

# **REGULAR CITY COUNCIL MEETING**

## **MONDAY, FEBRUARY 27, 2012 – 7:00 PM**

### **COUNCIL CHAMBERS, CITY HALL**

Mayor Connors called the meeting to order at 7:10 p.m.

The Pledge of Allegiance was led by Alderman Krause.

**Roll Call.** Present: Aldermen Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O’Neill. Also present: Administrator Jordan, City Attorney Draper, DPW Winkler and City Clerk Hawes.

**Awards, Presentations, and Proclamations.** None.

**Re-consider business from previous meeting.** None.

**Comments from the public as allowed by Wis. Stats. §19.84(2), limited to items on this agenda, except for public hearing items. Comments will be limited to 5 minutes.**

Penny Roehrer, 951 South Lakeshore Drive #1, Lake Geneva, addressed the Committee to discuss item #13-H relating to the settlement for attorney fees. She said she was hoping this matter wouldn’t be on the agenda because it is an insurance matter and the City shouldn’t be involved. She disapproved of the original appeal being included in the meeting’s agenda packet because it made it look like the four aldermen were seeking \$400,000 in legal fees. She said the purpose of their lawsuit against the City was to recover \$90,000 in legal fees. She gave a recap of the events leading up to the claim for attorney fees. Ms. Roehrer said the Council has an opportunity to make the four aldermen whole. She said it would make a statement about protecting all current and future elected officials from paying out-of-pocket legal expenses for doing the jobs they were elected to do. Ms. Roehrer said she is grateful for two conflict-free years with the new mayor.

Richard Malmin, N1991 S. Lakeshore Drive, Town of Linn, addressed the Committee in regard to item #13-H. Mr. Malmin asserted it is important for members of the public to be able to participate in government without fearing that their personal finances and reputation will be at risk. He said tonight the Council has an opportunity to send the message that Lake Geneva is a fair-minded City by agreeing to assist with the aldermen’s attorney fees. He urged the Council to work with the four aldermen to help resolve some of their legal expenses related to their work as elected officials.

Thomas Spellman, 270 Country Club Drive #22, commented on item #13-H. Mr. Spellman said the four aldermen originally sought the restraining order so the City would have a legally functioning government and so that a legal determination would be made about Mayor Chesen’s suspensions. He suggested that Mayor Chesen accused the four aldermen of breaking a law that did not exist. He said they paid \$50,000 of their own money to represent the interests of the City as a whole. He said the insurance company’s settlement did not include paying the full amount of attorney fees that were incurred.

**Acknowledgement of Correspondence.** None.

#### **Approval of Minutes**

Krause/Kupsik motion to approve the Regular City Council Meeting minutes of February 13, 2012, as published and distributed. Alderman O’Neill asked if the minutes could reflect the City Attorney’s report on the vote for the Maple Park and Dunn Field tennis courts. City Attorney Draper said this information would be discussed at tonight’s meeting and, therefore, would be reflected in the minutes for tonight’s meeting. Unanimously carried.

#### **Public Hearing on Original Application for Taxi Company License filed by Lakefront Shuttle & Services, W3746 Lake View Drive, Geneva, Robert T. McAllister, Owner**

Robert McAllister, applicant, addressed the Council to explain the purpose of his application. Mr. McAllister said he would like to start a shuttle service that would be dedicated to serving the hotels downtown. Alderman Marsala asked

if the shuttle would be only for hotel guests. Mr. McAllister answered yes. Alderman Hartz noted the safety inspection showed a couple of items needing repair. Mr. McAllister stated the electric locks are now working and an appointment has been made to fix the windshield. Alderman Marsala noted there is a discrepancy on how the business name is listed on the application and on the certificate of insurance. City Attorney Draper said he identified a few things that would need to be addressed with the certificate of liability insurance. Specifically, the certificate of insurance needs to reflect the business name on the license application; the certificate needs to list the number of passengers that would be accommodated by the shuttle; the certificate needs the state motor vehicle license number; and the certificate needs to include a provision that the policy cannot be cancelled without 10 days notice to the City. City Attorney Draper said he discussed these items with the applicant. He suggested that if the Council wished to approve the application, they should do so with the condition that the certificate of insurance is approved by the City Attorney.

Tammie Carstensen, representing Harbor Shores on Lake Geneva, 300 Wrigley Drive, said the shuttle service would provide an added convenience to the hotels. She said the shuttle would help provide transportation when there are weddings or bad weather.

Krause/Mott motion to close public hearing. Unanimously carried.

