

THESE ARE THE MINUTES OF A **COMMON COUNCIL MEETING OF THE 27<sup>TH</sup> COMMON COUNCIL**, HELD AT 8:17 P.M., TUESDAY, **AUGUST 15, 2006**, IN THE COUNCIL CHAMBERS OF BROOKFIELD CITY HALL, 2000 N. CALHOUN ROAD, BROOKFIELD, WISCONSIN

MAYOR JEFF SPEAKER PRESIDING

**ALDERMEN PRESENT:** Scott Berg, Gary Mahkorn, Steve Ponto, Dan Sutton, Rick Owen, Christopher Blackburn, James Garvens, Mike Franz, Bill Carnell, Bob Reddin (arrived at 8:40 p.m.), Jerry Mellone, Lisa Mellone, Ron Balzer, Mark Nelson

**ALDERMEN ABSENT & EXCUSED:** None

**ALSO PRESENT:** Acting City Attorney Karen Flaherty, Director of Administration Dean Marquardt, City Clerk Kristine Schmidt, Director of Public Works Tom Grisa, Director of Human Resources Jim Zwerlein, Planning Administrator Mike Theis, Director of Finance Robert Scott, Fire Chief John Dahms, Director of Information Technology Kevin Beck, Neighborhood Planner/Designer Carrie Johnson, Network Coordinator Mike Clarke

Mayor Jeff Speaker called the Common Council to order at approximately 8:50 p.m. The next Common Council meeting will be September 5<sup>th</sup>.

Alderman Ron Balzer led the Council in the Pledge of Allegiance.

Three individuals spoke from the audience during the 15 minute segment set aside for citizens to address the Council. Comments were made relative to the rezoning of 2945-55 N. Brookfield Road; the ownership of roads in the Pheasant Run Condominium development; and Calhoun Road issue relative to Strategic Planning.

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**ACTIONS OF THE COMMON COUNCIL**

8:17 p.m. A public hearing was heard regarding the request of CP Capitol I, LLC, to permit Modified Suburban Overlay rezoning at 14570-14620 W. Capitol Drive. The hearing ended at 8:50 p.m. (Minutes of the Public Hearing are separate from Council Minutes.)

**CONSENT AGENDA**

Alderman Ponto moved approval of the items on the Consent Agenda, except for items #17 and #21. The motion was seconded by Alderman Sutton and carried unanimously. Recorded as a roll call.

- 1) Minutes from the Regular Common Council meeting of July 18, 2006.

*Actions and recommendations from the Plan Commission minutes of July 27, 2006*

- 2) • P.C. #1: Request for a public hearing to rezone properties contained in the area to which the recently enacted Village Area Business District Ordinance is to be applied.

Actions and recommendation from the Plan Commission minutes of August 7, 2006, including the Plan Review Board minutes of July 20, 2006

- 3) • P.C. #1: Plan Review Board minutes of July 20, 2006 –
- a. • PRB #1: St. Andrew Square Condominiums, 18465-C St. Andrew Ct., for approval of a revised plan and method of operation permitting facade alterations at said development, specifically installation of sun protective deck awnings.
  - b. • PRB #2: Developers Diversified Realty/JDN Realty Corp. for approval of an outdoor seating plan for "The Pavilion" at Shoppers World at 12455 W. Capitol Drive.
  - c. • PRB Sign Request #A: The Preserve at Chapel Hill, 18840 Chapel Hill Dr., for a subdivision entry sign.
  - d. • PRB Sign Request #B: Realty Executives, 13005 W. Bluemound Rd., for a wall sign.
  - e. • PRB Sign Request #C: Pick N Save, 12735 W. Capitol Dr., Main Identification Sign Replacement (*as amended and recommended by the Plan Commission at their meeting 8/7/06*).
  - f. • PRB Sign Request #D1: Carrabba's Italian Grill, Bonefish Grill, 18365 W. Bluemound R., for a free standing sign.
  - g. • PRB Sign Request #D2: Bonefish Grill, 18365 W. Bluemound Rd., for a wall sign.
  - h. • PRB Sign Request #D3: Carrabba's Italian Grill, 18365 W. Bluemound Rd., for a wall sign.
  - i. • PRB Sign Request #E1: Pavillion at Shoppers World, Capitol Dr. & 124<sup>th</sup> St., for their Main Identification Signs (2).
  - j. • PRB Sign Request #E2: Pavillion at Shoppers World, Capitol Dr. & 124<sup>th</sup> St., for their Master Sign Program.
- 4) • P.C. #3: Capitol Progression LLC, for approval to amend the matrix of MSO Ord. #1692 as it pertains to the Use Variations column of Zoning Issue Area C13 removing the reference to new or expanded fuel/gasoline sales and related operations approved by PDD and adding language permitting a free standing, dine-in (quality, gourmet or family style) restaurant at 18350 W. Capitol Drive and amending the Special Characteristics column of Zoning Issue Area C13 permitting an intensive use, i.e. restaurant with a 40' pavement offset from a residential zoning district, a 2' side yard pavement offset, a 10' pavement setback and a 72.6% Lot Coverage. Included is a request to amend the "local business" land use recommendation for 18350 W. Capitol Drive of the Capitol Drive Corridor Study II – 1999 to include freestanding, dine-in (quality, gourmet or family style) restaurant, approve a preliminary survey map and final certified survey map all in association with approval of a revised and new plan and method of operation at 18300 and 18350 W. Capitol Drive.
- 5) Ordinance revising the Modified Suburban Overlay Matrix contained in Ord. #1692, for the property located at 18380 W. Capitol Drive (Spheeris Office/Pandl Restaurant). **Ordinance No. 2072-06\***
- 6) Resolution amending Res. #6353, the Capitol Drive Corridor Study Number Two, Zoning Issue Area C13, for the property located at 18380 W. Capitol Drive (Spheeris Office/Pandl Restaurant). **Resolution No. 7618-06\***

