



CITY OF WAUWATOSA
MEMORIAL CIVIC CENTER
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COMMON COUNCIL

Regular Meeting, Tuesday, January 20, 2004

PRESENT: Alds. Matthews, McCarthy, Stepaniak, Subotich, Sullivan, Treis, Bruderle-Baran, Becker, Casey, Ecks, Grimm, Heins, Herzog, Jenkins, Kopischke -15

EXCUSED: Ald. Krol

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; 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.

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. -15

PUBLIC HEARING

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

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 24.50.030 BY INCLUDING A PROVISION TO ALLOW ADDITIONS AND ALTERATIONS TO EXISTING NONCONFORMING RESIDENTIAL BUILDINGS

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

Part 1. Chapter 24.50 Nonconforming Uses, Structures and Lot is hereby amended to read as follows:

24.50.010 Purpose.

The purpose of this chapter is to provide for the regulation of nonconforming uses, structures and lots and to specify those conditions under which those nonconforming uses, structures, and lots shall be discontinued.

There are lots, structures and uses that were lawful before the ordinance codified in this title was adopted or amended, but which have become either prohibited, regulated or restricted under the new terms and conditions of this title. They shall hereafter be referred to as pre-existing, nonconforming lots, structures, and uses.

It is recognized that significant expenditures of personal and financial energy may have been invested in the development of such uses and structures and that to dismiss these expenditures as no longer relevant would be harmful to the public welfare, both in regards to the community harmony and with respect to support that will be needed to improve the quality, aesthetics and functional aspects of the community.

It is therefore the intent of this title to allow these structures and uses that existed prior to the adoption of the ordinance codified in this title to continue, including normal maintenance, repair or replacement in case of damage due to disaster or any means of destruction.

24.50.020 Existing nonconforming uses.

The lawful nonconforming use of a principal structure, or premises existing on February 1, 1972 may be continued although the use does not conform with the provisions of this title; however, the nonconforming use of a structure, all or substantially all of which is designed or intended for a use permitted in the district in which it is located, shall not be expanded or extended into any other portion of such building or structure (nor changed to any other nonconforming use) except as authorized by the board of appeals in accordance with the provisions of Chapter 24.52.

24.50.030 Existing nonconforming commercial structures.

Any principal structure lawfully existing on February 1, 1972 all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, or any building or structure whose size or location does not conform with the lot width, lot area, yard, height, parking and access provisions of this title may be continued subject to the following provisions:

1. A nonconforming building or structure shall not be extended, enlarged, reconstructed, moved or structurally altered except when required to do so by law or order, or so as to comply with all the regulations of the district in which it is located.
2. Total lifetime structural repairs and alterations shall not exceed fifty percent of the city's market value of the building or structure, unless it is permanently changed to conform with all regulations of the district in which it is located. (§ 1 (part) of Ord. dated February 1, 1972: prior code § 24.25(3))

24.50.040 Existing nonconforming residential structures.

Some existing residential structures might not be approved if submitted for review for compliance with this ordinance. These nonconforming structures have a right to continue subject to the following limitations.

1. A nonconforming principal structure that is abandoned for more than 12 months may be replaced only with a conforming structure.
2. Nonconforming principal structures may be maintained and repaired, but no such activity shall increase the degree of nonconformity or result in a change of use.
3. Nonconforming principal structures may be replaced.
4. Nonconforming principal structures may be enlarged provided that the addition meets current zoning requirements.

24.50.050 Averaging setbacks along residential street frontages.

For a principal use in a residential district, the minimum setback along a street frontage is reduced to the average setback of the existing primary use buildings on that block face (but never less than 10'). This average setback may be used to establish the setback for the construction of a new primary use building or to establish whether a property conforms to a front setback.

24.50.060 Discontinuance.

If the nonconforming use of a premises or the nonconforming use of a conforming building is discontinued or terminated for a period of twelve months, or if the use of a nonconforming building or structure is discontinued or terminated for a period of twelve months, any future use of the building, structure, or premises shall comply with the use provisions of this title. (§ 1 (part) of Ord. dated February 1, 1972; prior code § 24.25(4))

24.50.070 Existing nonconforming lots.

Some existing undeveloped lots, platted before February 1, 1972, would not be approved as building sites if submitted for review for compliance with this ordinance. These nonconforming lots may be developed, but only as provided here.

