

Minutes

Common Council

November 28, 2000

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, November 28, 2000, at the New Berlin City Hall at 11:22 P.M.

Present were Mayor Gatzke, Aldermen Bullermann, Wysocki, Patzer, Scheuble, Wilkens, Chiovatero, and Kaminski. Also present were City Attorney Paul Reilly, and City Clerk Judy Weter, Director of Finance Mike Holzinger, Asst. Director of Planning Mark Lake, and Fire Dept. Reps. Ron Rebatzke and Fred Schultz.

Clerk's Report - No Report

Council President's Report - No Report

Mayor's Report - No Report

City Attorney's Report - No Report

COMMUNICATIONS

Notice of Claim - David Breese - to City Attorney

Communication from Joe O'Connor/Alderman Scheuble re: Unsafe Intersection - to Safety Commission

Motion by Alderman Scheuble to place a temporary Yield Sign on Stratton Drive (eastbound and westbound) at the intersection of Stratton Drive and Emmer Drive, while the Safety Commission reviews this intersection. Seconded by Alderman Wilkens and carried unanimously.

PLAN COMMISSION

Alderman Kaminski reported from the meeting held on November 6, 2000:

Farrell Meadows – 14201 W. Farrell Dr. – PUD – 13 Duplex Homes

Motion by Alderman Kaminski to refer this item to the Plan Commission. Seconded by Alderman Bullermann and carried unanimously.

Honeyager Lane – 14101 W. Howard Ave. – PUD - 16 Duplex Homes

Motion by Alderman Kaminski to refer this item to the Plan Commission. Seconded by Alderman Wilkens and carried unanimously.

Guthrie Station - Extraterritorial Plat - Town of Waukesha - Final Plat

Motion by Alderman Kaminski to recommend "no serious objection" of the request for Guthrie Station Final Plat in the Town of Waukesha subject to the following:

1. Minimum rural lot size should be 1.5 acres not 1.0 acres.
2. Rear setbacks should be a minimum of 50'.
3. Side setbacks should be a minimum of 15'.
4. Primary Environmental Corridor setback should be a minimum of 10'.

Seconded by Alderman Bullermann and carried with Alderman Scheuble voting "no".

Brewers Two - 14901 W. National Avenue - Exterior Modifications and Interior Remodeling

Motion by Alderman Kaminski to approve the Conditional Use Request for Brewers Two at 14901 W. National Ave. for Exterior Modifications and Interior Remodeling, subject to the following:

1. Per recommendation of the Architectural Review Committee, the building exterior shall be of other materials such as brick. Applicant must submit actual color and material samples that shows how the entire building elevation ties together with the new material (four sided architecture).
2. Applicant is required to submit a revised plan that shows all mechanicals including air-conditioning units and other roof top mechanical for the proposed building. Units must be incorporated into the design of the building elevation or if on the ground, appropriately landscaped for screening from public view.
3. Per Section 17.1304(14) of the New Berlin Municipal Code, dumpster must be properly screened from the street and public view. Location of dumpster enclosure must be clearly designated and the materials for construction including thickness of the concrete slab must be indicated on the plan. Enclosure must match or enhance exterior of the principle building, and must be built to accommodate both solid as well as recyclable waste dumpsters.
4. Applicant will be required to incorporate the National Avenue Alternative Transportation and Commercial Center (City Center) Development design and guidelines for street edge, lighting, pedestrian pathways and landscaping requirements including;
 - a. Street trees at 40 feet intervals will be required along National Avenue.
 - b. Sidewalk lights will be required every 80' along National Avenue.
 - c. Parking lot lights must also meet the required design specifications.
 - d. A 6' concrete sidewalk will be required along National Avenue. Maintenance of sidewalk will be the responsibility of the property owner. Maintenance includes, but is not limited to the following: snow removal, ice removal, keeping clean of debris, etc.
5. Detailed plan of operation showing the number of employees and hours of operation will be required.
6. One parking stall along National Avenue shall be eliminated to provide for a minimum of 10' setback from the property line as required by Sec. 17.0403 (6) of the Zoning Ordinance.
7. Zoning Administrator to determine status of the existing accessory structures on the South of the property.
8. The accessory building on this site must be brought to conformance with Section 14.25 of the Non-residential Property Maintenance Code. Need Overall Site Plan to bring both buildings up to Code. Revised Landscaping Plan required to incorporate both structures.
9. Cross access easement shall be on file. Parking lot usage shall be determined subject to the hours of operation of Legacy Fine Dining restaurant, as the parking on this site is used towards meeting parking requirement for the restaurant.

