

**CITY OF NEW BERLIN  
PROCEEDINGS OF THE COMMITTEE OF THE WHOLE  
TUESDAY, July 27, 2010**

**ROLL CALL:** Mayor Jack F. Chiovatero called the meeting to order at 7:04PM. Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Moore and Ament. Alderman Liska had an excused absence. Also present were: City Clerk Kari Morgan, City Attorney Mark Blum, City Engineer JP Walker, DCD Director Greg Kessler, City Stormwater Engineer Nicole Hewitt and City Associate Planner Jessica Titel.

***This meeting was noticed on Thursday July 22, 2010 in accordance with the Open Meetings Law.***

**APPROVAL OF MINUTES**

Motion by Alderman Wysocki to approve the July 13, 2010 Committee of the Whole minutes as printed. Seconded by Alderman Ament and carried. Alderman Seidl voting present as he was not in attendance at the July 13, 2010 meeting.

**The following items will be considered for approval or denial by the Aldermen with a recommendation to Common Council on the Consent Agenda.**

**UTILITY AND FINANCE**

Motion by Alderman Ament to approve the Water Utility claims in the amount of \$306,280.96, Sewer Utility claims in the amount of \$37,086.70 and Bi-weekly claims in the amount of \$368,437.80. Seconded by Alderman Moore and carried unanimously.

**LICENSES/PERMITS**

**Bartenders**

- **Bartender License for the year 2010-2012 to Jesse Martin**

Motion by Alderman Seidl to approve the bartender license for the 2010/2012 year to Jesse Martin. Seconded by Alderman Harenda.

Discussion on applicant's extensive record, some violations not being included and review of the guidelines to determine if this applicant should be granted a license.

Motion carried with Aldermen Wysocki and Moore opposing.

- **Bartender Licenses for the year 2010-2012 to Krystal Bleiler, Rosalie Cifaldi and Rachel Hennings**

Motion by Alderman Wysocki to approve the bartender licenses for the 2010-2012 year to the above names. Seconded by Alderman Seidl and carried unanimously.

**Change of Agent**

- **Shawn Owen for New Berlin Bowling Center (dba New Berlin Ale House), 16000 W. Cleveland Ave.**

Motion by Alderman Wysocki to approve the change of agent for New Berlin Bowling Center. Seconded by Alderman Hopkins and carried unanimously.

**MISCELLANEOUS**

- **Discussion & Possible action on the Process of Appointments & Membership for the Police & Fire Commission, as well as all other City Committees and Commissions**

Alderman Harenda: Yes, as you received from me on July 14<sup>th</sup>...I received second hand a letter that was basically generated by Atty. Korom on behalf of Mayor Chiovatero regarding his interpretation of potential holdovers for committee appointments with respect to individuals on a commission or a committee but specifically here the Police and Fire commission where the individuals term had expired. The City attorney had ruled, well basically not ruled but given us a written opinion in the past as well as updated it recently to everybody that his position was once the term expires that the individuals term ends. The mayor had gone out to an outside counsel attorney to receive a different opinion which basically states...and Atty. Korom's position is that the appointee as long as the position has not been filled that he holds over and retains his position which I as you can see per my written communication to all members of the council and the Police & Fire Commission that I disagree with that so...and with that said, also basically drafted a letter and submitted it to former commissioner Irene Lorbiecki who also formally sat on the Police and Fire Commission which is also a vacant position that still, in my eyes, still remains vacant as well as former Commissioner Patzer that also resided on there. There is a difference of opinion between the two attorneys as well as with respect to the outside counsel and their interpretation. As you're all aware the police and fire commission is a separate body which is basically separated from the city by state statute for political purposes because of their function in overseeing personnel issues with the police and fire commission. I had basically also requested an addendum to the...in discussions with the city attorney and over the last couple of weeks and specifically on Monday had