1. Nonconforming lots may be divided, and thus eliminated, in order to enlarge adjoining lots.
2. Wherever possible, adjoining nonconforming lots that are in a single ownership shall be consolidated to create a conforming lot or lots.
3. Where a nonconforming residential lot cannot be consolidated, one single family dwelling may be built on that lot provided that it conforms to the setback, lot coverage and minimum lot size requirements.
4. No lot or parcel of land held in separate ownership and having a width of less than thirty feet and an area of less than three thousand feet shall be improved with buildings or structures.

24.50.080 Appeals.

Any person aggrieved by a decision regarding nonconforming lots, structures, or uses made by planning staff or a city commission may appeal such decision to the Board of Zoning Appeals in accordance with the provisions of Section 24.52.040.

Part II. 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 the City of Wauwatosa to amend Chapter 24.50.030 of the Zoning Code by including a provision to allow additions and alterations to existing non-conforming residential buildings, recommends to the Common Council that the request be approved.

Dated this 8th day of December 2003.

Nancy L. Welch, Secretary
City Plan Commission

Brian Mittner, 1869 N. 71st Street, spoke in favor of the proposed ordinance, noting that he owns an old farm house that has required renovation over the years. These ordinance changes should make it easier to obtain approval of needed improvements.

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.

Ordered held to the next Common Council meeting, February 3, 2004.

OLD BUSINESS

The following item was held in file after a public hearing on December 2, 2003:

RESOLUTION

WHEREAS, the Common Council of the City of Wauwatosa, Wisconsin, held a public hearing at the Council Chambers in the City Hall at 7:30 p.m. Local Time, on the 2nd day of December, 2003 for the purpose of hearing all interested persons concerning the preliminary resolution and report of the Board of Public Works on the proposed improvement by repaving of the following streets and alleys. Sidewalk replacement cost, on those streets so indicated, is included in the assessment rate for the paving work.

| <u>Street & Location</u> | <u>Ald. Dist.</u> | <u>Exist&(Prop) Width</u> | <u>Pavement Constr.Type</u> | <u>Assessed Sdwk. Work</u> |
|---------------------------------------------------------------------------------------|-------------------|-------------------------------|-----------------------------|----------------------------|
| ALLEY from Burleigh St. to Locust St. / N. 122nd St to N. 124th St/n-s leg | 7, 8 | 20' | A-Conc | No |
| ALLEY from Burleigh St. to Locust St./ N. 122nd St. to N. 124th St./e-w leg | 8 | 20' | C | No |

Original Construction: New (Conc.) or (Asph.) Grading, placing new concrete curb and gutter, and concrete or asphalt pavement surface (as indicated) on a new stone or asphalt base.

Reconstruction: Type "A" (Asph.) or (Conc.) Completely removing existing curb and gutter and existing pavement, placing new concrete curb and gutter (excluding alleys), and asphalt or concrete pavement surface on a new base.

The above repaving type also includes placing necessary water and sewer service pipes and storm sewer and appurtenances; relaying sanitary sewer and storm sewer as required; relocating existing street lighting system where necessary; constructing new concrete driveway approaches and replacing concrete sidewalks which are disturbed by other construction, which are defective, or which have a hazard potential.

Repaving: Type "B" (Asph.) Completely removing existing curb and gutter, milling the existing asphalt pavement as required, and placing new concrete curb and gutter and asphalt pavement surface on the existing road base.

The above repaving type also includes placing necessary water and sewer service pipes and storm sewer and appurtenances; relaying sanitary sewer and storm sewer as required; relocating existing street lighting system where necessary; constructing new concrete driveway approaches and replacing concrete sidewalks which are disturbed by other construction, which are defective, or which have a hazard potential.

