeting to order at 7:35 p.m.

It was moved by Ald. Grimm, seconded by Ald. Didier that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. -15

PUBLIC HEARING

The first item of business was a public hearing to consider the following proposed ordinance:

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 24.46.070 BY ALLOWING CELLULAR ANTENNAS AND ASSOCIATED EQUIPMENT AS A CONDITIONAL USE ON SCHOOL DISTRICT PROPERTY

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

Part 1. That Section 24.46.070 Cellular telephone, microwave and related communication towers and accessory ground structures is amended to read as follows:

Cellular telephone transmission, microwave and related communication towers, antennas and accessory ground structures shall be allowed as conditional uses only in the AA industrial district, AA light manufacturing district, medical center and institutions district, municipal public works district, park and open space district, cemetery district and on municipal or school district property. Fencing must secure each site with accessory ground structures not to exceed dimensions of twelve by twenty feet with a maximum

heights of ten feet. Ground structures shall have a stone aggregate or masonry exterior and must be in conformance with other ground structures on each site with respect to size and exterior materials. Landscaping shall be incorporated at each location. There shall be a limit of six ground structures for each site. Antennas shall have a maximum height of one hundred twenty-five feet. All obsolete or unused facilities must be removed within ninety days of cessation of operations at the site.

Part II. This Ordinance shall take effect and be in force from and after its passage and 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 Phil Ertl, Wauwatosa School District, for a code amendment in Chapter 24.46.070 General Regulations to allow cellular antennas and associated equipment on school district property, recommends to the Common Council that the amendment be approved.

Dated this 11th day of September 2006

Nancy L. Welch, Secretary  
City Plan Commission

No one of the public present wished to be heard in favor of the proposed ordinance.

The following members of the public present wished to be heard in opposition to the proposed ordinance:

Stacy Rhoads, 6914-A Milwaukee Avenue, expressed opposition to proposals to install cellular towers atop several Wauwatosa schools because of potential health concerns (leukemia, cancer, heart attacks, ear tumors, aggression, depression), especially for children. None of the schools' parents were informed of these proposals. The School Board should not allow itself to become blinded to the well-being of the children by the prospect of money.

The following members of the public present wished to be heard either for or against the proposed ordinance or had comments or questions:

Jackie Salemme, 2362 N. 65th Street, voiced concerns about the health of children attending schools with cellular towers after listening to Ms. Rhoads' remarks. Alternative locations should be found.

Geno Skolarczyk, 2344 N. 64th Street, noted that persons using cell phones for a period of time notice the sides of their heads feel warm. The feeling is caused by microwaves. It may be unwise to attach cellular towers atop schools.

The public hearing was declared closed. The matter will be considered by the Committee on Community Development on October 31, 2006.

**PUBLIC HEARING**

The second item of business was a public hearing to consider the following proposed ordinance:

**ORDINANCE**

**AN ORDINANCE AMENDING CHAPTER 24.22.040 BY PROHIBITING CHECK CASHING AND OTHER SIMILAR BUSINESSES IN THE TRADE DISTRICT AND VILLAGE TRADE DISTRICT**

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

Part 1. That Section 24.22.040 Prohibited Use in Trade Districts is amended and Section 24.27.050 Prohibited use is created to read as follows:

Convenient cash business, also referred to as a payday loan business, title for cash business, check cashing business, deferred presentment service provider or similar enterprise licensed pursuant to Wis. Stat. sec. 218.05, or a person licensed pursuant to Wis. Stat. sec. 138.09, who accepts a check or title, holds the check or title for a period of time before negotiating or presenting the check or title for payment, and pays to the issuer an agreed-upon cash, or who refinances or consolidates such a transaction.

Part II. This Ordinance shall take effect and be in force from and after its passage and 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 city staff for code amendments to the Trade District and Village Trade District to modify the language regarding check cashing establishments and consideration of a citywide moratorium on similar establishments, recommends that the amendments be adopted.

Dated this 7th day of August 2006.

Nancy L. Welch, Secretary  
City Plan Commission

The following wished to be heard in favor of the proposed ordinance:

Jackie Salemme, 2362 N. 65th Street, stated she lives four houses from a proposed check cashing facility. People who resort to using this type of business are frequently not financially stable and are vulnerable. This is not the type of business residents wish to see on North Avenue.

