

**CITY OF DELAFIELD COMMON COUNCIL MINUTES**

CALL MEETING TO ORDER

Mayor Schuman called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL

Present

Mayor Phil Schuman  
Jeff Krickhahn, Ald.  
Beth Leonard, Ald.  
Erv Sadowski, Ald.  
Michele DeYoe, Ald.  
Ron Miskelley, Ald.  
Matt Carlson, Administrator  
Marilyn Czubkowski, Clerk

Absent

Steve Headley, Ald.  
Lynn Morrison, Ald.

Items listed under the Consent Agenda are considered in one motion unless a Common Council Member requests that an item be removed from the Consent Agenda.

1. APPROVE MINUTES OF JUNE 28, 2006 AND JULY 17, 2006 COMMON COUNCIL MEETING.

**E. SADOWSKI MOTIONED TO APPROVE THE MINUTES FROM THE JUNE 28, 2006 MEETING. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

**E. SADOWSKI MOTIONED TO APPROVE THE MINUTES FROM THE JULY 17, 2006 MEETING. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

2. CITIZEN'S COMMENTS FOR ITEMS BOTH ON AND NOT ON THE AGENDA

Mayor Schuman commented on Item 7a. There would be a discussion at this meeting on the existing City Code pertaining to zoning changes (17.85). A discussion would not take place on a referendum because it is not part of the existing code. He did not foresee any changes to the existing procedures. He did not want to put the City in a position where it would need to defend itself with litigation.

Nicholas Sera, 199 Bauer Lane – Commented on space needs. He referenced a memo from Police Chief Taubel dated June 27. He asked why the Lang proposal was heard at the City Hall when there was not adequate space.

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Brad Hoffmann, 498 Lillian Court – Expressed deep disappointment with respect to the deliberations preceding the vote approving Ordinance 560. He thought it would be extremely beneficial to the community to have active and enlightened citizens participate in civic matters. He understood how busy people can become with their lives. He asked for understanding for those who have a difficult time finding the time to participate in civic matters. However, when they set aside time to address civic concerns, he asked that these concerns be understood and acknowledged and for their questions to be answered. In regards to deliberations on Ordinance 560, he felt that all alderpersons with the exception of B. Leonard failed in this regard. The alderpersons did not ask the questions that the constituents asked nor did they feel it was necessary to further analyze the impact of the text amendment by examining additional available data. He did not think that the addition of the flow chart was adequate to change the vote. In light of the alderpersons failure to meaningfully deliberate on this matter, their lack of response to the concerns that he and others raised, and reluctance to answer a single question that they posed to the Council, he found the request to trust the alderpersons in these matters to be challenging. He now asked the alderpersons to listen to the citizens' concerns, to acknowledge their reasoning behind the points that they make, and address any questions that are posed for further discussion. He hoped that the alderpersons, being the elected officials, would represent the constituents in a responsible manner. He thought that the Lang/Lauth project warranted the input of the entire community and that this input would be best handled through an advisory referendum.

Bob Coon, 498 S. Lapham Peak – Addressed the Lang/Lauth project in regards to zoning. The objective of the zoning law is to provide for greater benefit of the community by limiting the freedom and the rights of individual property owners; this is at the heart of the question. The citizens of Delafield do not see the greater benefit from changing the zoning south of the freeway. To go against the wishes of the people of Delafield will mean that the City sees a greater benefit than the combined wisdom of the majority of the citizens of Delafield.

Jerry Holton, 485 Lillian Court – Spoke about the advisory referendum. He discussed having an advisory referendum on the November ballot and what would be the right time for a referendum. Unless the referendum is approved by the Council within the next few weeks, voters will be prevented from having the right to express their views at the November general election. He asked the mayor if he could guarantee the citizens tonight that the City would take no action on this development until after the advisory referendum is held. Mayor Schuman stated that at this point there is nothing to make an advisory referendum on except for preliminary consideration by the Plan Commission. The Plan Commission has said that the proposal does not meet the existing zoning. If the Petitioners wish to come back, they would need to request a zoning change and they would also need to comply with the various zoning regulations that the City has. There is nothing before the City Council. There is nothing in the zoning change regulations which provide for a referendum and the Mayor stated that he does not want to be in a position like the City of

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Oconomowoc by not following the existing regulations. The referendum is not in the regulations. J. Holton stated that waiting until the spring would deprive the voters of a meaningful opportunity to express themselves. He asked if waiting until the spring is designed to delay the referendum and disenfranchise voters until it is too late to have an impact. He felt that stating that a referendum was premature was a convenient excuse not to allow the voters an opportunity to express themselves. He asked who would decide on this development; the people or the special interests. He asked that the right thing be done and let the voters have their say.

