

**CITY OF DELAVAN
COMMON COUNCIL
January 12, 2010**

Call to Order: Mayor Nieuwenhuis called the regular meeting of the City of Delavan Common Council to order at 6:30 p.m. in the Municipal Building Council Chambers.

Roll Call: The following members were present: Mayor Nieuwenhuis, Aldermen Siedelmann, DeWitt, O'Connor, Johnson, Kilkenny and Finley. Also Present: City Administrator Salitros, City Attorney Koch, Director of Public Works Wendorf, Golf Pro Piecha, Utility Director Stebnitz, Utility Manager Piester, Police Chief O'Neill, Library Director McCrea and City Clerk Kitzman.

Pledge of Allegiance and Invocation: Mayor Nieuwenhuis led the pledge and invocation.

Approval of Minutes: Alderman Kilkenny offered several additions to the minutes of December 8, 2009 relating to Municipal Water Service for Lake Lawn Lodge. Alderman Kilkenny moved to approve the minutes of December 8, 2009 as corrected. The motion was seconded by Alderman Finley and carried unanimously.

Public Comments: Mayor Nieuwenhuis cautioned the audience to keep the public comments down to three minutes. Merlyn C Dahl, 403 E Wisconsin Street, felt the Council must set the procedure and the mayor cannot set the 3-minute rule. Allen Buzzell, 353 Tyrrell Court, spoke on the Wisconsin Housing Preservation Corp. and their lack of on-site management, Delbrook Golf Course, the need to move on from discussing Lake Lawn, and the need to construct a new firehouse. Lauren Pohn, 314 N Fifth Street, asked that agendas be posted on the television channel. She also felt aldermen should be able to contact outside people as it is the citizens right to have open information.

Reports of Standing Committees - Finance and Treasurer's Report: Alderman Siedelmann reported on the meeting of January 11, 2010. Based upon the review and recommendation of the Finance Committee, Alderman Siedelmann moved to receive the Treasurer's Report for December 31, 2009 and place it on file. The motion was seconded by Alderman Johnson and carried unanimously.

General Operations: Alderman Johnson reported on the meeting of January 5th. He noted minutes are on file and available to the public.

Public Works: Alderman Kilkenny reported on the special meeting of December 15, 2009 regarding the 2010 street projects. Bids should be in by the end of January and they expect to receive favorable bids due to the early timing.

Town of Delavan Lake Committee: Alderman Finley highlighted their discussions on erosion from Jackson Creek, and Lake monitoring. The weeds were less this past year because of the cold summer. The Lake Committee will hold information meetings on the upcoming dredging project.

Library Board of Trustees: Alderman Finley noted a new employee Oscar Nicia was introduced and they plan to replace an aging telephone system.

Fire Station Task Force: Mayor Nieuwenhuis no meeting.

Tri-Community Meeting: Alderman Finley no meeting since April.

Lake Comus Protection and Rehabilitation District: Alderman Kilkenny no meeting this past month.

Communications Commission: Alderman DeWitt reported on the meeting January 5th. There was a discussion between hiring a part time employee and a communications coordinator.

Addendum to PILOT Agreement with Wisconsin Housing Preservation Corp.: City Administrator Salitros explained the Payment In Lieu Of Taxes agreement has been in effect since 2007 and this is a three-year extension. The corporation owns properties that are tax exempt under Wisconsin law, however they are agreeing to pay about 30% of what the tax bill would have been. Alderman Siedelmann moved to approve the addendum to the PILOT Agreement with Wisconsin Housing Preservation Corp. The motion was seconded by Alderman Johnson. Upon questions from Alderman Finley, a discussion was held on the ability to become tax exempt. It was noted these properties have had no legal requirement to pay any property taxes. The motion carried upon call of the roll with Alderman Finley dissenting.

Delbrook Golf Course Equipment Lease of Toro equipment from Reinders Inc. for five years at an annual cost of \$71,425.71: Golf Pro Piecha explained the Course had previously leased equipment on a lease to own basis and therefore some of the equipment is very old. The proposed lease is a 5-year full market value lease and it is felt this may be a more cost effective program. The Golf Commission has recommended leasing from Toro through the National Intergovernmental Purchasing Alliance. Toro will provide \$14,000 in free product through their dealer, Reinders, Inc. that would be used to purchase additional reels, filters, belts, and other disposable parts. John Deere recently offered a \$20,000 credit or free products. Alderman Siedelmann moved to approve the lease of equipment from Toro through its dealer, Reinders Inc for five years at an annual cost of \$71,425.71. The motion was seconded by Alderman Finley and carried unanimously upon call of the roll.

Delbrook Golf Course Equipment Payoff of the Textron lease agreements in the amount of \$21,137.30. Golf Pro Piecha explained the Cushman Truckster Utility Car, Turfco Widespin Broadcast Top Dresser, Smithco Spray Star Sprayer, and Buffalo Turbine Cyclone Blower are currently leased from Textron Financial. The Delbrook Golf Commission is asking to pay off the leases through the Fund 40 capital equipment program in order for Delbrook to stay within their operations budget. Mr. Piecha noted there would be a cost savings with this pay off. Alderman Siedelmann moved to pay off the Textron lease agreements in the amount of \$21,137.30. The motion was seconded by Alderman Finley and carried unanimously upon call of the roll.