Greg Zeimet, 2350 N. 91st Street, opined that this type of business does not attract desirable customers.

Geno Skolarczyk, 2344 N. 64th Street, stated that the recent upswing in activity on North Avenue is promising. There are no ‘positives,’ however, associated with this type of business.

Lois Marks, 10507 W. Auer, stated that these types of businesses take advantage of people .

No one of the public present wished to be heard in opposition to the proposed ordinance.

The public hearing was declared closed. The matter will be considered by the Committee on Community Development on October 31, 2006.

## **PUBLIC HEARING**

The third item of business was a public hearing to consider the following proposed ordinance:

### **ORDINANCE**

#### **AN ORDINANCE AMENDING CHAPTER 24.24 OF THE MUNICIPAL CODE BY MODIFYING THE FRONT YARD SETBACK REQUIREMENTS IN THE AA COMMERCIAL DISTRICT**

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

Part 1. That Section 24.24 AA Commercial Districts is amended to read as follows:

Section 24.24.070 Front building line setbacks.

Front building line setbacks shall be not less than 25 feet to the building except when located within 150 feet of the intersection of two public streets, in which case staff shall review and establish appropriate and safe setbacks.

Section 24.24.130 Additional restrictions.

A. No parking is allowed within the required front yard setback.

Section 24.24.080 Special front building line setbacks shall be eliminated

Part II. This Ordinance shall take effect and be in force from and after its passage and 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 city staff for a code amendment in the AA Commercial District to change the required front yard setback and to make other related changes, recommends that the amendment be approved.

Dated this 11th day of September 2006.

Nancy L. Welch, Secretary  
City Plan Commission

No one of the public present wished to be heard in favor of the proposed ordinance.

No one of the public present wished to be heard in opposition to the proposed ordinance.

No one of the public present wished to be heard either for or against the proposed ordinance or had any comments or questions.

The public hearing was declared closed. The matter will be considered by the Committee on Community Development on October 31, 2006.

**APPLICATIONS, COMMUNICATIONS, ETC.**

1. City of Wauwatosa Statement of Financial Condition as of 9/30/06  
Place on file
2. Wauwatosa Water Utility Statement of Receipts and Disbursements as of September 30, 2006  
Place on file
3. Request by Elias Pagoudis, Biggs Roadhouse, 1900 N. Mayfair Road, for an exemption to the restaurant smoking ban  
City Clerk; Health Officer

**FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS**

**RESOLUTION R-06-221**

WHEREAS, Stephen A. Glazer, 4121 N. 104<sup>th</sup> Street, Wauwatosa, WI, has applied for an operator's license in conjunction with his employment at Habanero's Mexican Kitchen, 869 N. Mayfair Road, Wauwatosa; and

WHEREAS, a background investigation revealed prior law violations which create concern for the Committee on Legislation, Licensing & Communications and he was asked to appear before this Committee; and

WHEREAS, his failure to appear and these prior convictions are substantially related to the responsibilities of an operator's license holder in the City of Wauwatosa;

NOW, THEREFORE, BE IT RESOLVED THAT the operator's license application of Stephen A. Glazer, 4121 N. 104<sup>th</sup> Street, Wauwatosa, WI, is hereby denied;

BE IT FURTHER RESOLVED THAT the Clerk shall notify Mr. Glazer in writing of this decision and the reasons for the denial.

It was moved by Ald. Becker, seconded by Ald. Birschel  
to approve the foregoing resolution. - 15

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-06-222**

WHEREAS, Pete Samens, Wunderlich, Pearson & Tetzlaff, and David Wellerritter, Mi-Tech Services, Inc., have applied for a Conditional Use in the AA Business District at 2515 Wauwatosa Avenue for the installation of a pad-mounted telephone fiber conversion cabinet and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Pete Samens, Wunderlich, Pearson & Tetzlaff, and David Wellerritter, Mi-Tech Services, Inc., for the installation of a pad-mounted telephone fiber conversion cabinet in the AA Business District at 2515 Wauwatosa Avenue subject to the following conditions:

