

**CITY OF DELAVAN
COMMON COUNCIL
July 13, 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: Aldermen Siedelmann, Kilkenny, O'Connor, Johnson, DeWitt and Stebnitz. Also Present: City Administrator Salitros, City Attorney Koch, Director of Public Works Wendorf, Building/Zoning Administrator Walling, Police Chief O'Neill and City Clerk Kitzman.

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

Approval of Minutes: Alderman Johnson moved to approve the minutes of June 8, 2010 and June 29, 2010. The motion was seconded by Alderman O'Connor and carried unanimously.

Communications: Mayor Nieuwenhuis encouraged attendance at the concerts in Phoenix Park. He also stated that Relay for Life raised \$136,171 for cancer research.

Alderman Kilkenny noted the National Trust for Historic Preservation awarded a matching grant of \$4,450 to the City to help cover the cost of the conditions assessment of the Israel Stowell Temperance building, and the Chesko family will be closing the sale of the former Temperance House to the Delavan Historical Society by the end of July.

Public Comments: Barbara Shreves, 640 Holland, thanked the council for their efforts to preserve the Israel Stowell Temperance house. Ron Wilson, 211 Meadow Court, encouraged use of the developer's letter of credit on Tamarack Street that has holes approximately 6 feet across and 5 feet deep. Merlyn Dahl, 403 E Wisconsin Street, asked about the Use of Electronic Mail policy. Lauren Pohn, 314 S 5th Street, spoke against reimbursing Lake Lawn \$13,000 plus interest and fees. She spoke against offering NAI MLG an exclusive listing.

Reports of Standing Committees - Finance and Treasurer's Report: Alderman DeWitt moved to approve the Treasurer's Report for June 30, 2010. The motion was seconded by Alderman Stebnitz and carried unanimously.

General Operations: Alderman Johnson reported on the meeting of July 6, 2010. He noted the minutes are available to the public.

Public Works: Alderman O'Connor reported on the meeting of June 22, 2010 where they discussed the North Fourth Street pavement drainage, and use of the letter of credit to repair Evergreen Drive and Tamarack Street. The Paser goal standard will be reviewed at the next Public Works meeting.

Town of Delavan Lake Committee: Mayor Nieuwenhuis reviewed the meeting of July 7th where they discussed the inlet dredging project for next spring. They also reviewed an aquatic plant management plan for Delavan Lake.

Library Board of Trustees: Alderman O'Connor reported on the meeting of July 1st, where they worked on the budget and capital plan. There are many activities at the library including summer programs in the tent.

Tri-Community Meeting: No meeting.

Lake Comus Protection and Rehabilitation District: No meeting.

Fire Station Building Committee: Mayor Nieuwenhuis reported the Committee reviewed the plans for the building and made some modifications.

Public Hearing on a request for a Regular Conditional Use Permit to allow for a Two-Flat Residential Dwelling Unit to be located at 303 E. Washington Street, which is a permitted land use in the Office Neighborhood (ON) Zoning District.

Applicant: James Beall: Mayor Nieuwenhuis opened the public hearing. Mr. Beall noted he has owned the property for a few years and recently they have not been able to maintain a commercial business for the building. They would like to convert to a residential facility. There being no further parties wishing to speak, the public hearing was closed.

R-503 Resolution to authorize a Regular Conditional Use Permit to allow for a Two-Flat Residential Dwelling Unit to be located at 303 E. Washington Street, which is a permitted land use in the Office Neighborhood (ON) Zoning District.

Applicant: James Beall: Alderman Johnson moved to adopt the regular conditional use permit for the building at 303 E Washington Street. The motion was seconded by Alderman O'Connor and carried unanimously.

