



CITY OF WAUWATOSA  
MEMORIAL CIVIC CENTER  
7725 WEST NORTH AVENUE  
WAUWATOSA, WI 53213  
Telephone: (414) 479-8917  
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**COMMON COUNCIL**  
**Regular Meeting, Tuesday, March 16, 2004**

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

EXCUSED: Alds. Herzog and McCarthy

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

Common Council President Bruderle -Baran in the Chair

The Common Council President 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

**APPOINTMENTS BY THE MAYOR**

**Design Review Board C**

Gary G. Woodward, 6934 Cedar Street (13)  
(Term ends 12/31/05)

William G. Robison, a current member of Board C whose term ends 12/31/04, is designated as an Alternate to the Board.

It was moved by Ald. Ecks, seconded by Ald. Heins to concur with the foregoing appointment. -14

**APPLICATIONS, COMMUNICATIONS, ETC.**

1. Annual report of the Board of Public Debt Commissioners  
**Place on file**
2. Wauwatosa Water Utility Statement of Receipts and Disbursements for month ended February 29, 2004  
**Place on file**

3. City of Wauwatosa Investment Summary as of February 29, 2004  
**Place on file**
4. Notice of Claim: Marion Kowalski, 2881 N. 118th Street  
**City Attorney**
5. Conditional Use application for church activities at 1025 N. 70th Street  
**Plan Commission, Committee on Community Development**
6. Request by Bob Marquis, 2654 N. 62nd St., for speed bumps on N. 62nd Street between Center and Clarke Streets  
**Director of Public Works**
7. Request by Dimitrios Mavraganis, Sts. Constantine & Helen Green Orthodox Church, for a Street Festival Permit for the church's annual Grecian Festival, June 11-13, 2004  
**Committee on Community Development**
8. Loading Zone permit application for area in front of 6913 W. North Avenue  
**Committee on Traffic & Safety**
9. Donation: \$100 from Patricia Schmidt, 2356 N. 81st Street, in memory of Carl A. Bohmann  
**Place on file**
10. City of Wauwatosa Statement of Financial Condition as of 2/29/04  
**Place on file**

**FROM THE COMMITTEE ON TRAFFIC & SAFETY FOR INTRODUCTION**

1. Ordinance amending Section 11.32.080 of the City Code by restricting parking on school days on W. Marion Street from N. 99th Street to the west city limits  
**Re-refer to originating committee**

**FROM THE COMMITTEE ON TRAFFIC AND SAFETY**

**RESOLUTION R-04-47**

WHEREAS, the special privilege permit for the loading zone at 9800 W. Blue Mound Road in the City of Wauwatosa has expired and no new fee has been paid; and

WHEREAS, the owner of the building has been sent renewal notices which have not been responded to;

NOW, THEREFORE, BE IT RESOLVED THAT the special privilege loading zone permit issued to the location at 9800 W. Blue Mound Road in the City of Wauwatosa is hereby revoked, relevant signage be removed, and parking at that location shall be subject to the ordinance currently in place.

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

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

**RESOLUTION R-04-48**

WHEREAS, JoJo's Martini Lounge, 418 N. Mayfair Road, Wauwatosa, WI, has applied for a Class B beer and liquor license;

NOW, THEREFORE, BE IT RESOLVED THAT a Class B beer and liquor license be awarded to JoJo's Martini Lounge, 418 N. Mayfair Road, Wauwatosa, WI, 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-04-49**

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin THAT permission be and the same is hereby granted to Jennifer Torrence to combine the parcels located at 1335 N. 68<sup>th</sup> Street, Wauwatosa. These parcels are more particularly described as follows:

South 32 feet of Lot 4, Block 3 and North 20 feet of Lot 5, Block 3 in West Blanchards Subdivision, in the Southeast ¼ of Section 22, in Township 7 North, Range 21 East, in the City of Wauwatosa, County of Milwaukee, State of Wisconsin.

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 24.56.010 of the Code of the city of Wauwatosa and subject to the payment of all outstanding special assessments on the aforescribed property which is being subdivided.

