

REGULAR CITY COUNCIL MEETING

MONDAY, JANUARY 24, 2011 – 7:00 PM

COUNCIL CHAMBERS, CITY HALL

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

The Pledge of Allegiance was led by Alderman Fesenmaier.

Roll Call. Present: Aldermen Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe. Also present: Administrator Jordan, City Attorney Draper, DPW Winkler, and Clerk Reale.

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.

Terry O'Neill, 954 George Street, spoke on the subject of Item 13 (D) regarding the renewal of the Community Bank of Delavan CD. He stated that he wanted to clarify that this was not a General Fund CD but rather a TIF CD, thus meaning that the funds could only be used for projects within the TIF #4 area.

Cass Kordecki, 715 North Street, addressed the Council to express her opposition to Ordinance 11-03 regarding transient rentals. She stated that she felt City officials had very little understanding of the concept of transient rentals, noting that it carried the potential benefit of providing an additional revenue stream to the City if taxed. She further noted that this type of activity had already been occurring in Lake Geneva without presenting any problems, thus likening the proposed ordinance to a solution in search of a problem. Ms. Kordecki stated that it would be unfair to place these restrictions upon homeowners during the current economic recession, as transient rentals may be the only way that some owners can generate sufficient money to pay their bills. She also stated that the proposed ordinance was discriminatory in that it singled-out transient rentals without taking into consideration that the City had in fact been experiencing significantly more problems with its full-time rental properties. In consideration of these points, Ms. Kordecki requested that the Council table the ordinance and create an ad hoc committee to review the provisions and bring a recommendation back to Council at a later date.

Mike VanderBunt, Association Executive for the Lakes Area Realtors Association, rose to speak on Ordinance 11-03. He stated that City officials might be overlooking an opportunity to take advantage of transient or "vacation" rentals, adding that this type of rental activity had a rich tradition in Lake Geneva. He noted that tourism is the main industry in this area, and expressed concern that taking away viable short-term housing choices for vacationers might discourage these individuals from coming here and patronizing the local business community. Mr. VanderBunt pointed to Door County as an example of an area that had adopted a very pro-business transient rental program. He also stated that most of the feedback he had received from area residents was that transient rentals were not generally considered a nuisance, but were rather welcomed in the community. If there were minor problems, he felt those could be best addressed through regulations instead of a total ban on transient rental activity.

Sharon Clark, of Keefe Real Estate's resort rental program, addressed the Council on the subject of transient rentals. She noted that these rentals provided a significant source of tax revenue to the municipalities in which they were permitted to operate. The typical transient renter profile included families of five to eight persons looking for accommodations in which they would be able to share space for meals, entertainment and other activities together. Ms. Clark stated that these families generally used short-term rental properties everywhere that they would travel, so allowing this type of activity to continue would not be diverting any business away from area hotels and resorts. She mentioned that many of these families had made coming to Lake Geneva for extended vacations a long-term tradition.

Rob Keefe, 45 Lakeview Drive, echoed many of the comments that previous speakers had made regarding Ordinance 11-03. He noted that short-term and vacation rentals were deeply rooted in the history of Lake Geneva, reading an excerpt from a study published in 1950 that stated it was commonplace for many residents of the City to rent out rooms in their homes to transients and vacationers. He presented several ideas on how the City could better regulate this rental activity and protect both residents and renters alike, including: identifying the rental properties involved; putting in place regulations to protect guests from substandard housing conditions; protecting neighbors from noise control and other potential issues; and providing for room taxes or other fees to be levied against the properties. Mr. Keefe urged the Council to table the item for additional review and discussion, and offered to make himself available to provide additional feedback or suggestions on a possible regulatory system.

