



CITY OF WAUWATOSA
7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
Fax: (414) 479-8989
<http://www.wauwatosa.net>

COMMON COUNCIL
Regular Meeting, Tuesday, March 16, 2010

PRESENT: Alds. Wilke, Berdan, Birschel, Donegan, Hanson, Herzog, Jay, Krol, McBride, Meaux, Nikcevich, Organ, Stepaniak, Walsh -14

EXCUSED: Alds. Dennik and Ewerdt

ALSO PRESENT: Mr. Archambo, City Administrator; Mr. Kesner, City Attorney; Mr. Braier, Finance Director; Mr. Kappel, Public Works Director; Ms. Welch, Community Development Director; Police Chief Weber; Mr. Wehrley, City Engineer; Mr. Miner, City Assessor; Ms. Ledesma, City Clerk; Ms. Van Hoven, Deputy City Clerk

Mayor Didier in the Chair

The Mayor called the meeting to order at 7:34 p.m.

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

APPLICATIONS, COMMUNICATIONS, ETC.

1. Wauwatosa Water Utility Statement of Receipts and Disbursements for the period ending February 28, 2010
Place on file
2. Donation by Karen M. Wolfe in the amount of \$1,000 to the Police Department's Community Support Division for future expenditures and funding the Canine Program
Place on file
3. Notice of Claim: Justino Perez, 710 S. 29th Street, Milwaukee
City Attorney
4. Financial Statements for the period ending February 28, 2010
Place on file
5. E-mails in opposition to the Stone Pointe condominium project: Spencer & Gail Hoyt, 1298 N. 63rd Street; Mary Toole, no address given; Mark Tiggard, 1276 N. 63rd Street
Add to existing file

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-36

WHEREAS, Pitch's Club 113, LLC, d/b/a The Baby Grand has asked for a transfer of their Class B beer and Class B liquor license to Jo-Jo's Martini Bar, LLC, d/b/a Jo-Jo's Pizza & Pub, 11302 W. Blue Mound Road,

NOW, THEREFORE, BE IT RESOLVED THAT the Class B beer and Class B liquor license be transferred from Pitch's Club 113, LLC, d/b/a The Baby Grand to Jo-Jo's Martini Bar, LLC, d/b/a Jo-Jo's Pizza & Pub, 11302 W. Blue Mound Road, Wauwatosa, WI.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-37

WHEREAS, Sara J. Beam, 7522 W. Sheridan Avenue, Milwaukee, WI, has applied for an operator's license in conjunction with her employment at Dave & Buster's, 2201 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Sara J. Beam, 7522 W. Sheridan Avenue, Milwaukee, WI, is hereby issued an operator's license for the period ending June 30, 2010.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-38

WHEREAS, Michelle R. Carter, 3208 W. Mount Vernon, Milwaukee, WI, has applied for an operator's license in conjunction with her employment at Dave & Buster's, 2201 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Michelle R. Carter, 3208 W. Mount Vernon, Milwaukee, WI, is hereby issued an operator's license for the period ending June 30, 2010.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-39

WHEREAS, Sterling D. Paris, 8853 N. Swan Road, Milwaukee, WI, has applied for an operator's license in conjunction with his employment at Dave & Buster's, 2201 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Sterling D. Paris, 8853 N. Swan Road, Milwaukee, WI, is hereby issued an operator's license for the period ending June 30, 2010.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-40

WHEREAS, Matthew J. Mozejewski, 10876 W. Mt. Vernon Avenue, Wauwatosa, WI, has applied for an operator's license in conjunction with his employment at Dave & Buster's, 2201 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Matthew J. Mozejewski is hereby issued an operator's license for the period ending June 30, 2010, contingent upon a review of his record in six months;

BE IT FURTHER RESOLVED THAT the Wauwatosa Police Department is directed to review Mr. Mozejewski's record six months after issuance of this initial license and report back to the Committee on Legislation, Licensing and Communications if any new significant issues or concerns are revealed at that time.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-41

WHEREAS, Shamane T. Anderson, 2434 N. 41st Street, Milwaukee, WI, has applied for an operator's license in conjunction with her employment at Dave & Buster's, 2201 N. Mayfair Road, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Shamane T. Anderson, 2434 N. 41st Street, Milwaukee, WI, is hereby issued an operator's license for the period ending June 30, 2010.

It was moved by Ald. Birschel, seconded by Ald. Hanson to approve the six foregoing resolutions. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-10-42

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, April 20, 2010 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 the proposed rezoning of a portion of the northeast quadrant of the Milwaukee County Grounds located at the northeast corner of Hwy. 45 and Watertown Plank Road from Medical Center and Institutions District and Research Park Planned Development District to Business Planned Development 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.