Repaving: Type "C" (Asph.) Milling the existing pavement as required, repairing curbs (and abutting approaches and sidewalks where necessary), and surfacing with asphalt pavement. Also included is the placing of necessary water and sewer service pipes and storm sewer and appurtenances, and relaying sanitary sewer and storm sewer as required.

And has heard all persons desiring audience at such hearing;

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

Section 1. That the report of the Board of Public Works in connection with the construction of the above-described permanent public improvement, including preliminary plans and specifications therefor, is hereby adopted and approved.

Section 2. That the Board of Public Works is directed to carry out the work of such permanent improvement in accordance with the report of the Board of Public Works.

Section 3. That payment for said permanent improvement be made by assessing the cost to the property improved as indicated in said report.

Section 4. That the assessments shown on the report, are true and correct and are hereby confirmed.

Section 5. That the owners of the respective parcels of land fronting or abutting the street improvements, on which a public hearing has been held and preliminary assessments have been confirmed, shall have payment of the special assessments scheduled as follows:

(a) Each special assessment and special charge, pursuant to Section 66.0627 of the Wisconsin Statutes, levied in an amount of \$200 or less against any parcel of land in the City of Wauwatosa shall be entered in the tax rolls in one installment.

(b) All assessments will be collected in installments as provided below, except such assessments on property where the owner of the same shall file with the City Clerk within 30 days from date of billing, a written notice that he elects to pay the special assessment on his property to the City Treasurer on or before the next succeeding November 1, unless the election is revoked in writing 30 days prior to November 1. If, after making such election, said property owner fails to make the payment to the City Treasurer, the City Clerk shall place the entire assessment, and applicable interest, on the next succeeding tax roll.

(c) Each special assessment for improvements levied in an amount exceeding \$200 against any parcel of land in the City of Wauwatosa shall be entered in the tax rolls in five equal annual installments of principal together with interest at the rate of twelve percent (12%) per year or the percentage rounded out to the next highest whole percentage number above the interest rate paid by the City for the sale of corporate purpose bonds, which include the project which is the subject of the

special assessment, whichever figure is less, on the unpaid balance of said assessment. Individual assessments shall run concurrently except as provided under Section 3.08.040 of the City Code.

(d) Each special assessment levied against any parcel of land in the City of Wauwatosa for the installation of sanitary sewer main or water main or construction of permanent street pavement shall not be entered in the tax roll until all installments of special assessments for sanitary sewer or water main or construction of permanent street pavement levied previously against the same parcel of land have been entered into the tax rolls and have been paid. Such subsequent special assessment shall be deferred and only interest at the rate of twelve percent (12%) per year, or the percentage rounded out to the next highest whole percentage number above the interest rate paid by the City for the issuance of General Obligation Debt, which include the project which is the subject of the special assessment, whichever figure is less, on such subsequent special assessment shall be carried into the tax rolls in addition to the scheduled installments of such prior assessments. After the last installment of such prior special assessment has been entered in the tax rolls, installments of the subsequent special assessment shall, beginning with the next subsequent tax roll, be entered in the tax rolls pursuant to Section 3.08.030 of the City Code.

(e) Whenever special assessments are levied against the frontage and side of a corner parcel of land in the City of Wauwatosa for the installation of sanitary sewers or water mains or construction of permanent pavements arising out of the same public works project, such special assessments levied against a corner parcel of land shall be deemed to be two separate special assessments, and the special assessment levied against the frontage of the corner parcel of land shall first be scheduled on the tax rolls for payment as provided in Section 3.08.030 of the City Code and the special assessment levied against the side of the corner parcel of land shall be scheduled on the tax rolls pursuant to (c) above, following such scheduling of the special assessment levied against the frontage of the corner parcel of land.

(f) Notwithstanding the provisions of (c) and (d) above, any owners of parcels of land assessed may at their option elect to pay both the scheduled installments of prior assessments as well as scheduled installments of subsequent special assessments on the same tax rolls as entered on those tax rolls pursuant to Section 3.08.030 of the City Code.