requested that another item be placed on the agenda to deal with possibly updating our ordinance with respect to dealing with these inconsistencies and differences of opinion, not only with the police and Fire commission but with all commissions and committees. That ordinance was handed out tonight which I can't really talk about since it is not on the agenda. I had requested the City Clerk put that on the agenda but the Mayor took it off the agenda on Monday even though as council president I have the right to amend the agenda without the Mayor's ok. The Mayor went around and took it off the agenda which I disagree with which is another issue I think we are going to have to address and that goes with something else that I requested be placed on the agenda that was also taken off. With all that said, the issue that I have is before you as we have some inconsistencies even though the police and fire commission wants to function and has three functioning continuous commissioners on the body now, we have two vacancies but with a difference of opinion with regards to the former commissioners that reside. One was basically formulating a charter ordinance and bringing that forth to deal with this issue going forward but we would still reside with potential problems with the existing positions because you can't be retroactive. One suggestion by the City Attorney was requesting that the Police and Fire Commission on their own behalf request a third party legal opinion on the matter that with respect to at least their specific issues, police and fire commission holdovers as well as them getting a legal opinion on us adopting a potential charter ordinance with regards to holdovers if we were to send that I guess as well as the impact of anything that falls under the police and fire commission's rights and authorities under State Statute and City Ordinances. They have the ability...they have a budgeted account and money that we finance or budget to them every year for legal Counsel. Scott Herrick has been their attorney I think they have used in the past. We can't really require them to do that but it would be a recommendation on my behalf that they look at that since we have inconsistency. The one thing that really concerns me with respect to this is we have a difference of opinion. Actions that are being taken on behalf of the police and fire commission need to be brought into question at a later date. For example right now, we have before the police & fire commission, the hiring of a new fire chief. For example, the commission decides on an applicant and refers that they hire that applicant, and say the common council or an alderman or even the Mayor doesn't like that decision and then all of a sudden says, for example, just because of the commissioner's positions and the inconsistencies of whose approved, whose not approved, beyond who votes, who doesn't vote could be brought into question at a later date and everything that transpires from this point on could be brought into question depending on what we...whoever interprets it if it ever goes to that point. So my intent here is to resolve that issue so we don't have those problems moving forward. One was to, I guess from the standpoint on and the City attorney can comment if I missed anything or misinformed here or I misstated something but asking the police & fire commission to utilize their ability as a body to have a third party review the decisions or as my opinion and the city attorney's opinion and that of Atty. Korom as well as us bringing forth a potential ordinance to rectify this discrepancy going forward with any of our commissions and bodies and specifically in this case the police and fire commission. So I open that up for discussion or look for discussion on that and look for feedback because I know it is a concern to me and is a potential issue going forward. My thoughts at this point.

City Attorney: Just to complete the picture, the request that was made of me is what options would be available to deal with the current situation as it stands and I did indicate to Alderman Harenda that one option the PFC would have is to request an independent opinion of their own to make a decision or they could simply look at the two opinions and make a decision on the one, so I don't think that the council is in a position to request that the PFC do anything at this point – they need to make that decision on their own. But the options would be to decide between the two legal opinions on their own or to seek independent counsel so I just wanted to clarify that.

Alderman Ament: Question – then the legal counsel, the outside legal counsel was not hired by, I use the term “hired” by the Police and Fire Commission? That's not their legal counsel on this issue?

Mayor: Atty. Korom is not, no.

Alderman Ament: Ok, then how did he get involved?

Mayor: How did he get involved? I, after speaking with the City Attorney, the City Attorney had given me the opinion but he also had said that he's not an expert in section 62.13. I'm very concerned about the police and fire commission getting their quorums and the fact that they are looking for a new fire chief, so under the authority of the Mayor I found somebody we were familiar with whose done good work for us that is involved in 62.13 law and so I asked him for an opinion and that's what you have before you.

Alderman Ament: Ok, and then did that come out of the Police and Fire Commission budget?

Mayor: Right now I think it came out of probably legal budget that's within the city hall budget.

Alderman Ament – Ok.

Alderman Wysocki: I'm disappointed in the fact that this is occurring because it creates a situation that I don't think had to be created. I think it's very clear in our charter...I think it's on our charter 6-7 which describes how the commission is made up, the membership. The membership is not decided by the police and fire commission itself. It's clear that it's an appointment made by the Mayor subject to approval by the council, that's number one. Number two, this whole issue about a vacancy, please keep in mind this person; Mr. Patzer's reappointment request came to us and was turned down. It isn't a situation of vacancy where no one was brought forward yet or that other people or even the appointee himself was brought forward. We took action as a council and the majority said "no" to that appointment. So true it's vacant, but it was vacant by a legitimate action taken by this council and the proper procedures that I believe apply. And now for this to be coming up this way is at the very least disappointing. It's going to create and has created somewhat I believe a concern within the police and fire commission itself unnecessarily so. A real un-comfortableness at a very critical time when we're looking to have them interview and basically hire a new fire chief. So I'm really disappointed it has to take this way, I am disappointed Mayor that this came up this way, I don't think that's the right way to do it. I do think that it's clear within our own operations here, our own ordinance, how this is to be done and how it works and now we have two different opinions – we have one from the City Attorney and it the City's responsibility through the Mayor and the Common Council to appoint the position in the police and fire commission. That's the way it's done, that's the relationship we have. It's not up to the police and fire commission itself to essentially appoint their own members which this is sorta kinda leading to, in some respects. So I don't know what kind of action we should be taking on this, I'd be looking forward to something, we've got an activity coming up in early August where the final candidates will be presented to the police and fire commission whatever makeup it has. I share Alderman Harenda's concern about what may happen in that process and as a result what could happen going back to this original problem that's been created and I think unnecessarily created. Though I think we need to do something tonight but I'm not sure what it is but I'd be interested to hear what the other council members have to say. Thank you.

