



**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, February 3, 2004**

**PRESENT:** Alds. Matthews, McCarthy, Stepaniak, Treis, Bruderle-Baran, Becker, Casey, Ecks, Grimm, Heins, Herzog, Jenkins, Kopischke, Krol -14

**EXCUSED:** Alds. Subotich and Sullivan

**ALSO PRESENT:** Mr. Wontorek, City Administrator; Ms. Plass, Accounting Mgr.; Mr. Kesner, City Attorney; Mr. Kappel, Dir. of Public Works; Ms. Welch, Community Development Dir.; Police Capt. Reit; Fire Chief Redman; 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. -14

City Administrator Wontorek introduced Aaron Zwaska, an administrative intern who will be working in the Administration office over the coming year.

**OLD BUSINESS**

The following item had been held after a public hearing on January 20, 2004:

**ORDINANCE O-04-4**

**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:

Chapter 24.50 Nonconforming Uses, Structures and Lots

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 as in 1 or 2 above, after a good faith effort by the owner, 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.

It was moved by Ald. Krol, seconded by Ald. Becker to adopt the foregoing ordinance. -14

**APPLICATIONS, COMMUNICATIONS, ETC.**

1. Conditional Use application to operate a massage therapy establishment at 10625 W. North Avenue  
**Plan Commission, Committee on Community Development**
2. Letter from Betty J. Gotham regarding excessive rate increases by Time Warner Cable  
**Ad Hoc Cable Committee**
3. Letter from Thomas E. Pluster, Flag Center, Inc., expressing dissatisfaction with the city’s snow removal efforts  
**Director of Public Works**
4. Donation: \$325.79 from the Travel Club to the Wauwatosa Hart Park Senior Center to purchase a cabinet  
**Place on file**
5. City of Wauwatosa Bank Reconciliation of Depository Accounts as of December 31, 2003  
**Place on file**
6. Notice of Claim: LeRoy Neusteder, 2116 N. 113th Street  
F.H. Healthcare Development, Inc., 9200 W. Wisconsin Avenue

Dynacare Laboratories, 9200 W. Wisconsin Avenue  
Michael Best & Friedrich LLP for Covenant Healthcare System, Inc. (3)  
Reinhart Boerner Van Deuren S.C. for Milwaukee Regional Medical Center, Inc. Day Care  
Atty. Melita M. Biese, Murphy, Gillick, Wicht & Prachthausser for Margo M. Atwell, Mont  
Claire, NJ

**City Attorney**

7. Application for a Land Division at 1335 N. 68th Street  
**Plan Commission, Committee on Community Development**
8. E-mail from Joseph J. Heder, 2641 N. 117th Street, expressing concerns about the planned aerial spraying for gypsy moths in the City of Wauwatosa  
**Director of Public Works, Parks Superintendent, Health Officer**

**FROM THE COMMITTEE ON TRAFFIC AND SAFETY**

**ORDINANCE O-04-5**

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 11.32.080 TO ADD NO PARKING ZONES ON PORTIONS OF NORTH 123<sup>RD</sup> STREET

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

Part I. The “North 123<sup>rd</sup> Street – both sides” portion of the “Schedule of Streets, and Portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by adding the following language:

(w) from North Avenue to a point 83 feet north thereof.

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

**FROM THE COMMITTEE ON TRAFFIC AND SAFETY**

**ORDINANCE O-04-6**

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 11.32.080 TO REMOVE A SCHOOL ZONE PARKING RESTRICTION ON PORTIONS OF WAUWATOSA AVENUE

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

Part I. The “Wauwatosa Avenue – east side” portion of the “Schedule of Streets, and Portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by deleting the following language:

(gg) from 240 feet south of W. Clarke Street to 360 feet south of W. Clarke Street

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

**FROM THE COMMITTEE ON TRAFFIC AND SAFETY**

**ORDINANCE O-04-7**

AN ORDINANCE AMENDING WAUWATOSA CODE SECTION 11.32.080 TO ELIMINATE SOME PARKING RESTRICTIONS ON NORTH 113<sup>TH</sup> STREET

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

Part I. The “113<sup>TH</sup> Street – west side” portion of the “Schedule of Streets, and Portions” subsection of Wauwatosa Code Section 11.32.080 is hereby amended by deleting the following line:

(qq) from Potter Road to Underwood Court.