Laura Schult, 935 Bauer Road – Asked that the City include a referendum on the November ballot for the proposed Lang/Lauth development. She felt strongly that this was too important of an issue to not have on the ballot. Let the voice and vision of the citizens be heard.

Linda Holton, 485 Lillian Court – She reminded the City that the public has a position in government. She felt that the Lang/Lauth proposal disrespects the citizens, government, and zoning. She asked that the excuse of due process not be used. The master plan and zoning are already in place. Say “no”. She stated that the Mayor first attempted to limit citizen comments and that the City Administrator’s first reaction was to successfully initiate Ordinance 560 through the Plan Commission and City Council which also results in a reduction of the zoning rights and again limits public input. City government has failed to take a position on the Lang/Lauth request. The City government can, but won’t, take a position in regards to the Master Plan or zoning change. A referendum is the only way to hear the citizen’s voices. She asked why the City does not want to hear the opinion of the people. She stated that the City creates the watch dogs and the activists by their actions and inactions.

Julie Lynn, S445 Indian Spring Drive – She has been going door-to-door throughout the City collecting signatures from citizens who oppose the Lang development. Many residents thanked her for coming to get their signatures and wished her luck. Why do residents think it will take luck to oppose this development? She questioned who the alderpersons represent. On huge proposals such as the Lang development, there should be an accurate way to find out what the city residents want. Placing a referendum on November’s ballot would be one way to find out what the people think. These opinions along with the zoning code and Master Plan should guide city officials when deciding Delafield’s future.

Bob Borkowski, 4521 Vettleson Road – Asked the City Administrator if berms would be changed by Village Square. M. Carlson stated this would be discussed later in the meeting. B. Borkowski did not feel that a 2.5’ berm would be any good. He referenced a letter from B. Restock. B. Borkowski agreed with the contents of the letter. There is now a problem with the dust and dirt in the neighborhood. M. Carlson stated that he was at the site this afternoon and did not witness it. B. Borkowski referenced Item 4b3, Tumbleweeds. He felt that the hours of operation were of a concern with the compatibility of the neighboring residents in addition to the lighting, screening,

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privacy, noise. He stated that this was not compatibility with zoning, but compatibility with use. Mayor Schuman stated that there was a lawsuit with this that was settled. The SIP was approved by the City Council.

George Erwin – Represents the Lauth Group. It was clarified that they would be able to speak during the agenda item.

Scott Esser, 1646 Brookside Court – Thought that a referendum was premature due to lack of detail regarding the Lang project. The feeling of the citizens in regards to the Master Plan and the current zoning law was discussed. A referendum is a vehicle in which the feelings of the constituents can be determined. He asked that the City be willing to listen to the people and to act in the best interest of Delafield.

Mayor Schuman asked three times if there were any other citizens who wished to speak. There were none.

M. Czubkowski stated that she received a letter from Bill Restock regarding Item 4b3. Alderpersons also received this letter. He questioned the privacy, hours of operation, parking areas and impact. In addition, she received a letter from Lang/Lauth.

**E. SADOWSKI MOTIONED TO CLOSE CITIZENS COMMENTS. R. MISKELLEY SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

3. CONSENT AGENDA

**E. SADOWSKI MOTIONED TO APPROVE THE CONSENT AGENDA, ITEMS A, B, AND C. B. LEONARD ASKED ABOUT ITEM 3C. M. CARLSON STATED THAT THE CITY IS IN THE MIDST OF NEGOTIATING A NEW FRANCHISE AGREEMENT WITH TIME WARNER. THIS AGREEMENT/RESOLUTION WOULD EXTEND THE SAME FRANCHISE AGREEMENT FOR ANOTHER SIX MONTHS IN ORDER TO COMPLETE DISCUSSIONS. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- a. RESOLUTION 2006-14 - RESOLUTION FOR THE CITY OF DELAFIELD TO OBTAIN AN EXEMPTION FROM THE 2006 COUNTY LIBRARY LEVY FOR 2007 PURPOSES.

Approved. See above.