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-04-50**

WHEREAS, D. Lynne Staral and Dennis Boschi, have applied for a Conditional Use in the AA Business District at 10625 W. North Avenue to operate a massage therapy establishment 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 D. Lynne Staral and Dennis Boschi for the operation of a massage therapy establishment in the AA Business District at 10625 W. North Avenue subject to the following conditions:

- 1) hours of operation shall be 8:00 a.m. to 8:00 p.m., Monday through Friday, 8:00 a.m. to 6:00 p.m. on Saturday, and 9:00 a.m. to 3:00 p.m. on Sunday, and 2) obtaining appropriate licenses and permits.

**FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT**

**RESOLUTION R-04-51**

WHEREAS, Sherry Carlin, chairperson of Tosafest 2004, has applied for a Street Festival Permit to the Village area on September 10-12, 2004 for Tosafest; and

WHEREAS, the Committee on Community Development reviewed the request and recommends granting a Street Festival permit subject to the following restrictions:

1. Tosafest shall be conducted on Friday, September 10th from 2 p.m. to 11:30 p.m.; and on Saturday, September 11th from 11 a.m. to 11:30 p.m.; with take down and clean-up on Sunday, September 12th from 7 a.m. to 1:00 p.m.
2. Live and recorded music associated with the event shall cease no later than 11:00 p.m.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT a Street Festival permit be granted for Tosafest 2004 to use the Village area on September 10-12, 2004, subject to compliance with all state and municipal laws and ordinances.

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

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-52**

**RESOLUTION AWARDING THE SALE OF \$2,300,000  
GENERAL OBLIGATION PROMISSORY NOTES, SERIES 2004  
PROVIDING THE FORM OF THE NOTE; AND LEVYING  
A TAX IN CONNECTION THEREWITH**

WHEREAS, pursuant to a resolution adopted on March 2, 2004 (the "Authorizing Resolution"), the Common Council has heretofore found and determined that it is necessary, desirable and in the best interest of the City of Wauwatosa, Milwaukee County, Wisconsin (the "City") to raise funds for the purpose of paying the cost of various public improvements included in the City's 2004 Capital Project Plan, including repairing and upgrading streets, and storm and sanitary sewers (the "Project");

WHEREAS, the Common Council has heretofore found and determined that the Project is within the City's power to undertake and serves a "public purpose" as that term is defined in Section 67.04(1)(b) of the Wisconsin Statutes;

WHEREAS, cities are authorized by the provisions of Section 67.12(12) of the Wisconsin Statutes to borrow money and to issue general obligation promissory notes for such public purposes; and

WHEREAS, the Common Council now deems it to be necessary, desirable and in the best interest of the City to authorize the issuance of and to award the sale of its general obligation promissory notes to Hutchinson, Shockey, Erley & Co., Milwaukee, Wisconsin.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Authorization of the Notes. For the purpose of paying the cost of the Project, there shall be borrowed pursuant to Section 67.12(12) of the Wisconsin Statutes, the principal sum of TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000) from Hutchinson, Shockey, Erley & Co., Milwaukee, Wisconsin (the "Purchaser") in accordance with the terms and conditions of its purchase proposal (the "Proposal") attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. Sale of the Notes. To evidence such indebtedness, the Mayor and City Clerk are hereby authorized, empowered and directed to make, execute, issue and sell to the Purchaser for, on behalf of and in the name of the City, General Obligation Promissory Notes, Series 2004 aggregating the principal amount of TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000) (the "Notes") for the sum set forth on the Proposal, plus accrued interest to the date of delivery.

Section 3. Terms of the Notes. The Notes shall be designated "General Obligation Promissory Notes, Series 2004"; shall be dated March 15, 2004; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be numbered 1 and upward; shall bear interest at the rates and shall mature on December 1 of each year, in the years and principal amounts as set forth on the schedule prepared by the Purchaser and attached hereto as Exhibit B (the "Schedule"). Interest is payable semi-annually on June 1 and December 1 of each year commencing on December 1, 2004.