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

**FROM THE COMMITTEE ON TRAFFIC AND SAFETY**

TO THE COMMON COUNCIL, CITY OF WAUWATOSA –

The Committee on Traffic and Safety, to whom was referred a request by Patrick O’Hara, 8648 Stickney Avenue, for measures to control speed and traffic volume on Stickney Avenue, recommends to the Common Council that the matter be placed on file.

Dated this 27th day of January 2004.

Committee on Traffic and Safety

It was moved by Ald. McCarthy, seconded by Ald. Herzog to adopt the three foregoing ordinances and to approve the foregoing report. -14

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

**RESOLUTION R-04-8**

WHEREAS, Daniel Semenske, 3826 W. National Avenue, Apt. #3, West Milwaukee, WI, applied for an operator’s license in conjunction with his employment at Noodles & Co., 7700 W. State Street, Wauwatosa, WI;

NOW, THEREFORE, BE IT RESOLVED THAT Daniel Semenske is hereby issued an operator’s license for the period ending June 30, 2004.

It was moved by Ald. Treis, seconded by Ald. Grimm to approve the foregoing resolution. -14

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-04-9**

WHEREAS, the 2004 City of Wauwatosa budget does not provide funds for planting and maintenance of municipal flower beds within the public right-of-way and boulevard areas; and

WHEREAS, the Wauwatosa Beautification Committee has proposed an action plan for an “Adopt a Boulevard” program, which plan is described in the memorandum of the Director of Public Works dated January 21, 2004; and

WHEREAS, the “Adopt a Boulevard” proposal would be conducted on public lands pursuant to the specific conditions and limitations of the Director of Public Works;

NOW, THEREFORE, BE IT RESOLVED THAT the proposed “Adopt a Boulevard” program of the Wauwatosa Beautification Committee, as described in the January 21, 2004 memorandum of the Director of Public Works, and to be conducted with the limitations and conditions placed upon it by the Director of Public Works, is hereby approved;

BE IT FURTHER RESOLVED THAT excavation and abandonment of flower beds in the public right-of-way in boulevards during the calendar year 2004 will be delayed by the Department of Public Works and the Wauwatosa Beautification Committee will be allowed to place small signs within the beds scheduled for abandonment seeking adoption of the beds, on condition that such signs shall be removed by June 15, 2004.

It was moved by Ald. Heins, seconded by Ald. Ecks to approve the foregoing resolution. -14

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-10**

WHEREAS, the Purchasing Department and the Wauwatosa Fire Department sought bids to refurbish a pumper truck; and

WHEREAS, the bid of American LaFrance North Central of Shawano, WI, was the most advantageous to the City, in an amount of \$26,100.00; and

WHEREAS, the Fire Department has requested a hold over of the uncommitted balance of \$13,900.00 for this project to cover unforeseen repair costs;

NOW, THEREFORE, BE IT RESOLVED THAT the bid of American LaFrance North Central of Shawano, WI, in the amount of \$26,100.00, modified to provide a delivery date of 60 days, for refurbishing and body repairs of the 1991 3-D pumper with a Spartan Diamond Cab of the Wauwatosa Fire Department is hereby approved.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-11**

WHEREAS, the Purchasing Department and the Office of the City Attorney issued a request for proposals for a law firm to perform debt collection practices and follow-up legal action on behalf of the City of Wauwatosa; and

WHEREAS, the proposal of the Kohn law firm provides a rate structure and process which is most advantageous to the City;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa is hereby authorized to enter into a contract for debt collection services with the Kohn law firm pursuant to the proposal received on January 21, 2004 for collection of unpaid debts to the City, including delinquent personal property taxes, property damage, and other items not covered by other collection agreements.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-12**

WHEREAS, the Department of Public Works 2004 vehicle purchase budget contains funds for the purchase of a replacement van to be used for garbage cart repairs; and

WHEREAS, fleet maintenance staff has proposed the use of a less expensive 4x2 pickup truck for the same purpose; and