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-10-43

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, April 20, 2010 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 the proposed rezoning of a portion of the northeast quadrant of the Milwaukee County Grounds from Medical Center and Institutions District to Conservancy 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.

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

ORDINANCE O-10-03

AN ORDINANCE TO CREATE SECTIONS 15.02.180 AND 15.02.190 AND TO REPEAL AND RECREATE CHAPTER 15.06 OF THE WAUWATOSA MUNICIPAL CODE TO CHANGE THE NAME OF THE BOARD OF EXAMINERS AND APPEALS TO THE BOARD OF BUILDING AND FIRE CODE APPEALS AND TO AMEND THE POWERS AND DUTIES OF THAT BOARD

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

Part I. Sections 15.02.180 of the Code of the City of Wauwatosa are hereby created to read as follows:

15.02.180 Appeals and Code Interpretations.

A. Any person aggrieved by orders, requirements, decisions or interpretations of the building and safety division may, within fifteen days from the date of said orders, requirements, decisions or interpretations, request a review and determination by the chief building official or may serve written notice upon the chief building official and file an application for appeal to the board of building and fire code appeals.

B. Any person aggrieved by the application of the provisions contained in Title 15, except as modified by a specific chapter, may file an appeal before the board of building and fire code appeals.

C. Application, fee and supporting documentation for any appeal under this section shall be submitted as outlined in Chapter 15.06 – Board of Building and Fire Code Appeals

Part II. Section 15.02.190 of the Code of the City of Wauwatosa is hereby created to read as follows:

15.02.190 Violations and Penalties.

Any person, firm or corporation violating any provision of this title shall be subject to the violation and penalty provisions as outlined in Chapter 15.34.080 of this code.

Part III. Chapter 15.06 of the Code of the City of Wauwatosa is hereby repealed and recreated in its entirety to read as follows:

Chapter 15.06 BOARD OF BUILDING AND FIRE CODE APPEALS

15.06.010 Purpose.

In order to hear and decide appeals of orders, decisions, denials and interpretations; to determine the suitability of alternate materials, types of construction or fire-protection systems; or to review requests for interpretations of the provisions of Title 14 – Fire Prevention Code and Title 15 – Buildings and Construction, except as otherwise specifically modified in this code, there is created a Board of Building and Fire Code Appeals.

15.06.020 Membership.

The Board of Building and Fire Code Appeals shall consist of eight members. The members shall be comprised of a general contractor, a professional engineer, a fire professional, a journeyman electrician, a professional in the field of real estate development, valuation or related area of expertise, a professional architect, a resident of the city, and the chief building official who shall act as secretary to the board. Members, other than the chief building official, shall be appointed by the mayor and confirmed by the common council for terms of three years. The mayor shall appoint one member as a chairperson and the board shall elect a vice-chairperson at the first meeting in June annually. Where a determination of the chief building official is being appealed, the chief building official shall abstain from voting on the question.

15.06.030 Appeals and Interpretations.

A. Any person aggrieved by orders, decisions, denials or interpretations of the chief building official, fire marshal, inspector, or other authorized representative of the building and safety division or the fire prevention bureau may file an appeal before the Board of Building and Fire Code Appeals.

B. Any person aggrieved whose application for use of a new material, method of construction or alternate fire-protection system is denied by the chief building official, fire marshal, inspector, or other authorized representative of the building and safety division or the fire prevention bureau may file for a variance before the Board of Building and Fire Code Appeals.

C. Any person aggrieved by the requirements or provisions contained in Title 14 or Title 15 may file for an interpretation before the Board of Building and Fire Code Appeals.

15.06.040 Powers.

A. The Board of Building and Fire Code Appeals is empowered to adopt reasonable rules and regulations for conducting its investigations and hearings and shall make findings and render decisions based thereon in writing to the chief building official or fire marshal when applicable, with a duplicate copy to the applicant. The board may recommend to the common council such changes in legislation as are consistent therewith.

B. The board, by majority vote, may hear an appeal where it is alleged there is error in any order, requirement, decision, denial or interpretation made in the enforcement of Title 14 or Title 15. The board may uphold, modify or reverse any such orders, decisions, denials or interpretations of the chief building official, fire marshal, inspector, or other authorized representative of the building and safety division or the fire prevention bureau.

C. The board, by a majority vote, may provide an interpretation to approve the use of a new material, method of construction or alternate fire-protection system.

D. The board by majority vote, may interpret the requirements and provisions contained in Title 14 and Title 15. The board may not interpret such provisions in a manner outside the scope of existing language unless it finds, upon a preponderance of the evidence, that the following facts and conditions exist and the board so indicates in the minutes of its proceedings:

1. *Preservation of intent.* The modification sought shall not be contrary to the public interest, and where, owing to special conditions, a literal enforcement will result in

practical difficulty or unnecessary hardship, so that the spirit and purposes of the code shall be observed and the public safety, welfare and justice secured.

