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Office of the City Clerk
Taped and Televised

COMMON COUNCIL
Regular Meeting
Tuesday, May 10, 2016
7:30 PM
Christine Nuernberg Hall

Minutes

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

Present:

Mayor Dan Abendroth
Alderman Robert Strzelczyk
Alderman Connie Pukaite
Alderman Dale Mayr
Alderman John Wirth
Alderman Mark Gierl
Alderman John Hawkins
Alderman Andrew Nerbun
Alderman Pam Adams

Also Present: City Clerk/Administrator Jones; Assistant City Administrator Thyges; Deputy City Clerk Fochs; City Attorney Sajdak; Community Development Director Tollefson; Assistant Director Community Development Zader; City Engineer/Public Works Director Lundeen; Police Chief Graff; Finance Director Watson; Assistant Finance Director Rudychev; Thomas Zabjek, President of Lakeside Development Company; press and interested public

Motion to suspend the rules and take action on 7g **RESOLUTION 3380** - A Resolution Authorizing a Development Agreement with P2 Development Company, LLC with a Town Center TID Incentive in the Amount of \$250,000.

RESULT: **Approved by Roll Call Vote [7 to 1]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Hawkins

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun
NAYS: Adams

RESOLUTION 3380 - A Resolution Authorizing a Development Agreement Between the City of Mequon and P2 Development Company, LLC with a Town Center TID Incentive in The Amount of \$250,000.

RESULT: **Approved by Roll Call Vote [7 to 1]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Nerbun

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun
NAYS: Adams

2) Public Hearings:

Motion to open public hearings for **ORDINANCE 2016-1467** - An Ordinance Amending a Planned Unit Development (PUD) Approval for the Sarah Chudnow Campus Located at 10995 N. Market Street Reducing the Overall Site Acreage from 19.4 to 16.9 acres and **ORDINANCE 2016-1468** - An Ordinance Amending Chapter 58, 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 Planned Unit Development (PUD) to Allow for a 9 Lot Single Family residential Development.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Nerbun

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

The following citizens spoke in support of **ORDINANCE 2016-1468**: Suda Wagle, Jamie Bach, David Mueller, Bob Tenges, Tanya Felton, Lisa Froemming, John Graham, Brian Stark, Judy Smith, Thomas Zabjek.

The reasons for the support is the increased tax base, increase in property values, good reputation and high quality of craftsmanship of Lakeside Developers, improvement of the aesthetics of the neighborhood, satisfy a market need for single family homes of this size, increase tax revenue, increase school enrollment, aid in the water management of the area. The City planners and engineers, DNR and developer will work together to ensure that all the concerns are addressed. The proposed engineering to manage the water is more extensive than if individual home owners would build. Mr. Zabjek challenged some of the claims of the residents that the DNR has not been contacted about the wetlands. Due to the minimal amount of wetland Lakeside Development Company would be filling the DNR told them they would just require a general permit. The permit will be purchased when/if the project is approved. In addition, Lakeside met with the Army Corp of Engineers before meeting with City staff and proceeding with the proposal. Doing nothing will certainly not solve any drainage/flooding issues.

The following citizens spoke in opposition to **ORDINANCE 2016-1468**: Nicholas Meyer, Jim Locatelli, Arlene Kurzer, Janet Ehn, Robert Kieckhefer.

They expressed concerns about a decrease in property values, possible alteration to or elimination of wetland area, sewer capacity issues, lack of DNR approval regarding wetland setbacks and flood risks. Whereas they have no issue with the developer, per se, this is not the location to build nine homes. The flooding of resident's yards has increased proportionately with development over the years. Can detention ponds guarantee that flooding will not get worse?

The following citizens spoke in opposition to both **ORDINANCE 2016-1467** and **ORDINANCE 2016-1468**: Lisa Lamb, Sara Fleet, Lynne Bomzer.