Alderman Moore: I understand what Alderman Wysocki is saying and to a certain extent agree with him that it's too bad that there is this problem here. The problem though is not a fault of the Mayor. The Mayor has put forth names and the city council has turned them down. They've been, in my way of thinking very good people in relation to the chore that would be put before them, and I see no reason to turn them down. I think that this is somewhat of a power struggle between the city council and the Mayor, I think it's inappropriate and I do think that in relation to Alderman Wysocki's question about what should be done in the future; I think we've got a Alderperson here who is not part of this and needs to be part of this discussion so I feel that the appropriate action in relation to this especially since Alderman Harenda has suggested an ordinance that has just come out that this be tabled so that we can look at that suggestion more fully and for Alderperson Liska to participate, so I move to table it.

Mayor: What are we tabling? We don't have a motion.

Alderman Moore: All that does is it extends the discussion.

Mayor: I don't...since there's no action; I don't think there's anything that needs to be tabled is that correct City Attorney?

City Attorney: You can table this item, this agenda item/discussion if you wish to but I haven't heard a second to the motion yet, so it might be a moot point.

Mayor: Ok, Motion by Alderman Moore to table the discussion. Is there a second? Ok, motion fails for lack of a second.

Alderman Ament: First of all I would agree with Alderman Moore that the Mayor has the authority to appoint but the council has the responsibility as representatives of the city, of the people of the city to confirm those appointments and as such I think the council whether they did the right thing or not has that responsibility and took that on. It's not always an easy decision because I think we all feel like for the most part, Mayor's appointments should stand. I'm sure everybody had a reason for not doing it. It doesn't happen very often that there is not an appointment confirmed. The question I have – this may be a question for the City Attorney, but the agenda says "discussion and possible action on the process of appointing appointments and membership for the Police and Fire Commission as well as all other committees and commissions." Can there

be a motion to approve the Charter Ordinance No. 8 or does that have to be specifically agendized as such?

City Attorney – I would recommend that it be specifically agendized.

Alderman Ament: Ok. So eventually would it be best to table this or just let it come back as its own item?

City Attorney: Well I guess the question would be what other relief aside from the adoption of a potential ordinance to deal with the specifics of holdover appointments that the council would wish to engage in. If there isn't anything else, then you might as well table it pending the discussion on the proposed ordinance. If there is some other action that's being desired tonight then that should be articulated in a form of a motion at this point.

Alderman Ament: Ok, thank you.

Alderman Hopkins: I think it's worth repeating the Mayor has...it's his job to appoint people to commissions or reappoint them and it's the council's job to go over and either recommend that they be reappointed, appointed or denied. In this particular case I think that most of us made pretty clear what our thoughts were and that goes back before Mr. Patzer's vote. I think that, I've said it more than once in this chambers that there are still three good people on the Police and Fire Commission and I at least from where I sit, I think it well that the council, the mayor, whatever, we let the police and fire commission act as a police and fire commission and at least at the present time, keep out of their business and I think that they can do a good job and they've proven in the past that, just with the Police Chief that they can do a good job.