Royce DeBow, Southeastern Wisconsin Governmental Affairs Director for the Wisconsin Realtors Association, addressed the Council to reiterate that renting homes to transients and vacationers was an entrenched practice in the Lake Geneva area. He also mentioned that there was a significant amount of case law from across the country that would suggest that the proposed ordinance might not stand up to any potential legal challenge. He added that he had held several conversations with Walworth County Sheriff Graves, who had indicated that there was no data to suggest that transient renters provided any greater threat to community harmony than other residents. Mr. DeBow noted that it was very rare to see an entire industry come before a government body and request to be regulated and taxed, which is exactly what was happening in this case. He echoed the calls to table the item to provide additional time for review and modifications to the proposed ordinance.

Acknowledgement of Correspondence

Clerk Reale reported that a letter from Cass Kordecki in opposition to Ordinance 11-03 had been received and filed in the office of the City Clerk on January 20, 2011. He added that Ms. Kordecki had also filed an additional letter and informational materials on the subject of transient rentals, which had been distributed to the members of the Council immediately prior to the meeting.

Approval of Minutes

Krause/Marsala motion to approve Regular City Council Meeting minutes of January 10, 2011 and Special City Council Meeting minutes of January 17, 2011, as published and distributed. Unanimously carried.

Public Hearing on request for extension of General Development Plan (GDP) for Southland Farms, LLC

Attorney Jim Howe, representing Southland Farms, LLC, and developer Brian Pollard addressed the Council to explain the extension request. Attorney Howe noted that the Council had previously approved an amended GDP for the development on August 14, 2006. In the ensuing time period and relying upon the zoning specified in the GDP, Mr. Pollard had closed the Geneva Raceway on the property and had also proceeded to a Precise Implementation Plan (PIP) on the single-family duplex portion of the property. The PIP had been approved, and his client had gone through preliminary and final platting stages and entered into a development agreement with the City for the construction of public infrastructure needed for the future development. Attorney Howe further noted that the United States had since entered into the deepest recession since the Great Depression, particularly in the housing market. He stated that his understanding, based upon conversations with Building and Zoning Administrator Brugger and his reading of statutes, was that the planned development zoning was fixed for the single-family portion of the property. The zoning classifications that were not fixed included the multi-family residential and business/neighborhood retail sections of the Southland Farms property. As such, his client was requesting a renewal prior to the August 14, 2011 expiration date of the GDP zoning on the multi-family and business portions. Attorney Howe also noted that an amendment to the Development Agreement had been filed to bring the agreement up to more modern standards for the City, including strengthening the language regarding letters of credit so that the City would receive 30-day notices of renewal, non-renewal, and/or expiration. The amendment would also extend the commencement date to May 2014, and add language to stipulate that the developer would observe prevailing wage provisions in the development of the public infrastructure on the property.

Alderman Kehoe noted that the plan called for the development of senior housing on the property and asked Mr. Pollard to briefly explain that component. Mr. Pollard stated that a ten-acre site had been designated for mixed-use senior housing, including assisted care living, memory care living, and independent living – all in one facility. He added that he was currently working with the operator on financing for the project and finalizing the plans. It was

hoped that they would be ready to appear before the Plan Commission in March or April for approval of the final plan, so the project could move forward in the coming autumn.

The floor was then opened to comments from the public.

Terry O'Neill, 954 George Street, noted that the Southland Farms project was a large development, including 489 residential units, a 100-unit senior housing facility, condominiums, and neighborhood retail lots. Unlike the Hummel project, the Southland Farms project had been given very little publicity and had been approved by the City. Mr. O'Neill then provided an overview of the history of the Southland Farms project and its relationship to the lawsuits currently facing the City. He stated that this project united two groups that would normally oppose one another: those who oppose development and desire to maintain a small town atmosphere and protect the lake area, and those who favored development with particular interest in providing a benefit to the Southland Farms project versus the Hummel project. Both groups had united in opposition to the Hummel project and were responsible for its defeat. He added that City personnel had not treated both developers equally, as required by statute. He also noted that there had been no referendum held regarding the Southland Farms development, which served as further evidence of the disparate treatment of the two developers. Mr. O'Neill noted that the votes of some of the current and former members of the Council were directly responsible for the legal predicament in which the City was presently involved, adding that the newer aldermen bore no responsibility for the ongoing lawsuits. He stated, however, that those newer aldermen could become responsible if they were to vote to approve this extension, as a vote for approval would give additional evidence to the attorneys representing Mr. Hummel that the City was continuing its pattern of bias and unequal treatment. Mr. O'Neill urged the members to pay attention to the Ethics Code and abstain from voting on this request, if appropriate. He also noted that the law firm appearing on behalf of Southland Farms was the same firm representing Hummel in its lawsuit against the City, adding that he was concerned of a potential trap being set.