**Discussion/Action on funding the Maple Park and Dunn Field Tennis Courts Replacement from the TID budget in the amount of \$231,000**

City Attorney Draper said he issued a memo to the Mayor and Council explaining that a two-thirds vote was needed to approve the funding for the tennis courts. The item received five votes at the February 13<sup>th</sup> meeting, instead of the needed six votes. He said in order for the project to be funded from the TID discretionary fund, it would either need a two-thirds vote for approval, or approval from the Joint Review Board.

Alderman Krause said the Council has the option to direct the City Administrator to go before the Joint Review Board and request an amendment to the TID project plan. Alderman Marsala asked how long a process this would be. City Attorney Draper said staff estimated it would take about 60 days.

Krause/Kehoe motion to direct the City Administrator to request funding from the Joint Review Board to complete the Maple Park and Dunn Field tennis courts project. Alderman Krause said he believes it is important to maintain the quality of the City's tennis courts. Alderman Kupsik noted the cost of completing the project will likely be higher than the bid the City received in the Fall. Alderman Kehoe asked how the City will void its current contract for the project. Mayor Connors noted the contract was not executed so it will not need to be voided. Alderman Hartz said he is in favor of fixing the tennis courts, but opposed a piecemeal approach toward amending the project plan. Alderman Marsala noted that none of the aldermen have talked about hearing from constituents who were in support of fixing the tennis courts.

Roll Call: Krause, Kehoe and Kupsik voted "yes." Hartz, Mott, Marsala, Krohn and O'Neill voted "no." Motion failed by vote of 3 to 5.

**Discussion/Action on acceptance of streets located in the Meadowlands Subdivision**

DPW Winkler said the City has been working with the developer to improve the second phase of roads in Meadowlands Subdivision. Mayor Connors referenced a letter from the City Engineer recommending the City accept the streets at this time. Alderman Hartz questioned whether the roads were in sufficient condition. He noted a missing street sign and cracked curbs. DPW Winkler said he could address these issues. Alderman O'Neill said the letter from the City Engineer recommends acceptance of the roads but does not specifically state that the roads sufficiently met City standards.

Krause/Hartz motion to continue to March 12<sup>th</sup> meeting. Unanimously carried.

**Discussion/Action on deeding of driveway to Swatek Sales Corporation, d/b/a The Red Geranium Restaurant, 393 Edwards Boulevard, Lake Geneva**

Krause/Kupsik motion to suspend rules to allow Mr. Swatek to address the Council on this matter. Unanimously carried.

Mr. Swatek asked City Attorney Draper to describe the history with this matter. City Attorney Draper said the parcel containing the driveway to the Red Geranium Restaurant was dedicated to the City as public land in 2005. He said the City passed a resolution in August 2005 abandoning that parcel, but it is not exactly clear what was intended by abandoning the parcel. Mr. Draper said the County GIS system includes the driveway as part of the Red Geranium parcel and Mr. Swatek has been paying property taxes on the driveway area. The purpose of the deed would be to clarify Mr. Swatek's ownership of the driveway. Mr. Swatek said he is in the process of refinancing his parcel and one of the title companies is requesting a copy of a deed from the City for the driveway. City Attorney Draper said he spoke to Building Inspector Brugger who believed that it had been deeded all along, or at least that was the intent in 2005. Mr. Draper said the deed would be subject to an easement for Walgreens to utilize the driveway for their customers. DPW Winkler said there is a storm drainage in that location and it may be subject to a storm sewer easement as well.

Hartz /Mott motion to direct the City Attorney to prepare a deed for the driveway to the Red Geranium Restaurant, 393 Edwards Boulevard, Lake Geneva, including the easements that may be required.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O'Neill voted "yes." Unanimously carried.

### **Finance, License and Regulation Committee Recommendations – Alderman Krause**

#### **RESOLUTIONS**

##### **Resolution 12-R11, a budget amendment allowing for a carry-forward of the capital project budget balances totaling \$505,290.00**

Krause/Hartz motion to approve, subject to removing EM Narrow Band Sirens, resulting in the total amount of \$480,325.00. Alderman Krause said the carry-forward list includes unspent funds for capital projects approved in 2011.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O'Neill voted "yes." Unanimously carried.

#### **ORDINANCES**

##### **First reading of Ordinance 12-05, amending Chapter 78, Utilities, of the Lake Geneva Municipal Code, to establish Regulation of Water Softeners in New Construction (*Administrator Jordan*)**

Alderman Krause said the ordinance would prohibit the installation of timer-generated water softeners in new construction. He said this would require water softeners that regenerate on an as-needed basis, which waste less salt and are more efficient. First reading only; no action taken.