7) • P.C. #4: VK Development for approval of an amended Development Agreement for 17400 W. Capitol Drive and 4030 Beaufort Drive to allow the construction of Building A (southeastern building with first floor retail, second floor office, and underground parking) and Building D (northwestern building with first floor office) in the "Capitol Heights" development to extend the construction completion date to April 3, 2008, for two of the four building consisting of Phase 2.

8) • P.C. #5: Johnson Bank to schedule a rezoning/conditional use public hearing to amend a floodplain boundary with a new plan and method of operation that would permit razing the vacant Manhardt Inn, and replacing it with an 11,667 sq. ft. two-story bank building with drive-thru.

*As recommended by the Finance Committee*

9) Vouchers exceeding \$50,000 requiring immediate action.

10) Resolution approving contract with Dell, Inc. to purchase replacement computer equipment and related installation/disposal services for \$313,757. **Resolution No. 7619-06\***

11) Request of the Highway Division to purchase road salt from North American Salt Co. for \$147,488.

*As recommended by the Legislative & Licensing Committee*

12) Eighteen Original Bartender Licenses (see Legislative & Licensing Committee agenda for names).

13) Fireworks User Permits:

a. Westmoor Country Club, 400 S. Moorland Rd., September 9, 2006; from 4-10 p.m., for the end of Summer Festival "Westmoor Fest".

b. Brookfield Academy, 3460 N. Brookfield Rd., September 8, 2006; at 8:45 p.m., for their capital campaign kick-off party.

*As recommended by the Board of Public Works*

14) Resolution awarding the bid for the Westwood Drive Storm Sewer Project No. SW-06-07 to Underground Pipeline, Inc. for \$151,602.60. **Resolution No. 7620-06\***

15) Resolution awarding the bid for the City of Brookfield City Hall, City Hall, 2000 N. Calhoun Rd., Roof Replacement Project, IRS Project #13046 to Vidmar Roofing, Inc. for \$64,582.00. **Resolution 7621-06\***

*As recommended by the Water and Sewer Board*

16) Resolution approving the Perpetual Water Main Easement for the connecting water main between Talon Trail and Toldt Forest Court between the City of Brookfield and Saadat A. Laiq. **Resolution No. 7622-06\***

17) *Removed from the Consent Agenda.*

18) Resolution awarding the bid for the Brookfield Square Water Treatment Facility Project to TV John & Sons, Inc. for \$409,572.37, contingent on approval by the DNR. **Resolution No. 7624-06\***

*Council As A Whole*

19) Resolution authorizing the City Clerk to appoint special registration deputies for voter registration duties. **Resolution No. 7625-06\***

20) Council President's Appointments:

- a. Legislative & Licensing Committee – removal of Alderman Gary Mahkorn (simple majority).
- b. Human Resources & Public Safety Committee – Alderman Gary Mahkorn, Chairman (*Council confirmation not required*).
- c. Legislative & Licensing Committee – Alderman Steve Ponto, as a member (*3/4 vote*).
- d. Legislative & Licensing Committee – Alderman Steve Ponto, as a Chairman (*3/4 vote*).

21) *Removed from the Consent Agenda.*

22) Mayor's Appointments:

- a. Board of Appeals – Jeffrey J. Warchol, 3 yr. term expiring 5/1/09.

23) Items removed from the Consent Agenda –

17) Alderman Berg moved approval of the Resolution vacating the Perpetual Water Main Easement between James R. Stevenson and the City of Brookfield for the Elm Grove Road and I-94 well site. The motion was seconded by Alderman Owen and carried unanimously. **Resolution No. 7623-06\***

21) Alderman Ponto moved approval of the Mayor's Reappointment to the Board of Appeals – David Peterson and Frank DeGuire, term expiring 5/1/09. The motion was seconded by Alderman Berg and carried unanimously.

***\* End of the Consent Agenda \****

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**Actions and recommendations from the Plan Commission minutes of August 7, 2006**

24 • P.C. #2: Tabled request of Richard Conley to rezone from "B-1" Local Business to "PDD" Planned Development District – General Plan (Mixed Use) and reaffirm the general plan for 2945-55 N. Brookfield Road to allow the construction of a mixed use building with first floor retail and second floor residential uses in the "Village Area" business district.

