

CITY OF MEQUON COMMON COUNCIL

Regular Meeting February 9, 2016

PRESENT: Mayor Abendroth, Aldermen Strzelczyk, Pukaite, Mayr, Leszczynski, Gierl, Hawkins, Nerbun, Adams; City Clerk/Administrator Jones; Assistant City Administrator Thyges; City Attorney Sajdak; Executive Assistant Prosser; Community Development Director Tollefson; Community Development Assistant Director Zader; Finance Director Watson; Director of Parks & Operations Curran; Operations Director for Water Utility Voight, press and interested public

ABSENT: None

ALSO PRESENT: John Graham of JG Venture

1) Mayor Abendroth called the meeting of the Common Council to order at 7:30 PM with the Pledge of Allegiance and the roll call.

2) **Public Hearings:**

- a) Moved by Alderman Hawkins, seconded by Alderman Pukaite to open a public hearing to discuss **ORDINANCE 2015-1452** - Text amendment to the City of Mequon, Chapter 58, zoning code, relating to definitions and the use of single-family dwellings in the residential zoning districts. The motion passed by voice acclamation 8/0.

There being no one else wishing to speak, moved by Alderman Mayr, seconded by Alderman Adams to close the public hearing. The motion passed by voice acclamation 8/0.

- b) Moved by Alderman Nerbun, seconded by Alderman Adams to open a public hearing to discuss **ORDINANCE 2016-1466** - An amendment to City of Zoning Map by JG Venture for a 221 acre property located at 11446 N. Farmdale Road and the Northwest Corner of Mequon Road and Farmdale Road for a 20-Lot conservation single-family residential subdivision.

Mayor Abendroth clarified the Common Council will be deciding whether to approve or deny the conservation subdivision after discussion and/or whether to modify the conservation subdivision. The motion passed by voice acclamation 8/0.

The following citizens spoke in opposition to **ORDINANCE 2016-1466**: Bruce Duncan, Patty Ayer, Dennis Wozniak, Ben Arnold, Walter M. Stefan, Jean Richmond, Kim Rusch, Joe DeFrancis, Betty Duncan and Jim Collins. They cited opposition to all the residential clusters that threaten the rural nature of that area, additional traffic, deeding land to the city does not guarantee against further development and easements, supply and demand, lack of maintenance of conservancy land, demise of the dairy farm, trust issue, concern for the potential for flooding if not planned correctly, and change of social

character of community. It was suggested to work with the DNR or conservationists when landscaping to avoid invasive plantings.

The following citizens registered their opposition to **ORDINANCE 2016-1466** but did not wish to speak: Ann Trumble, John Trumble, John Grau, Samantha Landis, Michael Schoessow, Krisi Harwood, Elizabeth Reiss, Kurt Reiss, Drew Pipkorn, Dale Schoessow, Dean Schoessow, Peggy Schoessow, Pamela Helmig, Hermie Stern, Karen Pelczynski, Cece Kim, Daniel Kim, Sue Schoessow, Troy Schoessow, David Greeger, and Tim Trenkle.

The following citizens spoke in favor of **ORDINANCE 2016-1466**: Tom Zabjek, Deb Anderson. They cited the need for developable land, how this maintains the rural nature of the area, control of invasive plants is very difficult and minimal traffic impact.

The following citizens registered their support of **ORDINANCE 2016-1466** but did not wish to speak: Karen Maclay, Kristen Maclay, Rosemary Graham, Jim Clemons, Kathy Happ.

There being no one else wishing to speak, moved by Alderman Mayr, seconded by Alderman Adams to close the public hearing. The motion passed by voice acclamation 8/0.

Moved by Alderman Mayr, seconded by Alderman Hawkins to suspend the rules and take action on **ORDINANCE 2016-1466** - An amendment to City of Zoning Map by JG Venture for a 221 acre property located at 11446 N. Farmdale Road and the Northwest Corner of Mequon Road and Farmdale Road for a 20-Lot conservation single-family residential subdivision. The motion passed by voice acclamation 8/0.

Moved by Alderman Mayr, seconded by Alderman Hawkins to deny **ORDINANCE 2016-1466**.