#### **LICENSES AND PERMITS**

##### **Taxi Company License Application filed by Lakefront Shuttle & Services, W3746 Lake View Drive, Geneva (continued 2/13/12)**

Krause/Kupsik motion to approve, subject to the City Attorney's approval of the certificate of liability insurance and the vehicle being cleared of safety issues. Unanimously carried.

##### **Original "Class A" Intoxicating Liquor and Class "A" Fermented Malt Beverage License Application for Fischer's on Button Bay, Inc. d/b/a Salami Sam's Deli and Market, 880 West Main Street, Lake Geneva, Deborah Dalzell, Agent**

Krause/Marsala motion for approval, subject to the applicant providing proof of ownership and surrendering the previous owner's license prior to being issued the new license. Unanimously carried.

##### **Original "Class B" Fermented Malt Beverage and "Class C" Wine License Application for Mama Cimos, 131 Wells Street, Lake Geneva, Nick Cimino, Agent**

Krause/Marsala motion to approve. Unanimously carried.

**Original “Class B” Intoxicating Liquor and Class “B” Fermented Malt Beverage License Application for Chubby Kitty LLC d/b/a Fat Cats, 104 Broad Street, Lake Geneva, Mark Basil, Agent**

Krause/Hartz motion for approval, subject to the applicant providing proof of ownership and surrendering the previous owner’s license prior to being issued the new license. Unanimously carried.

**Discussion/Action on 2012 Street Maintenance List and Crispell-Snyder engineering services proposal (recommended by Public Works Committee 2/16/12)**

Krause/Hartz motion to approve.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O’Neill voted “yes.” Unanimously carried.

**Discussion/Action on award of bid to Western Contractors for Riviera Beach Dredging in the amount of \$36,350 (recommended by Public Works Committee 2/16/12)**

Krause/Marsala motion to approve award of bid to Western Contractors in the amount of \$36,350, subject to the approval of a budget resolution allocating funds from the lakefront reserve fund.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O’Neill voted “yes.” Unanimously carried.

**Discussion/Action on award of bid to Mohr Construction for Chamber of Commerce Public Restroom Remodel in the amount of \$29,800.00 (recommended by Public Works Committee 2/16/12)**

Krause/Kupsik motion to approve award of bid to Mohr Construction for Chamber of Commerce Restroom Remodel in the amount of \$29,800. Mayor Connors noted the project would be funded by TIF and was included in the 2012 TID budget.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O’Neill voted “yes.” Unanimously carried.

**Discussion/Action on award of bid to Humphreys Contracting for Downtown Concrete Repairs in the amount of \$76,155.00**

Krause/Marsala motion to approve, with \$64,653 funded from the TIF discretionary account and \$11,502 from the TID parking system account. Mayor noted that approximately \$4,200 in matching funds from property owners would be returned to the City. DPW Winkler said the project includes sidewalk and curb/gutter repairs throughout downtown, as well as the concrete pads for the new parking kiosks.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn and O’Neill voted “yes.” Unanimously carried.

**Discussion/Action on settlement of claim filed by Mary Jo Fessenmaier, Arleen Krohn, Penny Roehrer and Thomas Spellman for attorney fees**

Alderman Krohn recused herself from the proceedings. City Attorney Draper said the City’s insurance carrier has worked out a settlement with the four individuals (three former aldermen and one current alderman) who filed a claim for attorney fees. He said the insurance company has a cooperation clause with the City which gives the Council the opportunity to vote whether it agrees or disagrees with the settlement. The details of the settlement were outlined in a memo issued to the Mayor and Council from the City Attorney.

Hartz/Krause motion to approve the insurance carrier’s settlement of claim for attorney fees. City Attorney Draper said neither party is admitting liability in the settlement. He said the City is not paying any money as part of the settlement. Alderman O’Neill said he supported this matter being resolved, but didn’t like that the former mayor got off without a bill. Alderman Mott said he believed the settlement was a reasonable resolution to the matter.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik and O’Neill voted “yes.” Alderman Krohn abstained. Motion carried by vote of 7 to 0, with 1 abstention.