- b. RECOMMENDATION TO AWARD A CONTRACT TO HUMANE ANIMAL WELFARE SOCIETY OF WAUKESHA (HAWS) FOR 2007, 2008, AND 2009 IN THE AMOUNT OF \$2,541.00 PER YEAR.

Approved. See above.

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- c. RECOMMENDATION TO EXTEND THE TIME WARNER CABLE FRANCHISE AGREEMENT (RESOLUTION 2006-15)

Approved. See above.

4. COMMITTEE REPORTS

- a. LICENSES - APPROVAL OF THE FOLLOWING LICENSES

**TWO-YEAR BARTENDER LICENSES**

Megann Senfleben, North Prarie; Twist n' Olive  
Rachael Van Veghel, Nashotah; Marty's Pizza  
Britney Scherwinski, Waukesha; Delafield Brewhaus  
Niah K. Laska, Ixonia; Marty's Pizza  
Christopher Wood, Menomonee Falls; Twist n' Olive  
Paul Randall, Hartland; Andrews/Delafield Hotel

**E. SADOWSKI MOTIONED TO APPROVE. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- b. PLAN COMMISSION (MINUTES OF JULY 26, 2006) (NEXT MEETING AUGUST 30, 2006)

- 1. APPROVAL OF FINAL PLAT FOR INTERLAKEN VILLAGE IN THE TOWN OF SUMMIT

M. Carlson provided background to the Council.

**R. MISKELLEY MOTIONED TO APPROVE. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- 2. FINAL APPROVAL OF A CONDITIONAL USE PERMIT, REZONING AND GENERAL DEVELOPMENT PLAN FOR A CONDOMINIUM DEVELOPMENT, TAX KEY 793.991.002 AND 793.991.003, 232 MAIN STREET, DELAFIELD.

M. Carlson reviewed. This is a two building, 12 unit condominium project on the south side of Main Street. The plan includes rezoning to be consistent with the City's Master Plan. The Plan Commission supported the project.

**R. MISKELLEY MOTIONED TO APPROVE. E. SADOWSKI SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

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3. FINAL APPROVAL OF SPECIFIC IMPLEMENTATION PLAN (SIP) FOR TUMBLEWEED RESTAURANT AT VILLAGE SQUARE, TAX KEY 733.990.003, 2961 VILLAGE SQUARE DRIVE, HARTLAND.

Mayor Schuman noted that this SIP was negotiated and approved by the City Council and that the location of the restaurant was approved at that time. M. Carlson provided background to the Council members. The landscaping plans which were included in the Tumbleweed's proposal indicate that there is a berm that separates the two parcels that are in question (Restock and Borkowski homes). Photos were displayed and discussed. He stated that there would be three layers of protection between the homes and the site for the restaurant. Mayor Schuman stated that he has asked that the .5' candle foot be used for the lighting off of the property line. Accommodations have been made to the citizens who live on the south side of the development. M. Carlson recommended that there should not be berms because the homes are zoned business. If they change to commercial uses in the future, the berms would separate the businesses. J. Krickhahn was concerned about the lights from cars, etc. He would like the berm to be longer and run the full length of the property. He asked not only what the possibility of having the long berm built, but also to request an 8' wooden fence for screening to protect the neighbors. This would make it a nonpermanent structure, but would also assure privacy. M. Carlson stated that when the City Council considered the Plan Commission's recommendation for an SIP for the entire site, the berm and the site plan were locked in. In order to change the site plan, it would need to go through the process of major/minor determination and the petitioner would need to be the landowner. R. Miskelley stated that the only time the residents would be completely shielded would be in the summer months; he thought more needed to be done to protect the people there. Discussion took place on the approved SIP. B. Leonard was concerned about the orientation of the restaurant. She also questioned why the City could not be the Petitioner for a change in the SIP. Mayor Schuman stated that if any changes were requested to the SIP it would need to be referred to the City Attorney. R. Miskelley strongly felt that the residents in this area had a point. M. Carlson asked if he obtained a letter from the developer stating that their intention and desire would be to seek an amendment to their approved SIP to construct the 3' high berm and install an 8' high fence after completion of construction of Tumbleweed if this would be adequate.

