

CITY OF DELAFIELD COMMON COUNCIL MINUTES

CALL COMMON COUNCIL 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

Absent

- Mayor Phil Schuman
- Jeff Krickhahn, Ald.
- Beth Leonard, Ald.
- Erv Sadowski, Ald.
- Michele DeYoe, Ald.
- Gerald MacDougall, Ald.
- Lynn Morrison, Ald.
- Ron Miskelley, Ald.
- Matt Carlson, Administrator

Also Present

Mark Sewell, Attorney

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 SEPTEMBER 17, 2007 COMMON COUNCIL MEETINGS.

R. MISKELLEY MOTIONED TO APPROVE THE MINUTES FROM THE SEPTEMBER 17, 2007 MEETING. MAYOR SCHUMAN MADE A CORRECTION THAT ON PAGE 11, LINE 2 SHOULD READ: "... SCHUMAN STATED THAT HE HAS HAD A MEETINGS." G. MAC DOUGALL STATED THAT ON 9 OF 18, UNDER FINANCE ADVISORY BOARD, THE BUDGET SHOW AND TELL IS AT 6 P.M. ON OCTOBER 4, 2007. ON PAGE 10 OF 18, FIRST PARAGRAPH, LINE 12, G. MAC DOUGALL STATED THAT HE REVIEWED AND HE AND T. TURNOCK DID MEET WITH ST. JOHN'S. R. MISKELLEY AGREED WITH CORRECTIONS AND CLARIFICATIONS. L. MORRISON SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

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

Laura Schult, 935 Bahr Rd. – Comments were directed at the Mayor and City Administrator regarding leadership, especially in regards to the meeting with Mr. Quail. She felt that this was unethical. The actions undermined the trust bestowed upon the City by the residents. She felt obligated to her neighbors to right a wrong and armed with their advance support she stated she would work toward their removal from their positions that require men of honor.

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Mayor Schuman stated that she had the right of free speech and the right of free association. He felt that it was unfair to criticize him for the doing the same. R. Miskelley asked M. Carlson if he was involved in the conversation with the Lang Group. M. Carlson stated that he was. Mayor Schuman explained that he received a phone call through City Hall to meet with them. Mr. Lang was contemplating selling. The relationships between Lang and the City have not been all that great. It was clarified that it was not anticipated that they would make an offer. Mayor Schuman stated that it was not discussed at that time. No discussion took place at that meeting regarding an offer. There were general conversations. If Mr. Lang sells out, he may have some money to donate to the City for a library. Mayor Schuman spent his career in sales and one of the first things you do is develop relationships and do some networking. Meeting with somebody is not deceitful. He has a right to free speech and the right of free assembly. He is doing this on behalf of the citizens of Delafield. As far as the letter, it came in, there were discussions about the value of this building, comments were made. The Plan B Committee and other members questioned whether the City could get the \$2 million that a professional appraiser said the building was worth. If anything, this is an attempt to add value to the appraisal of the City Hall building. The letter was not an offer, but an expression of interest. The Mayor stated that he meets with people all the time on behalf of the citizens of Delafield. It was clarified that he did not go to the coffee for a private negotiation. Mayor Schuman stated that he had no conversation about this building. It was public knowledge as to what this building was worth. The mayor did not bring this forward before because the Plan B Committee was looking at this. They made statements about the value of this building. He did not want prejudging to take place.

Marty Wiley, 493 Lillian Court – She and her husband have been attending many Common Council meetings this year. It appears that some items are on the agenda are discussed with no concern for citizen input. They felt that at some of the meetings it appeared that there was not a great deal of aldermanic discussion. This made them feel that those items on the agenda were put there and predetermined by the administrator. She referenced the last Common Council meeting. She stated that the report card for the alderpersons from the last meeting. She gave a “D” representing discussion, debate, discourse, and disagreement that was allowed to enter into the proceeding. It was refreshing to see how hard they worked to be understood and to understand. Another grade was an “A” for putting the “us” back in the ruling of Delafield city government. She felt this was very democratic.