The Plan Commission recommended approval of an ordinance rezoning 2945-55 N. Brookfield Road from "B-1" Local Business to "PDD – Mixed Use (General Plan), No. \_\_\_", allowing approximately 7,712 sq. ft. of first floor retail and restaurant space, a maximum of eight (8) second floor dwelling units, and surface and underground parking stalls, subject to the listed conditions of

approval. No music allowed on the outdoor deck was added to the list of recommendations, which was not included in the previous staff's recommendations of July 10<sup>th</sup>, but is reflective of previous Plan Commission discussion.

Alderman Mahkorn moved to remove the item off the table. The motion was seconded by Alderman Berg and carried unanimously.

Alderman Mahkorn moved adoption of the Plan Commission recommendation. The motion was seconded by Alderman Owen and carried Ayes 11, Nays 3 with Aldermen Reddin, L. Mellone and Nelson voting nay.

25) Alderman Mahkorn moved to remove from the table the Ordinance rezoning 2945-55 N. Brookfield Road from "B-1" Local Business District to "PDD" Planned Development District – General Plan (Mixed Use Commercial/Residential) No. 13, for the purpose of constructing a two-story, mixed use building with first floor commercial, second floor residential and underground parking. The motion was seconded by Alderman Owen and carried unanimously.

Alderman Mahkorn moved adoption of the Ordinance rezoning 2945-55 N. Brookfield Road from "B-1" Local Business District to "PDD" Planned Development District – General Plan (Mixed Use Commercial/Residential) No. 13, for the purpose of constructing a two-story, mixed use building with first floor commercial, second floor residential and underground parking. The motion was seconded by Alderman Berg. A roll call vote was taken and carried Ayes 11, Nays 3 with Alderman Reddin, L. Mellone and Nelson voting nay. ***Ordinance No. 2073-06\****

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### **Council As A Whole**

26) Discussion and adoption of 2006-2008 strategic plan initiatives. Alderman Ponto moved approval of the 2006-2008 strategic plan initiatives including item 9 submitted by Alderman L. Mellone, "Consider a policy for a formal traffic calming program on residential and collector roadways to improve traffic safety and quality of life". The motion was seconded by Alderman Sutton. Program.

Alderman Blackburn moved to amend the initiatives by removing Initiative #6 from the Strategic Plan - Implement the approved transportation and land use plan for the Calhoun Road/Bluemound Road/I-94 area (MP3). The motion was seconded by Alderman J. Mellone. The motion was subsequently withdrawn.

Alderman J. Mellone moved to amend Initiative #6 to read, "Reassess the transportation and land use plan for the Calhoun Road/Bluemound Road/I-94 area including a study of the impact on residential and business properties. The motion was seconded by Alderman Blackburn. A roll call vote was taken and failed Ayes 4, Nays 10 with Aldermen Sutton, J. Mellone, Blackburn and L. Mellone voting Aye.

Alderman Ponto moved to amend Initiative #6 to substitute the word "address" for "implement". The motion was seconded by Alderman Reddin. A roll call vote was taken and carried unanimously.

The motion as amended including "Initiative #9, Consider a policy for a formal traffic calming program on residential and collector roadways to improve traffic safety and quality of life", passed unanimously.

Alderman Ponto stated for the record, that "address" is meant as a neutral term meaning to devote time and resources to this issue while continuing to move forward with discussions being held at the various committees having responsibility for the elements of this plan and ultimately the Council.

27) Legislative Referrals:

- a. Alderman Berg requested the Board of Public Works analyze the data gathered by new automated road salt equipment to determine if current road salt practices are optimal for safety and cost.
- b. Alderman J. Mellone requested that the land use and transportation plans be reassessed for possible amendments.

28) In continuing actions of the Council, pursuant to 19.85(1) of the Wisconsin Statutes, after first convening in open session, the Mayor will explain the nature of the business proposed to be considered in closed session, and upon a motion duly made, seconded and adopted, meeting in Closed Session for the following purpose:

- a. Under 19.85(1)(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. (*Discussion of strategy with the City Attorney about pending and possible litigation with the Town of Brookfield including the Ravenswood sewer extension lawsuit, the Capitol Drive annexation and relation to the City-Town's issues.*)

Alderman Ponto moved to convene into Closed Session under Section 19.85(1)(g). The motion was seconded by Alderman Garvens and carried unanimously. Recorded as a roll call. 10:45 p.m.

Present during closed session were as follows: Mayor, City Clerk, Acting City Attorney, Director of Public Works, Director of Human Resources, Director of Administration, and Director of Finance.

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29) Alderman Ponto moved to adjourn the meeting without going into open session. No action was taken in closed session. The motion was seconded by Alderman Nelson and carried unanimously. 11:15 p.m.

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Kristine A. Schmidt, City Clerk

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