In response to her question of the status of the protest petition, City Attorney Sajdak stated it will be brought forward when the item is up for action. They expressed concerns about the DNR approval regarding the wetland conditions, complete identification of specimen trees, alleged inaccuracy of site plan, propensity to flood in the area which diminishes the daily use of their property, drainage problems, actual market demand, increased traffic, decreased water pressure, and negative effect on wildlife in the area. The sewer capacity is strained now. Any modification to the sewer system and its capacity is 2-5 years away. How can more homes be built without addressing that issue immediately? There has been no offer or talks between the developer and Sarah Chudnow regarding the 2.5 acres being reduced. Sarah Chudnow currently owns and maintains the pond on the property. If the overall size of their campus is reduced, this pond will become the responsibility of the developers. Will they keep it up to the current high standards? The residents urged Council to listen to the residents and leave the zoning as is. There are other locations within the City where this development could be built.

The following citizens opposed **ORDINANCE 2016-1467** and **ORDINANCE 2016-1468** but did not wish to speak: Harriet M. Resnick, Ira Kaufman.

The following citizens opposed **ORDINANCE 2016-1468** but did not wish to speak: Kathleen Tracy, Keith Tracy, Laura Meyer, Ellen Leeney, Marvin and Marlene Lauwasser.

Motion to close public hearings for **ORDINANCE 2016-1467** and **ORDINANCE 2016-1468**.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Pukaite

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams
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Motion to suspend the rules and take action on **ORDINANCE 2016-1468** and **ORDINANCE 2016-1467**.

RESULT: **Approved by Roll Call Vote [Unanimous]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Nerbun

AYES:

Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

ORDINANCE 2016-1468 - An Ordinance Amending Chapter 58, 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 Planned Unit Development (PUD) to Allow a 9 Lot Single Family Residential Development.

Discussion ensued by Council. It was stated that the specimen tree issue is off the table because it has been agreed that all 22 of the specimen trees will be preserved. Alderman Hawkins questioned the wetland delineation report prepared by TRC Environmental Corporation. There were appendices missing and the DNR has not approved any plan yet.

Engineering studies will be done by staff specifically to study the sewer capacity in the East Trunk area. Alderman Hawkins advised the developers await the completion of these studies and the DNR approval.

Director Tollefson clarified the issues from the DNR and wetland delineation. Initially staff's concern was to receive the wetland delineation, but the fact that there was an indication that buildings were proposed within the wetland required a setback of 50 feet and that there could be deviations to that 50 foot setback so long as other measures were met caused the Planning Commission to pause over environmental concerns about the wetland. Regarding the overall wetland complex and final approval of fill, it is standard at this point in the process to condition rezoning approvals subject to DNR approvals. Land developers do not initiate the process until there is some understanding that they could move forward with their concept plan should they be able to meet all the technical standards.

Director Lundeen clarified the sewer capacity issue. Staff has recommended as a condition of the rezoning is that if there is a consideration of a density in excess of what is currently allowed by zoning (four homes), then the discharge to the sewer would be restricted to the rate equal to or less than that four homes. On-site accommodations, such as a storage tank, grinder pump or lift station, would reduce the pumping and discharge to a rate that would be equal to that of a four home development instead of the nine homes that may be built. This would ensure that there would be no further impact on the sanitary sewer than the four homes currently allowed until such time that the East Trunk sewer project was completed.

Alderman Wirth expressed the need for a fair set of rules. Throughout the process drainage experts and engineers are hired numerous times. All conditions must be met prior to getting approval to proceed with the project. The developers plan can/will assist with the improving the drainage issues; building four homes will not improve the drainage conditions. This is not the time to say no to the developer.

Alderman Mayr stated that not all development improves conditions. Council clarified that the vote is to allow the PUD to go forward instead of the traditional 1 acre subdivision. That PUD would ultimately be reviewed and approved by the Planning Commission once the DNR

approval is received. The next step in the process would be a plat. Do we want up to 9 building sites with no water remediation plan or engineering involvement or a PUD with specimen tree and engineer-advised water remediation plans?