Director Tollefson stated that the PUD application was approved 7/1 by the Planning Commission. The PUD request is to allow for the flexibility of a more creative design that allows for the preservation of common open space; it does not change the base density. The protest petition was vetted by staff and the City Attorney and was confirmed to be in compliance to the State's statutes on protest petitions, therefore a super majority vote is needed. Common Council's decision is whether to accept and approve the PUD which allows for the conservation subdivision. The property owner has rights under the current R-1 zoning to develop this land with a 5-acre minimum lot layout. A preliminary plat and development agreement would only need to be presented to the Planning Commission.

The conservancy concept design 1) preserves 71 percent common open space; 2) includes lots sizes between 1.25 - 3 acres; 3) has setbacks of 30 foot side and rear and 50 foot in the front yard; 4) significant environmental features, i.e. wetland, specimen trees; 5) perimeter and buffer open spaces; 6) allows for a reduction of lot size without increasing density; 7) infrastructure demand may be less due to smaller lot sizes and concentrated in particular areas; 8) served by private septic and private wells; 9) perc tests are mandated;

10) any further changes to the approved PUD would require Common Council approval and public notice.

Developer John Graham of JG Venture spoke to the positives of the conservation subdivision plan, i.e., smaller lot sizes, maintains rural character of city, city's need for equestrian operations and sensitiveness to environment.

Attorney Sajdak clarified that any approval vote would need three quarters of the Council's approval but the motion to deny already pending could pass by a simple majority vote. Failure of the motion to deny would need to be followed up with a motion to approve and that would require the three quarters vote to pass.

Council discussed property owner's rights in 5-acre zoning, the need to listen to one's constituencies, proposed 55-acres land along the river for public dedication, public access, and what is good for the city in the long run.

Motion to deny passed upon roll call vote 5/3.
 Favor: Strzelczyk, Mayr, Gierl, Hawkins, Adams
 Opposed: Pukaite, Leszczynski, Nerbun

Council took a short break at 8:56 PM.
 Council reconvened at 9:06 PM.

- 3) **Personal appearances and public comment:** None
- 4) **Public official's reports:**
 - a) **Mayor:** Outpost National Foods has received a LEED (Leadership in Energy and Environmental Design) Silver Certificate for it's Mequon store.
 - b) **City Administrator:** As a result of the recent news stories about the lead contamination of the Flint, Michigan water supply, Mr. Voight provided a brief overview of the low risk potential related to our local water system and what residents and businesses can do to mitigate the risks. Mequon Water is new, installed after 1998. Ninety-nine percent of the water main in Mequon is plastic, the final 1 percent are ductile iron with rubber gaskets. Residents can reduce their risk by replacing any old fixtures that may contain lead, flush the water lateral in the morning before drinking, or install a point of use water filter on the drinking water tap or install reverse osmosis systems. Residents on wells can follow the same precautions. Council suggested putting a link on the City website with information on water testing for well owners.
- 5) **Consent Agenda:**
 - a) Common Council meeting minutes of January 12, 2016
 - b) Architectural Board meeting minutes of December 14, 2015
 - c) Bureau of Permits and Inspections Report for December 2015
 - d) Finance-Personnel Committee meeting minutes of December 8, 2015
 - e) Fire Department Report for December 2015
 - f) Mequon Festivals Committee meeting minutes of November 2 and November 17, 2015
 - g) Planning Commission meeting minutes of December 7, 2015
 - h) Public Works Committee meeting minutes of November 10 and December 8, 2015

- i) Zoning Enforcement and Site Compliance Reports through February 1, 2016
- j) **RESOLUTION 3354** – A resolution to observe International Migratory Bird Day
Recommendation forthcoming by Public Welfare Committee February 9, 2016.

Moved by Alderman Strzelczyk, seconded by Alderman Nerbun to approve the consent agenda.

The motion passed by voice acclamation 8/0.

6) **Ordinances:**

Moved by Alderman Nerbun, seconded by Alderman Strzelczyk to remove **ORDINANCE 2015-1452** – Text amendment to the City of Mequon, Chapter 58, zoning code, relating to definitions and the use of single-family dwellings in the residential zoning districts from the table.

The motion passed by voice acclamation 8/0.

