

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, June 12, 2007**

Please note: Minutes are unofficial until approved by the Common Council at the next regularly scheduled meeting.

Mayor Jack F Chiovaturo called the City of New Berlin Common Council Meeting to order at 8:22 PM after Committee of the Whole and Privilege of the Floor.

Present were Aldermen Hopkins, Augustine, Seidl, Harenda, Poshepny, Moore and Ament. Also present were: City Attorney Mark Blum, City Clerk Marilyn Gauger and Deputy Clerk Sherry Grant, Community Development Director Greg Kessler, Lead Inspector Allen Wnek, Plumbing Inspector Dave Welzer and Electrical Inspector Pat McGilvray.

This meeting was noticed on Thursday, May 31, 2007 in accordance with the Open Meeting Law.

Those present recited the Pledge of Allegiance.

8:25 PM HEARING: POSSIBLE NON-RENEWAL OF "CLASS B" LIQUOR LICENSE TO KATHY GALANIS DBA KAT'S CAFÉ ON 19680 W NATIONAL AVENUE.

City Attorney Blum explained the reason for the hearing. A verbatim transcript of the hearing follows these minutes and is also on file in the City Clerk's office.

DISCUSSION AND POSSIBLE ACTION ON RENEWAL OF "CLASS B" LIQUOR LICENSE TO KATHY GALANIS DBA KAT'S CAFÉ ON 19680 W NATIONAL AVENUE.

Motion by Alderman Hopkins to approve the stipulation and renew the "Class B" Liquor License to Kathy Galana dba Kat's Café. Seconded by Alderman Harenda and carried unanimously.

REPORTS

City Clerk - none

Council President – Replacing Alderman Moore with Alderman Augustine liaison for Finance/Claims/Judiciary. Alderman Moore is no longer on Finance Committee.

Mayor - none

City Attorney – Mark Blum indicated we are finishing our 10th year as City Attorney. It is our pleasure to represent the City. We work with a lot of good people and staff. This is something its residents should be proud of.

COMMUNICATIONS - none

PLAN COMMISSION

Motion by Alderman Ament to adopt Ordinance #2350 that approves the rezoning of property known as Mike Dillett located at 2530 S. Johnson Road from R-1/ R-2 and C-2 to R-1/R-2 and C-2 to field delineate the wetlands and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

COMMUNITY DEVELOPMENT AUTHORITY

Motion by Alderman Harenda to adopt Ordinance #2351 that approves the rezoning of property known as U. S. Cellular located at 2885 S. 166th Street and 16735 W. Dakota Street from M-1 and C-2 to M-1 and C-2 to field delineate the wetlands and accept the Community Development Authority Report. Seconded by Alderman Augustine and carried unanimously.

MAYORAL APPOINTMENTS

Police and Fire Commission

Motion by Alderman Hopkins to approve the re-appointment of Mike O'Donnell with term expiring 4-30-2012. Seconded by Alderman Augustine and carried unanimously.

Youth Advisory Board

Motion by Alderman Poshepny to approve the appointment of Matt Brunner/District #5 with term expiring 5-31-2009. Seconded by Alderman Ament and carried unanimously.

Motion by Alderman Harenda to approve the appointment of Jonathan Hensley/District #4 with term expiring 5-31-09. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Moore to approve the re-appointment of Joe Levene for District #6 with term expiring 5-31-2009. Seconded by Alderman Poshepny and carried unanimously.

Motion by Alderman Moore to approve the re-appointment of Katie Schober for District #6 with corrected term expiring 5-31-08. Seconded by Alderman Harenda and carried unanimously.

DEFERRALS, REFERRAL & TABLED ITEMS - none

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CONSENT AGENDA

Motion by Alderman Augustine to approve the following items on the Consent Agenda. Seconded by Alderman Poshepny and carried unanimously.

MINUTES - Common Council minutes from the Special meeting on May 10, 2007 and Regular meeting on May 22, 2007

UTILITY AND FINANCE

CLAIMS

- Water Utility claims in the amount of \$100,019.94, Sewer Utility claims in the amount of \$23,892.06 and Bi-weekly claims in the amount of \$875,634.22, all of which represents payment to vendors.