Section 4. Redemption Provisions. At the option of the City, the Notes maturing on December 1, 2012 and thereafter shall be subject to redemption prior to maturity on December 1, 2011 or on any date thereafter. Said Notes shall be redeemable as a whole or in part, and if in part, from maturities selected by the City and within each maturity by lot, at the principal amount thereof, plus accrued interest to the date of redemption.

Section 5. Form of the Notes. The Notes shall be issued in registered form and shall be executed and delivered in substantially the form attached hereto as Exhibit C and incorporated herein by this reference.

Section 6. Direct Annual Irrepealable Tax Levy. For the purpose of paying the principal of and interest on the Notes as the same becomes due, the full faith, credit and resources of the City are hereby irrevocably pledged, and there is hereby levied upon all of the taxable property of the City a direct annual irrepealable tax in the years 2004 through 2012 for the payments due in the years 2005 through 2013 in the amounts set forth on the Schedule.

The direct annual irrepealable tax hereby levied shall be carried onto the tax roll and collected in addition to all other taxes and in the same manner and at the same time as other taxes of the City for said years are collected. So long as any part of the principal of or interest on the Notes remains unpaid, the tax hereinabove levied shall be and continues irrepealable except that the amount of tax carried onto the tax roll may be reduced in any year by the amount of any surplus in the Debt Service Fund Account created below.

The City has heretofore levied a direct annual irrepealable ad valorem debt service tax in anticipation of the sale of the Notes. Upon receipt, a sufficient sum shall be irrevocably deposited in the Debt Service Fund Account for the Notes and shall be used to pay the interest on the Notes coming due on December 1, 2004 as set forth on the Schedule.

Section 7. Segregated Debt Service Fund Account. There is hereby established in the City treasury a fund account separate and distinct from all other funds or accounts of the City designated "Debt Service Fund Account for \$2,300,000 City of Wauwatosa General Obligation Promissory Notes, Series 2004, dated March 15, 2004", which fund account shall be used solely for the purpose of paying the principal of and interest on the Notes. There shall be deposited in said fund account all accrued interest paid on the Notes at the time the Notes are delivered to the Purchaser, any premium, all money raised by taxation pursuant to Section 6 hereof and all other sums as may be necessary to pay principal of and interest on the Notes as the same becomes due. Said fund account shall be used for the sole purpose of paying the principal of and interest on the Notes and shall be maintained for such purpose until such indebtedness is fully paid or otherwise extinguished, and shall at all times be invested in a manner that conforms with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable income tax regulations (the "Regulations").

Section 8. Borrowed Money Fund; Reimbursement. The proceeds of the Notes (the "Note Proceeds") (other than any premium and accrued interest which must be paid at the time of the delivery of the Notes into the Debt Service Fund Account created above) shall be deposited into an account separate and distinct from all other funds and disbursed solely for the purposes for which borrowed or for the payment of the principal of and the interest on the Notes.

The City declares its reasonable expectation to reimburse itself from the Note Proceeds for expenditures relating to the Project which it pays from other funds of the City prior to receipt of the Note Proceeds no more than 60 days prior to the date the Authorizing Resolution was adopted. The City may also reimburse itself for preliminary expenditures relating to the Project (such as architectural, engineering, surveying, soil testing, costs of issuance and similar costs but not including land acquisition, site preparation and similar costs incident to the commencement of construction) which are in an amount which is less than 20% of the issue price of the Notes. This declaration and the Resolution of which it is a part, shall be publicly available in the official books, records or proceedings of the Common Council.

Section 9. Arbitrage Covenant. The City shall not take any action with respect to the Note Proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the date of the delivery of and payment for the Notes (the "Closing"), would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

The Note Proceeds may be temporarily invested in legal investments until needed, provided however, that the City hereby covenants and agrees that so long as the Notes remain outstanding, moneys on deposit in any fund or account created or maintained in connection with the Notes, whether such moneys were derived from the Note Proceeds or from any other source, will not be used or invested in a manner which would cause the Notes to be "arbitrage bonds" within the meaning of the Code or Regulations. The City covenants that it will not invest in any obligation if such investment would violate the "prohibited payment" requirement of Section 148 of the Code.