**R. MISKELLEY MOTIONED TO APPROVE CONTINGENT BASED ON A THREE FOOT BERM ACROSS WITH AN 8' FENCE WALL ON TOP BEFORE OCCUPANCY IS GIVEN. E. SADOWSKI SECONDED THE MOTION. B. LEONARD WOULD LIKE TO WAIT THE TWO WEEKS AND RECEIVE THE LETTER. SHE**

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**ASKED WHAT POWER THE COMMON COUNCIL HAD OVER THE SIP AND WHAT THE APPROVAL WAS FOR. SHE ALSO QUESTIONED THE ACCESS TO HIGHWAY 83. M. CARLSON STATED THAT THEY ARE UNDER PERMIT CONDITION REQUIREMENTS TO MAKE IMPROVEMENTS TO THE INTERSECTION. THREE WERE IN FAVOR. B. LEONARD AND J. KRICKHAHN WERE OPPOSED. MOTION CARRIED.**

**E. SADOWSKI MOTIONED TO RECOMMEND TO THE PLAN COMMISSION THAT THE PATIO WITH OUTSIDE DINING HAVE THE DECK CLOSE ON WEEKENDS AT 11 P.M. AND TO CLOSE ON WEEKDAYS AT 10 P.M. AND TO HAVE THE HOURS POSTED AND ENFORCED. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

4. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

Mayor Schuman stated that his role in zoning changes was to be as even handed as possible.

- c. LAKE WELFARE COMMITTEE (NEXT MEETING AUGUST 9, 2006)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

Mayor Schuman will attend this meeting as a representative from the Council since S. Headley has resigned.

- d. PARK AND RECREATION COMMISSION (MINUTES OF JULY 31, 2006) (NEXT MEETING AUGUST 28, 2006)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

The budget was reviewed at the Park & Rec meeting. The City Forester was present and reviewed the Park & Rec's duties as the "Tree Board". Capital projects were discussed. Bids will be obtained on a fishing/boat dock pier this year for informational purposes. The next meeting will be August 28, 2006.

- e. PUBLIC WORKS (MINUTES OF AUGUST 2, 2006) (NEXT MEETING SEPTEMBER 6, 2006)

1. DISCUSSION REGARDING VETTELSON ROAD SEWER PROJECT.

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M. Carlson displayed where the sewer project was located. The road will be closed for approximately 30 days. A plan for signage has been developed and the signs have been installed. General discussion took place on the effect this would have on businesses in the area.

2. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

Discussion took place on either a by-pass lane or a left turn lane on Genesee Street south of Exeter Street. Communication with the County will take place asking that they put this in their budget and that they choose the least disruptive and least offensive design. The City's Sanitary Sewer Hook-Up Ordinance was discussed. The Committee will conduct a survey involving other communities as to what they require for sanitary sewer hook-up. The Capital Budget was reviewed. The Committee was against funding the Equestrian Trail on the east side of the City. The street resurfacing program and pier at St. John's Park were discussed. The restroom facility at Bostrum Park was discussed and the committee felt that given the cost of the project and the limited amount of money available, it should not be a priority project for 2007. The GDP for the condos at 232 Main Street was reviewed along with the sanitary sewer extension for the Kettle Moraine Evangelical Free Church. There was a lack of support for the fishing pier/boat dock. The Committee thought that the NE quadrant plan should be completed in order to determine future streets and sewer plans.

- f. DEL-HART COMMISSION (NEXT MEETING AUGUST 15, 2006)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

Discussion took place at the meeting on July 18<sup>th</sup> on the preliminary 2007 budget. The Mission Prairie Sewer Extension was approved. Interceptor sewer capacity was reviewed. The data logger was put in on Main Street and Delafield. The results showed that there is plenty of capacity in the interceptor now, however, there was a request to collect benchmark data in dry times and in wet times. The next meeting will be August 15, 2006.

- g. POLICE AND FIRE COMMISSION (NEXT MEETING TBA)

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1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

E. Sadowski will leave the Police & Fire Commission and J. Krickhahn will take his place.

- h. LIBRARY BOARD (NEXT MEETING AUGUST 8, 2006)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

The next meeting will be held on August 8, 2006 at 7 p.m.

- i. FINANCE ADVISORY BOARD (NEXT MEETING TBA)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

No report.

- j. BOARD OF ZONING (NEXT MEETING AUGUST 10, 2006)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

The next meeting will be held on August 10, 2006.