Mr. Pollard then rose to address the comments made by Mr. O'Neill. He stated that the accusations made had no basis in reality, as the Southland Farms project had absolutely nothing to do with the proposed Hummel development. Mr. Pollard noted that he had lived in Lake Geneva since 1993 and had developed many projects in the City during that time. He stated that there had been problems with the old Geneva Raceway, so he had purchased and disbanded it with the understanding that he would develop the property for residential and neighborhood commercial use. He also stressed that development of the property would have begun much sooner but for the economic downturn that occurred after the initial approval of the GDP in 2006. Mr. Pollard reiterated that he was totally unconnected to the Hummel project and that he had not spoken either for or against that development at the time it was proposed. While he acknowledged that Attorney Howe's firm was representing Mr. Hummel, he stated that their representation of Hummel was entirely unrelated to the Southland Farms development and the request pending before the Council. He felt that he had established a good track record with the City of Lake Geneva and hoped that the word he had given to City officials would speak for itself. Alderman Kehoe inquired about the developer's handling of the wetlands on the property. Mr. Pollard responded that the proposed development and construction would be situated so as not to disturb any of the wetland areas.

Marsala/Tolar motion to close the public hearing. Unanimously carried.

Second Reading and Approval of Ordinance 11-02, an ordinance providing for direct annexation by unanimous consent of electors and property owners of territory located in the Town of Linn, Walworth County, Wisconsin, to the City of Lake Geneva, Walworth County, Wisconsin (Palicka)

Hartz/Mott motion to approve Ordinance 11-02. Unanimously carried.

Second Reading and Approval of Ordinance 11-03, amending the Zoning Ordinance to clarify the regulation of free-standing commercial indoor lodging uses

Hartz/Tolar motion to table until the next regular meeting of February 14, 2011.

Roll Call: Tolar, Krause, Hartz, Marsala, and Kehoe voted "yes". Fesenmaier, Krohn, and Mott voted "no". Motion carried by vote of 5 to 3.

Discussion/Action on request for extension of General Development Plan (GDP) and first amendment to the Development Agreement between the City of Lake Geneva and Southland Farms, LLC

Hartz/Marsala motion to approve the extension of the General Development Plan and first amendment to the Development Agreement with Southland Farms, LLC. Alderman Hartz noted that the City had already benefitted from the proposed development of the area in question by the closing of the old racetrack. He added that the concept plan for the senior housing portion of the development had already been presented to the Plan Commission and it now appeared that there was momentum to start the project. A denial at this stage would therefore stall the development of the project as a whole, which would be contrary to the idea of a planned development. Alderman Hartz mentioned that he felt the issue of letters of credit needed to be tightened up somewhat. Mayor Connors responded that the letters of credit had been addressed in the latest revision, which was distributed to the Council prior to the meeting. Alderman Tolar asked if there had been any discussion about the dedication of roadways in the development area. Alderman Hartz responded that all of the proposed streets were to be public roadways.

Motion carried by vote of 7 to 0, with Alderman Krause abstaining.