Seconded by Alderman Wilkens and carried unanimously.

Pro Health Care PUD - 13700-13900 W. National Avenue and 13755 Fieldpointe Drive

Motion by Alderman Wilkens to approve the request by Pro Health Care, Inc. to rezone the area north of Fieldpointe Drive to P-1/PUD and the area to the south of Fieldpointe Drive to I-1/PUD, subject to the application, plans on file, and the following:

1. Use, Site and Architectural approval required for any future improvements to this property.
2. Grading/filling as part of future improvements shall be performed by ProHealth Care, Inc per a grading plan submitted to the City.
3. Sewer and water plans for future improvements to be approved by all regulating authorities.
4. As this area develops, the existing and proposed residential and/or office buildings land coverage may not exceed 50 percent of Area 2, and a minimum of open space requirement of 30 percent of Area 2 will be maintained, and in no case shall the independent living apartments, or their equivalent, exceed 14 units per acre of Area 2 in total.
5. All plans for the improvements to the public way are to be approved and completed prior to building permits being issued.
6. Conformance to and participation in Regional Stormwater Management Plan required.

Seconded by Alderman Kaminski.

A Public Hearing was scheduled for December 12, 2000 at 7:00 p.m.

Waiver of the City of New Berlin Right of First Refusal for Parcel 1 of CSM No. 8134, New Berlin Industrial Park

Motion by Alderman Kaminski to waive the City of New Berlin Right of First Refusal for Parcel 1 of CSM No. 8134, New Berlin Industrial Park.

Seconded by Alderman Wilkens and carried unanimously.

BOARD OF PUBLIC WORKS

Alderman Patzer reported from the meeting held on November 6, 2000:

Relocation Order/Resolution No. 00-30

Motion by Alderman Patzer to recommend Resolution No. 00-30 pursuant to Section 62.22(4)(d), Stats., Declaration of Public Necessity and Relocation Order for Deer Creek Interceptor Sewer construction to Council. Seconded by Alderman Wysocki and carried unanimously.

STORM WATER COMMITTEE - No Report

UTILITY COMMITTEE

2001 Utility Budgets

Motion by Alderman Wysocki to approve the Water and Wastewater Operational and Capital Budgets as recommended and approved by the Utility Committee on October 6, 2000, per the documentation from City Treasurer Holzinger dated October 10, 2000. Seconded by Alderman Patzer and carried unanimously.

Alderman Wysocki reported from the meeting held on October 6, 2000:

Muskego Inter-Municipal Agreement

Motion by Alderman Wysocki to approve the Muskego Inter-Municipal Agreement creating a Linnie Lac Sanitary Sewer District between Muskego and New Berlin. Seconded by Alderman Patzer and carried unanimously.

LANDMARKS COMMISSION - No Report

SAFETY COMMISSION - No Report

TECHNOLOGY COMMITTEE - No Report

ETHICS BOARD

Fact Finding Trips Policy

Motion by Alderman Wysocki to refer this item to the City Attorney for review and apply appropriate legal language. Seconded by Alderman Patzer and carried unanimously.

MAYORAL APPOINTMENTS - None

ACTION ON PUBLIC HEARINGS

Cable Television Franchise Agreement

Motion by Alderman Wysocki to recommend that the Digital Access Franchise Agreement be approved subject to: 1) receipt of a letter confirming verbal commitment by Digital Access to amend Section 3 of the agreement to provide service, at no charge, to municipal and school buildings located more than 200 feet from the System, and 2) to include language regarding Engineering and Planning approvals. Seconded by Alderman Kaminski and carried unanimously.

