

**CITY OF OCONOMOWOC**  
**COMMON COUNCIL MEETING MINUTES**  
**July 21, 2009**

**Public Hearings:**

**8:12 PM** – The purpose of the hearing is to hear public comment on the amendment of the General Development Plan for the project known as Lake Shore Place. Tim E. Thiele of Lutheran Homes of Oconomowoc, Inc. has submitted the application which amends the General Development Plan approved in Step 3 in the PD; Planned Development process. The amendment is to allow the structure containing the commons building and independent living units located at 1306 W. Wisconsin Ave to encroach closer than 75' from the ordinary high water mark of Lac LaBelle.

Thiele, from Lutheran Homes, gave a Power Point presentation (9 slides) providing the history of the property and reasons for the proposed amendment. No other comments were received. Hearing closed at 8:12 PM.

**8:14 PM** – The purpose of the hearing is to hear public comment on the application filed by the City of Oconomowoc to amend Sections 17.034 Definitions; 17.105(3)(h)2.a. Land Uses in the UI; Urban Industrial District; 17.105(3)(i)2.c Land Uses in the HI; Heavy Industrial District; 17.203(4) Tables of Land Uses; and Section 17.206(4)(p) Sexually Oriented Land Use. The purpose of this ordinance is to amend the regulations and approval process regarding sexually oriented businesses.

Gallo stated that currently the City has not sites available for sexually oriented businesses. These types of uses are highly scrutinized by the courts and must be allowed in municipalities. The ordinance amendments now allow sexually oriented uses as a permitted use in the UI Urban Industrial District and repeals definitions, which are replaced in the new section in Chapter 12. The City will now have 6 – 8 sites available with regulations.

Carl Sheid, 1495 Fairways Circle stated he has experience with this type of ordinance through his work with the City of Delafield. He commented that the ordinance needs to be consistent with other communities and the light levels should be at 10 ft. candles, which is consistent with other communities. No other comments were received. Hearing closed at 8:23 PM.

**Mayor Sullivan** called the regular Common Council meeting to order at 8:23 PM.

**Pledge of Allegiance**

**Roll Call:** Aldermen Miller, Schmitter, Morgan, Nold, Larsen, Antonneau, Cochrane and Kohlenberg

**Staff present:** Mayor Sullivan, Gard, Beguhn, Gallo, Lamp, Dodge, Duffy, Frye and Coenen

**Others present:** Atty. Chapman and Stan Sugden

**Minutes of June 23, 2009:** Motion by Cochrane to approve the minutes of the June 23<sup>rd</sup> meeting as written; second by Antonneau. Motion carried 8-0.

**Comments and suggestions from citizens:**

- A. Presentation on Rail Station Locations – Duffy gave a Power Point presentation identifying three station sites. The Midwest rail initiative is seeking to establish a connection between Chicago and the twin cities, with a stop in Oconomowoc. The Commissioner of Railroads has issued an order to install a second set of tracks on the north side, between Pewaukee and Watertown. The service could be available as early as 2012.
- B. Comments from Citizens:
  - 1) Stu Wangard, 4525 N. Hewitts Point Road spoke regarding his liquor license application. He passed out to Council the current list of alcohol license owners in the City and their locations. He is looking for support for a license on the north side of town, which is important for the viability of his shopping center. As a concession, he will withdraw his request if he could be placed on a waiting list.
  - 2) Florence Whalen, 405 W. 3<sup>rd</sup> Street spoke on the history of the City Administrator position and stated Gard is doing a splendid job.
  - 3) Attorney Perry Friesler, 320 E. Buffalo, Milwaukee, spoke in support of the application of Jose Zarate for a liquor license. A business plan has been submitted for the property at 124 E. Wisconsin Avenue and they will be meeting with Staff on July 22<sup>nd</sup>.

**Consent Agenda:**

- A. Licenses
- B. Budget Amendment for Grants Received – April 1<sup>st</sup> – June 30<sup>th</sup>, 2009
- C. Multi-Use Trail Easement – Bielinski Development, Inc. (Outlot 8 of Wood Creek V Subdivision)
- D. \$10,000 Reserve “Class B” Alcohol Beverage Grant – Splash Martini Bar, LLC (Richard Reinert)
- E. Treasurer’s Report