Mayor: Well, I guess I'll speak on this. The PFC has become a political fireball. It's supposed to not be political at all and you the council has...are jeopardizing the safety of this community by making this a political issue. As far as removing from the agenda, late afternoon is when Alderman Harenda wanted to put this on the agenda. I did not receive a phone call from him, I have no idea what his agenda item was, I didn't even see the charter ordinance until late this afternoon, the ordinance that he wants you to vote on. I haven't even read it yet. So that's why I didn't put it on there. And it's been precedent and I think Alderman Wysocki would agree to this that at least the Mayor should be at least talked to about what is being put on the agenda or not. Yes, the common council president does have the opportunity to put something on the agenda, but to do something at the last minute...I am the ultimate person on the agenda and I decided that because there was no time to look at it, discuss it or even read it – I made a decision not to put it on the agenda. And when I talked to Alderman Harenda today I said you know if you want to put it on the agenda, we can put it on the agenda for next week or next council meeting, but at this time I was not going to put it on the agenda because I had not even seen it. Maybe all of you have seen it, but I didn't see it. Now as far as the appointments go, five people, I've recommended five people and you have turned them all down, that makes this political. The current police and fire commissioners are feeling pressure politically that if they do not abide by whatever are the wishes of a few of you here on the council, they will not be reappointed either. That makes this whole police and fire commission very political. It's your responsibility, my responsibility and your responsibility as a council to appoint these positions on a timely basis. Now if this was any other commission or any other appointment or board and you want to leave a vacancy open as I did with the first one, I kinda went with that, but right now the police and fire commission has had a hard time to get meetings and quorums together to even meet. You call that safe if they had to meet in a specific area. Now as far as the first appointment, or what Alderman Harenda had did is send a letter to former commission member Renee Lorbiecki. It was requested that last year after my appointment to replace her was turned down that I re-look at her and talk to her and I did. I brought her in, I talked to her and interviewed her again as I said, it was a very fine line about who I was choosing. I take this as a very, very serious appointment because it is a very important appointment. I agree with you Alderman Hopkins, I think the police and fire commission did a great job in hiring the police chief but that was with a full compliment of members – not three. One of the reasons I did not reappoint Renee Lorbiecki is the fact that we are trying to keep this non-political. Ms. Lorbiecki has been political in the area of the police and fire commission in the past and I looked past it because she's done a good job as secretary. But then after re-interviewing her, found out she's talked to several members of the council which to me I thought made it political and to let you know there's plenty of people, ex-police chiefs, fire chiefs, policemen and firemen from other communities who are residents of New Berlin who would love to be on the Police and Fire commission, but in my eyes, I don't think that anybody who has served on one of those forces should be part of the police and fire commission, especially Ms. Lorbiecki who was a supervisory person in the police dept. for several years. I don't know how she could be objective if somebody that she supervised came in and had to be disciplined or in effect of a promotion if she could be objective. She states she can, but I had made a decision that anybody connected in that fashion was not going to be on the police and fire commission and I've said that to several of our former chiefs who have asked and have submitted

resume's to be on there. Everybody thinks hey it would be really neat to have the fire chief or the police chief on the police and fire commission but it's a conflict of interest. And the reason I don't have any other body from a police or fire commission is just because everyone thinks they know how to run a police and fire department. Our police and fire commission does not have optional powers, they don't run the operations of those departments but their going to be pushing their agendas or thoughts or whatever into the hiring or the placement of new officers or firefighters/paramedics. Now Rini was not a reappointment, David Patzer was. I'm at a loss, I'm trying...I'm very disappointed that the council is taking it this far and I've even been told well if you appoint Rini I'll give you Dave, come on. So I'm trying to keep this non-political and it just gets deeper and deeper and deeper and that's why I have requested an outside attorney who knows 62.13, who has a lot of experience in this area to help me out. What do I need to do? I gotta get these positions filled because I feel the Safety of this community could be in jeopardy. I don't think three people should be deciding who the next fire chief should be. I think we need a full compliment of a full range of opinions and looks and ideas in order to appoint somebody; the next fire chief is very important. Chief Dobernig did a great job, he brought our fire department to rotation, he did a lot of great advances but now it's time to hire the next one. I'm just...I'm at a loss for words on this and that's why I went and got the outside attorney. I mean I...also you know as far as this charter ordinance which I just seen, I would like to know where Alderman Harenda was authorized to go and have the city attorney draft it before we even talked about it here, before I even knew about it, it was being drafted. So there's an issue I have a problem with. Maybe Alderman Harenda has an issue with me not putting it on the agenda but he went out and had one drafted without me even knowing about it and he's stated tonight that he's been working with the City Attorney for a couple weeks on it. So I mean...

Alderman Harenda: Wait a minute, Mayor, Mayor, Mayor, geez...you've been out of town for a week or so, you're talking very political with Rini, who do you think Dave Patzer was...apolitical? Come on, and you don't have the right to take anything off the agenda, I do. I can put it on, you can put something on, it's the right of the council president, it's in our rules and don't tell me I don't take the safety of this community seriously!