- 1) Contingent upon AT&T obtaining all permits, licenses, franchises and permissions required under federal, state or local law prior to AT&T's commencement of the use of the facilities to provide any video programming or other programming services, as those terms are defined in 41 U.S.C. Section 522, as amended, to subscribers in the City, and
- 2) AT&T agrees it will not use the facilities described in this Conditional Use Permit as part of a network for the provision to subscribers in the City of video programming or other programming service, as those terms are defined in 47 U.S.C. Section 522, as amended, unless AT&T provides the City Clerk 30 days' prior written notice, with a copy to the City Attorney, and
- 3) Except for the grant of this Conditional Use Permit by the City of Wauwatosa, this action by the city shall not constitute nor be construed as a grant of any other permit, license, franchise or permission otherwise required under federal, state, or local law, and
- 4) Obtaining any necessary licenses and permits, and
- 5) Installation of approved landscaping.

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-06-223**

WHEREAS, Theresa Belsan, Deloitte Tax, LLP, has applied for a Conditional Use in the AA Business District at 2500 Mayfair Road for a kiosk selling previously viewed Hollywood Video DVDs and videos, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Theresa Belsan, Deloitte Tax, LLP, for a kiosk selling

previously viewed Hollywood Video DVDs and videos in the AA Business District at 2500 Mayfair Road subject to obtaining any required licenses and permits.

It was moved by Ald. Treis, seconded by Ald. Herzog to approve the two foregoing resolutions. -15

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-06-224**

WHEREAS, James T. Barry, representative for WBP LLC, and Kimberly Young has applied for a Conditional Use in the AA Light Manufacturing District at 3015 N. 114<sup>th</sup> Street for an outpatient therapy clinic, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to James T. Barry, representative for WBP LLC, and Kimberly Young for an outpatient therapy clinic in the AA Light Manufacturing District at 3015 N. 114<sup>th</sup> Street subject to the following conditions:

- 1) hours of operation to be 8:00 A.M. to 8:00 P.M. Monday through Friday, and
- 2) obtaining any required licenses and permits.

It was moved by Ald. Treis, seconded by Ald. Herzog to approve the foregoing resolution. Ayes 14, Present 1 (Meaux)

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-06-226**

WHEREAS, the Wauwatosa Health Department has indicated that the Wauwatosa Physical Activity and Nutrition (PAN) Committee, comprised of 30 local organizations, businesses, schools and residents, expects to receive donations of money or gifts which may be utilized for furthering the purposes of the PAN Committee; and

WHEREAS, it is recognized that acceptance of donations and expenditures or utilization of those donations must be approved by the Common Council;

NOW, THEREFORE, BE IT RESOLVED THAT the Wauwatosa Health Department is hereby authorized to accept donations and contributions for purposes of the Wauwatosa Physical Activity and Nutrition Committee activities, and shall be authorized to expend or utilize those donations and gifts for PAN Committee purposes in compliance with the usual and customary procedures of other City of Wauwatosa entities receiving similar donations and gifts.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-06-227**

WHEREAS, the Wauwatosa Senior Center has received a \$500.00 donation from an individual who wished to help the center with a monetary gift; and

WHEREAS, the Senior Center has not in prior years received monetary gifts of this type to utilize for its own purposes;

NOW, THEREFORE, BE IT RESOLVED THAT the Wauwatosa Senior Center is hereby authorized to accept a \$500.00 monetary gift as more particularly described by the Director of Public Works in his October 6, 2006, memorandum to the Committee on Budget & Finance;

BE IT FURTHER RESOLVED THAT a corresponding expenditure account shall be created with these donated funds which shall be expended in accordance with usual and customary procedures utilized by other departments in the City of Wauwatosa.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-06-228**

WHEREAS, unusual legal situations have arisen during the year 2006 which have required more extensive utilization of outside counsel by the Wauwatosa City Attorney's office than had previously been expected, particularly in regards to changes in cable television franchising laws and competitive cable television service providers, as well as contested case hearings requiring retention of outside counsel in both the Police & Fire Commission and the Board of Review;

NOW, THEREFORE, BE IT RESOLVED THAT the sum of \$20,000.00 is hereby authorized for transfer from the Reserve for Contingencies to the City Attorney's office Sundry Contractual Services Account for the year 2006 to provide the necessary funds to meet the legal needs of the City of Wauwatosa for the balance of the year 2006.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-06-229**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT the claim filed by Lisa Pacocha for damages be and the same is hereby denied and placed on file for the reason that no liability exists on the part of the City;

BE IT FURTHER RESOLVED THAT the City Clerk is hereby authorized and directed to notify said claimant of this action of the Common Council as provided by law.