Kohlenberg asked that Item E., Treasurer’s Report, be separated for consideration. Motion by Cochrane to approve the Consent Agenda for Items A.-D. with E. separated; second by Miller. Motion carried 8-0. Motion by Larsen to approve the Treasurer’s Report ; second by Cochrane. Kohlenberg stated he had requested previously from Gard an explanation if the Treasurer’s Report is essentially approving all payments reflected in the Treasurer’s Report . For example, checks that were drafted but not issued. Gard stated that when she responded to Kohlenberg’s request, she had explained that the Finance Committee approves the individual vouchers and that the Treasurer’s Report included in the Council packet lists total receipts and total disbursements, which are being approved in its entirety. The review of the individual vouchers has been delegated to the Finance Committee. Kohlenberg questioned if there were any payments for third party legal services in this report. Gard stated she assumed there probably was a payment to Bill White. She would have to go through the check register to verify and to see if there were any others. Kohlenberg asked if there were any payments in there for no bid third party services under professional services. Gard responded she did not know and that she would have to look through the register. Motion carried 7-1. (Kohlenberg)

#### Committee Reports:

Protection and Welfare – Schmitter, chairman, Kohlenberg, Miller, secy.

1. **Consider / act on Reserving Available “Class B” License for: 1) Jose Zarate (124-126 E. Wisconsin, OR 2) Prairie Creek Shopping Center, LLC (1280 Brown Street)** – Miller reported that the Committee took no action on reserving the liquor license for either of the applicants. Nold questioned why we would not approve the license for Zarate who is ready to move forward, whereas Wangard is not. Kohlenberg suggested that Council do as we have in the past and follow precedence; with the exception of the last liquor license. This will consume the last license, which is a prerequisite for Pabst Farms to apply for their eight and then recognize Wangard as the next in line. Larsen asked Chapman to give his opinion. Duffy suggested Council act as they did with the Splash Martini Bar license; postpone action until the business gets through the City approval process and has a date certain for occupancy.

*Sullivan removed himself as Chairman at 9:11 PM and Antonneau took his seat.* Sullivan stated that Zarate needs to have some confidence from the City that if he commits and follows through on an approved plan, he would receive a liquor license. Sullivan suggests that Council not grant the license, but rather make a commitment if the project moves forward, the license would be available. That commitment was made by Council for the Splash Martini Bar. He noted that the City does not have a waiting list, per the code, and for Council to make a commitment to one party, ignores the others that are out there. If Council is inclined to have a waiting list, then Council needs to have a discussion about the requirement for the list and open up the offer to be placed on a waiting list to the public. *Sullivan returned to his chair at 9:16 PM.*

Kohlenberg suggests issuing the license to Zarate and putting Wangard on a waiting list in exchange for his offer to remove his application. Miller stated Wangard did not want to be on a waiting list, he wants the next license. He asked “how can you deny the next applicant when Wangard does not have a business.” Motion by Nold to reserve a “Class B” license for Zarate on the condition that he meets all requirements, building and conditional use and city so that Zarate knows that when he meets all approvals he will have a liquor license; second by Schmitter. Motion carried 5-3. (Miller, Morgan and Kohlenberg). Sullivan stated Staff will schedule a Special Meeting to discuss liquor licenses.

Public Services – Nold, chairman, Schmitter, Larsen, secy.

1. **Consider / act on Support of Rail Station Location(s):** Larsen reported that the City was approached by WIDOT and asked to identify rail station locations in Oconomowoc for the Midwest rail initiative. Public Services reviewed and recommend Sites A & B be submitted to the WIDOT for consideration of the location for the rail station. Nold stated that the Committee also discussed the feasibility of other sites, but that the logistics of Sites A & B make the most sense in relation to the downtown as well as the cost to maintain would be minimal. Motion by Larsen to support the rail station locations for Sites A & B to WIDOT; second by Nold. Motion carried 8-0.
2. **Consider / act on First Amendment to the Memorandum of Understanding:** Larsen reported that this amendment to the Memorandum of Understanding amends the provisions of the four party agreement previously signed by the City, Town of Summit, Pabst Farms and Aurora. The changes include the transfer of construction responsibility to the City and a revision of the size of the fire station from 16,500 sq. ft. to 14,000 sq. ft. Public Services

recommends unanimously. Motion by Larsen to approve the First Amendment to the Memorandum of Understanding regarding the Fire Station; second by Nold. There was discussion regarding the initial design work done by the Zimmerman firm for the fire station and why the City did not enter into the letter of engagement with them, but paid them \$25K. The project had a cost cap of \$2.5M and Zimmerman could not fulfill that term. They developed schematics and the City paid them for their performance. Motion carried 8-0.