Mayor: Go ahead, lose yourself.

Alderman Harenda: I'm not losing myself.

Mayor: Alderman Harenda...

Alderman Harenda: You saw...no...you saw the ordinance at the same time I did. You went to outside legal counsel to get a second opinion which is fine, you did not request our ok on that, you didn't even let us know about it. I found out that you sent a letter to Mr. Patzer telling him he's reappointed, go to the committee. This council was not even aware of that. Who's hiding what? And my discussions with the city attorney in conjunction with everything that's going on I conveyed in writing to you and to the police and fire commission trying to resolve this. We got a difference of opinion trying to resolve this and all we're doing is arguing over who did what. I'm not losing anything it's just this is getting ridiculous you're talking about this political – we never made this political – you did.

Mayor: I didn't make it political.

Alderman Harenda: Oh I don't think so.

Mayor: Alderman Harenda, David Patzer never did anything political on the police and fire commission. He has his own opinion, he does stuff outside, that's him, ok. But, the reason I appointed Alderman Patzer, former Alderman Patzer is because of the way he does business. Him and I do not always see eye to eye but he was always the devil's advocate and that's all I wanted out of him and I think he did that on the police and fire commission and he did it well. Never, I didn't even talk to him during those times he was on the police and fire commission except around the time of elections that was it. Which nothing about PFC was ever brought up. But by you continually, the council continually not bringing forth valid candidates that I brought forth I mean, three years ago when I decided I wanted to reappoint somebody other than Michael O'Donnell I was asked, I think it was by Alderman Wysocki to take a look and consider him again. I brought him in, Mike and I talked, I reconsidered him. But in the case of Ms. Lorbiecki, I felt that my appointment was right, ok. But you continually, until the council gets who they want to appoint...I'm never going to be able to appoint anybody so it's not my appointment obviously. Yes, you guys have to confirm it. Never, in the history of this city never has a mayor's appointment been turned down as many times as this one, never. So obviously, it's political.

Alderman Ament: I'm a little hesitant to join into this, it's an interesting conversation but just like to read one sentence from Rule #35 of the council rules, "the agenda may be amended by the mayor or the Common

Council President.” With that said, I guess what I’m most disappointed to hear is the inappropriateness of selecting somebody here Mr. Mayor and individually naming her and making backhanded accusations about her when she’s not here in the venue to defend herself. Despite the obvious political alliance with yourself, Mr. Mayor, we did not do that with Mr. Patzer. And I would hope that in the future, that would be done in a little bit more professional manner rather than ending up with these kind of statements being made to the public that don’t need to be made just to embarrass people.

Mayor: I don’t think my comments were embarrassing, I think my comments, even Ms. Lorbiecki had heard them, knows about them, so I did not bring anything embarrassing. There’s other reasons which I will not bring but those are the two main reasons and I did not do that to embarrass her or anything and if she is, I apologize to her, but she’s well aware of these facts because she’s been told of them by me.

City Attorney: Gentlemen, let me remind you that the agenda item you are talking about is discussion/possible action regarding process of appointments and membership to the Police and Fire Commission.”

Alderman Wysocki: City Attorney, I would ask you, it seems at this point that there are two people that are sitting on the Police and Fire Commission, former commissioner Patzer and former commissioner Lorbiecki. What in your opinion is the status of the police and fire commission in view of these actions that have been taken to this point?

City Attorney: Could you clarify what you mean by status?

Alderman Wysocki: Yes, I’m sorry. Is their status officially members of the police and fire commission, currently right now?

City Attorney: If the police and fire commission accepts Atty. Korom’s opinion then the answer would be yes.

Alderman Wysocki: Would it apply to both?

City Attorney: I believe it would. I would add to that though that ultimately, it’s the PFC that’s going to make that decision and my opinion and \$3.50 will get you a cup of coffee at Starbucks.