Deer Creek Inn & Conference Center - 1401 S. Moorland Road - Rezone from RM-1 to B-1/PUD

Motion by Alderman Patzer to approve the request by TDI Associates/Deer Creek Inn & Conf. Center to rezone the property located at 1401 S. Moorland Road from RM-1 to B-1/PUD subject to:

1. Draft PUD Ordinance to be reviewed and approved by the City Attorney.
2. For future use, site and architectural approval the following must be addressed:
 - a. Site and Architecture to be thoroughly reviewed during the use, site and architectural review process.
 - b. County Access Permit required for access to Moorland Rd.
 - c. State Access Permit required for access to Greenfield Av.
 - d. Adherence to 17.1308 (10) Woodland Preservation restrictions required.
 - e. A coordinated rehabilitation plan for the enhancement of this reach of the Deer Creek required. Any floodplain, wetland, and/or Deer Creek work requires City, DNR and/or Corps of Engineers permits/approvals.
 - f. View-shed analysis required for use approval.
 - g. Each tenant will require a separate use approval from the Plan Commission. Use will be based, in part, on available parking as each tenant applies for occupation.
 - h. Building must meet all applicable State and local building and fire codes.
 - i. A minimum of 25% open space required within development.

- j. Building to be setback from adjacent structures a minimum of one foot for each foot of height.
- k. Coordinated traffic study of the potential impact to Moorland Rd. and Greenfield Av. post reconstruction required.
- l. All aboveground utilities, both on-site and off-site, to be buried.
- m. Conformance to the Commercial Center roadside edge plan required. Plan includes but is not limited to the following: sidewalks, sidewalk lighting, and street trees.
- n. Sanitary sewer, storm sewer, and water plans to be approved by all regulating authorities.

Seconded by Alderman Wysocki and carried with Alderman Scheuble voting present.

REFERRALS, DEFERRALS, AND TABLED ITEMS/None

CONSENT AGENDA

Motion by Alderman Bullermann, seconded by Alderman Patzer carried unanimously to approve the following items from the consent agenda:

2001 CIP Budget

Approve the 2001 CIP Budget in the amount of \$3,946,695.

Minutes

Minutes of the Public Hearing re: Budget held on October 24, 2000

Minutes of the Common Council Meeting held on October 24, 2000

Minutes of the Common Council Meeting held on October 30, 2000

UTILITY & FINANCE

Claims

From November 15, 2000:

Approve the Sewer Utility claims in the amount of \$72,963.78, Water Utility claims in the amount of \$77,724.92, and bi-weekly claims in the amount of \$855,977.13, all of which represents payments to vendors.

For November 29, 2000:

Approve the Sewer Utility claims in the amount of \$217,157.86, Water Utility claims in the amount of \$89,921.69, and bi-weekly claims in the amount of \$981,024.81, all of which represents payments to vendors.

Wage and Benefit Adjustments/Transfer of Funds

Transfer of \$341,619 from Contingency Account (616) to various accounts per the documentation submitted by City Treasurer Holzinger dated October 26, 2000.

Update Financial Policies - Purchase Order System

Eliminate the Purchase Order System policy section of the financial policies.

Update Financial Policies - Valuation of Fixed Assets

Increase the value for capitalizing Fixed Assets to \$5,000 or more.

LICENSES

Bartender Licenses

Approval of the Bartender Licenses for the year 2000-2002 to Joyce M. Armeli, Linda A. Chmielewski, Cheryl A. Guenther, Adam W. Haut, Michael L. Hug, Sandra L. Mitten, Beth Ann Peltier, Michael J. Waedekin, Paul E. Wagner, Dorothy L. Wiese, and Jason G. Witt.