**Discussion/Action on disallowance of claim filed by Benchmark Builders & Developers, LLC for damages relating to infrastructure improvements made in the Cottages of Lake Geneva Hills development**

Krause/Marsala motion to disallow claim. City Attorney Draper said the developer filed a claim against the City to recapture funds for infrastructure improvements. He said the City’s insurance carrier is recommending disallowance

because the contractor did not follow public projects procedures that would have been necessary to collect special assessments from property owners. Alderman O'Neill asked about special assessments for the curb and gutter portion of the work. City Attorney Draper said the Council should follow the insurance carrier's recommendation to disallow the claim.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik and Krohn voted "yes." Alderman O'Neill abstained. Motion carried by vote of 7 to 0, with 1 abstention.

### **Public Works Committee Recommendations – Alderman Mott**

#### **Discussion/Action on revisions to Public Works Policies relating to snow and ice removal (recommended 2/16/12)**

Mott/Marsala motion to approve the public works policies relating to snow and ice removal with exception to the section dealing with storm classifications. Alderman Mott said the Public Works Committee developed these policies through the course of several meetings. He said a meeting was held with members representing the BID district to incorporate the concerns of business owners as well. He noted the total page number on the footer of the document should be changed to 19. Alderman O'Neill said there is an "or" in the wrong location on page three. He suggested there is a problem with snow being plowed back onto the sidewalk. He said property owners clear their sidewalks and then plows come and push snow back onto the sidewalk. Alderman O'Neill said the City should make sure parking meter areas are clear of snow, even if it costs the City extra. He suggested the policy should allow all properties with parking meters to push snow into the street, not just "downtown properties."

City Attorney Draper said the policy provides for Police, Public Works or Code Enforcement personnel to provide a written warning to non-downtown properties within 24 hours. He said this is currently not stated in the municipal code and suggested an ordinance be adopted to match the policy.

Krause/Marsala motion to amend the motion to instruct the City Attorney to draft an ordinance to match the policy in regard to notice of written warning. Unanimously carried.

Unanimously carried.

#### **Discussion/Action on City entryway marker concept (recommended 2/16/12)**

Alderman Mott said the Beautification Committee worked with Moonlight Masonry to design an east entryway marker for the City. He said after much discussion among the Public Works Committee members, it was approved with the recommendation from Alderman Hartz that the logo doesn't include the sailboat being on a bed of rocks. DPW Winkler described the proposed monument. He said it would need to meet Department of Transportation (DOT) sign requirements. Mr. Winkler indicated the sign will be paid for by the Beautification Committee and Moonlight Masonry. Alderman Kupsik asked if there would be lighting at night. DPW Winkler said there was discussion about having lighting.

Alderman Hartz noted a tree will need to be moved in order to install the monument. He asked about the size of the proposed monument. DPW Winkler said it would be about 10-12 feet high and about 10 feet wide. He said the boulevard is about 36 feet wide.

Kupsik/Mott motion to approve, subject to the monument meeting DOT standards, that there will be lighting on the monument and that the illustration does not include the sailboat on a bed of rocks. Alderman Krause commented that the individual from Moonlight Masonry is extremely talented and very passionate about this project. He said the City will be very fortunate to have this monument and the work donated. Unanimously carried.

### **Plan Commission Recommendations – Alderman Hartz**

**Resolution 12-R12, authorizing the issuance of a Conditional Use Permit filed by Wrigley Drive LLC, PO Box 460, Lake Geneva, WI 53147, for a commercial indoor lodging facility in the Central Business zoning district at 835 Wrigley Drive, Tax Key No. ZOP 00339, including all staff recommendations and, specifically, that the proposed setbacks for the patio be an essential component of the site design.**

Hartz/Krause motion to approve. Alderman Hartz said the owner's intention is to have a second-story vacation rental. He said a brick patio in front was also approved by the Plan Commission. Alderman O'Neill expressed concern with there being only one exit from the second floor and it being located near the utility room. Mayor Connors said this concern would be addressed as part of the building code process; he said the Council is only considering the proposed zoning use at this time.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, and Krohn voted "yes." Alderman O'Neill abstained. Motion carried by vote of 7 to 0, with 1 abstention.

**Resolution 12-R13, authorizing the issuance of a Conditional Use Permit filed by East Shore Estates Property Owners Association C/O Mark Kammermeier (President), 727 La Grange Drive, Lake Geneva, WI 53147, to amend the existing Conditional Use granted to Fairwyn, Ltd. on behalf of the property owner Antoinette Sottrel on November 9, 2010 and August 30, 2011, to reduce the site area of 1084 La Grange by 579 square feet for a lot line adjustment to comply with the riparian zone boundary requirements for the pier on the adjoining property. The Conditional Use Application amended is for the property located at 1084 La Grange Drive, Tax Key Number ZLE 00003, including all staff recommendations.**

Hartz/Kupsik motion to approve. Alderman Hartz said the property owners association is requesting the lot line adjustment to comply with riparian zone boundary requirements.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O'Neill voted "yes." Unanimously carried.