- k. PROMOTIONAL AND TOURISM COMMITTEE (MINUTES FROM JULY 5, 2006 MEETING) (NEXT MEETING TBA)

1. REPORT ON DISCUSSION AND ACTION TAKEN AT PREVIOUS MEETINGS, FUTURE AGENDA ITEMS AND UPCOMING SCHEDULED MEETINGS.

The minutes from the July 5, 2006 meeting were included in the commissioner's packet. They are looking at expanding the membership of the committee. Mayor Schuman will be making appointments to this committee.

5. OLD BUSINESS

- a. SPACE NEEDS PRESENTATION OF FINANCIAL INFORMATION CONCERNING THE PROJECT.

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M. Carlson displayed an electronic document and distributed hard copies to the Commissioners. He reviewed the documents on the City's website, particularly the Plunkett Raysich Analysis. The City compiled a spreadsheet that was distributed. Two proposals for space needs were received and were lease proposals. These lease proposals are also on the City's website. The lease prices compared to purchase prices showed that it would be more expensive to lease the project than to own it. The Council decided that it didn't make sense to lease. The debt structure was discussed and reviewed; it is based on a 20 year note. M. Carlson asked for direction as to what the City Council would like the staff to do. Mayor Schuman stated that there are other buildings in downtown and perhaps these alternatives could be explored along with partnering with other surrounding communities/organizations. R. Miskelley requested that public hearings/town hall meetings be held after Labor Day in order to hear what the citizens think. M. Carlson suggested combining a town hall meeting with tours of the facilities. He suggested getting authorization from the community to build the project. It was the consensus of the Commissioners to hold two town hall meetings with tours; one during the week and the other on a Saturday. This will be put on the next Council agenda. Appropriate notification will take place. M. Carlson will send letters to other municipalities about sharing space including St. John's and school districts and a schedule will be put together for two town hall meetings to occur after Labor Day.

6. MAYOR'S REPORT

- a. RESIGNATION OF DISTRICT 5 ALDERPERSON STEVE HEADLEY;  
PROCESS TO FILL POSITION.

S. Headley has resigned due to relocation. Mayor Schuman thanked S. Headley for his contribution to the City.

**E. SADOWSKI MOTIONED TO DIRECT M. CZUBKOWSKI DIRECTED TO SEND A NEW RELEASE TO THE NEWSPAPERS REGARDING OPENING OF THE POSITION. APPLICATIONS WILL BE ACCEPTED THROUGH AUGUST 16. ON AUGUST 21 INTERVIEWING OF CANDIDATES WOULD BE PLACED ON THE COMMON COUNCIL AGENDA. R. MISKELLEY SECONDED THE MOTION. J. KRICKHAHN MADE A CORRECTION TO THE DESCRIPTION. B. LEONARD ASKED IF A MAP COULD BE INCLUDED. M. CZUBKOWSKI WILL PUT A MAP ON THE WEBSITE. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- b. RESIGNATION OF EVELYN HEADLEY FROM THE PARK & RECREATION COMMITTEE

E. Headley has resigned due to relocation. Mayor Schuman thanked E. Headley for her contribution to the City.

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- c. APPOINTMENT OF RICK LIEBLANG TO THE PUBLIC WORKS COMMITTEE

**R. MISKELLEY MOTIONED TO APPOINT RICK LIEBLANG TO THE PUBLIC WORKS COMMITTEES. E. SADOWSKI SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- d. APPOINTMENT OF JEFF KRICKHAHN TO POLICE AND FIRE COMMISSION

**E. SADOWSKI MOTIONED TO APPOINT JEFF KRICKHAHN TO THE POLICE AND FIRE COMMISSION. B. LEONARD SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

- e. OTHER

Attended Waukesha County Executives meeting on July 31

7. NEW BUSINESS

- a. DISCUSSION REGARDING CITY MUNICIPAL CODE PROCESS FOR CHANGING ZONING RELATING TO LANG/LAUTH PROPOSAL AND ROLE OF CITIZENS IN THAT PROCESS.

Mayor Schuman's opinion was that the City code needed to be followed in order to avoid future problems. M. Carlson prepared a presentation on the existing code. Mayor Schuman was not in favor of changing any of the code since any change might be considered disadvantageous to one party or the other. M. Carlson made the presentation on the process. The Petitioner for the Lang/Lauth proposal has not told the City what zoning category they are seeking. He stated that zoning decisions are not subject to referendum; they are not an appropriate subject for referendum because the City has already determined what the process will be for considering zoning amendments. The summary included how to go about a zoning change, what time lines are included and how to file a protest. Mayor Schuman stated that his objective was to inform everyone as to what the codes are.

