



CITY OF WAUWATOSA
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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, May 27, 2008

PRESENT: Alds. Birschel, Hanson, Herzog, McBride, Meaux, Nikcevich, Stepaniak -7

EXCUSED: Ald. Treis

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; Chief B. Weber, Police Dept.;
PRESENT: W. Kappel, Dir. of Public Works; J. Archambo, City Admin.; Mayor Didier

Ald. Herzog as Chair called the meeting to order at 8:04 p.m.

Street Festival Permit – Sts. Constantine & Helen Greek Orthodox Church, 2160 Wauwatosa Avenue

The committee reviewed a request by Alex Marlis, Sts. Constantine and Helen Greek Orthodox Church, 2160 Wauwatosa Avenue, for a Street Festival permit for their annual Grecian Festival on the church grounds June 13-15, 2008. Tony Antonopolos, 3152 S. 99th Street, Milwaukee, was present representing the church and reported that the event would follow the same format, rules, and regulations as last year's festival. He provided an emergency contact number for use during the festival.

Moved by Ald. Stepaniak, seconded by Ald. Meaux to recommend to Council approval of a Street Festival permit for Grecian Festival 2008 on June 13-15, 2008. Ayes: 7

Conditional Use – 2323 N. Mayfair Road

The committee reviewed a request by Mark Russert, agent for Cricket Communications, for a Conditional Use to install a wireless communications facility in the AA Business District at 2323 N. Mayfair Road. Ms. Welch reported that they would like to install three cellular antennas and related equipment on the roof of the Heritage building. They are replacing a previously approved cellular provider. The Plan Commission unanimously recommended approval.

Moved by Ald. Hansen, seconded by Ald. Birschel to recommend to Council approval of the requested Conditional Use. Ayes: 7

Conditional Use – 10101 W. Capitol Drive

The committee reviewed a request by Eboni Burgess for a Conditional Use for a full-service themed party venue in the AA Business District at 10101 W. Capitol Drive. Ms. Welch reported that the site is a former Curves location. Girl Power Parties would specialize in parties and play dates for girls between the ages of four and 15. They would offer frozen pizza, juice, and desserts from outside vendors and have contacted the city sanitarian regarding licensing. Proposed hours of operation are Monday through Friday from 11:30 a.m. to 7 p.m. and Saturday and Sunday from 10:30 a.m. to 6 p.m. Adequate parking is available. The Plan Commission unanimously recommended approval.

Moved by Ald. McBride, seconded by Ald. Meaux to recommend to Council approval of the Conditional Use as requested—

Upon discussion of hours of operation, Ms. Burgess indicated that at some point she may wish to extend the hours to 8 p.m.

The mover accepted an amendment by Ald. Meaux to extend the requested hours of operation to 8 p.m. Vote on the motion as amended, Ayes: 7

Historic Designation of the First Congregational Church, 1511 Church Street

Ms. Welch reported that the Wauwatosa Historic Preservation Commission has recommended local historic designation of the First Congregational Church, 1511 Church Street, which the church supports. The First Congregational Church was previously identified as a Wauwatosa Historical Landmark by the former Landmarks Commission. It is a Milwaukee County landmark and is listed on the National Register of Historic Places. This is the oldest congregation in Wauwatosa, and the church and its members have had a significant impact on the city.

Rev. Steven Peay, 8515 Jackson Park Boulevard, senior minister, said the church was first gathered in 1842 in a location not too far from present-day Mayfair Mall. The current property was purchased from the Hart family in 1853, and the original building is still in use as a social hall. The major portion of the church as it is now seen was built in 1919, and the newest portion of the facility was built in 1959. In addition to serving its congregation, the church has also been open to other community uses. Some of first basketball games of Wauwatosa High School were, in fact, played there. First Congregational Church is very much in favor of this designation and appreciates the consideration, Rev. Peay stated.

Ms. Welch explained that historic designation would require that any future exterior changes requiring a building permit would be subject to the approval of the Historic Preservation Commission based on their guidelines. Although Church Street is designated as a historic district, the church wanted this separate recognition that it is historic in its own right.

Moved by Ald. Stepaniak, seconded by Ald. Nikceovich to recommend to Council local historic designation of the First Congregational Church, 1511 Church Street. Ayes: 7

Agreement with Wauwatosa Rotary Foundation – Construction of Rotary Performance Pavilion at Hart Park

The committee reviewed a draft agreement between the City of Wauwatosa and the Wauwatosa Rotary Foundation, representing the two Rotary Clubs in the City of Wauwatosa, which would allow the Foundation to construct the Rotary Performance Pavilion at Hart Park consistent with previously approved plans for the development of Hart Park. The group is ready to break ground on June 25.