Council discussion continued. Sewer capacity issues happen during wet weather events. Any new system would be constructed with plastic piping. The engineers have extensively planned to fix the water drainage problems. Alderman Gierl said that the homeowners in the area are his main concern. He wishes to see all the data from the DNR and Army Corps of Engineering before approving. Alderman Adams is not comfortable with doing away with Sarah Chudnow's green space. She does not think the yield plan gives the developers nine homes and the wetland delineation plan is incomplete.

Director Lundeen confirmed that the subject area is generally flat and drains to the Milwaukee River with a low grade change. Prior to this development moving to Planning Commission there were no reported drainage issues in the area that the city staff investigated or evaluated. Topography generally does drain from east to west and from south to north. Whether the water actually flows in those directions would need to be evaluated in a rain event. Off-site drainage can be evaluated by staff whether it was a part of the project or not or on private property or public roadway. She further stated that the storm water City ordinance regulates the rate of discharge not the volume of discharge. The development would be required to have the rate of discharge be less than or equal to that of the site predevelopment. That would require on-site retention of water that would hold back water in large storm events to discharge at the same rate. There is no question that with the addition of any impervious surface the volume of runoff increases. Storm water facilities are built to address this issue. She further stated that the Sarah Chudnow runoff goes through the Winding Hollow subdivision.

Mayor Abendroth clarified that the yield plan was approved at Planning Commission.

City Attorney Sajdak stated that there was a protest petition filed referencing both subject parcels. As a result of City staff's analysis it was determined that the petitions for **ORDINANCE 2016-1468** were sufficient to trigger the protest requirement. Therefore, this ordinance would require a $\frac{3}{4}$ majority vote, or six votes, to pass the rezoning. The protest petitions for **ORDINANCE 2016-1467** were similarly analyzed and it was determined that they were not sufficient to trigger the protest requirement. Therefore, this ordinance would require a standard majority vote to pass the rezoning.

RESULT: Failed [3 to 5]
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Nerbun

AYES:	Strzelczyk, Pukaite, Nerbun
NAYS:	Mayr, Wirth, Gierl, Hawkins, Adams

Moved by Alderman Pukaite, seconded by Alderman Wirth to approve **ORDINANCE 2016-1467** - An Ordinance Amending a Planned Unit Development (PUD) approval for the Sarah Chudnow Campus located at 10995 N. Market Street Reducing the Overall Site Acreage from 19.4 to 16.9 Acres.

Alderman Adams questioned whether the developer would proceed with the development of Sarah Chudnow given the failure of the previous ordinance. The developer confirmed there would be no point to proceed.

RESULT: **No Vote**

ORDINANCE 2016-1467 - An Ordinance Amending a Planned Unit Development (PUD) approval for the Sarah Chudnow Campus Located at 10995 N. Market Street Reducing the Overall Site Acreage from 19.4 to 16.9 Acres.

RESULT: **Table [Unanimous]**
MOVED BY: Alderman Wirth
SECONDED BY: Alderman Mayr

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

3) Personal Appearances and Public Comment:

None.

4) Public Officials' Reports:

a) Mayor

None.

b) City Administrator

None.

5) Consent Agenda:

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Pukaite
SECONDED BY: Alderman Hawkins

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- a) Common Council meeting minutes of April 12, 2016
- b) Common Council Organizational meeting minutes of April 19, 2016
- c) Architectural Board meeting minutes of March 14, 2016
- d) Board of Appeals meeting minutes of April 13, 2016
- e) Bureau of Permits and Inspections Report for March 2016
- f) Finance-Personnel Committee meeting minutes of March 8, 2016

- g) Fire Department Report for March 2016
- h) Mequon/Thiensville Bike Pedestrian Commission meeting minutes of February 5, 2016
- i) Planning Commission meeting minutes of February 8, 2016
- j) Public Safety Committee meeting minutes of February 23, 2016
- k) Public Welfare Committee meeting minutes of March 8, 2016
- l) Public Works Committee meeting minutes of February 9 and March 8, 2016
- m) River Advisory Committee meeting minutes of February 24, 2016
- n) Sewer Utility District Commission meeting minutes of October 27, 2015
- o) Zoning Enforcement and Site Compliance Report through May 1, 2016

6) Ordinances:

- a) Item 6a was moved to after the Public Hearings.
- b) Item 6b was moved to after the Public Hearings.
- c) **ORDINANCE 2016-1471** - An Ordinance Amending Section 2-204 of the Mequon Municipal Code as it Relates to Identifying and Defining Department Heads.