(g) If, after special assessments have been placed on the tax rolls in installments or otherwise, the taxpayer fails to pay the same within the time allowed for payment of general taxes, the same shall become delinquent and shall be treated in the same manner and subject to the same laws as delinquent general property taxes.

Section 6. The properties against which the assessments are proposed are benefited. Such benefits may include, but are not necessarily limited to, enhancement of value or marketability, improved drainage, improved pedestrian safety (walks), improved vehicular access, improved skid resistance and cross sectional elements.

Section 7. The City Clerk is directed to publish this resolution in the Wauwatosa News Times, official paper of the City of Wauwatosa.

Section 8. The City Clerk is further directed to mail a copy of this resolution to every property owner within the limits of the assessment district whose name appears on the assessment roll and whose post office address is known, or can with reasonable diligence be ascertained.

It was moved by Ald. Treis, seconded by Ald. Matthews
to hold this issue in file for approximately one year (until

it is time to consider the proposed 2005 street improvement program.) -15

OLD BUSINESS

The following item was held for two weeks following a public hearing on January 6, 2004:

ORDINANCE

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF WAUWATOSA BY REZONING THE PROPERTY LOCATED AT 10747 W. YORK PLACE FROM AAA SINGLE FAMILY RESIDENCE DISTRICT TO AA BUSINESS DISTRICT

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

Part 1. The Official Zoning Map of the City of Wauwatosa is hereby amended to reflect the following change:

Park Ridge Subdivision, Lot 17 Blk 5 & W Half Vac Alley Adj on E NW ¼ of Section 8, Town 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin is Rezoned from AAA Single Family District to AA Business 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.

It was moved by Ald. Treis, seconded by Ald. Matthews to deny this request. -15

APPOINTMENTS BY THE MAYOR

Civic Celebration Commission

Kevin Lofy, 202 Forest
(Term ends 12/31/07)

Board of Health

Maureen McNally, 8223 Stickney
(Term ends 12/31/07)

It was moved by Ald. Ecks, seconded by Ald. Matthews to concur with the foregoing appointments. -15

APPLICATIONS, COMMUNICATIONS, ETC.

1. Complaint filed by six property owners on N. 99th Street regarding Heart Hospital of Wisconsin
Building Dept., Director of Community Development
2. Wauwatosa Water Utility Statement of Receipts & Disbursements for month ended December 31, 2003
Place on file
3. Special Use application to operate a martini bar/lounge at 418 N. Mayfair Road
Plan Commission, Board of Zoning Appeals
4. E-mail from Patrick O'Hara regarding traffic speed and signage on Stickney Avenue from Wauwatosa Avenue to Swan Boulevard
Police Department, Director of Public Works
5. City of Wauwatosa Investment Summary as of December 31, 2003
Place on file
6. Notice of Claim: Michael and Maureen Klein, 1816 Alta Vista Avenue
Joe Farley, N67 W26231 Silver Spring, Sussex
City Attorney
7. Letter from Nancy Benninghouse, Wauwatosa Beautification Committee, proposing volunteer groups adopt city flower beds for planting and maintenance
Director of Public Works
8. Conditional Use application to conduct massage therapy in conjunction with an existing chiropractic office at 8812 W. North Avenue
Plan Commission, Community Development Committee
9. Letter from Norma McCutcheon, President of the Wisconsin Heart Hospital, and Jonathan Flyte, Vice-President of Facilities Development, Covenant Health Care System, regarding concerns expressed by neighbors during construction of the Wisconsin Heart Hospital
Building Department, Director of Community Development
10. Special Use application to operate a take and bake pizza store at 7630 W. Blue Mound Road
Plan Commission and Board of Zoning Appeals

FROM THE COMMITTEE ON TRAFFIC & SAFETY FOR INTRODUCTION

1. Ordinance amending Section 11.32.080 of the City Code by prohibiting parking between 9 p.m. and 2 a.m. on N. 123rd Street, north of North Avenue
Re-refer to originating committee
2. Ordinance amending Section 11.32.080 of the City Code by removing school day parking restrictions on the east side of Wauwatosa Avenue adjacent to St. Pius X School
Re-refer or originating committee
3. Ordinance amending Section 11.32.080 of the City Code by removing parking restrictions adjacent to 925 N. 113th Street
Re-refer to originating committee

FROM THE COMMITTEE ON EMPLOYEE RELATIONS

TO THE COMMON COUNCIL, CITY OF WAUWATOSA, WI,

The Committee on Employee Relations, to whom was referred the matter of additional earned or accrued vacation and executive leave pay for laid off employees, recommends to the Common Council that the matter be placed on file.