LICENSES & PERMITS

Bartenders

- Denial of Bartender Licenses for the year 2007-2009 to Cory Hughes
- Bartender Licenses for the year 2007-2009 per list as presented.
- Bartender Licenses for the year 2007-2009 to Janel Doering, Nicole Feilen, Peter Fuller, Wendy Gaar, Bradley Goss Anthony Gresk, Katherine Kamenz, Ryan Landowski, Charles Leonard, Steven Moser, Eric North and Joshua Rusch.

Class "A" Fermented Malt/Beer only

- Kashmir Singh, owner of Quick Trip Pantry/16401 W Greenfield Avenue/Plan of Operation and Site Map.

Amendment to "Class B" Retailers License/Extension of Premise and Loud Speaker Permit

- Penny Burk, owner of Nickel's Pub/13915 W Greenfield Avenue for Saturday, August 11, 2007 from 12:00 PM to 8:00 PM with karaoke from 2:00 PM to 7:00 PM.

Renewals of licenses from 7-1-2007 to 6-30-2008 for the following per list as presented:

- Archery Range
- Entertainment – Class A
- Entertainment – Class B
- Wholesale Beer
- Class "A" Fermented Malt/Beer only
- "Class A" Fermented Malt & Liquor
- Class "B" Fermented Malt/Beer only
- "Class B" Fermented Malt & Liquor
- Class "C" Wine – only
- Theater
- Trapshooting

MISCELLANEOUS

- **City Attorney Contract**
Proposal from City Attorney Mark Blum from Hippenmeyer, Moodie, Reilly & Blum for a 2-year contract.

DEFERRED, REFERRED & TABLED ITEMS

- Resolution No. 06-42 A Preliminary Resolution Declaring Intent to Levy Special Assessments and Directing the City Engineer to Prepare a Report for the Installation of Sanitary Sewer System to Service Areas on the North Side of Howard Avenue (west of Sunny Slope Road)/TABLED 11-14-06
This item remained on the table.

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ITEM/S REMOVED FROM CONSENT AGENDA

Appeal Of Denial Of Direct Sellers Permit

Motion by Alderman Hopkins to approve the appeal of denial of Christopher Cluka/AT&T products and services pursuant to City Code Section 152-5 F. Appeals. Seconded by Alderman Harenda and carried with Alderman Poshepny voting no.

ORDINANCES/RESOLUTIONS - none

City Clerk Gauger read the following:

CLOSED SESSION

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85 (1) (e) and (g) of the Wisconsin State Statutes, deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session; more specifically: Potential land acquisition via donation for proposed fire station; and conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically: Todd Economy Claim, Claim against Adair Plumbing and NB School District and Janacek Investments Claim.

Motion by Alderman Augustine to go into Closed Session at 9:16 PM. Seconded by Alderman Seidl and carried unanimously per roll call vote.

RECONVENE TO OPEN SESSION

Motion by Alderman Augustine to reconvene in Open Session at 9:57 PM. Seconded by Alderman Ament and carried unanimously.

DISCUSSION AND POSSIBLE ACTION:

Todd Economy Claim

No action taken.

ADJOURN

Motion by Alderman Augustine to adjourn at 9:57 PM. Seconded by Alderman Moore and carried unanimously.

Respectfully submitted:

Marilyn Gauger, CMC/WCMC
City Clerk

8:25 PM HEARING: POSSIBLE NON-RENEWAL OF "CLASS B" LIQUOR LICENSE TO KATHY GALANIS DBA KAT'S CAFÉ ON 19680 W NATIONAL AVENUE.

