

THESE ARE THE MINUTES OF A **REGULAR COMMON COUNCIL MEETING OF THE 26TH COMMON COUNCIL**, HELD AT 7:45 P.M., TUESDAY, **JUNE 15, 2004**, IN THE COUNCIL CHAMBERS OF BROOKFIELD CITY HALL, 2000 N. CALHOUN ROAD, BROOKFIELD, WISCONSIN

MAYOR JEFF SPEAKER PRESIDING

ALDERMEN PRESENT: Scott Berg, Cindy Kilkenny, Thomas Schellinger, Jim Garvens (present via telephone), Jim Heinrich, Richard Brunner, Mike Franz, Steve Ponto, Dan Sutton, Rick Owen, Ron Balzer, Christopher Blackburn, Beverly Wentz

ALDERMEN ABSENT & EXCUSED: Gary Mahkorn

ALSO PRESENT: Director of Public Works Tom Grisa, Director of Community Development Dan Ertl, Director of Finance Robert Scott, Assistant City Attorney Karen Flaherty, City Clerk Kristine Schmidt, City Attorney Vince Moschella (appointed this evening as City Attorney), Fire Chief John Dahms, Director of Human Resources Jim Zwerlein, Director of Park and Recreation Bill Kolstad, Director of Information Services Fred Miller

Mayor Jeff Speaker called the Common Council to order at approximately 7:55 p.m.

Eight people spoke from the audience during the 15 minute segment set aside for the citizens to address the Council regarding the proposed Greenway Corridor/Bike Path in Kinsey Park and the proposed Tax Incremental District #3.

The next Common Council meeting is scheduled for July 20, 2004.

Alderman Scott Berg led the Common Council in the Pledge of Allegiance to the American Flag.

Alderman Heinrich moved approval of the Regular Common Council meeting minutes of June 1, 2004. The motion was seconded by Alderman Wentz and carried unanimously.

ACTIONS OF THE COMMON COUNCIL

COUNCIL AS A WHOLE

Alderman Brunner moved approval of the Resolution approving the Mayor's appointment of Vincent D. Moschella to the position of City Attorney. The motion was seconded by Alderman Berg and carried unanimously. *The City Clerk administered the Oath-of-Office to Vincent D. Moschella.*
Resolution No. 7266-04*

PARK AND RECREATION COMMISSION

(A neighborhood petition was presented opposing the construction of an 8 ft. wide asphalt bike road through Kinsey Park and its existing playground was presented earlier.)

Alderman Franz moved approval of the Resolution awarding the bid for the Greenway Trail Construction Phase II Project #PR-02-04 to Payne & Dolan, Inc. for \$64,988.17 (Kinsey Park and Mound Zion Park segments). The motion was seconded by Alderman Schellinger.

Alderman Franz moved to amend the resolution to substitute the base bid and Option I to be the base bid and Option III. The motion was seconded by Alderman Schellinger. A roll call vote was taken and carried Ayes 7, Nays 6 with Alderman Brunner, Owen, Garvens, Ponto, Wentz, and Heinrich voting Nay.

The motion as amended carried unanimously. ***Resolution No. 7257-04****

PLAN COMMISSION

The City Clerk referred to the actions and recommendations of the Plan Commission as represented in the June 7, 2004, minutes, including the Plan Review Board actions and recommendations of May 20, 2004, (all items require Common Council approval except for Items #3a, 4, 8 and Item #2 from the Plan Review Board, which was authorized by the Common Council on June 1, 2004).

The first item was item #2 of the Plan Commission, the request of the City of Brookfield Plan Commission, c/o the Department of Community Development, 2000 N. Calhoun Road, Brookfield, WI 53005, to amend portions of Section 17.98.030(A) Modified Suburban Overlay District requirements, to add "Standards for the removal of a development pattern designation" and to amend the paragraph number for "Standards without Matrix".

The Plan Commission recommended approval of the code amendment.