3. **Consider / act on Agreement for Fire Station #2:** Larsen reported that this agreement sets forth the provisions of fire station #2 construction which include that the City is the developer of the fire station, the third acre conveyed for the fire station parcel from Pabst Farms will be applied as a credit against future parkland dedication requirements, three acres will be rezoned SO to replace the SO acreage dedicated for the fire station, the City will do a joint press release regarding this transfer of development rights for the fire station and Pabst Farms will transfer \$2 million to the City. Public Services recommends unanimously. Motion by Larsen to approve the Agreement for Fire Station #2 which includes a transfer of \$2M to the City of Oconomowoc from Pabst Farms, rezoning of lands and payment for stormwater usage; second by Nold. Motion carried 8-0.
4. **Consider / act on Ordinance to Amend §8.06(3)(j)1.e. Relating to Sidewalk Seating Standards Restrictions – 1<sup>st</sup> Reading:** Larsen reported that this ordinance amendment allows sidewalk dining furniture and displays that are too heavy to move, to remain per the discretion of the Zoning Administrator. Accessories, such as umbrellas and light display items must be removed daily. Motion by Larsen to give the ordinance its first reading; second by Cochrane. Chapman read the ordinance into the record. Motion carried 8-0.

#### Old Business:

1. **Consider / act on Ordinance to Create § 13.49(11) Relating to Chloride Reduction in Wastewater - 2<sup>nd</sup> Reading:** Motion by Cochrane to give the ordinance its 2<sup>nd</sup> reading in title only; second by Schmitter. Chapman stated that a revision was made to omit hose bibbs in section (b) and then read the title into the record. Motion carried 8-0. Motion by Antonneau for the ordinance to become law; second by Cochrane. Motion carried 8-0.

#### Plan Commission:

- A. **Consider / endorse Resolution by Plan Commission to Amend the City of Oconomowoc Comprehensive Master Plan to Incorporate the River West Neighborhood Plan:** Antonneau reported that this plan covers approximately 2,700 acres of land in the City, Town of Summit and the Town of Oconomowoc. The Plan Commission reviewed and unanimously adopted the resolution. Motion by Antonneau to endorse the resolution to amend the City of Oconomowoc Comprehensive Master Plan to Incorporate the River West Neighborhood Plan; second by Cochrane. Motion carried 8-0.
- B. **Consider / act on Ordinance for Amendment of the General Development Plan for Lake Shore Place, 1306 West Wisconsin Avenue – 1<sup>st</sup> Reading:** Antonneau reported that the development was in compliance up until 2005. Since then, the DNR has determined the location of the ordinary high watermark had changed. The change is a result of a man-made drainage structure. The amendment is to allow for the construction of a building approx. 50 ft. and a new skywalk 38 ft. from the newly established ordinary high watermark of Lac La Belle. The proposed site plans have not changed from what was previously approved. Plan Commission recommends unanimously. Motion by Antonneau to give the ordinance its first reading; second by Cochrane. Miller questioned the setback to the ordinary high water mark and Chapman stated that the only concern of the DNR is the Chapter 30 permit. Chapman read the ordinance into the record. Motion carried 7-1. (Miller)
- C. **Consider / act on Ordinance to Rezone .785 acres of land located at 715 Concord Road from SR-3; Suburban Residential District to MR-6; Mixed Residential District (Buss Property) – 1<sup>st</sup> Reading:** Antonneau reported this rezone is to allow the construction of a side-by-side residential structure on Concord Road from SR-3 to MR-6. MR-6 zoning allows duplexes as a permitted use. Plan Commission reviewed and recommends unanimously. Motion by Antonneau to give the ordinance its first reading; second by Cochrane. Chapman read the ordinance into the record. Motion carried 8-0.
- D. **Consider / act on Order for Amendment to the Conditional Use Permit for Porticello Restaurant, 685 E. Valley Road to allow an outdoor seating/dining area, on-site storage/trailer and parking lot maintenance:** Antonneau reported that this order will amend the original Conditional Use Permit for Porticello Restaurant to allow for outdoor seating and dining, onsite storage, parking lot striping and ornamental lawn features. Plan Commission reviewed and recommends approval. Motion by Antonneau to approve the Order for the Amendment to the Conditional Use Permit for Porticello Restaurant; second by Cochrane. Motion carried 8-0.
- E. **Consider / act on Ordinance to Amend/Repeal Part of §17.034 Definitions; and Amend §17.105(3)(h)2.a. Land Uses in the UI; Urban Industrial District; §17.105(3)(i)2.c Land Uses in the HI; Heavy Industrial District; and §17.203(4) Tables of Land Uses and Repeal and Recreate Section §17.206(4)(p) Sexually Oriented Land Use – 1<sup>st</sup> Reading:** Antonneau reported that the way our current ordinance reads it does not comply with case