Finance, License and Regulation Committee Recommendations – Alderman Krause

RESOLUTIONS

Resolution 11-R01, a resolution amending the City of Lake Geneva 401(a) Plan (tabled 1/10/11)

Krause/Marsala motion to remove from the table. Unanimously carried. Alderman Krause reported that the Committee had recommended an amendment to the resolution inserting a provision that any future changes to the 401(a) Plan would be subject to the final approval of the Common Council.

Krause/Hartz motion to approve Resolution 11-R01, as amended. Unanimously carried.

Resolution 11-R04, a resolution amending the annual budget to transfer \$3,500.00 from the Contingency account to provide for the authorized purchase of speed control signage on Townline Road

Krause/Mott motion to approve Resolution 11-R04. Alderman Krause reported that this budget resolution was necessary to provide the funding for the purchase and installation of the speed control signage, as previously authorized by the Council.

Roll Call: Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Fesenmaier and Krohn voted “no”. Motion carried by vote of 6 to 2.

Resolution 11-R05, a resolution amending the annual budget to transfer \$2,000.00 from the Plan Commission salaries account to the Contingency account

Krause/Marsala motion to approve Resolution 11-R05. Alderman Krause reported that the approved budget had included a line item for Plan Commissioner salaries. As the Council had later denied a change in the ordinance to provide for these members to be compensated, this budget amendment would transfer the funds from that line item into the Contingency account. Alderman Fesenmaier reiterated her opposition to the budget amendment on the basis that she believed the funds should be transferred to the tree replacement program.

Roll Call: Krohn, Tolar, Krause, Hartz, Marsala, and Kehoe voted “yes”. Fesenmaier and Mott voted “no”. Motion carried by vote of 6 to 2.

ORDINANCES

First Reading of Ordinance 11-01, amending Section 54-34 of the Lake Geneva Municipal Code to permit trapping on certain City property (referred to staff for revision and continued First Reading 1/10/11)

Mayor Connors noted that the proposed ordinance would permit trapping, subject to local regulations, within the White River estuary between Main Street and Sheridan Springs Road. He asked if it might be more geographically accurate to change the language from “Sheridan Springs Road” to “Edwards Boulevard”. Administrator Jordan stated that the ordinance should probably declare the boundary of the estuary to be the WE Energies Building property line, as it did

not technically advance as far as the roadway. Attorney Draper was directed to revise and clarify the language, as necessary.

First Reading of Ordinance 11-04, prohibiting the sale and/or possession of synthetic chemical cannabinoids (synthetic marijuana)

First Reading; no action taken.

LICENSES & PERMITS

Original Operator Licenses for Adam Miskie, Connie Patten, Aaron Rathbone, and Alexander Leonard

Krause/Marsala motion to approve. Unanimously carried.

Discussion/Action on renewal of Community Bank of Delavan CD in the amount of \$304,923.23, maturing February 10, 2011

Krause/Marsala motion to approve renewal of CD for a term of three months. Alderman Krause reported that the Committee had recommended renewing the CD for the three-month term at a rate of 0.15 percent. He added that the City intended to keep these funds as liquid as possible, with the hope that rates would eventually begin to improve.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Discussion/Action on Change Order No. 1 for Riviera remodeling project, to deduct cost of materials purchased by the City from the contract price

Krause/Marsala motion to approve Change Order No. 1. Administrator Jordan explained that the City had purchased some of the materials needed for the project, as this would result in a savings of the sales tax costs that would otherwise apply to purchases by the contractor. Since the cost of these materials had been included in the original contract price, the change order was necessary to deduct those costs from the contract price. Administrator Jordan stated that this would reduce the contract amount from \$506,349.00 to \$417,751.00.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Discussion/Action on Change Order No. 3 for Riviera remodeling project, for modification to projection screen

Krause/Mott motion to approve Change Order No. 3 in the amount of \$69.63. DPW Winkler explained that this change order would provide for the addition of four feet of border at the top of the projection screen, thus allowing the screen to be lowered to an elevation closer to the finish floor.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Discussion/Action on Change Order No. 4 for Riviera remodeling project, to replace toggle switch in elevator cab

Krause/Hartz motion to approve Change Order No. 4 in the amount of \$1,155.00. DPW Winkler explained that this was a component of the elevator retrofitting that had been outside of the original specifications. It was proposed to remove the non-compliant toggle switch and replace it with an up-to-code key switch and twenty-two keys.