Alderman Owen moved the Plan Commission recommendation. The motion was seconded by Alderman Wentz and carried unanimously.

Alderman Owen moved adoption of the Ordinance amending portions of the Zoning Code, Section 17.98.030 Modified Suburban Overlay District, relating to Overlay district requirements (removal of a development pattern designation and standards without a matrix). The motion was seconded by Alderman Wentz. A roll call vote was taken and carried unanimously. ***Ordinance No. 1965-04****

The next item was item #3b and #3c of the Plan Commission, the request of Zabest Commercial Group Inc., Attn: Steve Nikolas, 16800 W. Greenfield Ave. #200, Brookfield, WI

53005, and Open Pantry Food Marts of Wisconsin, Inc., Attn: Robert Buhler, 10505 Corporate Drive, Suite 101, Pleasant Prairie, WI 53158, to approve the following for the future permission to construct approximately 12,370 square feet of retail space for a proposed gas station and retail development:

- b1. Amend Zoning Issue Area C18 of the Modified Suburban Overlay District matrix, including the removal of "CS" Cluster Suburban development pattern designation;
- b2. Reaffirm the general plan and rezone 3970 and 3980 N. Brookfield Road, Brookfield, WI 53045, from "B-1" Local Business to "PDD" Planned Development District – Commercial. (NW 1/4 of Sec. 9)

The Plan Commission recommended to amend *A Neighborhood Plan for the Brookfield Road and Capitol Drive Node and Capitol Drive Corridor Study: Number Two*, allowing a traditional suburban development pattern at the southeast corner of Brookfield Road and Capitol Drive, via Resolution, amending Zoning Issue Area C18 of the Modified Suburban Overlay District matrix, including the removal of "CS" Cluster Suburban development pattern designation, and reaffirm the General Plan and rezone 3970 and 3980 N. Brookfield Road, Brookfield, WI 53045, from "B-1" Local Business to "PDD" Planned Development District – Commercial, subject to the conditions listed above and the following additional conditions: (1) Phased parking not necessary, (2) No commercial signage on Fresno Road, (3) Reconcile the need for opaqueness through landscaping or decorative fencing along Capitol Drive and Brookfield Road to screen the parking lots.

Alderman Owen moved approval of the Plan Commission recommendation. The motion was seconded by Alderman Wentz and carried unanimously.

* * * * *

Alderman Owen moved adoption of the Ordinance rezoning certain property to Planned Development District – Commercial Use, No. 11 – Open Pantry Food Marts of Milwaukee, Inc., from "B-1" Local Business to "PDD" Planned Development District-Commercial, to construct approximately 12,370 square feet of retail space for a proposed gas station and retail development (Open Pantry) located at 3970 and 3980 N. Brookfield Road; and amending the zoning issue area C18 of the Modified Suburban Overlay District matrix, including the removal of "CS" Cluster Suburban Development pattern designation, (the version of the ordinance with the language indicated on p. 2 using the words "consistent with"). The motion was seconded by Alderman Wentz. A roll call vote was taken and carried unanimously. **Ordinance No. 1966-04***

* * * * *

Alderman Owen moved approval of the balance of actions and recommendations of the Plan Commission as represented in the June 7, 2004, minutes, including the actions and recommendations of the Plan Review Board of May 20, 2004, (all items require Common Council approval except for Items #3a, 4, 8 and Item #2 from the Plan Review Board, which was authorized by the Common Council on June 1, 2004). The motion was seconded by Alderman Wentz.

* * * * *

Alderman Kilkenny moved to separate Item #6 (Request of Fountain Square- PDD Specific Plan, Development Agreement, Preliminary and Final Plat) from the Plan Commission minutes for

special consideration. The motion was seconded by Alderman Blackburn and failed Ayes 4, Nays 9 with Aldermen Blackburn, Kilkenny, Berg, and Sutton voting aye.

The vote on the approval of the actions and recommendations of the balance of the June 7, 2004 Plan Commission and the Plan Review Board of May 20, 2004 was taken and carried unanimously.