- a) Moved by Alderman Mayr, seconded by Alderman Strzelczyk to approve **ORDINANCE 2015-1452.**

Short-term rentals, per the ordinance, are listed as conditional uses in residential zoning districts and will be subject to approval by the Planning Commission, will require a public hearing and notification to all property owners with ¼ mile for the public hearing, will be published in the newspaper, will mandate annual submission of rental records, and necessary documentation of floor plans and site plans, is revocable should negative impacts of use arise.

Council members expressed their opinions about taking property owner's rights, enforceability, permit process, public safety issue, the need for regulation, proof of insurance requirement, staffing levels for enforcement, the conditional use grant process, and protecting neighborhood integrity. Current zoning code says that any uses that are not specifically identified and permitted are not allowed within the city. However, there is case law that raises questions as to whether or not enforcement of rental properties would be successful. If the conditional use process is removed from the discussion and just a permit fee is charged then the context would shift to general regulation as opposed to zoning code regulation.

Moved by Alderman Pukaite, seconded by Alderman Hawkins to table **ORDINANCE 2015-1452** and return it the Public Welfare Committee.

The motion passed by voice acclamation 7/1.

- b) Moved by Alderman Pukaite, seconded by Alderman Strzelczyk to approve **ORDINANCE 2016-1465** – Ordinance repealing and recreating Section 2-236(5), Mequon Code (Meals).

Motion passed by roll call vote 8/0.

Favor: Pukaite, Mayr, Leszczynski, Gierl, Hawkins, Nerbun, Adams, Strzelczyk

Opposed: None

- d) **ORDINANCE 2016-1467** – An amendment to a PUD approval for the Sarah Chudnow Campus located at 10995 N. Market Street to reduce the overall site acreage from 19.4 to 16.9 acres **Recommendation forthcoming by Planning Commission February 8, 2016; First Reading.**
- e) **ORDINANCE 2016-1468** – An amendment to the City of Mequon Zoning map by Lakeside Development for a 10 acre property located immediately south of 11104 Oriole Lane from R-3 (Single-Family Residential) with C-2 (General Conservancy) to R-3 with C-2 and PUD (Planned Unit Development) **Recommendation forthcoming by Planning Commission February 8, 2016; First Reading.**
- f) **ORDINANCE 2016-1469** – Amendment to the City of Mequon zoning map for approximately 2.22 acres located at 11351-11363 N. Port Washington Road from B-3 (Office) to B-2 (Community Commercial) and Land Use Plan Map amendment from Office to Community Commercial **Recommendation forthcoming by Planning Commission February 8, 2016, First Reading.**
- 7) **Resolutions:**
- a) Moved by Alderman Pukaite, seconded by Alderman Leszczynski to approve **RESOLUTION 3350** – Initial Resolution Authorizing General Obligation Bonds in an Amount Not to Exceed \$9,020,000.
- Motion passed upon roll call vote 8/0:
Favor: Mayr, Leszczynski, Gierl, Hawkins, Nerbun, Adams, Strzelczyk, Pukaite
Opposed: None
- b) Moved by Alderman Nerbun, seconded by Alderman Adams to approve **RESOLUTION 3353** – An Amendment to the City of Mequon Approved Development Agreement to Extend the Project Completion for Phase II: Café Hollander.
- Motion passed by voice acclamation 8/0.
- c) Moved by Alderman Adams, seconded by Alderman Nerbun to approve **RESOLUTION 3356** – 2016 DPW Equipment Replacement.
- Motion passed by voice acclamation 8/0.
- d) Moved by Alderman Mayr, seconded by Alderman Hawkins to approve **RESOLUTION 3357** – Approving the Town Center Business Development Loan Program for Ruby Tap.
- Loan program is offered by First Bank Financial and the City only needs to assure that Ruby Tap meets the Town Center goals and standards. The City has no financial obligation.
- Motion passed by voice acclamation 8/0.

- e) Moved by Alderman Nerbun, seconded by Alderman Pukaite to approve **RESOLUTION 3358** – Road reservation vacation by WE Energies to remove a 30-foot road reservation for property located at 7980 W. Donges Bay Road.

Motion passed by voice acclamation 8/0.

- f) Moved by Alderman Mayr, seconded by Alderman Leszczynski to approve **RESOLUTION 3360** – Resolution in support of the preservation of tax-exempt financing.