Alderman Wysocki: No, I value your opinion. I’m very concerned, again that the process is in question, it never had in the past and there have been appointments made by mayors that have not received approval from the majority of the council. I understand the frustration the Mayor has in trying to fill the appointments, but I think, but the message that has been trying to be made is that there have been qualified people there that for reasons that we weren’t aware of were not reappointed and some of the appointments that have recently been made have been political. Former aldermen, former people of political advisors and it just seems counter to the concept of a citizen member. That’s basically it to some extent as I see it. I really think we need to get past this very quickly. I believe Mayor that the police and fire commission at it’s next meeting August 4<sup>th</sup> will be reviewing the final candidates, or not final, but the number of people who have applied for the position and I think it’s over 10. So there’s going to be very much involved in a very important process over the next few weeks. I don’t know if introducing two new members at this point is going to work. I don’t know how the three members feel but if the City Attorney is saying that probably at this point it’s up to them whether or not to accept these two persons based on an opinion from a different attorney who said that in both cases apparently, because their vacancies they continue to act as commissioners. It runs counter to the concept of a term, you have a term for a certain period of time and when the times up you either get reappointed or somebody else gets appointed to fill the position. Having said all that, I’m just concerned about now what is happening and what’s happening now. I think from what I’m hearing, the best that can happen right now is that that police and fire commission is going to have to decide whether they accept these two people under the circumstances of past commissioners still serving because of a vacancy. That seems to be the other attorney’s point of view. I don’t agree with it, but that’s the point of view. By the way that was not an attorney hired by the police and fire commission as the Mayor said, it was the Mayor’s attorney that gave that opinion. I think recently with...I attended a couple months ago a full day session on police and fire commissions both in terms of membership and its duties and obligations. A full day seminar and it was put on by Attorney Herrick who had been the attorney who had helped us in the past issues dealing with the police and fire commission. Alderman Harenda has suggested that perhaps that person should be looking at this issue. I was impressed with his knowledge, the participants at that session were also impressed which include Ms. Lorbiecki and Patzer were there, among others. So if the question is we have two competing legal opinions here, if a third one’s going to resolve, I don’t know, obviously it’s come out one side or the other. But I don’t want to jeopardize the situation we’re in now where we’re looking at filling a very important position as Fire Chief and

the three members of that police and fire commission have been working on that and I don't know if introducing two more people at this point is going to be helpful or hurtful but if I understand it all correctly, whatever we can do here, which is very limited in terms of the agenda item, I'm hearing that it's going to be up to the commission, the three members of the commission whether they are willing to accept these people under one legal opinion or reject these people under another legal opinion and it's unfortunately put them in that position – it's wrong. But I guess that's where it's at.

Mayor: Alderman Wysocki I just wanted to make a slight correction in what you were saying. The police and fire commission, the applications were just finished coming in last week, I don't even know if they have the applications in hand yet, so, but it's very early in the beginning of this, looking for the Chief and just wanted...

Alderman Wysocki: I only brought that up as I was at the last meeting and they said that on August 4<sup>th</sup> they will be presented with all the applications.

Mayor: Actually it's not August 4<sup>th</sup>, it's August 5<sup>th</sup>...

Alderman Wysocki: I'm sorry on the 5<sup>th</sup>...

Mayor: And they just had to change the date again because another member couldn't make it.

Alderman Wysocki: I stand corrected, August 5<sup>th</sup>. Thank you Mayor.

Alderman Seidl: Alderman Harenda, you put this on the agenda, correct? What is the action that you're looking at taking?

Alderman Harenda: Well the full action would have included the charter ordinance that I handed out but we can't take action on that tonight. What I would like to see is what I said originally. Request as sort of a-not to say a directive from the council to the police and fire commission because we can't do that, is respectfully request to them that they seek a third party review utilizing Scott Herrick who is their attorney of record on a number of matters to give his opinion on this issue because I go back to the concern I have is actions are taken and votes are made, will they withstand scrutiny later on if one of us does not like what they come up with in the end. That'd be us, the Mayor or some outside citizen might question that or the individuals that were not recommended to be hired and not hired. So I guess from the standpoint that Alderman Wysocki pointed out is they have the budget they have a legal budget as well as we have a contingency budget within the city, they have the ability to have their attorney review it, give their opinion and then those three commissioners as the City Attorney points out make the final say on that. All we can do at this body going forward is I can agree or disagree where we go with this is, you know my opinion, but the charter ordinance is the thing I was going to bring forth, would take care of this issue going forward not only on the police and fire commission but all the Committees and commissions so we don't run into this issue again. So I don't know if I can make a motion on that.

City Attorney: Can I make a suggestion, as you indicate, the police and fire commission has independent status from this council and so in terms of you making a request of them or, I don't think is appropriate. In whether they want to hire an attorney to look at this or if they want to make the decision on their own, that's up to them. So my suggestion would be that you would consider just having the excerpt of the minutes of this discussion provided to them and they'll know where you're coming from with respect to it, but I don't think you can give them a directive beyond that.