RESULT: First Reading

7) Resolutions:

- a) **RESOLUTION 3373** - A Resolution Awarding the 2016 GSB-88 Bituminous Seal Contract to Fahrner Asphalt Sealers, LLC, Kaukauna, WI, in the Amount of \$266,030.

RESULT: Approved by Roll Call Vote [Unanimous]
MOVED BY: Alderman Adams
SECONDED BY: Alderman Nerbun

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- b) **RESOLUTION 3374** - A Resolution Awarding the 2016 Road Improvements Contract to Payne & Dolan, Inc., Jackson, WI, in the Amount of \$962,170.

This bid came in 14-15% less than expected, as did **RESOLUTION 3373**.

RESULT: Approved by Roll Call Vote [Unanimous]
MOVED BY: Alderman Adams
SECONDED BY: Alderman Mayr

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- c) **RESOLUTION 3375** - A Resolution Authorizing Execution of a Professional Services Agreement with Matrix Consulting Group, Mountain View, CA, for Completion of a Human Resource Compliance Audit in an Amount Not-to-Exceed \$23,250.

RESULT: Failed [3 to 5]
MOVED BY: Alderman Strzelczyk
SECONDED BY: Alderman Nerbun

AYES: Strzelczyk, Pukaite, Nerbun
NAYS: Mayr, Wirth, Gierl, Hawkins, Adams

- d) **RESOLUTION 3376** - A Resolution Amending the City of Mequon's 2016 Employee Compensation Plan, in Connection with the Establishment of New and Reclassified Positions.

RESULT: Approved by Roll Call Vote [Unanimous]
MOVED BY: Alderman Mayr
SECONDED BY: Alderman Pukaite

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- e) **RESOLUTION 3377** - A Resolution Authorizing the Replacement of Squad Video Cameras and Purchase of Body Worn Cameras.

RESULT: Approved by Roll Call Vote [Unanimous]
MOVED BY: Alderman Pukaite
SECONDED BY: Alderman Hawkins

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- f) **RESOLUTION 3379** - A Resolution Authorizing Renewal of a Mutual Cooperation Agreement For the City of Mequon's Participation In the Home Investment Partnership Program Administered by Waukesha County.

RESULT: Tabled [Unanimous]
MOVED BY: Alderman Strzelczyk
SECONDED BY: Alderman Wirth

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams

- g) Item 7g was already adopted earlier in the meeting.

8) Specified Unfinished Business:

None.

9) Presentation of Petitions, Memorials, and/or Remonstrances and Communications:

None.

10) Specified Miscellaneous New Business:

- a. Aldermanic Appointment: Harold Nonken, Ethics Board Member, District 7.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Nerbun
SECONDED BY: Alderman Gierl

AYES: Strzelczyk, Pukaite, Mayr, Wirth, Gierl, Hawkins, Nerbun, Adams
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11) Closed Session:

- a) There was no motion to 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).

In lieu of going into Closed Session Attorney Sajdak stated he could provide the information in open session. If Council wishes to discuss further then a motion could be considered.

Alderman Wirth recused himself.

Attorney Sajdak continued with the update on these items: 1) conference date in front of the judge has been set for July 6, 2016; and 2) the Association has reached out to an alderman to address existing on-going concerns of the property, i.e. lake maintenance, mowing. He has advised the title insurance company’s lawyer to organize further discussions. A future meeting is pending at this time.

12) Adjourn

Moved by Alderman Pukaite, seconded by Alderman Nerbun to adjourn at 10:00 PM.

Motion passed by voice acclamation.

William H. Jones, Jr., City Clerk