* * * * *

The next item was the tabled action and recommendation of Item #4 from the March 8, 2004, Plan Commission minutes, the request of Ceil Schwalbach (From Hair On), c/o Mohns Inc., 110 N. 121st St., Wauwatosa, WI 53226, Ben Mohns, representative, for approval to rezone 13750 W. Greenfield Ave., or TKN's 1151-990 and 1151-991, from "B-1R" Local Business-Restricted to "B-1" Local Business, approve a revised plan and method of operation at said address and 13780 W. Greenfield Avenue allowing a 5,000 sq. ft. building addition and approve a preliminary and final Certified Survey Map combining said parcels into one lot. (SW 1/4 of Sec. 36)

Alderman Owen moved to remove the request from the table. The motion was seconded by Alderman Wentz and carried unanimously.

The Plan Commission recommended approval of the staff recommendation to approve the rezoning from B-1R to B-1, approval of the CSM subject to technical corrections and granting a utility easement, and approval of the revised plan and method of operation subject also to modifying the eastern drive and adding landscaping in front of the dumpster.

Alderman Owen moved adoption of the Plan Commission recommendation. The motion was seconded by Alderman Wentz and carried unanimously.

* * * * *

Alderman Owen moved adoption of the Ordinance rezoning 13750 W. Greenfield Avenue, or TKN's 1151-990 and 1151-991 from "B-1R" Local Business Restricted to "B-1" Local Business (Ceil Schwalbach/From Hair On). The motion was seconded by Alderman Wentz. A roll call vote was taken and carried unanimously. ***Ordinance No. 1967-04****

FINANCE COMMITTEE

Alderman Brunner moved approval of the Vouchers exceeding \$50,000 requiring immediate action. The motion was seconded by Alderman Heinrich and carried unanimously.

* * * * *

Alderman Brunner moved approval of the Request of the Information Technology, Municipal Court and Police departments to purchase replacement of Municipal Court software from Tyler Technologies for \$52,885. The motion was seconded by Alderman Berg and carried unanimously.

* * * * *

Alderman Brunner moved to deny the Notice of Claim relative to Marcia Clafford. The motion was seconded by Alderman Owen and carried unanimously.

FINANCE/PERSONNEL COMMITTEES

Alderman Ponto moved approval of the Resolution approving reimbursement for a portion of the costs associated with retrofitting the home of a Police Sergeant [Lewis (Tobie) Tyler] shot in the line of duty, with the additional wording of "*BE IT FURTHER RESOLVED that this payment will be made upon a ruling by the State of Wisconsin Department of Workforce Development that Wausau Insurance Company is not legally obligated to pay these costs, and;*". The motion was seconded by Alderman Garvens and carried unanimously. **Resolution No. 7258-04***

LEGISLATIVE & LICENSING COMMITTEE

Alderman Ponto moved approval of seven Original Bartender's Licenses. The motion was seconded by Alderman Sutton and carried unanimously.

* * * * *

Alderman Ponto moved approval of 22 Renewal Bartender's Licenses and tabled two renewal licenses. The motion was seconded by Alderman Kilkenny and carried unanimously.