Consider reimbursing Lake Lawn \$13,264.68 plus administrative fee and interest for billed Cost Recovery Charges. Alderman DeWitt explained the City billed Lake Lawn for Cost Recovery charges in 2009 and Lake Lawn paid the bills. Lake Lawn's attorney sent a letter on April 17th, 2009 objecting to some of the charges where an alderman called special counsel about Lake Lawn on several occasions and we billed Lake Lawn for the attorney's services. On June 16, 2009, the Council agreed that Finance Chairman Siedelmann should review the bills with Lake Lawn and staff. The total bills for engineering were \$39,226.49. The committee recommended that \$11,250 was not eligible for cost recovery. The total bills for attorney fees were \$4,086 and the Committee recommended \$2,014 was not cost recovery and should have been paid by the City.

When asked, City Administrator Salitros explained that any reimbursement back to Lake Lawn would be paid by check and would include the administrative fee of 5% and any interest charges. Alderman DeWitt noted that Lake Lawn is not in arrears to the City in any way at the present time.

Alderman DeWitt moved to reimburse Lake Lawn \$11,250.68 for engineering fees and \$2,014 for attorney fees, for a total of 13,264.68 plus interest and administrative fees. The motion was seconded by Alderman O'Connor.

There was also an error in billing from Vandewalle and Associates that was reimbursed from Vandewalle and the City reimbursed Lake Lawn for those charges. Alderman Kilkenny spoke against reimbursing Lake Lawn for engineering and attorney fees as he felt there was no evidence provided to support the reimbursement. Alderman Johnson indicated the documents prepared by Alderman Siedelmann are evidence and the City should reimburse the funds. A lengthy discussion was held on the matter.

Alderman DeWitt moved to amend the motion to include a provision that the check be issued provided the City receives a signed release from the necessary parties including Lake Lawn and Anchor Bank that they will not seek reimbursement for any other claimed cost recovery charges. The amending motion was seconded by Alderman O'Connor.

Alderman Kilkenny asked if the release would include the \$20,000 in later cost recovery invoices that they also filed an objection. City Attorney Koch indicated the release would be very open ended. Alderman Kilkenny asked if Baker Tilly would find additional items in the audit of the cost recovery charges, would the release prevent the City from recovering the charges. City Attorney Koch indicated it would not.

The amending motion carried unanimously. The original motion, as amended, carried with Alderman Kilkenny dissenting.

2010 Sidewalk Repair Program Contract to R.R. Walton & Co. Ltd. of Whitewater, Wisconsin in an amount of \$16,125. Alderman Dewitt explained the sidewalk repair program has the City pay 50% of the repair costs for existing sidewalk. The City must also pay 100% of the cost of crosswalks. Approximately \$14,000 will be the City's cost and the remainder will be assessed to the property owners. Alderman DeWitt moved to award the 2010 Sidewalk Repair Program Contract to R. R. Walton & Co. Ltd. of Whitewater, WI in an amount of \$16,125. The motion was seconded by Alderman Stebnitz and carried unanimously upon call of the roll.

Class B Beer and Intoxicating Liquor License for Chef's Garden, Inc. 322 South Seventh Street, doing business as Benny's Pasta House, Verginus Useni, Agent. Alderman Johnson moved to approve the Class B Beer and Intoxicating Liquor License for Chef's Garden, Inc. at 322 South Seventh Street. The motion was seconded by Alderman Siedelmann and carried unanimously.

Policy for Use of Electronic Mail by the Mayor and Common Council: Alderman DeWitt noted that the General Operations Committee has recommended the proposed policy on e-mail for the Mayor and Council and City e-mail accounts shall be the only email account used and promoted by Delavan elected officials for conducting city-related business. Alderman Johnson moved to approve the Policy for Use of Electronic Mail by the Mayor and Common Council. The motion was seconded by Alderman DeWitt. Mr. DeWitt noted this policy originated from the Communications Commission. E-mails are subject to open records and the City has the ability to store and retrieve these e-mails. A discussion was held on open records and how aldermen can communicate with others and staff.

Paragraph B. 2. that requires email accounts to be accessible via the Web was discussed. City Administrator Salitros explained this will allow the Mayor and Aldermen to use the e-mail service from remote locations, however would not be available to the public. Alderman Johnson moved, seconded by Alderman DeWitt, to amend Section B.2. to state, "Email accounts for elected officials will be accessible *to said elected officials* via the Web." The amending motion carried unanimously. The original motion as amended also carried unanimously.