Motion passed by voice acclamation 8/0.

- g) Moved by Alderman Leszczynski, seconded by Alderman Pukaite to approve **RESOLUTION 3361** – Resolution approving the Revolving Loan Fund application for Big Shot Sports.

The proposed development at Nichol Park includes a new, year-round facility with a driving range, indoor practice facility, lessons, pro shop and concessions. The \$50,000 loan from the Revolving Loan Fund (RLF) is based on creating 2.5 full-time equivalents jobs and collateral has been established.

Motion passed by roll call vote 8/0:

Favor: Leszczynski, Gierl, Hawkins, Nerbun, Adams, Strzelczyk, Pukaite, Mayr
Opposed: None

- h) Moved by Alderman Pukaite, seconded by Alderman Leszczynski to approve **RESOLUTION 3346** - Approving the contract to purchase for the Town Center owned property known as 6200 W Mequon Road, 6300 W. Mequon Road, 11300 and 11350 N. Buntrock Avenue.

Attorney Sajdak stated that the proposal that came out of Finance-Personnel Committee included a few changes: 1) change dates to February, 2) added contingency that relates to the 50 foot Neimann property on the east, 3) broker services commission is not to exceed \$60K, 4) change the last sentence in Item 10 to read “If Buyer is dissatisfied with the Property for reasons first discovered through the inspections, testings or analysis completed, Buyer may terminate this Offer by giving written notice of termination to Seller at any time during the Review Period.”; and 5) add to the end of Item 16 the following sentence “Any such assignment shall be approved in writing by Seller provided that such approval shall not be unreasonably withheld by Seller.”

The Buyer’s attorney did approve the last two proposed changes. In addition, they proposed that we add the following provision to Item 16: “By entering into this agreement the Seller hereby consents to any assignments to an entity that is owned by or otherwise under majority control of Ms. Shaffer.”

Moved by Alderman Pukaite, seconded by Alderman Leszczynski to approve **RESOLUTION 3346** with all the proposed amendments.

Motion passed by roll call vote 7/1:

Favor: Hawkins, Nerbun, Adams, Strzelczyk, Pukaite, Mayr, Leszczynski
 Opposed: Gierl

- 8) **Specified Unfinished Business:** None
- 9) **Presentation of Petitions, Memorials, and/or Remonstrance's and Communications:**
None
- 10) **Specified Miscellaneous New Business:** None
- 11) **Convene to Closed Session:**
- a) Moved by Alderman Nerbun, seconded by Alderman Adams to convene into closed session at 10:30 PM pursuant to Section 19.85(1)(e), 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 (Land Acquisition); and
 - b) Convene into closed session pursuant to Section 19.85(1)(g), Wisconsin State Statutes, conferring with legal counsel for the government body who is rendering oral and written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved (Claim of the Lakes of Ville du Parc Condominium Association); and
 - c) Convene into closed session pursuant to Section 19.85(1)(c), Wisconsin State Statutes, considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility (Personnel-Evaluations).

Motion passed upon roll call vote 8/0:

Favor: Hawkins, Nerbun, Adams, Strzelczyk, Pukaite, Mayr, Leszczynski, Gierl

Opposed: None

- d) Moved by Alderman Strzelczyk, seconded by Alderman Pukaite to reconvene into open session at 11:31 PM.

Motion passed by voice acclamation 8/0.

- 12) Moved by Alderman Pukaite, seconded by Alderman Leszczynski to suspend the rules and take action of **RESOLUTION 3359** – A resolution disallowing the claim of the Lakes of Ville du Parc Condominium Association, Inc. relating to the Shoreland Nature Preserve.

Motion passed by voice acclamation 8/0.

Moved by Alderman Mayr, seconded by Alderman Pukaite to approve **RESOLUTION 3359**.

Motion passed by roll call vote 6/2:

Favor: Pukaite, Mayr, Leszczynski, Hawkins, Nerbun, Adams

Opposed: Strzelczyk, Gierl

- 13) **Adjourn:** Moved by Alderman Nerbun, seconded by Alderman Mayr to adjourn at 11:34 PM.

Motion passed by voice acclamation 8/0.

William H. Jones, Jr., City Clerk