Temporary Class B Wine license for St. Andrew Parish at 714 E. Walworth Avenue on February 6, 2010: Alderman Johnson moved to approve the Temporary Class B Wine license for St Andrew Parish on February 6, 2010. The motion was seconded by Alderman Kilkenny and carried unanimously.

Ordinance to Regulate U-Turns at Traffic Signals. Director of Public Works Wendorf asked that this item be returned to the General Operations Committee to add more language regarding U-Turns in the downtown area. Alderman Johnson moved, seconded by Alderman Siedelmann to table to the call of the chair. The motion carried unanimously.

Adopt Municipal Bond Schedule as recommended by Municipal Judge Himebauch: Alderman Johnson moved to approve the Municipal Bond Schedule. The motion was seconded by Alderman DeWitt and carried unanimously.

Approval of Bills: Based upon the review and recommendation of the Finance Committee, Alderman Siedelmann moved to approve Warrant 09-12 and Supplemental List of Bills in Excess of \$5,000 for December, 2009. The motion was seconded by Alderman Johnson and carried unanimously upon call of the roll.

Development Agreement Amendment No. 1 for Ellis Farms Subdivision. Director of Public Works Wendorf reviewed the proposed amendment that City Attorney Koch has prepared with the developer to reduce the Creek Road payment. The amendment provides for the charges to be based upon actual construction costs instead of the pre-construction estimates, as well as removes the cost for curbing and sidewalks along Creek Road. Alderman Finley moved to approve Development Agreement Amendment No. 1 for Ellis Farms Subdivision, seconded by Alderman Johnson.

Alderman Kilkenney noted other property owners along Creek Road were not charged for sidewalk. When Alderman DeWitt questioned this decision, Alderman Finley indicated the sidewalk was of no value to the people who were to be charged, as they would have to leave their houses drive around to Creek Road and proceed to shovel the walks.

The motion tied with Aldermen Siedelmann, DeWitt and O'Connor dissenting. Mayor Nieuwenhuis broke the tie and voted in the affirmative.

R-491 Resolution adopting a county-wide National Hazards Mitigation Plan: City Administrator Salitros explained the Walworth County Hazards Mitigation Plan has been approved by the Federal Emergency Management Agency and the City is able to adopt their plan and be qualified to submit grant applications for federal funds for future mitigation projects. Alderman Johnson moved to adopt the county-wide National Hazards Mitigation Plan. The motion was seconded by Alderman Finley and carried unanimously upon call of the roll.

Consider further extensions to the agreement with Alro Steel Corporation. Alderman Finley moved to not extend the agreement with Alro Steel Corporation. The motion was seconded by Alderman Kilkenney. The Council had a lengthy discussion on the benefits and consequences of extending the agreement. It was noted that under the current contract, Alro has until June of 2012 to receive the rebates of approximately 80% of their \$750,000 property purchase price if they meet the building value and

employment criteria. City Administrator Salitros summarized the discussion that the Council does not favor a five- year extension, however might be willing to find a middle ground. The motion carried unanimously upon call of the roll.

Discussion and possible action regarding authority of the City Administrator to instruct City engineer to not respond to an elected alderman. (Per request of Aldermen Kilkenney and Finley) Alderman O'Connor talked about the aldermen working as a team and felt that Alderman Kilkenney was seeking information from the City engineer when this information was already being handled per the Council and the Commission's unanimous directive. *Alderman O'Connor also stated that Alderman Kilkenney does not put other Council members on his e-mail.* Alderman Finley felt aldermen are not doing our job if we agree with everything from staff. Alderman Johnson agreed that aldermen should seek out information but when it is done in a duplicitous manner there is no efficiency and no communication.

Mayor Nieuwenhuis noted on December 8th the Council gave direction to the Water and Sewage Commission to deal with the connection for Lake Lawn's convention center and restaurants. In discussion at the Commission meeting it noted that it was wintertime so they concluded that 10 days was an unreasonable response time frame. Staff was directed to meet with Lake Lawn to work out details before the January Water and Sewage Commission meeting. The next day Alderman Kilkenney called Larry Thomas and asked him for cost, ability and a time frame for the project. Mr. Thomas called Utility Director Stebnitz to ask the questions. Mayor Nieuwenhuis felt there is a process and Alderman Kilkenney should have contacted the Utility Director first. Mayor Nieuwenhuis felt that if any alderman is going to call a consultant, such as the engineer, planner, or auditor, then the consulting firms should respond to all council members. In that way all Council members could make informed decisions. Mayor Nieuwenhuis admonished Alderman Kilkenney for accusing staff of doing something wrong. *The mayor quoted from Alderman Kilkenney's e-mail to City Administrator, "I don't want to be under time constraints because information was not brought forward timely or there is misinformation." When Alderman Kilkenney tried to respond to the Mayor with examples, a point of order was raised by Alderman O'Connor and he was not able to respond.* Alderman Kilkenney responded that he was elected as an alderman to ask questions and report to his constituents, and he does not blindly trust anyone, he does research.