* * * * *

Alderman Ponto moved approval of **Item #14**, the Renewal Wholesaler License: Edison Liquor, 21125 Enterprise Avenue; **Item #15**, the Renewal Class B Beer (Malt) License: The Ponds of Brookfield, 2810 N. Calhoun Road; **Item #16**, the Renewal Class B Beer (Malt) and Class C Wine License: Bear Rock Café, 18895 W. Capitol Drive; Saffron Indian Bistro, 17395 D-1 W. Bluemound Road; **Item #17**, the Renewal Class A Combination Beer (Malt) and Liquor Licenses: Angelina's Deli, 15655 W. North Ave.; Best Cellars Wine Shop, 17000 W. Capitol Drive; The Market Basket, 14835 W. Lisbon Rd.; Pick N Save – Bluemound, 17630 W. Bluemound Rd.; Pick N Save-East, 12735 W. Capitol Dr.; Pick N Save – Calhoun, 2205 N. Calhoun Rd.; Pick N Save- West, 17295 W. Capitol Drive; **Item #18**, the Renewal Class B Combination Beer (Malt) and Liquor Licenses: Bluemound Bowl, 12935 W. Bluemound Rd.; The Bowary Sports Eatery, 14640 W. Capitol Dr.; Chi-Chi's, 19365 W. Bluemound Rd.; Chili's Bar & Grill, 17915 W. Bluemound Rd.; Courtyard by Marriott, 16865 W. Bluemound Rd.; Dick Manhardt's Inn, 14000 W. North Ave.; Fuddrucker's, 16065 W. Bluemound Rd.; Grecian Inn, 14375 W. Capitol Dr.; Houlihan's Old Place, 95 N. Moorland Rd.; Jake's, 21445 W. Gumina Rd.; Loaf & Jug Restaurant, 17700 W. Capitol Dr.; Maxim's, 18025 W. Capitol Dr.; Mr. B's – A Bartolotta Steakhouse, 17700 W. Capitol Dr.; Outback Steakhouse, 1260 S. Moorland Rd.; Pedro's, 17105 W. Bluemound Rd.; Pepino's, 17065 W. Capitol Dr.; Pistol Pete's Neighborhood Grill, 16755 W. Lisbon Rd.; The Historic Red Mill, 1005 S. Elm Grove Rd.; Residence Inn, 950 Pinehurst Ct.; Sabella's Pub, 2850 N. Brookfield Rd.; T.G.I. Friday's, 17430 W. Bluemound Rd.; Venice Club, 1905 N. Calhoun Rd.; Westmoor Country Club, 400 S. Moorland Rd.; Wyndham

Brookfield, 18155 W. Bluemound Road; and **Item #19**, the Original Class B Beer and Class C Wine Alcohol License: ILM, LLC, d/b/a: Bear Rock Café, 18895 W. Capitol Dr.; Agent: Stephen C. Dutter. The motion was seconded by Alderman Heinrich and carried unanimously.

* * * * *

No action was taken on Item #20a, the Cancellation of the Class B Combination Alcohol License for Side Track Bar, for the remaining 2003/2004 license year: TRI J. Investments, LLC, d/b/a Side Track Bar, 2835 N. Brookfield Road; Agent – James T. Callen.

Alderman Ponto moved approval of Item #20b, the Renewal Class B Combination Beer (Malt) and Alcohol License for Side Track Bar, for the 2004/2005 license year: TRI J. Investments, LLC, d/b/a Side Track Bar, 2835 N. Brookfield Road; Agent – James T. Callen, subject to review on October 1st as to its use of it's license. The motion was seconded by Alderman Kilkenny and carried unanimously.

* * * * *

Alderman Ponto moved adoption of the Ordinance amending Section 15.04.340, Fences, of the Municipal Code, to permit fences to be constructed between non-residential and residential or public lands subject to approval of the Plan Commission. The motion was seconded by Alderman Sutton. A roll call vote was taken and carried Ayes 11, Nays 2 with Aldermen Brunner and Garvens voting nay. ***Ordinance No. 1968-04****

* * * * *

Alderman Ponto moved adoption of the Ordinance creating Section 3.24.020B. of the Municipal Code relating to charges for specialized services received by the Fire Department and billed to the City from other jurisdictions. The motion was seconded by Alderman Kilkenny.

Alderman Berg moved to table the Ordinance and refer it back to the Legislative and Licensing Committee for further review. The motion was seconded by Alderman Heinrich and carried Ayes 10, Nays 3 with Aldermen Sutton, Wentz and Garvens voting nay.