Gerry Holton, 485 Lillian Court – Complimented the majority of the council for the courage, character, and integrity displayed at the September 18, 2007 council meeting. He felt that an unfair shot at a citizen was made at the last meeting for his disregard for the current council’s hard work and earned credibility. He discussed his visit to Starbucks where there is a quote on the glass that states: “Be more concerned about your character than your reputation. Character is who you are. Reputation is what others say you are.” He applauded and respected the character that was shown. The letter of interest from Mr. Quail was discussed. G. Holton stated that he did not say this land and building were not worth \$2 million. He referenced the very first space needs open house at Cushing School. His wife asked the Mayor at that meeting if the Mayor was saying that the current City owned property is nonfunctional for three or more departments or if it was

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nonfunctional period. The Mayor's reply at that meeting was that it was nonfunctional. Mayor Schuman stated that this reply was based on the appraisal that the City had. G. Holton stated that the reasons listed at that meeting. He clarified at that meeting if the land alone was worth \$2 million and questioned at that time if someone would pay \$2 million and tear down the present facility. He stated that the Mayor replied "yes". The land value of \$2 million never made sense to him. He researched the City's website and discovered an appraisal dated January 28, 2005 that clearly listed the land value at \$213,000, rounded to \$215,000. This was a good reason for G. Holton to question the land value numbers and expectations of the Mayor. G. Holton read from the handout under the Stipulations A & B. He thought that the credibility of the mayor and city administrator was plummeting. M. De Yoe asked if the letter would have made any difference to the Plan B Committee. G. Holton stated that Plan B was still in session when the letter was received and that they should have had the opportunity. When Plan B started they were given instructions to be extremely transparent. He asked if this transparency was only one way. He asked R. Miskelley if he had any prior knowledge of the Quail Real Estate letter prior to the last Common Council meeting. R. Miskelley stated that he did not have any prior knowledge and had no idea that it was going to be presented. Mayor Schuman stated that the only other person who knew about the meeting was M. Carlson.

CITIZEN'S COMMENTS FOR ITEMS ON THE AGENDA

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

G. MAC DOUGALL MOTIONED TO CLOSE CITIZENS COMMENTS. M. DE YOE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

3. **CONSENT AGENDA**

- a. STAFF RECOMMENDATION TO APPROVE THE PURCHASE OF AN AIRMAN MODEL PDS 185S FROM JENSEN EQUIPMENT FOR \$10,339.00 (INCLUDED IN THE APPROVED 2007 CAPITAL EQUIPMENT BUDGET)

J. KRICKHAHN MOTIONED TO APPROVE THE PURCHASE OF AN AIRMAN MODEL PDS185S FROM JENSEN EQUIPMENT FOR \$10,339.00. M. DE YOE SECONDED THE MOTION. B. LEONARD INQUIRED AS TO WHETHER THERE WAS ANY WAY TO GET A BETTER TRADE-IN VALUE. M. CARLSON STATED THAT THERE WAS NOT AS THIS WAS PART OF THE BIDDING PROCESS. ALL WERE IN FAVOR. MOTION CARRIED.

4. **COMMITTEE REPORTS**

- a. **LICENSES - APPROVAL OF THE FOLLOWING LICENSES**

Two-year Bartender
Jen Borkowski, Delafield, Noodles & Company
Heidi Pietila, Waukesha; White Oak Grill
Natalie Sampolinski, Delafield; Daybreak Mobil

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Jasmine Johnson, Pewaukee; Qdoba Mexican Grill

E. SADOWSKI MOTIONED TO APPROVE. B. LEONARD SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

b. PLAN COMMISSION

1. PLAN COMMISSION RECOMMENDATION TO APPROVE THE ADDITION FOR LYONS ELECTRIC BUILDING, **TAX KEY 794.024, 75 ENTERPRISE ROAD, DELAFIELD.**

The biggest issue was that Lyons wanted to do the stormwater management program themselves. It has been reviewed by the Plan Commission. Everything is compliant. The City Planner and Plan Commission recommended approval.

E. SADOWSKI MOTIONED TO APPROVE SUBJECT TO THE CONDITIONS SET BY THE PLAN COMMISSION. M. DE YOE SECONDED THE MOTION. THE CONDITION IT IS SUBJECT TO IS THE ONE IN THE LETTER REGARDING THE STORMWATER MAINTENANCE AGREEMENT. THE MAINTENANCE AGREEMENT IS PART OF THE PROPOSAL. ALL WERE IN FAVOR. MOTION CARRIED.

2. RECOMMENDATION TO APPROVE A COLUMBARIUM AND LANDSCAPE IMPROVEMENTS AS A MINOR CHANGE TO THE CONDITIONAL USE FOR ST. JOHN CHRYSOSTOM CHURCH, **TAX KEY 792.988, 1111 GENESEE STREET, DELAFIELD.**

This columbarium will be about 3' high. The setbacks have been met. The drawings show a nice curved wall. St. John's agreed not to have a wall more than 3' high with setbacks as recommended. Plan Commission recommended approval.