Alderman Johnson moved to take no action as there is no merit in this agenda item. The motion was seconded by Alderman O'Connor. Alderman Siedelmann didn't feel it is appropriate for any alderman to act by themselves without approval to expend City funds. *Alderman Siedelmann indicated he has never sent out correspondence to anybody without cc to each of the Council members, to the Mayor, and City Administrator.* Alderman Kilkenney responded the reason he did not copy the Council as it could have been a violation of the open meeting law of meeting by e-mail. *This is best discussed in front of the public not in back round e-mails.* Alderman Kilkenney asked the City Administrator to address the agenda item "under what authority he was acting to instruct City Engineer to not respond to an elected Alderman by indicating under the circumstance knowing full well that the Engineer would be putting together information

for the Director and the Director would be provide report to Commission it would not be necessary in my opinion at the time for the Engineer to provide a separate report. The City Administrator did not site his authority as requested. Alderman Kilkenny explained that he did not request a report but simply requested confirmation in an e-mail of his response. After much discussion, Alderman Johnson called the question. The motion was seconded by Alderman O'Connor and carried with Aldermen Kilkenny and Finley dissenting. The motion to take no action carried with Aldermen Kilkenny and Finley dissenting.

Discussion and possible action regarding specific language in City agreements with Lake Lawn companies which city administrator believes may indicate that water hookups do not have to be made as provided by ordinance and/or by the first developer agreement. (Per request of Aldermen Kilkenny and Finley): City Attorney Koch expressed concern that if this is addressed in open session we may be giving information to the other side. Alderman Johnson moved to table this item. The motion was seconded by Alderman O'Connor. The motion carried with Alderman Kilkenny dissenting.

Discussion and possible action regarding Water & Sewer Commission failure to enforce ordinance for water connections to existing buildings. (Per request of Aldermen Kilkenny and Finley): City Attorney Koch pointed out that the ordinance provides that the Water and Sewage Commission is charged with determining water connections. The Court has held that the Common Council cannot over-ride the Water and Sewage Commission.

Alderman Kilkenny felt that the Water and Sewage Commission is required to follow Ordinance 9-1-50 and therefore must order the buildings to have a water connection within 10 days. He asked the Mayor to assure that all city officers do their duty. City Attorney Koch indicated the Water and Sewage Commission has not made a final decision and the Council would not have authority to override the Commission. Alderman Finley felt people make excuses for Lake Lawn and we should be requiring a connection of all of their buildings.

Water and Sewage Commission Chairman Wayne Hilbelink reported that the Commission unanimously agreed that Lake Lawn should be hooked up, however, the Commission felt it was imperative for staff and the City engineer to have an opportunity to talk to Lake Lawn first. He suggested the information came from Alderman Kilkenny pretty incomplete. Alderman Kilkenny made a motion at the Commission meeting with three subsequent amendments and therefore Chairman Hilbelink voted against that motion as it was very confusing. However the Commission directed staff to discuss the matter with Lake Lawn and provide a report to the Commission within 30 days. The Commission has always moved forward with connecting properties. In this instance there is a good reason to delay as it is the middle of winter and they cannot put the pipes in the ground in 10 days. Mr. Hilbelink said he has no reason to favor Lake Lawn, however we have a responsibility to discuss an issue of this size.

Alderman Johnson moved to take no action on this agenda item as the Water and Sewage Commission has not failed to do anything, they are in the process of making this happen. The motion was seconded by Alderman O'Connor.

After further discussion, Alderman Johnson called the question. The motion was seconded by Alderman O'Connor and carried with Aldermen Kilkenny and Finley dissenting. The motion to take no action carried with Aldermen Kilkenny and Finley dissenting.

Discussion and possible action regarding status of TIF No. 4 report from Baker Tilly (formerly Virchow Krause) and possible additions to the draft Baker Tilly TIF No. 4 report and timetable for updates to report. (Per request of Aldermen Kilkenny and Finley): Alderman Kilkenny requested additions to the report to capture interest costs, ins and out of cost recovery, and revenue streams. He suggested that the report be completed monthly and that staff should be updating this.

Alderman Siedelmann moved to have the Finance Committee Chairman, the City Administrator and a representative from the auditing company get together to determine whether this can be provided on a monthly, quarterly or annual basis, with the recommendation to the Finance Committee and Council on whether to do it differently than how it is now being done annually. The motion was seconded by Alderman Kilkenny.

Alderman Kilkenny moved to amend the motion to add "And also pursue the conditions requested by Alderman Siedelmann to add income stream, interest expenses and the ins and out of cost recovery expenses. The motion was seconded by Alderman Finley. The amendment carried unanimously. The motion as amended carried unanimously.

Suggested Future Agenda Items: None.

Adjourn: There being no further business to come before the Common Council, the meeting adjourned at 8:50 p.m. upon a motion by Alderman Kilkenny, seconded by Alderman Finley and unanimously carried.

Susan Kitzman
City Clerk

Italics denotes amendments made by Council.