Mayor: I was going to make the suggestion City Attorney, if that would be appropriate, just to send them the minutes.

City Attorney: Well, it's up to Alderman Harenda whether he wants to have that be part of the motion or not but I'm just saying, I think you can make a recommendation that you would feel that would be an appropriate course of action but that's certainly not binding upon them in any way and so I'm not sure what the effectiveness of that would be.

Alderman Harenda: I don't have a problem with that to include the minutes with the request and respectfully request them to take a look at this and not one way or the other, but I just don't want this to come into question at a later date regarding any decisions that they make. And then with respect to Alderman Moore's suggestion, we can table this item for further action because it has to be agenda item properly in order to deal with the charter ordinance going forward.

City Attorney: Well, since it's not on the agenda, you can just bring it forward as a new agenda item for the next time so I don't know that there really is anything to table at this stage.

Alderman Harenda: Ok. So I'll...

Alderman Seidl: What was your motion again, I'm sorry you kind of went into more of a discussion.

Alderman Harenda: To respectfully request that the police and fire commission ask for a third party legal opinion on the matter of police and fire commission holdovers as well as the City adopting a charter ordinance with respect to holdovers and impact on the police and fire commission's rights and authorities under state statute and city ordinances utilizing specifically as I pointed out their legal counsel of record on other matters, Scott Herrick and then including the minutes of this discussion.

Mayor: I thought the City Attorney said you can't request anything.

City Attorney: My suggestion would be that you could recommend that but you know who they decide to hire or if they decide to hire is up to them and so I think that goes too far. I think you can say that you would request or recommend to them that they review the two opinions and either make a decision on their own or to have that you would support their retaining separate legal counsel to engage in that review. And if they do that or who it would be is up to them.

Alderman Harenda: Ok.

Mayor: So your motion is whatever he said.

City Attorney: Well, you wanted to provide an excerpt of these minutes of your discussion and concerns that were expressed to be provided to them for purposes of their deliberation.

Mayor: Ok.

City Attorney: City Clerk do you have that?

City Clerk: I have the gist of it.

Alderman Moore: That would be a motion if there was a second to the motion right?

City Attorney: Is there a second to that?

Alderman Seidl: I'll second that, but I'd like to possibly add something to that, that all holdovers of any appointments be held off until we receive that opinion.

City Attorney: No.

Alderman Seidl: That's not acceptable?

City Attorney: No. That's up to them to decide, not this council.

Alderman Harenda: But the way I understand it, they can make that decision now if they'd like.

City Attorney: That's right.

Alderman Harenda: So it's up to them.

City Attorney: And you have no authority to direct them to do otherwise.

Mayor: Any other discussion?

Alderman Moore: I'm still concerned that Alderperson Liska is not here for this discussion and I'm concerned that this seems like a direction to the PFC so I will oppose.

Mayor: Any other discussion? Please vote.

City Clerk: Motion carried with Alderman Moore opposing.

- **Request that the Common Council offer input and grant final approval of the pending City Center Survey prior to mailing**

Motion by Alderman Harenda to allow the Common Council to offer input and grant final approval of the pending City Center Survey. Seconded by Alderman Seidl.

Discussion was held with the City's DCD Director Greg Kessler regarding the status of the survey as well as the use of it as a tool to gain input rather than as a deciding factor for the City Center plan.

Mr. Kessler explained that if the council chooses to hold off on the survey for now and would like additional focus groups that the 90 day moratorium would need to be extended. He also mentioned that the DCD office has open office hours from 9am to 10am Monday thru Thursday for the next two months to accommodate residents with concerns, questions and input.

Motion by Alderman Hopkins to delay the city center survey at this time. Seconded by Alderman Harenda and carried with Alderman Moore opposing.

#### **DEFERRED, REFERRED & TABLED ITEMS**

- **Carrie's West Side Pub, 20385 W. National Ave. for use of existing outside patio; TABLED 7/13/2010 w/Motion on Table**
- **Nickel's Pub, 13915 W. Greenfield Ave. for use of outside area for horseshoe pits & seating area; TABLED 7/13/2010 w/Motion on Table**

#### **ADJOURN**

Motion by Alderman Hopkins to adjourn at 8:34 p.m. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:  
Kari Morgan  
City Clerk