law. This amendment is a procedural change. Plan Commission reviewed and unanimously recommends. Motion by Antonneau to give the ordinance its first reading; second by Cochrane. Chapman read the ordinance into the record. Larsen questioned how the size of the UI district was determined. Gallo stated a study was done and that we looked for areas that had space available, away from residential and other sensitive areas that would not cause secondary effects on properties. We looked at reasonable buffer zones, 300 ft., which the courts also deem reasonable. Kohlenberg questioned who directed staff to initiate this change, if Council approved hiring legal services and what the cost was. Gallo stated that he brought this matter forth because the City is vulnerable. The City consulted with the law firm of Crivello Carlson, S.C. and the cost was approximately \$11K for the third party legal services. Motion carried 8-0.

Ald. Cochrane was excused from the Council Meeting (10:10 pm).

#### New Business:

- A. **Consider / act on Resolution Disallowing Claim of Lake Drive, LLC and Westshore, LLC:** Gard reported that this claim was submitted against the Town of Oconomowoc and the City of Oconomowoc due to the moratorium that has been imposed on the Westshore Subdivision because of the excessive flows to the Wastewater Treatment Plant. Our insurance carrier has reviewed the claim and recommends that the City deny this claim as municipalities are granted immunity under the statutes for public policy decisions. Motion by Antonneau to adopt the resolution disallowing the claim of Lake Drive, LLC and Westshore, LLC; second by Nold. Motion carried 7-0.
- B. **Consider / act on Extending the Licensed Premise for Porticello, Inc., 685 E. Valley Road, to include outdoor seating:** Sullivan reported that the extension of the licensed premises is needed in order for the licensee to be able to serve intoxicating beverages in the outdoor seating area. Outdoor seating will be limited to 15 and the furniture will be moved around the designated area so to not destroy the grass. Motion by Miller to extend the licensed premise to include outdoor seating for Porticello, Inc.; second by Schmitter. Motion carried 7-0.
- C. **Consider / act on Resolution to Grant a New "Class A" License for Apple Annie, Inc. (Brennan's Market – Corner of Summit Avenue and Valley Road):** Sullivan reported that this resolution grants a new "Class A" license for the sale of fermented and intoxicating beverages at Brennan's Market. The City has no quotas on Class A licenses, which are issued for the sale of alcoholic beverages in original packages for off-premises consumption. The applicant meets all Chapter 12 licensing requirements. Motion by Antonneau to adopt the resolution to grant a "New Class A" license for Apple Annie, Inc.; second by Nold. Motion carried 7-0.
- D. **Consider / act on Ordinance Creating §12.17 of the Municipal Code Relating to Sexually Oriented Businesses – 1<sup>st</sup> Reading:** Sullivan reported that this newly created section contains new definitions, location restrictions and licensing requirements for sexually oriented businesses in conjunction with the amendments to the Chapter 17 Zoning Code. City staff had assistance from legal counsel to make sure the ordinance is current and accurate, based upon recent court decisions. There are six sites within the City for these types of establishments. This ordinance falls under licensing requirements and does not require a public hearing or a recommendation from any Committee. Motion by Nold to give the ordinance its first reading; second by Larsen. Gallo gave an overview of the Planner's report. Council questioned the lighting requirements. Chapman stated that the Planning staff should check with legal counsel on changing the interior lighting requirements to from 5 ft. candles to 10 ft. candles. Motion carried 7-0. Motion by Larsen to suspend the rules for the reading of the ordinance; second by Nold. Motion carried 7-0.

#### Staff Reports

- A. **2009 Green Action Program of the Year Award – Oconomowoc Utilities Lead by Example Team:** Gard reported that on June 19, 2009 the Lead By Example Team was awarded 2009 Green Action Program of the Year Award by the Milwaukee Business Journal. She presented the award to Nold.

**Reports and comments from the Aldermen** – Kohlenberg stated a week ago in the Milwaukee Journal there was an article titled "Non -Profit Must Pay Property Tax, Judge Rules". Kohlenberg passed out a copy of the article. Kohlenberg called on the City Administrator to give guidance to Council on how we will be handling taxing of non-profit entities. Kohlenberg would like to hear a recommendation for Council to follow.

Motion by Miller to adjourn the Common Council meeting ; second by Antonneau . Motion carried 7-0. The meeting adjourned at 10:28 PM.

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Diane Coenen, City Clerk