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

3. PLAN COMMISSION RECOMMENDATION TO APPROVE THE ADDITION OF AN ATHLETIC BUILDING AS A MINOR CHANGE TO THE CONDITIONAL USE PERMIT AT ST. JOHN'S NORTHWESTERN MILITARY ACADEMY, **TAX KEY 792.067.002 & 003, 1101 GENESEE STREET, DELAFIELD.**

The conditional use permit dates back to the 1960's. Based on the existing agreement, the Plan Commission motioned to approve this as a minor change and asked that St. John's update their plan. Stormwater and grading management were discussed by the St. John's representative. This would be brought back to staff.

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E. SADOWSKI MOTIONED TO APPROVE. G. MAC DOUGALL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

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

The Open Pantry came before the Plan Commission and asked for outdoor storage which was approved. They also asked for a signage change. The Plan Commission motioned that the application be pulled off of the table, that the signage be taken down, that the fines be paid, and to then resubmit their proposal. J. Krickhahn stated that as of Saturday morning, the signs were off of the building. J. Krickhahn applauded the Plan Commission on this action.

M. De Yoe discussed the development in the Northwest Quadrant. The blending of the two developments will have 170 developed lots; much less than originally proposed. The Master Plan will have to be changed to reflect the lower density. M. Carlson displayed the map showing the densities on the properties.

The City Attorney addressed how developers come in and discuss ideas with staff. The developer then goes out and starts the formal application process. The Mayor has no independent authority, although he is seen by developers as someone who represents the City. The City Administrator can't approve or disapprove any function; this is the job of the Plan Commission and the Common Council. If a developer wants something, he can make an offer contingent on something changing. There is only one way to take legislative action, either by the Plan Commission or Common Council.

c. LAKE WELFARE COMMITTEE

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

The next meeting will be held on October 10, 2007 at 6 p.m.

d. PARK AND RECREATION COMMISSION (MINUTES OF SEPTEMBER 24, 2007 MEETING)

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

E. Sadowski explained that there will be a capital budget item for \$522,500 for the Oakwood Park to implement Phase I (roads and preliminary work) to get the park started. The Lake Welfare Committee could designate an area for the dredging spoils. R.

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Miskelley stated that the first proposal was to build a library by the Fish Hatchery about 5-6 years ago. The Geason land (Oakwood Park) was purchased for use as conversion land; this needs to be remembered. M. Carlson stated that the conversion had not been finalized. E. Sadowski stated that it was time to start on the park. B. Leonard recalled that a master plan for the park had been completed approximately one and a half years ago.

R. Miskelley will look into the status of the Bostrum Park shelter and inform E. Sadowski on the status.

Three statues (fountains) have been donated and will be placed in St. John's Park. They should be up next spring.

E. Sadowski will check the status of the fishing pier installation.

M. Carlson reported that the dam grading has been completed and the erosion matting has been installed. Plant plugs need to be installed, along with the fencing, the telemetry needs to be added along with alarm connections, and the DNR needs to inspect it.

e. PUBLIC WORKS COMMITTEE

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

The next meeting will be held on October 3, 2007 at 6:30 p.m.

f. DEL-HART COMMISSION

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

Work continues on the Triad agreement. The H2S project is open for bids. The Commissioners approved funds to purchase equipment.

G. Mac Dougall requested that he be put on the next Common Council agenda to discuss the appraisals received on the Del-Hart land and for direction from the Common Council on how to proceed. A closed session may take place to discuss the appraisals. He also requested to be on the October 16th Del-Hart agenda.

g. POLICE AND FIRE COMMISSION

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

The next meeting will be held on October 9, at 7:30 p.m.

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h. LIBRARY BOARD

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

The next meeting will be held on October 9, at 7:00 p.m. Anita Ziffren has resigned from the Library Board. Mayor Schuman encouraged residents to apply for the position. There is a volunteer application on the City's website. J. Krickhahn thanked Anita for the time she served on the Library Board.

i. FINANCE ADVISORY BOARD

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

The next meeting will be held on October 4, 2007 at 6 p.m. This is the Show & Tell for the 2008 budget. Proposed operating budgets will be presented by the department heads.