George Erwin representing Lang/Lauth was present and stated that he appreciated the comments made. He stated that they needed to follow and honor the process. He felt that a referendum would turn this into a political process rather than a planning process. They have not filed a petition for rezoning. The process of approving a project is in place and should be followed. The idea of forcing them to comply with a nonbinding referendum now, before they have had an opportunity to present their case, is completely volatile of their due process. He urged the Council not to short-circuit the process, but to let them do their job.

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B. Leonard would like more information on the concept of a referendum and whether that State of Wisconsin has any enabling legislation that deals with zoning or land use referendums. She thought that the Council needed to make sure that the best practices were being used, the best professionals, the state-of-the-art zoning code and that all of the resources are available. M. DeYoe looked at the League of Wisconsin Municipalities' website and viewed the text regarding advisory referendums. Guidelines were provided on the website. She recommended that Council members view this. M. Carlson stated that the reference on referendums for zoning is in Chapter 9.20 of the State Statutes (annotated). He will provide a written copy for the Council. M. DeYoe requested that this be put on the next agenda to have a discussion about the process. J. Krickhahn seconded the request. M. Czubkowski stated that the Common Council and City Staff received a letter from Rob Gerbitz, Lang Residential Investment LLC regarding the proposed resolution by CARE Group in connection with the Lauth/Lang contemplated preliminary concept plan. The letter was written in strong opposition. A copy is available at City Hall. J. Krickhahn suggested having the City Attorney present at the next meeting during this discussion. M. DeYoe would also like to extend the invitation to the people from the Lang/Lauth Group to be participants in the discussion at the next meeting.

Jerry Holton – Submitted Comments.

Brad Hoffmann, 498 Lillian Court – Addressed the code and asked if it precluded the advisory referendum. M. Carlson stated that it does not require a referendum; it is a different, added step; it is not included in the process to change the zoning for a piece of property. B. Hoffmann asked if there could be something to distinguish between a major development and a minor development that would suggest an advisory referendum. M. Carlson stated that this would require a text amendment to the zoning code. B. Hoffmann asked whether an advisory referendum is an appropriate vehicle given the size and magnitude of what has been proposed. He felt that the project was of such a significant size that it would affect more than the people pertaining to Chapter 8. Mayor Schuman thought that you could accomplish what you want to accomplish with the existing City code.

Jerry Holton, 485 Lillian Court – Clarified that they were talking about an advisory referendum, not a binding referendum. M. Carlson clarified and stated that with respect to zoning questions pending on a referendum, what the courts have said is that with respect to direct legislation petitions, it is not an eligible subject for direct legislation petitions. The direct legislation section, 9.20, talks about those topics which are eligible topics by referendum. Zoning questions have been determined by the Court not to be eligible questions to be placed before the voters in a direct legislation referendum. Whether or not this is true for non-binding advisory referendums has to be determined. The issue

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M. Carlson wanted to stress was whether or not zoning decisions are eligible topics to be decided by referendum (any). J. Holton pointed out that his understanding of the Oconomowoc situation is that the reason they got sued is that the land that Aurora wanted to build their hospital on was already zoned that way, the City then went in and tried to change their zoning to keep Aurora out. That was the basis for the lawsuit and the basis of why they lost the lawsuit. R. Miskelley stated that the City of Oconomowoc had a zoning added to that area of the Pabst Farm. Aurora came through via a third party and requested a zoning change that would allow them to build a hospital. The Planning Commission allowed that zoning change. When the City of Oconomowoc found out that there was a hospital planned there, the Plan Commission then changed the zoning back to its original zoning. B. Hoffmann wanted to make the distinction that the two issues are not the same. The representative from Lang/Lauth was opposed to an advisory referendum. He stated that the idea of a non-binding referendum is an invitation for disaster.

Linda Hoffman – Asked if because it was not in the zoning code that there could never be an advisory referendum in the City of Delafield. Mayor Schuman stated that in his opinion, it was inappropriate at this time for an advisory referendum because it runs counter from the timing of the existing City code.

- b. APPROVAL OF MISSION PRAIRIE'S DEVELOPMENT AGREEMENT, STORMWATER MAINTENANCE AGREEMENT, DEEDS RESTRICTIONS AND COVENANTS AGREEMENT AND CONDITIONAL USE AGREEMENT.