Roll Call: Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Fesenmaier voted “no”. Motion carried by vote of 7 to 1.

Discussion/Action on requested capital items for Capital Budget

Krause/Marsala motion to approve requested capital items listed as “high priority” and totaling \$1,878,431.00 for potential bond issue. Alderman Krause reviewed the capital projects ranking chart, as prepared by the City Clerk. The chart averaged the priority rankings of the responding aldermen and divided the capital items into three categories of high, medium, and low priorities. Alderman Mott suggested that the Council should focus its discussion not upon the higher priority items, but should rather concentrate on the low priority items that could possibly be eliminated from the potential bond issue. Alderman Tolar noted that the survey only reflected the responses of four aldermen, suggesting that it was important to have the input of the entire Council before making any decision on borrowing for capital items. Alderman Hartz discussed having the capital improvement budget as part of the annual budgeting process, adding that

the City needed to consider adopting a longer-term approach to equipment replacements. Aldermen Kehoe and Krohn agreed with the suggestion of Alderman Hartz, though Alderman Krohn noted that the City would need to do a better job of protecting funds set aside for capital items than it had done in previous years. She expressed concern that the City would be confronted with the need to borrow again in future years because no effort was being made to set aside funds for equipment replacements. Alderman Kehoe suggested that the Council needed to consider ways to save money or generate additional revenue that could be directed toward a special fund for capital items.

Mayor Connors stated that he felt the departments had done a good job of paring down their capital requests to the most essential items. He added that if the City was going to borrow money for capital projects, the Council should make sure that the borrowing was adequate to meet the City's immediate needs. Alderman Tolar agreed that there was a significant amount of equipment that needed to be replaced, adding that it might be best to delay the discussion until there was a better response from the Council on the capital list. Alderman Marsala countered that the Council was finally beginning to make some headway on the capital projects list and come closer to developing an actual figure for borrowing purposes. As such, he favored continuing the discussion and giving the aldermen an opportunity to offer their feedback at the current venue rather than delaying. Alderman Krause suggested that the remaining aldermen should submit their capital items rankings to the City Clerk prior to the next regular meeting. The City Clerk would then compile all of the data and report the results back to Council for additional discussion.

Following discussion, Alderman Krause withdrew his motion. Alderman Marsala withdrew his second.

Krause/Kehoe motion to continue this item to the regular meeting of February 14, 2011. Unanimously carried.

Plan Commission Recommendations – Alderman Hartz

First Reading of Ordinance 11-05, amending the Zoning Map of the City of Lake Geneva, Walworth County, Wisconsin, to assign standard zoning district designations on certain expired Planned Developments

First Reading; no action taken.

Discussion/Action on Application for Certified Survey Map/Lot Line Adjustment filed by Michael Komoll, 3420 Richnee Lane, Rolling Meadows, IL 60008, for land located in the Town of Linn, located within the City's Extra-Territorial Platting jurisdiction

Hartz/Tolar motion to approve the application for Certified Survey Map/Lot Line Adjustment. Alderman Hartz noted that the subject application involved property on Snake Road that fell within the extra-territorial review area of the City because it involved combining two contiguous lots into one. Unanimously carried.

Discussion/Action on Application for Certified Survey Map/Lot Line Adjustment filed by Sansnom, LLC, a Delaware limited liability company, 401 N. Michigan Avenue, Ste. 3200, Chicago, IL 60611-4163, for land located in the Town of Linn, located within the City's Extra-Territorial Platting jurisdiction

Hartz/Krause motion to approve the application for Certified Survey Map/Lot Line Adjustment. Alderman Hartz reported that this application also involved property on Snake Road, with an adjustment being proposed to merge three smaller lots with a larger contiguous lot. Unanimously carried.