Following are verbatim minutes:

City Attorney Blum: As you know we are going through the process of liquor license renewals. The license expires on June 30. As part of that process a review takes place for compliance with applicants as to our City Ordinances and there is also the opportunity for the inspection staff to examine properties in which liquor is sold and determine if there are building code violations. One particular license holder, Kat's Deli, has had some issues in the past with respect to zoning code violations and their property was recently examined by the inspection staff and was found to have a series of issues of non-compliance with our City codes. As a result of that a notice was sent to the license holder advising them of the violations and then because of the fact that a provision in our City Code was not being met in the building code, the notice was also given that there would be a hearing afforded them to raise whatever issues or present any information that they felt was appropriate with respect to their license and why that should be retained. So that is why this is on your agenda as it's stated. Subsequent to the issuance of that letter I've had conversations with council for Kat's Deli, Jim Gatzke, and also have spoken with the inspection staff and Greg Kessler regarding the zoning violations. My understanding and, Mr. Gatzke correct me if I'm wrong, but Kat's has acknowledged that these are issues and understands that they need to be corrected to become in compliance with City Ordinances and has agreed to address the issues that are reflected in the letter of May 31 that is in your packets. Is that correct?

Attorney Gatzke: That is correct sir.

City Attorney Blum: Ok. So in light of that the question becomes how do we get the issues that are presented addressed and compliance obtained. I think that if you look at the list our primary concern is with respect to the question of the holding tank, although there is other safety violations and so forth that need to be corrected and that are identified there as well. There is also a question about some zoning code issues, specifically some signage issues as to this property and also whether there has been a zoning permit issued if in fact there is not, some modifications for expansions made to their facility. So as a result of all of that, as I've said, I've had conversations with Attorney Gatzke and what we've done is put together a document entitled Stipulation which would be an opportunity to address the concerns that were on the list, but still to retain some control over whether in fact the license would continue if in fact the issues are not rectified. So what I would like to do at this point is hand out to you copies of that document, and I apologize for not getting to you earlier, but this is something that was just hammered out so to speak this afternoon. The first page is a lot of whereas clauses setting the stage of what has transpired to date. Specifically that what I mentioned regarding inspections has occurred and the meat of it is the Now Therefore and the following paragraphs that start at the bottom of page one and go on to page two. The first point is that pursuant to the terms of this Kat's would agree within 45 days of the date of this Stipulation to resolve all of the outstanding issues set forth in the inspection letter of May 31 to the satisfaction of our building inspection department. Second that within 45 days of the entry of the stipulation that Kat's will apply to the City of Community Development with respect to the architectural modifications, signage, expansion issues that should have been applied for when that was originally conducted. Third within 45 days it will obtain an approval from Waukesha County with respect to the holding tank that will be necessary to serve the expanded premises and that they will then have that installed. That they also provide

evidence that they have a contract let to have that work done and that work actually completed within 90 days of the date of the Stipulation. Fourth paragraph is that in the event that those dates are not met that they will agree to turn in their liquor license as to the 45 day issues on July 31st and that the 90 day issue is not met by October 31 of this year. So we, the point here being that we are keeping the control over the liquor license in the sense that they are agreeing to take care of the issues that have been identified to make the applications to the Department of Community Development and then also to address the issues with the County with respect to the holding tank. So the options this evening, I think in good faith, we present this as a way to deal with this situation if the Council is agreeable to that and entire into the Stipulation for some reason you're not then we need to reschedule this hearing to afford the opportunity to the applicant to present further information before you make the final decision on this. Jim is there any, if I've recited things correctly is there anything else you wanted to add?

Attorney Gatzke: No sir.

City Attorney Blum: Is there any questions from the Council with respect to what I presented. Alderman Moore.

Alderman Moore: How many of these items are first-time items as of May 30?

City Attorney Blum: I would defer I guess the inspection staff on that. I think the zoning issues certainly have been of long standing and certainly the septic tank issue has been of long standing. But some of the other items I think are, were identified as part of that most recent inspection, but I think Al or Greg would be in a better position to answer that for you.

City Inspector Wnek: In the first place all establishments that serve liquor are basically once a year and it's on a rotating basis. One year it would be electrical, one year plumbing and one year building. Also as far as first time offense, it would vary because the last time let's say the building inspector was there was three years ago. Like I say two years ago for electric, one year ago for plumbing.

Alderman Moore: So my question is how many of these are new as of May 30?

Mayor Chiovatero: I don't think any of them are new Alderman I think they all have been on going.

Alderman Moore: They are all ongoing?

City Inspector Wnek: It's kind of hard to say what's new because like I say we're not in there on a daily basis. We're in there once a year. So we find things when we do an inspection.