The agreement provides that the nonprofit Wauwatosa Rotary Foundation supply materials and labor necessary to construct the pavilion in Hart Park. Following completion of construction, the Foundation will dedicate ownership of the facility to the City of Wauwatosa. The Council previously approved a plan by which the Foundation would have the right to place names of donors on certain items, including the state itself, which was essential to the fundraising campaign. Plans for the stage are currently under review by the City and the Milwaukee Metropolitan Sewerage District for compliance with each organization's needs. Final approval would be obtained prior to actual construction of the facility. Mr. Kesner stated that the agreement, as drafted, covers

what is needed of the Foundation and also protects the City. Operation of the facility will be covered under a separate agreement to be discussed next.

Bill Bode, representing the Rotary Club of Wauwatosa, and Jim Englehardt, representing the Mayfair Rotary Club, were present. Mr. Bode reported that both clubs have been collaborating on fundraising and planning efforts for the past eight years as the Hart Park expansion evolved. They have now raised substantially all the money necessary to proceed with the project and are ready to move forward and begin construction.

Richard Bachman, 2229 N. 115th Street, a member of the Parks and Forestry Commission, reported that the commission fully supports this project.

Mayor Didier thanked the groups for coming forward and said that this will be the catalyst to move more projects along in Hart Park.

Moved by Ald. Birschel, seconded by Ald. Hansen to recommend to Council execution of an Agreement with the Wauwatosa Rotary foundation for construction of the Rotary Performance Pavilion at Hart Park. Ayes: 7

Memorandum of Understanding with Tosa Tonight, Inc. – Management and Operation of Rotary Performance Pavilion at Hart Park

The committee reviewed a draft Memorandum of Understanding (MOU) between the City of Wauwatosa and Tosa Tonight, Inc. regarding management and operation of the Rotary Performance Pavilion at Hart Park. Mr. Kesner reported that Tosa Tonight, Inc. is a new, non-profit corporation formed by the Tosa Tonight group that has been active in staging concerts and fundraising for the facility for the past several years. When the Rotary Performance Pavilion is turned over to the City, it will be under the jurisdiction of the Board of Parks and Forestry Commissioners whose stated intent has been to contract with a non-profit group to operate the facility.

Since Tosa Tonight, Inc. is just getting set up as a non-profit corporation, Mr. Kesner recommended executing the subject MOU as a first step in moving forward. A more formal agreement would ultimately be negotiated. He distributed revised copies of the MOU with some minor changes in language to ensure that the Rotary Clubs or the City are not foreclosed from scheduling events after a January 31 deadline. The Rotary Clubs and the City will each be allowed to use the facility for up to four events each year at no charge. Additional events will be permitted as dates are available. The City's events will include the 4th of July celebration and Wauwatosa Night Out. Other nonprofit and governmental entities also may schedule events with the permission of Tosa Tonight so long as they do not conflict with other events and do not cause Tosa Tonight to incur additional costs. Mr. Kappel felt that the arrangement would adequately cover any events the City might want to schedule.

Nancy Leahy, 1707 N. 70th Street, spoke as a representative of Tosa Tonight and one of the founding members of the group, which has been in operation for about eight years. She said that they are in the process of forming the nonprofit corporation, which would operate through a board with a part-time executive director hired as an independent contractor. To be posted in July/August, the position's primary focus will be marketing the facility to groups in Wauwatosa and throughout Milwaukee County. They will be self-funded through sponsorships, concession sales, and potentially some ticket sales as well.

Richard Bachman, 2229 N. 115th Street, a member of the Parks and Forestry Commission, reported that the commission voted unanimously in favor of this effort. He noted that the four concerts annually sponsored by Tosa Tonight originally began as a Millennium Committee project.

Moved by Ald. Meaux, seconded by Ald. Hansen to recommend to Council execution of a Memorandum of Understanding with Tosa

Tonight, Inc., regarding management and operation of the Rotary Performance Pavilion at Hart Park. Ayes: 7

Sunset Provision for Sex Offender Residency Ordinance

Mr. Kesner reported that last November the Common Council passed a sex offender residency restriction with a sunset clause ending the provisions June 30, 2008. Council action by means of an ordinance change would be needed to remove the sunset date and keep the ordinance in place, if so desired. Since an ordinance change requires committee action at two separate meetings, this first meeting offers an opportunity for the committee to give direction and input on how they wish to proceed.

Mayor Didier said that there has been no ill effect on the community since the ordinance has been in effect. Similar ordinances elsewhere have been a positive influence in deterring sex offenders from moving in. Ald. Krol has suggested forming a review panel to address questions here, which she will discuss further with him. She felt that any questions should be brought forward and that the ordinance should stay on the books.