Public Works Committee Recommendations – Alderman Tolar

Discussion/Action on Center Street sidewalk plan and bike rack for Flat Iron Park area

Tolar/Mott motion to approve the "3 diagonal/2 parallel" plan, as recommended by the Committee. DPW Winkler stated that the Committee had recommended this alternative to accommodate the extension of the sidewalk along the east side of the park area and through the island area adjacent to the existing parking lot. This plan would widen the island from the Center Street side, resulting in the elimination of three diagonal parking spaces along the street. These spaces would be replaced by two parallel spaces, for a net loss of one parking space. Of the various plans considered by the Committee, DPW Winkler noted that this plan was the least expensive and resulted in the least amount of parking spaces being eliminated.

Alderman Hartz noted that there had been discussion at the most recent Tree Board meeting about the prospect of losing trees due to the construction of the new sidewalk. Mayor Connors read aloud the minutes from the Tree Board meeting, which stated that the recommendation for approval had failed in a tie vote of 2 to 2. It was noted that the sidewalk plan called for the removal of two Austrian pines and a honeysuckle tree. DPW Winkler stated that the City was not usually in favor of removing trees; however, it had been determined that the addition of sidewalk would serve the greater public need in this instance.

Hartz/Kehoe motion to amend to include a provision for the planting of an equal number of trees in a non-festival area of Flat Iron Park to offset any trees removed for the sidewalk. Unanimously carried.

Original motion, as amended, unanimously carried.

Ad Hoc Committee on Policy and Procedure Recommendations – Aldermen Marsala & Fesenmaier

Discussion/Action on approval of revised Chapters 1 and 3 of the Policy Manual of the City of Lake Geneva (continued 1/10/11)

Fesenmaier/Kehoe motion to refer back to committee for review and recommendation. Unanimously carried.

Presentation of Accounts – Alderman Krause

Krause/Hartz motion to approve Purchase Order in the amount of \$86,598.00.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Krause/Marsala motion to approve Prepaid Bills in the amount of \$36,344.07.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Krause/Mott motion to approve Regular Bills in the amount of \$316,495.30.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

Krause/Marsala motion to accept the monthly report of the City Treasurer, as submitted. Alderman Mott complimented Treasurer Klein on reinstating the practice of submitting monthly reports to the Council. Unanimously carried.

Mayoral Appointments – Mayor Connors

Appointment of Sarah Hill as a member of the Plan Commission

Krause/Mott motion to approve the appointment. Alderman Mott stated that the resume of Ms. Hill indicated that she was well qualified to serve in this capacity. Unanimously carried.

Closed Session

Hartz/Krause motion to enter into Closed Session pursuant to Wis. Stats. 19.85 (1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation which it is or is likely to become involved in re: Town of Bloomfield incorporation.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

The Council entered into Closed Session at 9:06pm. Also present were: Administrator Jordan, City Attorney Draper, and Clerk Reale.

Fesenmaier/Tolar motion to return to open session pursuant to Wisconsin Statutes 19.85 (2) and take action on any items discussed in closed session.

Roll Call: Fesenmaier, Krohn, Tolar, Krause, Hartz, Mott, Marsala, and Kehoe voted “yes”. Unanimously carried.

The Council reconvened in open session at 9:29pm.

Krause/Marsala motion to direct the City Attorney to intervene in the matter of the potential incorporation of the Town of Bloomfield. Unanimously carried.

Adjournment

Kehoe/Marsala motion to adjourn at 9:31pm. Unanimously carried.

/s/ Jeremy A. Reale, City Clerk

THESE ARE NOT OFFICIAL MINUTES UNTIL APPROVED BY THE COMMON COUNCIL