M. Carlson stated that this was a nine lot subdivision that the City Council has approved. These are documents that go with the planned unit development approval. The City Attorney has reviewed the documents and has given his preliminary sign-off on it. There are a couple of areas that need dates and dollar amounts. He recommended approval of the Mission Prairie Development Agreement, Stormwater Maintenance Agreement, Deeds Restrictions and Covenants Agreement and Conditional Use Agreement subject to final City Attorney review and approval.

**E. SADOWSKI MOTIONED TO APPROVE ALL THREE. R. MISKELLEY SECONDED THE MOTION. M. CZUBKOWSKI STATED THAT THE PRELIMINARY DECLARATIONS OF RESTRICTIONS ARE NOT SIGNED BY THE CITY, A COPY IS RECEIVED, BUT NOT SIGNED. E. SADOWSKI AMENDED TO STATE THAT THIS APPROVAL WAS CONTINGENT UPON THE FINAL APPROVAL OF THE CITY ATTORNEY. R. MISKELLEY AGREED. ALL WERE IN FAVOR. MOTION CARRIED.**

8. ADMINISTRATOR'S REPORT

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No report.

9. CLERK'S REPORT

- a. Mock Board of Review Training Session on Wednesday, Aug. 30, 2006 at 6:30 p.m. at Mount Pleasant Village Hall sponsored by Arenz, Molter, Macy & Riffle, S.C. and Board of Review Training Session on Thursday, Aug. 31, 2006 at 6:00 p.m. at City of Brookfield Council Chambers sponsored by Arenz, Molter, Macy & Riffle, S.C.
- b. Notice of Public Hearing for U.S. Cellular
- c. Absentee ballots in Clerk's Office for the September 12, 2006 Election

10. FINANCIAL REPORT

- a. APPROVE VOUCHER LIST

**E. SADOWSKI MOTIONED TO APPROVE. R. MISKELLEY SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

11. CORRESPONDENCE

- a. Letter from Time Warner Cable dated July 17, 2006 regarding annual subscriber notice.
- b. Letter from Veolia Environmental Services dated July 18, 2006 regarding new policy.
- c. Letter from Wisconsin Department of Administration dated July 26, 2006 regarding no objection of the preliminary plat for Valley Road Farms Addition No. 2.

12. ADJOURN INTO CLOSED SESSION PER §19.85(1)(E) DELIBERATING OR NEGOTIATING THE PURCHASE OF PUBLIC PROPERTIES, THE INVESTING OF PUBLIC FUNDS, OR CONDUCTING OTHER SPECIFIED PUBLIC BUSINESS WHENEVER COMPETITIVE OR BARGAINING REASONS REQUIRE A CLOSED SESSION (VILLAGE OF CHENEQUA CONTRACT REGARDING FIRE DISCUSSIONS).

**E. SADOWSKI MOTIONED TO ADJOURN INTO CLOSED SESSION PER §19.85(1)(E) DELIBERATING OR NEGOTIATING THE PURCHASE OF PUBLIC PROPERTIES, THE INVESTING OF PUBLIC FUNDS, OR CONDUCTING OTHER SPECIFIED PUBLIC BUSINESS WHENEVER COMPETITIVE OR BARGAINING REASONS REQUIRE A CLOSED SESSION (VILLAGE OF CHENEQUA CONTRACT REGARDING FIRE DISCUSSIONS). J. KRICKHAHN SECONDED THE MOTION. A ROLL CALL VOTE WAS TAKEN: J. KRICKHAHN, AYE; B. LEONARD, AYE; E. SADOWSKI, AYE; M. DE YOE, AYE; R. MISKELLEY, AYE. MOTION CARRIED. CLOSED SESSION WAS**

**CITY OF DELAFIELD COMMON COUNCIL MINUTES**

**ENTERED INTO AT 9:55 P.M.**

13. RECONVENE INTO OPEN SESSION

**R. MISKELLEY MOTIONED TO RECONVENE INTO OPEN SESSION. B. LEONARD SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. OPEN SESSION RECONVENED AT 10:18 P.M.**

14. ACTION OF ITEM DISCUSSED IN CLOSED SESSION

No action was taken.

15. ADJOURNMENT

**E. SADOWSKI MOTIONED TO ADJOURN FROM THE MEETING. J. KRICKHAHN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 10:19 P.M.**

Respectfully submitted:

Minutes Prepared By:

Marilyn Czubkowski, CMC  
City Clerk/Treasurer

Accurate Business Communications LLC