Community Development Director Kessler: What Al is saying is we typically do a rotating inspection schedule. One year electrical, another year building another year once the permit cycles in. In this instance we did inspection for all three areas.

Alderman Moore: I guess what I'm saying is why are we giving this person extra time if we require the rest of the businesses to follow the rules and if this is no surprise to this owner, why are we considering another 45 days?

Community Development Director Kessler: I would refer that question to the City Attorney, but at least in relationship to the property as a whole, yes we've been working with this applicant for quite some time. In fact it has been numerous years. In discussing this with Mark Blum this afternoon we both felt it was important to keep this business open and viable while trying to provide some flexibility to meet our requirements. I think the best way that we have found that we could do this was a 45 day stipulation and they would have to surrender their license if they didn't agree to this. This is a last ditch attempt to get them to comply.

Attorney Gatzke: If I could answer the question of the Alderman. The specific items that you see articulated in the May 31, 2007 document are all new item. The issues with respect to the ongoing issues

Alderman Moore: Did you say May 1?

Attorney Gatzke: May 31. I don't know if you have that letter in front of you?

Alderman Moore: Yes.

Attorney Gatzke: May 31 letter.

Alderman Moore: May 31 inspection. Ok go ahead.

Attorney Gatzke: The items articulated in that letter are for the most part are all new, first time. We have been given a letter indicating these failures and they are already in process of fixing and will have within 45 days all of those repaired. The ongoing issues that the inspection department and Mr. Kessler and the City Attorney have referenced all relate to an expansion of this property and issues to that expansion. Most, the largest of which, now from the standpoint of getting it done within 45 days is the County's requirement that because of the increased number of chairs inside the facility that the septic system has to be expanded. But with respect to the individual articulated items, this is the first written notice that this applicant has received for these items.

Alderman Moore: Ok so I hear two different answers.

Community Development Director Kessler: No. Mr. Gatzke is correct. Related to, in relationship to the building inspection items, these are new items that were identified during our site inspection two weeks ago. So there are two issues that we are dealing with. We are dealing with the most recent building inspection items that were found on site by building inspection staff two weeks ago. But there are outstanding long-term items that have done with the plan of operation and the zoning of the property and the use.

Alderman Moore: So these are additional items then. There are long-standing plus additional.

Community Development Director Kessler: Yes.

Alderman Moore: And the additional are those the electrical and plumbing areas.

Community Development Director Kessler: Yes.

City Attorney Blum: And some of the building.

Community Development Director Kessler: And some of the building.

Alderman Moore: And some of the building areas. Do you agree with that?

Attorney Gatzke: Yes sir.

Alderman Moore: And it seems to me that the that there is one area that is obtuse here. I can't tell whether it requires an extra restroom or not. It says our concern is that this one restroom can't accommodate all these people. But it does not then say that another restroom is required.

City Inspector Wnek: Based on the Code requirements the one restroom, the unisex restroom was to have, is only good for 15 people. If they can get approval for 45 people then they need to add another restroom. But, as of this date they don't have approval for 45 people.

Alderman Moore: And how are they going to get that approval.

City Inspector Wnek: They have to apply and go to Plan Commission.

Alderman Moore: Are they in process?

Attorney Gatzke: That's part of the application that's referenced in the Stipulation.

Alderman Moore: And then you will, and then there will be a need for another restroom?

Community Development Director Kessler: Yes Sir.

Alderman Moore: And will all of that be able to be accomplished within 45 days?

Attorney Gatzke: No. I don't anticipate that the issues with respect to the restroom will be resolved within 45 days. What we are going to resolve in 45 days is the building, plumbing, electrical items that are articulated in the May 31 letter and we will submit within that 45 days the application to address the rest of the longer standing and more over reaching issues.

Alderman Moore: Is there any doubt that all of this will be accomplished by that time?

Attorney Gatzke: With the exception of the septic tank system actually being completed, there is no doubt in my mind that these will be accomplished.

Mayor Chiovarero: Alderman Hopkins.

Alderman Hopkins: Question for the City Attorney. Are you looking for a motion from this body?