PERSONNEL COMMITTEE

Alderman Ponto moved approval of the Resolution providing Health Insurance benefits to City of Brookfield employees called to duty in support of Operation Iraqi Freedom and Operation Enduring Freedom. The motion was seconded by Alderman Garvens and carried unanimously. ***Resolution No. 7259-04****

BOARD OF PUBLIC WORKS

Alderman Heinrich moved approval of the Resolution approving the execution of temporary limited easements with the State of Wisconsin Dept. of Transportation to reconstruct Greenfield

Avenue between Calhoun Road and Barker Road. The motion was seconded by Alderman Garvens and carried unanimously. **Resolution No. 7260-04***

* * * * *

Alderman Heinrich moved approval of the Resolution approving storm sewer easements at Brookfield Academy, 3460 N. Brookfield Road, and Grandma's House Limited Partnership, 3150 N. Brookfield Road, for the Brookfield Road/Estate Circle/Beverly Hills Drive Storm Sewer Project #SW-04-02. The motion was seconded by Alderman Ponto and carried unanimously. **Resolution No. 7261-04***

* * * * *

Alderman Heinrich moved approval of the Resolution awarding the bid for the Brookfield Road/Estate Circle/Beverly Hills Drive Storm Sewer Project #SW-04-02 to C.W. Purpero, Inc. for \$440,219.80. The motion was seconded by Alderman Garvens and carried unanimously. **Resolution No. 7262-04***

* * * * *

Alderman Heinrich moved approval of the Resolution amending the Official Traffic Control Map to include the installation of "No Parking Anytime" signs on Barberrry Street, Camden Lane, and Chadwick Lane. The motion was seconded by Alderman Ponto and carried Ayes 12, Nays 1 with Alderman Kilkenny voting nay. **Resolution No. 7263-04***

SEWER AND WATER BOARD

Alderman Berg moved approval of the Final Resolution levying special assessments for water main against 1085 Simon Drive, BRC 1148-001, \$2,094.23. The motion was seconded by Alderman Blackburn and carried unanimously. **Final Resolution No. 7264-04***

* * * * *

Alderman Berg moved approval of the Resolution approving the Perpetual Water Main Easement for the water main located at Reina International, 12730 W. Capitol Drive, TKN 1012-117 between the City of Brookfield and Reina International. The motion was seconded by Alderman Schellinger and carried unanimously. **Resolution No. 7265-04***

COUNCIL AS A WHOLE

Alderman Brunner moved approval of the Mayor's Appointments. The motion was seconded by Alderman Garvens and carried unanimously.

Plan Commission

Mary A. Roth – Three year term expiring May 1, 2007.

Beverly Wentz, Alderman – One year term subject to reappointment.

Paul Wartman – To fulfill the unexpired term of a member who resigned expiring May 1, 2006.

Board of Review

Jack Shaw – To fulfill the unexpired term of a member who resigned expiring January 1, 2007.

* * * * *

Alderman Brunner moved approval of the Mayor's Reappointments. The motion was seconded by Alderman Berg and carried unanimously.

Information Technology Subcommittee

Alan Nosbusch – Two year term expiring July 1, 2006.

Gary E. Jonardi – Two year term expiring July 1, 2006.

Scott Dryburgh was not reappointed at this time.

* * * * *

Alderman Brunner moved approval of the Council President's Appointments – Alderman Steve Ponto to the Board of Public Works. The motion was seconded by Alderman Heinrich and carried unanimously.

Board of Public Works

Steven Ponto, Alderman - To coincide with his aldermanic term expiring April 2006.

Council President Appointments not needing Common Council confirmation.

Finance Committee

Beverly Wentz, Alderman – To coincide with her aldermanic term expiring April 2005.

Personnel Committee

Beverly Wentz, Alderman – To coincide with her aldermanic term expiring April 2005.

* * * * *

Alderman Brunner moved to table the Strategic Planning Session. The motion was seconded by Alderman Heinrich and carried unanimously.

* * * * *

Alderman Kilkenny moved to adjourn the meeting. The motion was seconded by Alderman Wentz and carried unanimously. 10:20 p.m.

Kristine A. Schmidt, City Clerk

* May be viewed in the City Clerk's Office.