The City Clerk, or other officer of the City charged with responsibility for issuing the Notes, shall provide an appropriate certificate of the City, for inclusion in the transcript of proceedings, setting forth the reasonable expectations of the City regarding the amount and use of the Note Proceeds and the facts and estimates on which such expectations are based, all as of the Closing.

Section 10. Additional Tax Covenants; Two Year Expenditure Exemption from Rebate; Qualified Tax-Exempt Obligation Status. The City hereby further covenants and agrees that it will take all necessary steps and perform all obligations required by the Code and Regulations (whether

prior to or subsequent to the issuance of the Notes) to assure that the Notes are obligations described in Section 103(a) of the Code, the interest on which is excludable from gross income for federal income tax purposes, throughout their term. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Notes) if taking, permitting or omitting to take such action would cause any of the Notes to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause interest on the Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The City Clerk or other officer of the City charged with the responsibility of issuing the Notes, shall provide an appropriate certificate of the City as of the Closing, for inclusion in the transcript of proceedings, certifying that it can and covenanting that it will comply with the provisions of the Code and Regulations.

Further, it is the intent of the City to take all reasonable and lawful actions to comply with any new tax laws enacted so that the Notes will continue to be obligations described in Section 103(a) of the Code, the interest on which is excludable from gross income for federal income tax purposes throughout their term.

The City covenants that it is a governmental unit with general taxing powers and that the Notes are not "private activity bonds" as defined in Section 141 of the Code.

In accordance with Section 148(f)(4)(C) of the Code, the City covenants that at least 75% of the available construction proceeds of the Notes shall be used for construction expenditures with respect to property owned by the City as provided in Section 148(f)(4)(C)(iv) of the Code. If at least 10% of the available construction proceeds of the Notes (including investment earnings thereon) are expended for the governmental purposes of the issue within six months of the Closing; at least 45% are expended for such purposes within one year; at least 75% are expended for such purposes within eighteen months; and 100% are expended for such purposes within two years, the City will qualify for the two year expenditure exception from the rebate requirements of the Code. If for any reason the City did not qualify for the two year expenditure exemption from the rebate requirements of the Code, the City covenants that it would take all necessary steps to comply with such requirements.

The Common Council hereby designates the Notes to be "qualified tax-exempt obligations" pursuant to the provisions of Section 265(b)(3) of the Code and in support of such designation, the City Clerk or other officer of the City charged with the responsibility for issuing the Notes, shall provide an appropriate certificate of the City, all as of the Closing.

Section 11. Execution of the Notes. The Notes shall be issued in typewritten or printed form, executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk, authenticated, if required, by its fiscal agent, if any, sealed with its official or corporate seal, if any, or a facsimile thereof, and delivered to the Purchaser upon payment to the City of the purchase price thereof, plus accrued interest to the date of delivery. In the event that either of the officers whose signatures appear on the Notes shall cease to be such officers before the delivery of the Notes, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery. The aforesaid officers are hereby authorized to do all acts and execute and deliver all documents as may be necessary and convenient to effectuate the Closing.

Section 12. Payment of the Notes. The principal of and interest on the Notes shall be paid in lawful money of the United States of America by the City Clerk or City Treasurer.

Section 12A. Persons Treated as Owners; Transfer of Notes. The City shall keep books for the registration and for the transfer of the Notes. The person in whose name any Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of either principal or interest on any Note shall be made only to the registered owner thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Any Note may be transferred by the registered owner thereof by surrender of the Note at the office of the City Clerk, duly endorsed for the transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing. Upon such transfer, the Mayor and City Clerk shall execute and deliver in the name of the transferee or transferees a new Note or Notes of a like aggregate principal amount, series and maturity and the City Clerk shall record the name of each transferee in the registration book. No registration shall be made to bearer. The City Clerk shall cancel any Note surrendered for transfer.