Dated this 6th day of January 2004.

Committee on Employee Relations

It was moved Ald. Jenkins, seconded by Ald. Kopischke to approve the foregoing report. Upon roll call vote, the vote was Ayes 11, Noes 4 (McCarthy, Subotich, Sullivan, Grimm)

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-04-5

WHEREAS, Theresa R. Sidirdkastriti, 11244 W. National Avenue, West Allis, WI, has applied for an operator's license in conjunction with her employment at Applebees, 2500 N. Mayfair Road;

NOW, THEREFORE, BE IT RESOLVED THAT Theresa R. Sidirdkastriti, 11244 W. National Avenue, West Allis, WI, is hereby issued an operator's license for the period ending June 30, 2004.

It was moved by Ald. Treis, seconded by Ald. Ecks to approve the foregoing resolution. -15

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-04-6

WHEREAS, the Milwaukee Metropolitan Sewerage District has notified the City of Wauwatosa of increases in sewer user charges for the year 2004 at approximately 13.4%; and

WHEREAS, current rates charged to sanitary sewer users in the City of Wauwatosa are not sufficient to pay that portion of the expenses for late sewer user charges charged by the Metropolitan Milwaukee Sewerage District while maintaining the local sewer system within the City of Wauwatosa; and

WHEREAS, recommended rate increases for 2004 sanitary sewer rates are reflected in a January 6, 2004 memorandum of the City of Wauwatosa Finance Director;

NOW, THEREFORE, BE IT RESOLVED THAT the recommendation of the Finance Director for an increase in the 2004 sanitary sewer rates as reflected in his memorandum of January 6, 2004, a copy of which is attached hereto, is hereby approved.

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

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 1/7/04 – 1/20/04 --

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 1/7/04 – 1/20/04: \$1,137,677.92

It was moved by Ald. Casey, seconded by Ald. Ecks that each and every one of the accounts of bills and claims be allowed and ordered paid. Upon roll call vote, the vote was Ayes 15.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-04-7

WHEREAS, the Board of Public Works has accepted the work of Henry R. Marohl, Inc. in the City of Wauwatosa under Contract 02-55 and the same is ready for final payment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works of the City of Wauwatosa, Wisconsin as follows:

Section 1. That the drainage improvements and work incidental thereto under Contract 02-55 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 nine thousand eight hundred sixty dollars and sixty cents (\$9,860.60) in favor of Henry R. Marohl, 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.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-04-8

BE IT RESOLVED by the Common Council of the City of Wauwatosa THAT the V.A.L.U.E. bid of Ewald Automotive Group Inc. to furnish seven (7) full size Ford Crown Victoria police vehicles for their total bid price of \$153,839.00 without trade-in vehicles be and the same is hereby accepted.

BE IT FURTHER RESOLVED THAT the V.A.L.U.E. bid of Holz Motors, Inc. to furnish two (2) 11,000 GVW truck cab and chassis for their bid price of \$40,864.00 without trade-in vehicles be and the same is hereby accepted.

BE IT FURTHER RESOLVED THAT the Purchasing Manager is hereby authorized and directed to issue purchase orders for these vehicles as directed by the proper city officers.

BE IT FURTHER RESOLVED THAT Fleet numbers P-80, P-86, P-94, P-96, P-100, P-101, P-103, W-02, and T-39 be declared surplus and the Purchasing Manager be authorized and directed to dispose of these vehicles in a manner most advantageous to the city when the new vehicles are put into service.

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

There being no further business, the meeting adjourned at 7:47 p.m.

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Carla A. Ledesma, CMC, City Clerk