2. *Exceptional circumstances.* There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure or premises that do not apply generally to other properties or structures in the city.
3. *Economic hardship and self-imposed hardship are not grounds for modification.* No application shall be granted solely on the basis of economic gain or loss. Self-imposed hardships also may not be the basis for the granting of such interpretations.
4. *Preservation of property rights.* The modification must be necessary for the preservation and enjoyment of the applicant's property rights to the same extent that such rights are possessed by the owners of other similar properties in the city.
5. *Absence of detriment.* No application for such interpretation shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this article or the public interest.
6. *Fire protection.* No application for such interpretation shall be granted for an alternate fire protection system unless the board finds that the modification takes into consideration the characteristics of the fire hazard on the specific premises, the threat to human life and the likelihood of damage to property.

15.06.050 Meetings – Procedures.

A. Except as specifically modified below, or where otherwise inapplicable, Robert's Rules of Order, Tenth Edition shall govern the procedures for all meetings of the Board of Building and Fire Code Appeals.

B. The members may convene as a board at the site in question to review items relevant to the case.

C. The Board of Building and Fire Code Appeals shall hear testimony or accept other evidence as presented so long as such testimony or evidence is relevant and not unduly repetitious as determined by the chairperson.

D. All witnesses giving testimony to the Board of Building and Fire Code Appeals shall be placed under oath; such testimony shall be subject to cross examination.

E. Any person may appear with legal counsel.

F. Once the Board of Building and Fire Code Appeals begins its deliberation no further testimony is permitted unless requested by a majority vote of the Board.

H. Upon the completion of the hearing, the Board of Building and Fire Code Appeals may adjourn into closed session consistent with state law.

I. The Board of Building and Fire Code Appeals' decision shall be final and binding upon the parties involved.

J. The board's decision shall be rendered in writing.

15.06.060 Application

A. A request for hearing an appeal where it is alleged there is error in any order, requirement, decision, denial or interpretation made in the enforcement of Title 14 or Title 15, shall be made within fifteen days from the date of said orders, decisions, denial or interpretations.

B. A request for hearing an interpretation to approve the use of a new material, method of construction, alternate fire-protection system or any requirements or provisions contained in Title 14 or Title 15 may be submitted any time prior to the agenda deadline for the meeting at which the request is to be heard.

C. Any person requesting an appeal or interpretation shall file with the Building and Safety Division an application therefore in writing on a blank form to be furnished for that purpose. Such

application shall be accompanied by a copy of the written denial, written interpretation or notice of noncompliance issued by the Building and Safety Division or the Fire Prevention Bureau; documentation supporting the appeal or variance request and the proper fee as outlined in the city consolidated fee schedule. All fees shall be retained by the city without refund.

D. Applications, meeting dates and agenda deadlines shall be established each year by the Building and Safety Division and made available to the public.

15.06.070 Notice--Mailing.

A. The Building and Safety Division shall give written notice of the time, date and place of the Board of Building and Fire Code Appeals meeting at which the appeal or interpretation will be considered as follows:

1. Regular first class mail to the last known address of owners of any real estate for which application for an appeal or interpretation has been made, when such owners are not the applicants;
2. Regular first class mail to the last known address of adjoining property owners for which an appeal or interpretation has been requested;
3. Regular first class mail, interdepartmental mail or e-mail to alderpersons of the district in which the affected property is located.

B. Notices shall be deposited in the United States mail at least seven days prior to the scheduled meeting.

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

It was moved by Ald. Herzog, seconded by Ald. Stepaniak to approve the two foregoing resolutions and to adopt the foregoing ordinance. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-10-44

WHEREAS, Geoff Hurtado, Irgens Development, and Denise Lindberg, Friends of Hoyt Park and Pool, Ltd., have applied for a Conditional Use in the Parks and Open Space District at 1800 Swan Boulevard to operate a pool, bathhouse, and concessions, 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 Geoff Hurtado, Irgens Development, and Denise Lindberg, Friends of Hoyt Park and Pool, Ltd., to operate a pool, bathhouse, and concessions at 1800 Swan Boulevard subject to the following conditions:

- 1) Hours of operation to be 6:00 a.m. to 10:00 p.m. and;
- 2) Working with City Engineer and Public Works Director to identify and implement measures to reduce possible traffic impacts; and

- 3) obtaining all necessary licenses and permits.