**Resolution 12-R14, authorizing the issuance of a Conditional Use Permit filed by Michael and Nancy McCabe, PO Box 203, Fontana, WI 53125 for the construction of a single family residential home in an ER-1 District using SR-4 District requirements per Sec. 98-407 at Tax Key Number ZCE 00031 located on Maytag Road, including all staff recommendations and, specifically, that staff review the drainage and grading plan.**

Hartz/Kupsik to approve. Alderman Hartz said the lots in the subdivision are zoned ER-1. In order to accommodate a house, they need setback distances and measurements of SR-4 zoning. He said the architect and owners wanted to save as many trees as possible. The plans showed they only needed to cut down one tree.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O'Neill voted "yes." Unanimously carried.

**Resolution 12-R15, authorizing the issuance of a Conditional Use Permit filed by Rick Bittner on behalf of Bittner's Bakery, 259 Sky Lane, Lake Geneva, WI 53147, for a light industrial use (bakery) incidental to retail sales at 495 Interchange North, Tax Key number ZYUP 00140B, including all staff recommendations.**

Hartz/Krause to approve. Alderman Hartz said the application is for a proposed bakery that will be located in the Shell gas station strip mall on Interchange North. He said a conditional use permit was required for the light industrial use. Alderman Hartz explained that the plan is to ultimately make the gas station not look like a gas station. They would like to redo the façade and give it more of a market feel. Alderman Kehoe asked how this use qualified as light industrial. Alderman Hartz said it had to do with them being a retail business that would be making product on-site.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O'Neill voted "yes." Unanimously carried.

**Discussion/Action on a Precise Implementation Plan filed by Anchor Covenant Church, PO Box 351, Lake Geneva, WI 53147, to allow for an Indoor Institutional Use (Church) at 630 Williams Street Tax Key Numbers ZA1776 00001, ZA1776 00002, ZA1776 00003 and ZA1776 00004.**

Hartz/Kupsik motion to approve. Alderman Hartz said the church is proposing to use a portion of the 36,000 square foot building as its church facility. He said they plan to raze the muffler shop in front of the building and replace it with 35 parking spaces. He indicated the Precise Implementation Plan (PIP) is for their use of one portion of the building that will include their sanctuary and offices. He said if they do anything additional with the property they will have to come back and amend their PIP. It also includes approval of an LED sign, with the restriction that the sign message changes only once per minute. City Attorney Draper noted that the rest of the facility can continue to be used for storage. Alderman Hartz said 40 parking spaces will be used at Dunn lumber on days of worship. Alderman O'Neill asked about a timetable for razing the muffler shop. Alderman Hartz said there is not currently a timetable, but the parking lot would be paved before end of the year and prior to the Church facility opening to the public. Alderman O'Neill acknowledged the property would become tax-free once it is a church, which would be about \$21,000 of

property tax revenue the City wouldn't receive. City Attorney Draper said it would be up to the City Assessor and the Department of Revenue to determine if all or part of the property was tax-exempt. Alderman Krohn asked if the applicant had the funding to complete the project. Alderman Hartz said the funding was not represented to the Plan Commission. City Attorney Draper said the PIP outlines requirements for starting and completing the project. He said the property would go back to its original zoning if the project isn't completed within five years.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, and Krohn voted "yes." Alderman O'Neill abstained. Motion carried by vote of 7 to 0, with 1 abstention.

### **Mayoral Appointments**

#### **Appointment of Tammie Carstensen to the Business Improvement District (BID) Board**

Marsala/Mott motion to approve. Unanimously carried.

#### **Presentation of Accounts – Alderman Krause**

Krause/Hartz motion to approve Prepaid Bills in the amount of \$7,671,592.99

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O'Neill voted "yes." Unanimously carried.

Krause/Hartz motion to approve Regular Bills in the amount of \$80,840.37. Alderman Krause noted that this amount was corrected from a typo on the agenda.

Roll Call: Krause, Hartz, Mott, Marsala, Kehoe, Kupsik, Krohn, and O'Neill voted "yes." Unanimously carried.

### **Adjournment**

Marsala/Mott motion to adjourn at 9:17 p.m. Unanimously carried.

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/s/ Michael D. Hawes, City Clerk

**THESE ARE NOT OFFICIAL MINUTES UNTIL APPROVED BY THE COMMON COUNCIL**