WHEREAS, the V.A.L.U.E. price for a 4x2 short bed pickup truck is \$11,536.00;

NOW, THEREFORE, BE IT RESOLVED THAT a change of purpose in funding for a vehicle purchase from the 2004 fleet maintenance reserve general purpose equipment budget, to purchase a 4x2 pickup truck instead of the van originally planned for this purpose, is hereby approved;

BE IT FURTHER RESOLVED THAT the purchase of the 4x2 pickup truck pursuant to the V.A.L.U.E. bid of \$11,536.00 is hereby approved.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-13**

WHEREAS, the City has been notified by the Wisconsin Department of Natural Resources of its responsibility for investigating a possible contamination at the City-owned property located at 6826 W. North Avenue in the City of Wauwatosa, which the City was originally notified of in the year 1991; and

WHEREAS, the initial step in the process of determining whether any contamination does exist requires an environmental assessment at the site during the year 2004; and

WHEREAS, the Department of Natural Resources has agreed that, if any contamination were discovered, the City could delay any action and response to such findings until the year 2005 so that it can be included in the 2005 annual budget;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa Department of Public Works is hereby authorized to issue a request for proposals for an environmental assessment of possible contamination at 6826 W. North Avenue in the City of Wauwatosa.

It was moved by Ald. Stepaniak, seconded by Ald. Grimm to approve the four foregoing resolutions. -14

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**BILLS AND CLAIMS FOR THE PERIOD 1/21/04 – 2/3/04**

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 1/21/04 – 2/3/04: \$1,864,383.55

It was moved by Ald. Ecks, seconded by Ald. Casey 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 13, Present 1 (Grimm)

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-14**

BE IT RESOLVED by the Common Council of the City of Wauwatosa THAT the bid of Badger Ford to furnish one 2003 model L8511 cab & chassis from their inventory at a price of \$57,474.00 without trade-in be and the same is hereby accepted.

BE IT FURTHER RESOLVED THAT Fleet equipment number T-67 be declared surplus and the Purchasing Manager is hereby authorized to dispose of it in a manner most advantageous to the City.

BE IT FURTHER RESOLVED THAT the competitive bidding process be waived in this matter.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-15**

WHEREAS, the Purchasing Manager and the Department of Public Works solicited bids for the purchase of replacement LED traffic signal lamps, and

WHEREAS, the bid of Traffic Control Corporation, of Racine, WI, was the lowest of three bids submitted, in an amount of \$38,500.00, and is in the best interest of the City; and

WHEREAS, funds for this purchase are budgeted within the 2004 annual budget;

NOW, THEREFORE, BE IT RESOLVED THAT the bid of Traffic Control Corporation of Racine, WI, in an amount of \$38,500.00, received on January 16, 2004, for purchase of LED traffic signal lamps, is hereby accepted and the purchase is approved.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-16**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT permission be and the same is hereby granted to Cod Company, Inc., of Elm Grove, WI, to encroach onto City property on the east side of North 112<sup>th</sup> Street with three Geoprobe borings between the sidewalk and the curb for purposes of testing for groundwater contamination, subject to the applicant 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 applicant, notification to adjacent property owners, and a street occupancy permit is obtained.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-17**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT permission be and the same is hereby granted to Hoffman's Valet Cleaners, 7215 W. Center Street, Wauwatosa, WI, to encroach onto City property with two monitoring wells, one near the sidewalk on the north side of the building and the other in the alley south of the building to be installed on a permanent basis, subject to the applicant 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 applicant, a street occupancy permit obtained, coordination of locations with the water and engineering departments, and payment of the annual loading zone permit fee if the loading zone is to be maintained.

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

**MISCELLANEOUS BUSINESS**

1. Discussion of possible amendments to TIF #2

It was moved by Ald. Bruderle-Baran, seconded by Ald. McCarthy to go into closed session per Wisconsin Statutes 19.85 (1)(e), and to possibly reconvene into open session. Upon roll call vote, the vote was Ayes 14.

The closed session began at 7:45 p.m.

There being no other business, the meeting adjourned at 9:05 p.m.

cal

---

Carla A. Ledesma, CMC, City Clerk