It was moved by Ald. Herzog, seconded by Ald. Stepaniak to approve the foregoing resolution. Ayes 13, Present 1 (McBride)

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION

WHEREAS, David Israel, Lears & Company, has submitted a request for an amendment to the project plan for a Business Planned Development at 1215 N. 62nd Street to construct a portion of a multi-family residential development as senior rental housing units; and

WHEREAS, the amendment has been reviewed and recommended by the City Plan Commission and the Committee on Community Development; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby approves the amendment to the project plan for a Business Planned Development at 1215 N. 62nd Street submitted by David Israel, Lears & Company, to allow for the construction of 82 units of senior rental housing units and subject to the following conditions:

- 1) plans showing adequate sewer capacity, environmental remediation, and storm water management subject to approval by the city engineer;
- 2) parking lot and traffic circulation plans showing adequate access for adjacent businesses subject to approval by the city engineer;
- 3) plans for water supply to site subject to approval by the city water superintendent;
- 4) building plans designating design and materials recommended the city Design Review Board;
- 5) emergency vehicle access plan subject to approval by the city police and fire departments;
- 6) granting of a conservation easement to preserve and protect the portion of the Schoonmacher Reef owned by the developer or any portion acquired in the future; granting an access easement for the public to view, according to city specifications, the portion of the Schoonmacher Reef owned by the developer or any portion acquired in the future;
- 7) amended developer's agreement approved by the Common Council;
- 8) an appropriate interim landscaping plan subject to approval by city staff; and
- 9) obtaining all necessary licenses and permits.

It was moved by Ald. Herzog, seconded by Ald. Stepaniak to approve the foregoing resolution. –

It was moved by Ald. Donegan, seconded by Ald. Hanson to refer the matter back to committee for further discussion. Roll call vote, Ayes 9 (Wilke, Berdan, Birschel, Donegan, Hanson, Krol, McBride, Organ, Walsh), Noes 5

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-46

WHEREAS, the Wauwatosa Village Business Improvement District Board has faced a number of issues regarding way-finding public improvements and other potential changes to the Village area; and

WHEREAS, many of the issues addressed by the Village Improvement District Board require further study by professional planners and the creation of a Village Center/State Street Corridor Plan; and

WHEREAS, 2010 Community Development Block grant (CDBG) Administrative Funds could be made available to fund the cost of preparing the Village Center/State Street Corridor Plan;

NOW, THEREFORE, BE IT RESOLVED THAT 2010 CDBG Administrative Funds in an amount not to exceed \$50,000.00 are hereby allocated for purposes of preparing a Village Center/State Street Corridor Plan consistent with the concerns expressed by the Village Business Improvement District Board, which consultant contract shall be awarded and administered by the Department of Community Development, Planning Division.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-47

WHEREAS, the Common Council previously authorized a 5-year lease for a Minolta Model C550 copier to be located in the engineering department, which lease commenced in 2007; and

WHEREAS, although 16 months remain in the previous lease, the last two years have proven to be problematic with numerous issues resulting in extensive hours of down time; and

WHEREAS, the vendor for the copier has recognized the City's concerns and have offered to replace the unit with a five-year lease for a newer model which has an overall lower lease and maintenance cost, which is expected to result in a savings over five years of more than \$8,700.00;

NOW, THEREFORE, BE IT RESOLVED THAT appropriate City officials are hereby authorized to enter into a new 60-month lease including all service and supplies from Konica Minolta as more particularly described in the memorandum of the Purchasing Manager dated March 3, 2010, and presented to the Committee on Budget & Finance at its meeting of March 9, 2010.

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

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 3/3/10 – 3/16/10 --

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 3/3/10 – 3/16/10: \$1,628,809.33

It was moved by Ald. Meaux, seconded by Ald. Hanson that each and every account of bills and claims be allowed and ordered paid. Roll call vote, Ayes 14

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-10-48

WHEREAS, in March, 2009, the City of Wauwatosa issued an RFP for a needs assessment to address City Hall and Civic Center space utilization and energy management, although funding was not immediately available to complete that study at that time; and

WHEREAS, a grant of Community Development funds through the American Recovery and Reinvestment Act of 2009 in the amount of \$30,000.00 is available for the City to utilize toward this study, along with additional funds currently available in the Municipal Complex Retained Earnings Fund; and

WHEREAS, after reviewing proposals and updating the details of said proposals, staff has recommended that Engberg Anderson, Inc. of Milwaukee, WI, be contracted to perform the space utilization and energy management study at City Hall consistent with the proposal modifications described in its March 5, 2010, letter to the Special Projects engineer;

NOW, THEREFORE, BE IT RESOLVED THAT appropriate City officials are hereby authorized to contract with Engberg Anderson, Inc. of Milwaukee, WI, to perform an overview facilities plan for the Wauwatosa City Hall and Civic Center consistent with the proposal submitted to the Special Projects engineer on March 5, 2010, in an amount not to exceed \$38,000.00.

It was moved by Ald. Krol, seconded by Ald. Jay to approve the foregoing resolution. -14

There being no further business, the meeting adjourned at 8:52 p.m.

cal

Carla A. Ledesma, CMC, City Clerk