City Attorney Blum: I think that it's appropriate that given the posture of this, that yes there should be a motion as to whether you would consent to this stipulation and to renew it on that basis renew this license on that basis.

Alderman Hopkins: So moved.

Mayor Chiovero: Ok. Motion by Alderman Hopkins. Second by Alderman Harenda. Discussion. Alderman Ament.

Alderman Ament: First of all if this was not approved or here we're talking about just the liquor license, class B?

City Attorney Blum: Correct.

Alderman Ament: And I thought somebody said that we want to keep this business in business. Would that put them out of business? I thought their major product there was their deli?

City Attorney Blum: I think that, yes this is in essence a restaurant. It was a deli, but it's now basically a restaurant and it does have a liquor license. I think that the comment that Greg was making, I think our, at least my policy enforcement is to try and get in compliance with City Ordinances not necessarily to just look for opportunities to putting the hammer down to deal with a business in this way. If we can find a way to get in compliance with the Ordinances that we believe that it is necessary now, if in fact it's an ongoing situation which we are not getting compliance, yes we'll do what we have to do. I think what we are trying to do is to find reasonable solutions with reasonable remedies while still retain to deal with the situation and that at least that was my motivation and I think it was Greg's and the rest of staff as well.

Alderman Ament: I understand that. I guess where I'm having a problem is we have seen this over and over and over when I look at the bullet points in this letter that's dated May 31, two, three, four the fifth one in particular, the signage issue, the remodeling, there was never a permit pulled. They were talked to about that, the seating was going to have to be taken care of, the bathroom situation, I don't remember how far this goes back, I wasn't even sure that, aware that we were still kicking this around. I thought that was resolved, because I haven't heard about it for so long, so it just seemed to me, seems to me that I'm having troubles with the fact that this isn't the first time around. We go through this with bartender's licenses and other things and it just seems like this is an ongoing problem. Now I see this as a possible solution, but what if they don't? Are we going to be here again looking at this in 45 days or 90 days. We are looking at a possible \$100 additional fee. Is this anywhere near enough to cover what we've all gone through in the last couple of years to get this straightened out? I know that, I've met with these people, they're nice people, it's a nice place, I know a lot of people who use it, I've been there myself, but. The other question I'm struggling with this yet so I don't know that I'm ready to pull the trigger and vote on this thing. To approve this agreement, but, the other thing that I'm looking at is this, how did this get to a hearing. This might be a question for the City Attorney. I don't see any paperwork where they are applying for this or asking for a hearing.

City Attorney Blum: They applied for a renewal of their license and if we, if you as a City take the position that perhaps that should not take place and you've looked at that at staff level identified these violations and what your Code says is that there is non-compliance with the City Ordinance that that could be a basis for non-renewal. So that is what resulted in the letter that we now have that is in your packet and then the scheduling of this hearing tonight.

Alderman Ament: Is that automatic though if we deny it? Or do they have to apply for it?

City Attorney Blum: No the Statute fills in due process protection and that they are afforded a hearing automatically if you decide you do not want to renew so that they have the opportunity to have their say and to make comments in their own defense.

Alderman Ament: Ok.

City Attorney Blum: Maybe just one thing to add to, with respect to the issue of consequences. There was three or were three municipal court citations issued here with respect to zoning issues that resulted in three judgments for a total of \$3,000 so there have been consequences for the fact that there has not been, these issues have not been resolved.

Alderman Ament: Ok well I, this is better than the way we've been going for sure because apparently they're still operating and have not taken anything we've done in the past seriously. I'm sure that just the times I've heard about it, were just a small fraction of the dealings that we've had, and the fact that they've gone through all of that and we still have not seen anything happen with the amount of rooms I think or the amount of patrons and the bathroom situation, I don't know. I hope to hear more to convince me more one way or the other.

Mayor Chiovaturo: Alderman Moore.

Alderman Moore: When were the court actions?

City Attorney Blum: The citations, I didn't bring them with me Alderman, but the judgment was just entered in June. It had been outstanding or held pending some attempts to get some of the issues resolved for a couple months prior to that. But I don't have the exact dates.

Alderman Moore: Do you remember when the first court action, I see it is plural.