"Class B" Retailers License and Class B Entertainment License

Approve the "Class B" Fermented Malt Beverage and Intoxicating Liquor License, and Class B Entertainment License for the year 2000-2001 to Bucci Corp. D/B/A Bartlett's Restaurant & Lounge, Bert Bartlett, Agent at 15801 W. National Ave., subject to approval of the Inspection and Planning Departments.

"Class B" Retailers License

Approve the "Class B" Fermented Malt Beverage and Intoxicating Liquor License for the year 2000-2001 to Scorpio's Restaurant, Inc., Vassilios Anastopoulos, Agent at 15419 W. National Ave., subject to approval of the Inspection and Planning Departments and notification of Social Security Number for Vice President/Member Dimitrios Ziogas.

Reserve "Class B" Retailers License

Approve the Reserve "Class B" Fermented Malt Beverage and Intoxicating Liquor License for the year 2000-2001 to Holy Apostles Congregation, Inc., D/B/A Holy Apostles Congregation, Robert J. Delvaux, Agent at 16000 W. National Ave., subject to approval by the Inspection and Planning Departments.

Reserve "Class B" Retailers License Grant

Approve the grant application to Holy Apostles Congregation, Inc. D/B/A Holy Apostles Congregation, Robert J. Delvaux, Agent, for a Reserve "Class B" Retailer's License.

PERSONNEL

Authorization to Fill Various Positions - Office Coordinator/Finance and Utilities Department, Building Maintenance Technician, IS Coordinator, Associate Planner, Librarian and Any Residual Vacancies

Authorize the Director of Human Resources to fill the following positions on or after January 2, 2001 and any residual vacancies: Office Coordinator/Finance and Utilities Department, Building Maintenance Technician, IS Coordinator, Associate Planner, and Librarian.

MISCELLANEOUS

Request from Kelly Lakes Association for Funds Towards Storm Water Facility Plan

Forward request for preliminary storm water facility plan funding assistance to the Storm Water Planning Committee for recommendation.

LICENSES

Appeal to Denial of Bartenders Licenses

Motion by Alderman Scheuble to recommend to Council to approve a 6-month Bartender License to James A. Erskine, to expire April 24, 2001. If there are any problems, the Clerk will revoke the license after 6 months; if no problems, the Clerk will approve until June 30, 2002. Seconded by Alderman Patzer and failed with Aldermen Patzer, Scheuble and Kaminski voting "yes".

Motion by Alderman Scheuble to recommend to Council to approve a 6-month Bartender License to Tracey L. Zettel, to expire April 24, 2001. If there are any problems, the Clerk will revoke the license after 6 months; if no problems, the Clerk will approve until June 30, 2002. Seconded by Alderman Kaminski and carried with Aldermen Wysocki, Wilkens and Chiovero voting "no".

Bartender Licenses

Motion by Alderman Kaminski to recommend to Council to approve a 6-month Bartender License to Andrew C. Radjenovich, to expire April 24, 2001. If there are any problems, the Clerk will revoke the license after 6 months; if no problems, the Clerk will approve until June 30, 2002. Seconded by Alderman Wilkens and carried with Aldermen Wysocki, Wilkens and Chiovero voting "no".

Motion by Alderman Wysocki to recommend to Council to deny the Bartender License for the year 2000-2002 to Roy L. Thiede, due to the frequency of OWI convictions. Seconded by Alderman Patzer and carried with Aldermen Scheuble voting "no".

PERSONNEL

Authorization to Fill Position of Director of Community Development and Any Residual Vacancies

Motion by Alderman Kaminski to recommend to Council to authorize the Director of Human Resources to fill the position of Director of Community Development and any residual vacancies. Seconded by Alderman Wilkens and carried with Alderman Scheuble voting "no".

MINUTES

Minutes of the Public Hearing re: Midwest Power Rezoning held on October 31, 2000

Minutes of the Common Council Meeting held on October 31, 2000

Minutes of the Common Council Meeting held on November 8, 2000

Hold until next meeting - Alderman Scheuble to provide Clerk within 1 week his suggested changes to these Minutes.