Asked by the Chair about any changes in the law affecting the ordinance, Mr. Kesner said there has been nothing significant. There have been lower court cases around the country where ordinances were found to be unconstitutional, but it doesn't seem that the higher courts have upheld those findings. The ordinances were all written differently and based on different state constitutional provisions. There is an active Franklin case that is testing an almost identically worded ordinance that it doesn't seem will be successful, but it is too soon to know the outcome. Mr. Kesner said that he has received only one inquiry about ordinance provisions, which was referred to the police chief.

Ald. Birschel recalled that there was much debate, both pro and con, before this committee and a lot of statistics were cited. He was especially concerned at the time because a Conditional Use had just been granted for a day care center that was across the street from an offender.

Moved by Ald. Birschel, seconded by Ald. Hansen to recommend
to Council introduction of an ordinance rescinding the sunset date –

Mr. Kesner said that the Franklin challenge is on constitutionally equal protection based on not being allowed to live in certain places. The claim would likely be that the difference is not addressed appropriately and that there are other more effective means. It is an appeal of a municipal court prosecution. There haven't been any significant challenges in other jurisdictions in Wisconsin with similarly written ordinances. A small number have been successful in other states, but those ordinances or state laws address the issue differently. Most importantly some do not "grandfather" violators currently living within the specified restricted area.

Recalling comments in previous discussions that well-intended legislation sometimes causes unanticipated results that are worse than the original problem, Ald. Stepaniak asked if those fears have proved out. Mr. Kesner said that there have not been enough situations here to have a real reading. He has not heard anything from the Department of Corrections or the Sex Offender Registry Program but could notify those groups and others who appeared previously if the committee decides to move forward.

Ald. Meaux asked if there has been any action to implement the ordinance since it was passed. Chief Weber explained that the department is notified of an offender, and that person is required to register with the police when moving in, although it is debatable whether all comply. Since the ordinance was passed, there was one notification involving a person who apparently has since moved to another state, and there is another case where the offender lives outside the restricted area.

Ald. Meaux inquired about any formal Department of Corrections position on the restrictions. Mr. Kesner said they have different opinions on its effect, especially from a treatment standpoint, but usually want the freedom to

do what they feel is needed with people under their care. Although the program has not been perfect in achieving registration, it has improved since coming under the Department of Corrections' jurisdiction. Mayor Didier commented that despite having 22 municipalities with sex offender ordinances, Wisconsin still has the highest registration rate. She concluded that the ordinances are not affecting the registry, but Ald. Meaux felt that the Department of Corrections might disagree. Staff does not seem to be taking a position on whether or not to repeal the sunset clause, he noted, but the sunset clause was inserted because there was some uncertainty. He thought there would be more information by this time to make a more informed decision, but he was concerned that that information has not come forth.

Chief Weber said that staff does have a position, which he spoke up on when this first came up. When Department of Corrections or social service agency representatives cited a 3% recidivism rate, he referenced victims' families and said that was too much. Franklin had a case where an offender did not move in because of the ordinance, but he was not sure if that has happened here. He said that offenders *are* treated differently, which is why they have to register, and he questioned why we would let them move wherever they want.

Ald. Meaux spoke of the understanding that the Department of Corrections and law enforcement work hand in hand. We get concerned when agencies are not working cooperatively, yet we are in a position contradictory to the Department of Corrections. The City of Pewaukee passed a safety zone, which he said is an example of the state and local law enforcement working together. He is willing to look at a broader concept but is concerned about the Department of Corrections aspect.

Ald. Birschel said that offenders are treated differently even by the Department of Corrections. Violent offenders are kept in a facility until professionals feel they can move into the community. At the time the ordinance was passed, he had list of 14 offenders in the city, seven of whom were grandfathered and could live within otherwise restricted areas.

Ald. McBride questioned whether all cases were overturned by higher courts upon appeal. Mr. Kesner said that those ordinances upheld as being unconstitutional usually had more restrictive provisions or a more restrictive state constitution. There have been some intermediate court of appeals cases in other states, but he could not recall a state supreme court case. A federal district court has upheld one ordinance. Ald. McBride requested a list of referenced cases.

Ald. McBride commented that there are no differences on wanting to protect our children; he encourages having the most effective law we can. Options would be to amend the law, extend the sunset date, or perhaps form a taskforce to take a harder look. He was concerned that the ordinance was initially passed in a hurry, and he feels rushed now as well. We should bring in the best thinking, notifying everyone who spoke on either side at previous meetings and possibly hearing from Dean Stojkovic of the UW-M School of Social Welfare, who was quoted previously and is well known in the field. Mr. Kesner indicated that those who spoke previously would be notified.

Vote on the motion, Ayes: 4; Noes: 2 (Stepaniak, Meaux),
Present: 1 (McBride)

The meeting adjourned at 9:02 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin

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