RC-290 Smoking Prohibited in Certain Places Law. Alderman Johnson moved to adopt by reference the smoking prohibited law. The motion was seconded by Alderman O'Connor. Police Chief O'Neill explained this allows the charges and fees to go to Municipal Court instead of County Court, and does not change the state law. The motion carried unanimously.

Consider use of Developers Letter of Credits to repair base pavement failures on Tamarack Street and Evergreen Drive. Alderman O'Connor moved to use the developers letter of credit to repair base pavement failure to Tamarack Street and Evergreen Drive. The motion was seconded by Alderman Kilkenny. Director of Public Works Wendorf indicated that the Letters of Credit should have adequate funds to repair the pavement failures and all of the remaining improvements. The motion carried unanimously upon call of the roll.

Consider Change of Date for September, 2010 Council meeting from Tuesday, September 14th to Monday, September 13th due to conflict with Primary Election. Alderman Johnson moved to change the regular September meeting to September 13, 2010. The motion was seconded by Alderman Kilkenny and carried unanimously.

Approval of Bills-Warrant 10-06 and Supplemental List of Bills in Excess of \$5,000 for June, 2010: Based upon the review and recommendation of the Finance Committee, Alderman DeWitt moved to approve Warrant 10-06 and the Supplemental List of Bills in Excess of \$5,000 for June, 2010. The motion was seconded by Alderman Stebnitz and carried unanimously upon call of the roll.

R-504 Surplus Property Resolution for disposal of Old Toro Greens Mower from Delbrook. Alderman Johnson moved to adopt the Resolution for disposal of the mower. The motion was seconded by Alderman Siedelmann and carried unanimously.

Consider NAI MLG Commercial proposal for marketing industrial park properties. Alderman Johnson moved to approve NAI MLG Commercial proposal for marketing industrial park properties. The motion was seconded by Alderman Stebnitz. John Henderson of NAI MLG Commercial noted his proposal is to market industrial park property. He explained it is an exclusive listing, however the company will co-broke with any other broker in the country. NAI MLG is actively marketing the I-43 corridor including industrial property in East Troy, Elkhorn, Clinton, Darien and Beloit. There is no cost to the City unless there is a sale and then they are paid a commission.

Upon the recommendation of City Administrator Salitros, Alderman Johnson amended the motion to include the effective term of August 1, 2010 to July 31, 2012. The motion was seconded to Alderman Stebnitz. The amendment carried unanimously. The motion as amended carried unanimously upon call of the roll.

Public Comments: Melinda Allen, 313 N 6th Street, attended the Town of Delavan meeting about Shodeen development on the east side of South CTH 'F' and that they may be getting water from the City. John Finley, spoke on fiscal conservatism and felt that TIF funds makes the City have one of the highest debt per capita rates in the state. Lauren Pohn, 5th Street, requested that Baker Tilly actually analyzes Delavan's cost recovery bills for Lake Lawn and pulls it out of all of the financial statements. Alderman Siedelmann suggested that the Water and Sewer Commission and the Park and Recreation Commissions be included in the standing committees reports. Steve Cass, 348 Spring Lane, noted that several different school systems and communities will be meeting tomorrow to discuss fiber and wiring of public infrastructure. Merlyn Dahl, 403 E Wisconsin Street, expressed concerns about water and wanted to know what rate people outside of the city would be receiving. Matt McIntrye, an Alderman in the City of Edgerton, who was visiting in Delavan, commented on several procedural issues that he felt the Common Council was doing in an excellent manner.

Suggested Future Agenda Items: None.

Adjourn: There being no further business to come before the Common Council, the meeting adjourned at 8:15 p.m. upon a motion by Alderman O'Connor, seconded by Alderman Johnson and unanimously carried.

Susan Kitzman
City Clerk

These are not official minutes until approved by the Common Council.