City Attorney Blum: There were three citations issued concurrently.

Alderman Moore: So they all were together. When were they

City Attorney Blum: Initially the judgment was actually entered just a week ago and the actual citations were I believe probably even date back to last fall.

Alderman Moore: Ok and when was the last license given to them.

City Attorney Blum: It would have been last July 1.

Alderman Moore: Where there any concerns at that time?

City Attorney Blum: There were concerns expressed but I think the other piece of this is that from a legal standpoint, the Ordinance and Statute written to afford due process protections to the applicant and to restrict the basis on which a license non-renewal will take place. In general the usual course is that if there is concerns about the operation facility for example, excessive noise, or public drunkenness, or disorderly conduct occurring at that particular place of business that that activity is the reason for non-renewal and not the building code violations per se. That usually is dealt with by enforcement of the zoning ordinances as opposed to the liquor license. New Berlin does have an Ordinance that provides a linkage as I already mentioned, but I think part of the equation is that relationship and how that can be interpreted by a Court because it is not the norm to be done that way.

Alderman Moore: Where most of the electrical and plumbing items outstanding at that time?

City Attorney Blum: All I can say is that that inspection was just done on May 30 and so I am not aware of any of the outstanding building code violations as of prior to May 30.

Alderman Moore: Yes, that is correct, because most but not all of the buildings had violations were recent. I'm talking about the electrical and plumbing were they outstanding at time of license last summer?

City Attorney Blum: I don't know if an inspection was done last July, or a complete inspection. I believe that's what they indicated it was not.

Community Development Director Kessler: We would not have done a complete inspection.

Alderman Moore: No I'm not talking about a complete inspection. You said that there were electrical and plumbing violations outstanding at on May 30. Right?

City Inspector Wnek: Correct.

Alderman Moore: Were they outstanding the previous summer?

City Inspector Wnek: I really couldn't tell you to be honest with you. I don't think we did an inspection covering that from that standpoint.

Alderman Moore: Ok, what I'm trying to figure out is whether with the renewal of the license last summer there was any concern or anything expressing – hey if you don't get these things fixed you're going to lose your license at the end of the year. You've got to get them fixed in order to maintain the license.

City Attorney Blum: The answer to that would be no because we are looking at dealing with the enforcement through the zoning code as to their license.

Alderman Moore: Ok.

Mayor Chiovaturo: Alderman Ament.

Alderman Ament: Looking at one and two in this Stipulation especially in two, the amount of this they are looking for an after the fact payable which I understand except for what if who controls that permit and or that approval is that a sign commission approval?

Community Development Director Kessler: That would be done by Plan Commission.

Alderman Ament: And then therefore what would happen if because the way I recall that the seating is there is too much seating for the size of that room and or that facility there wasn't enough parking. What if they can't remedy those issues in the 45 days?

Community Development Director Kessler: Well they're not; we're not asking them to do them within 45 days. At least to apply. If you remember Alderman Ament I think they have at least two or three different applications on the Plan Commission Agenda pending for several months and the Plan Commission dismissed those for insufficient information to go forward. But what I request here is that we finally get this together we get completed applications for the Plan Commission to make a determination. This isn't to say that the Plan Commission has to approve it or deny it. It's just that we have enough information together so that now as a way that I have always understood it from the City Attorney's office to us, is that you really need to be separating the zoning code issues from the liquor license requirements. And so we are trying to at least get the building issues taken care of first and foremost the safety issues, to get completed applications and then we will start dealing with the zoning issues above and beyond the liquor license. Did I fairly represent that Mark?

City Attorney Blum: That is correct.

Alderman Ament: I understand that but I want, if we approve this and that's not part of the link, I'm not saying it should be, I'm just saying if it's not, then if they come in for that approval and don't get it, so their still in violation of the zoning code.

Community Development Director Kessler: That is correct.

Alderman Ament: What is our linkage at that point, what do we do? Shut them down?

City Attorney Blum: That will be a choice that you will have to make at that stage.

Attorney Gatzke: If I might, I think your alternatives would be to issue a citation, order the removal of some of the tables and chairs, or to grant approval. I think those are your options. But that's something that staff and elected bodies will take care of.