It was moved by Ald. Stepaniak, seconded by Ald. Purins  
to approve the four foregoing resolutions. -15

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-06-225**

WHEREAS, the Village of Wauwatosa Business Improvement District submitted to the Committee on Budget & Finance its 2007 budget and work plan, as well as a certified audit prepared by the firm of Reilly, Penner & Benton, LLP; and

WHEREAS, Committee members and representatives of the BID Board agreed that the budget and work plan are accurate and do reflect the intentions of the entire BID Board;

NOW, THEREFORE, BE IT RESOLVED THAT the 2007 budget and work plan and certified audit for the Village of Wauwatosa Business Improvement District as provided to the Committee on Budget & Finance on October 10, 2006, are hereby approved and, upon completion of the tax roll, assessments shall be included on the property tax bills of affected properties in a manner consistent with those documents.

It was moved by Ald. Stepaniak, seconded by Ald. Purins to approve the foregoing resolution. -15

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**BILLS AND CLAIMS FOR THE PERIOD 10/4/06 – 10/17/06**

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 10/4/06 – 10/17/06:

It was moved by Ald. Meaux, seconded by Ald. Sullivan that each and every one of the accounts of bills and claims be allowed and ordered paid. Roll call vote, Ayes 15

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-06-231**

BE IT RESOLVED THAT the following used and obsolete equipment be declared surplus:

X-96	1968	40MW REX 4" Pump X
X-53	1960	86A2JD Gorman Rupp
X-60	1960	90 M REX 6" Pump X
X-59	1960	90 M REX 6" Pump X
X-70	1988	TR-48 Infrared Asph
X-06	1987	S41250 Crafc0 Aspha

X-61	1960	90M REX 6" Pump X
X-77	1964	90M REX 6" Pump X
X-62	1960	90M REX 6" Pump X
X-95	1968	40MW REX 4" Pump X
U-11	1973	40M Construction MA
X-54	1960	86A2JD Gorman Rupp
X-56	1960	86A2JD Gorman Rupp
X-09	1999	Asphalt Melting Ket
U-06	1970	84A2D Gorman Rupp 4
X-55	1960	86A2JD Gorman Rupp
U-12	1973	40M Construction Mac
X-97	1968	40MW REX 4" Pump Y

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-06-232**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT permission be and the same is hereby granted to Trinity Episcopal Church, 1717 Church Street, Wauwatosa, WI, to encroach onto City right-of-way with a sign on an existing masonry pier, subject to the applicants executing unto the City of Wauwatosa an indenture setting forth the terms, provisions and conditions relating to the granting of the aforesaid permission by said City to said applicants.

It was moved by Ald. Herzog, seconded by Ald. Krill to approve the two foregoing resolutions. -15

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-06-230**

WHEREAS, the Board of Public Works has accepted the work of Asphaltic Concrete Repaving and work incidental thereto in the City of Wauwatosa under Contract 04-7 and the same is ready for final payment;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin as follows:

Section 1. That the Asphaltic Concrete Repaving Contract 04-7 is hereby accepted.

Section 2. That the proper City officers be and they are hereby authorized and directed to draw and sign a City order in the sum of thirty-four thousand seven hundred twenty-two dollars and fifty-seven cents (\$34,722.57) in favor of Payne & Dolan, Inc. as the final payment under said contract, upon receipt of waivers of lien and for labor and materials furnished under said contract, and upon receipt of an affidavit stipulating compliance with wage rate requirements.

It was moved by Ald. Herzog, seconded by Ald. Krill to approve the foregoing resolution. -15

Mayor Estness recognized City Attorney Alan Kesner on this, his last Common Council meeting as Interim City Administrator, and thanked him for his service in this capacity for the past six months.

There being no further business, the meeting adjourned at 8:02 p.m.

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Carla A. Ledesma, CMC, City Clerk