The City shall cooperate in any such transfer, and the Mayor and City Clerk are authorized to execute any new Note or Notes necessary to effect any such transfer.

The fifteenth day of each calendar month next preceding each interest payment date shall be the record date for the Notes. Payment of interest on the Notes on any interest payment date shall be made to the registered owners of the Notes as they appear on the registration book of the City at the close of business on the corresponding record date.

Section 13. Utilization of The Depository Trust Company Book-Entry-Only System. In order to make the Notes eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City agrees to the applicable provisions set forth in the Blanket Issuer Letter of Representations previously executed on behalf of the City and on file in the City Clerk's office.

Section 14. Undertaking to Provide Continuing Disclosure. The City hereby covenants and agrees, for the benefit of the holders of the Notes, to enter into a written undertaking (the "Undertaking") required by SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934 (the "Rule") to provide continuing disclosure of certain financial information and operating data and timely notices of the occurrence of certain events in accordance with the Rule. This Undertaking shall be enforceable by the holders of the Notes or by the Purchaser on behalf of such holders (provided that the rights of the holders and the Purchaser to enforce the Undertaking shall be limited to a right to obtain specific performance of the obligations hereunder and any failure by the City to comply with the provision of this Undertaking shall not be an event of default with respect to the Notes).

The City Clerk, or other officer of the City charged with the responsibility for issuing the Notes, shall provide a Continuing Disclosure Certificate for inclusion in the transcript of proceedings, setting forth the details and terms of the City's Undertaking.

Section 15. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the Common Council or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-53**

WHEREAS, the Wauwatosa Civic Celebration Commission has recommended that the July 4<sup>th</sup> fireworks display at Hart Park be provided by Bartolotta Fireworks Company;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa is hereby authorized to contract with Bartolotta Fireworks Company for the July 4<sup>th</sup>, 2004 fireworks display at Hart Park in an amount not to exceed \$12,000.00 in accordance with the recommendation of the Purchasing Manager and the Civic Celebration Commission;

BE IT FURTHER RESOLVED THAT the competitive bidding process is hereby waived for this purchase.

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

**RESOLUTION R-04-54**

BE IT RESOLVED THAT the proposed settlement in the matter of Dale Schlueter, et al. v. Charles O. Reuter, et al, Milwaukee County Case #02-C-0134, in the amount of \$43,000.00, is hereby approved.

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

**FROM THE COMMITTEE ON BUDGET AND FINANCE**

BILLS AND CLAIMS FOR THE PERIOD 3/3/04 – 3/16/04 --

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 3/3/04 – 3/16/04: \$1,088,212.93

It was moved by Ald. Casey, seconded by Ald. Becker 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 14.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-55**

BE IT RESOLVED, By the Common Council of the City of Wauwatosa THAT the cooperative purchase bid with the City of Milwaukee by Brooks Tractor Incorporated to furnish one John Deere

410G Backhoe Loader Breaker and other equipment all for their bid price of \$79,588.00, including City trade-in Fleet Number W-03, be and the same accepted.

BE IT FURTHER RESOLVED THAT the Purchasing Manager is hereby authorized and directed to issue a purchase order for this equipment as directed by the proper City officers.

BE IT FURTHER RESOLVED THAT Fleet number W-03, a 1996 John Deere 710D, be declared surplus so that it can be used as a trade-in on the new unit.

**FROM THE BOARD OF PUBLIC WORKS**

**RESOLUTION R-04-56**

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT permission be and the same is hereby granted to Chris and Sarah Quesnell, 2506 N. 80<sup>th</sup> Street, Wauwatosa, WI, to encroach onto City property along W. Wright Street with a 4 ½ foot fence, 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. Ecks, seconded by Ald. Heins  
to approve the two foregoing resolutions. -14

There being no further business, the meeting adjourned at 7:40 p.m.

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Carla A. Ledesma, CMC, City Clerk