Alderman Ament: So this is, I'm not trying to beat this to death.

Community Development Director Kessler: No, I just don't think that staff and Plan Commission, who you are the representative, I don't think we've ever been in a position to fairly look at this property, assess it through site plans and plan of operation and all of that. I don't think we ever got there. This is my way, and I can sense your frustration because we are just as frustrated, this is our way of saying this is the line in the sand. You have 45 days.

Alderman Ament: Then I'm going to ask you this because from the Plan Commission part of this, are you comfortable with this?

Community Development Director Kessler: I'm about as comfortable as I can get. At least get this going in the direction.

Alderman Ament: I agree this is a big step forward. The other concern I have is that we're giving somebody a break if you will that has pretty much completely ignored us and I'm afraid that could come back to bite us later on. So that's the thing I'm trying to get past. So, anyway, thank you.

Community Development Director Kessler: We have issued the citations, so I am going to reiterate that. So we have followed the normal process and procedure, so consistency is there it's just unfortunately from the Plan Commission perspective we've just never gotten to the point where we had completed applications where the Plan Commission could intelligently debate discuss and make a statement.

Alderman Ament: And then City Attorney if we approve this and within 45 days or the 90 days something isn't accomplished, we're not putting them out of business, we're just

City Attorney Blum: They're turning in their liquor license and I assume at that stage if there was still non-compliance then we would probably be pursuing resigning remedies in addition to that.

Mayor Chiovatero: As far as the liquor license, I'm sorry.

Attorney Gatzke: One other point that I think has been lost here, if you revoke their liquor license and they ever intend to get a license again, which every establishment that operates on a narrow margin, liquor license is for some of them is what helps them survive. In order for them to re-obtain the liquor license it would cost them \$10,000. That's a pretty heavy duty sanction.

Mayor Chiovatero: I have talked to the owner of this establishment. The liquor license is nothing more than a convenience for some customers. People don't come in there and sit down and have 5 drinks. It's to have a drink with their meal and that's about it. But their issue with the liquor license is there one they want to provide the best service as possible and the convenience. The second thing is if they lose this license it will cost them \$10,000 to get another one. So that's why, you know, I've been frustrated with this property. I've met the owner a couple of years ago. We thought we had an understanding and it's just been a very slow process for her to understand it thoroughly. So it's gotten to this point.

Alderman Ament: Can I ask Attorney Gatzke one more thing? At the end of three, I don't know if you recall this, it says septic and holding tank signed contract. From one to that linkage of losing their license, are you comfortable with the 90 days that they can get through the County's process and get that contract.

Attorney Gatzke: That's a really good question. In fact that was the last issue we worked out this afternoon. Which is probably the reason this document was not in your packet. If this is what the City requires I understand the City wants to see some conclusion to this, and we are

in agreement with this, but believe that that will be the one issue that will cause us the most stress right now. Because we're dealing not just with a responsible responsive local entity, we're dealing with the County which can at times be quite a difficult bureaucracy.

Alderman Ament: Ok thank you.

Mayor Chiovatero: Alderman Harenda.

Attorney Gatzke: And in conclusion I believe what the document says is it has to be under contract and I think that the City will see that if we are under contract and going through the appropriate channels and doing the best we can I don't think, the City has been very accommodating in this process. I don't think they will drop the hammer on day 91.

Alderman Ament: They obviously won't be able to get a contract unless they have a permit from the County and that would be the biggest stumbling block.

Community Development Director Kessler: Just one last item relating to that, keep in mind too that the condition is on the permit that they get the permit approval from the County for their septic system so we would never even sign the zoning permit should the Plan Commission approve it.

Alderman Ament: Thank you.

Mayor Chiovatero: Just two real small comments. I know the owners have contacted the County. The County is familiar with this place and so that may help speed up that process a little bit, but and I'll tell you about some of the patience the City has had. The City has been very patient for the simple reason that the intersection modification, we, the County was very unsure what was to happen to this establishment in this location. So, you know, the reason we kind of let it go as long as we have is we were waiting for the County to provide the final plans and what they were going to do and that building was not identified as one of the buildings that they had to buy out.