RESOLUTIONS AND ORDINANCES

Resolution No. 00-30 "Declaration of Public Necessity and Relocation Order for Deer Creek Interceptor Sewer in the City of New Berlin"

Motion by Alderman Wysocki to approve and adopt Resolution No. 00-30. Seconded by Alderman Bullermann and carried unanimously.

Ordinance No. 2125 "City of New Berlin Cable Television Ordinance"

City Clerk Weter gave the second reading of Ordinance No. 2125.

Ordinance No. 2126 "Ordinance to Repeal and Recreate Section 14.085 of the City of New Berlin Municipal Code so as to Allow the Imposition of Ambulance Fees"/Approval of Fee Schedule

City Clerk Weter gave the first reading of Ordinance No. 2126.

Motion by Alderman Bullermann to waive the second and third readings of Ordinance No. 2126. Seconded by Alderman Patzer and carried with Alderman Scheuble voting "no".

Motion by Alderman Bullermann to approve and adopt Ordinance No. 2126, and approve the fee schedule. Seconded by Alderman Patzer and carried unanimously.

Ordinance No. 2127 "Midwest Zoning Ordinance"

City Clerk Weter gave the only necessary reading of Ordinance No. 2127.

Motion by Alderman Patzer to approve and adopt Ordinance No. 2127. Seconded by Alderman Bullermann.

Motion by Alderman Scheuble to defer this item. Seconded by Alderman Wysocki. Upon voting, the motion failed with Alderman Wysocki and Scheuble voting "yes".

Upon voting on the original motion, the motion carried with Aldermen Wysocki, Scheuble and Kaminski voting "no".

Motion by Alderman Kaminski to move into Closed Session at 12:15 a.m. Seconded by Alderman Chiovatero. Upon voting, Alderman Bullermann voted "yes", Alderman Wysocki voted "yes", Alderman Patzer voted "yes", Alderman Scheuble voted "yes", Alderman Wilkens voted "yes", Alderman Chiovatero voted "yes", and Alderman Kaminski voted "yes".

CLOSED SESSION

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(e) of the Wisconsin State Statutes.

- e. Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified business whenever competitive or bargaining reasons require a Closed Session.

- Award of Damages - New Berlin Heating & Air Conditioning -

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(g) of the Wisconsin State Statutes.

- g. Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which is or likely to become involved.

- Motor Vehicle Accident of April 12, 2000 involving City of New Berlin Fire Department Ambulance and Otilie Sindermann -

- Foshey Claim -

- Stacey Schultz Claim -

Motion by Alderman Chiovatero to move into Open Session at 12:33 p.m. Seconded by Alderman Patzer and carried unanimously.

OPEN SESSION

Possible Action on Award of Damages - New Berlin Heating & Air Conditioning

Motion by Alderman Bullermann to recommend to Council award of damages to New Berlin Heating & Air Conditioning in the amount of \$23,300, per the recommendation of City Attorney Paul Reilly. Seconded by Alderman Wysocki and carried unanimously.

Possible Action on Motor Vehicle Accident of April 12, 2000 involving City of New Berlin Fire Department Ambulance and Otilie Sindermann

Motion by Alderman Wysocki to recommend to Council that the City Attorney pursue a settlement to the Otilie Sindermann claim. Seconded by Alderman Bullermann and carried unanimously.

Possible Action on Foshey Claim

Motion by Alderman Wilkens to recommend to Council approval of the Foshey claim in the amount of \$4,000, per the recommendation of City Attorney Paul Reilly. Seconded by Alderman Kaminski and carried unanimously.

Possible Action on Stacey Schultz Claim

Motion by Alderman Wilkens to recommend to Council approval of the Stacey Schultz claim in the amount of \$662.45, per the recommendation of City Attorney Paul Reilly. Seconded by Alderman Kaminski and carried unanimously.

Motion by Alderman Bullermann to adjourn the meeting at 12:38 p.m. Seconded by Alderman Wysocki and carried unanimously.

**Judy Weter
City Clerk**

JW/nh