Alderman Ament: I understood from the parking issue, that therein was the problem. They wanted to expand the parking lot and the County was in effect shrinking what they had to work with.

Mayor Chiovatero: Right.

Alderman Ament: Thank you.

Mayor Chiovatero: Alderman Harenda.

Alderman Harenda: Just a couple comments. I understand where Alderman Ament is coming from. I have some heartburn with this too. Both he and I have been involved with this, the owner, tried to work with the owner. It goes back about 4 years now I think, it's been awhile and I'm going to support this because it basically draws a line in the sand. We're at a point now where we've done our due diligence and it's time that the owner of the establishment comes through and meet what we require. And I understand what you are saying Greg, because we are going to have two paths here. One is the liquor license and the

fact that they lose that and the second is the zoning. If they don't follow through there they're going to be technically eventually out of business so they have to downsize the business. Is that correct?

Community Development Director Kessler: That is correct.

Alderman Harenda: I think at this point in time we've done what we need to do and if they can't come through with it then everything else is going to fall where it may and we'll go from there.

Mayor Chiovatero: Alderman Moore:

Alderman Moore: I think compliance section J is that applicants for renewal shall on or before June 15 of each year demonstrate to the City's Committee of the Whole etc. and then talks about Committee of the Whole at the end also. Is this properly brought before the City Council rather than the City of the Committee of the Whole?

City Attorney Blum: Ultimately it's the City Council that would have to make the decision with respect to the renewal of the license. In many communities it is done at the Committee of the Whole basis or the licensing committee. The problem is that in order to expedite the schedule here, the statute goes on to say that if you have a committee that makes initial determination and that they require to prepare Findings of Fact and Conclusions of Law which are then supplied to the applicant to basically dispute or raise any issues that they may see. Logistically in order for us to bring it before the Committee of the Whole we would have had to have time then to prepare those findings, submit them to the applicant, and then conduct the hearing that we were going to do tonight and we didn't have the time to make that happen. So that's why we brought it directly to the Common Council and I believe that is appropriate under the State Statute.

Alderman Moore: That could have been done on a consent agenda at this

City Attorney Blum: Not without giving though, we would have to assume the findings that you would have made and then have given them the opportunity to receive that and respond and there is no way that could all have occurred in one night. You would have then probably a week or so to give them an opportunity to decide what issues if they have with the findings and to present those to you before you make your final decision.

Alderman Moore: Very good. A couple other short things and that is first of all in addition to all of the reasons mentioned in relation to somebody having a liquor license is my understanding from, whether it's a restaurant or whatever type of establishment that is they don't make a lot of money on food. They actually make most of their money on drinks. And so this is a essentially a big monetary portion of their profits. And while I still sit on the fence in relation to whether this should have been done this way, I think when I sit on the fence I think it's important to go along with staff's recommendation, so I will vote in favor.

Mayor Chiovatero: Any other comments? Questions? City Clerk.

City Clerk Gauger: Who will be my contact person so that I know that these Stipulations as stated are being accomplished?

City Attorney Blum: Well I think the answer to that is that it depends there's different pieces here. For example the, Greg (Community Development Director) has indicated that he is willing to take that on. So I guess we'll let it sit at that.

Community Development Director Kessler: I think and I can understand the dilemma we are facing because with such an issue as this you've got many pieces to the puzzle and you should have one individual coordinating and not many individuals. So I think you (City Clerk) and I should be the ones to discuss it because there are code compliance issues and building inspection issue and an engineering. It's a multi layered issue.

City Clerk Gauger: So is that person you?

City Attorney Blum: Attorney Gatzke will supply the contract to me to verify the compliance so and I will in turn provide it to Greg (Community Development Director and to your office Marilyn (City Clerk).

City Clerk Gauger: Thank you.

Mayor Chiovaturo: Any other comments or discussion. Ok we have a motion on the table.

Alderman Ament: to approve?

Mayor Chiovaturo: To approve.

City Clerk Gauger: To approve the liquor license.

City Attorney Blum: And to renew the license.

City Clerk Gauger: And to renew the license. Correct. Motion carried unanimously.