There are three dates for budget: November 5 (public hearing), November 12, and November 19 when the Common Council votes on the budget.

j. BOARD OF ZONING

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

The Board of Zoning will meet on October 11, 2007 at 7:30 p.m. for Case 739, a home addition.

k. PROMOTIONAL AND TOURISM COMMITTEE

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

The next meeting will be held on October 2, 2007 at 7 a.m. at the Fish Hatchery.

l. PLAN B COMMITTEE

1. ST. JOHN'S NORTHWESTERN MILITARY ACADEMY'S PARTNERSHIP DISCUSSION

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A meeting took place with St. John's on Thursday September 27. Those in attendance were: K. Smits, M. Carlson, T. Zignego, K. Kemnitz, and G. Mac Dougall. Discussion took place on a joint library/administration building to be built on city property behind the Post Office adjacent to the St. John's property. This would be a 4,000 sf library addition, plus common areas, and would be the same square footage as what the Plan B Committee came up with for this site. This will be studied with the same due diligence as the first plan. The next meeting of the Plan B Committee will be held at 11 a.m. this Friday, October 5, 2007. J. Krickhahn clarified that the library voted that the Plan B Committee should study this.

2. PROPOSALS FOR GEOTECHNICAL AND ENVIRONMENTAL SERVICES FOR PROPERTY NORTH OF BARK RIVER WEST OF GENESEE STREET.

St. John's has been requested to provide the soil boring for the United States Postal Service site. Soil boring quotes have been obtained if more borings are needed. M. Carlson stated if a building is elected to be put on that site, a soil study would be needed. G. Mac Dougall stated that if that were the case, the quotes would be saved until that time.

3. PLAN B REPORT DISCUSSION

Mayor Schuman stated that he was not averse to having multiple questions on the referendum. L. Morrison hoped that as Plan B looks at this that they will feel comfortable going on record as to what they recommend.

m. SIGN REVIEW COMMITTEE

Information was included in the packets.

5. OLD BUSINESS

a. DISCUSSION AND POTENTIAL ACTION REGARDING AN ORDINANCE PERMITTING CITY CLERK AND CITY TREASURER POSITIONS TO BE COMBINED.

Attorney Sewell stated that this would be a charter ordinance and would need a two-thirds vote. The only way to amend a charter ordinance is to have another charter ordinance. There is no state statute prohibiting the combination of the city clerk and city treasurer. There is no inherent conflict in this. There is no conflict of interest with the city administrator performing these functions.

E. SADOWSKI MOTIONED FOR ORDINANCE #579, CHARTER ORDINANCE, TO BE PASSED BY THE COMMON COUNCIL BASICALLY REPEALING CHARTER ORDINANCE #331, SECTION 2. R. MISKELLEY SECONDED THE MOTION. DISCUSSION TOOK PLACE ON ORDINANCE

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#331, SECTION 2 AND PAST PERFORMANCE IN THE CITY. ATTORNEY SEWELL STATED THAT THE CITY HAS BEEN OPERATING IN VIOLATION OF THIS ORDINANCE SINCE 1993. THIS ACTION WOULD GO BACK TO THE OPTION TO HAVE THE CLERK AND THE TREASURER AS ONE POSITION. IT IS UP TO THE COMMON COUNCIL TO DETERMINE HOW THEY WANT TO STRUCTURE THOSE OFFICES. IT WAS CLARIFIED THAT HAVING THE CITY ADMINISTRATOR PERFORM THESE DUTIES IS NOT A CONFLICT OF INTEREST. BECAUSE IT IS A CHARTER ORDINANCE, IT DOES NOT TAKE ACTION UNTIL 60 DAYS PAST THE DATE OF PUBLICATION. IT WAS CLARIFIED THAT SIX VOTES WOULD BE NEEDED TO PASS THE ORDINANCE. THIS MOTION WOULD ELIMINATE THE REQUIRED SEPARATION. **A ROLL CALL VOTE WAS TAKEN: J. KRICKHAHN, AYE; B. LEONARD, AYE; E. SADOWSKI, AYE; M. DE YOE, AYE; G. MAC DOUGALL, AYE; L. MORRISON, AYE; R. MISKELLEY, AYE. ALL WERE IN FAVOR. MOTION CARRIED.**

- b. DISCUSSION AND POTENTIAL ACTION REGARDING ADMINISTRATIVE SERVICES DIRECTOR/ASSISTANT CITY ADMINISTRATOR/CITY CLERK POSITION.

A simple majority vote would be needed for this to pass.

E. SADOWSKI MOTIONED TO ELIMINATE THE ADMINISTRATIVE SERVICES DIRECTOR/ASSISTANT CITY ADMINISTRATOR POSITION. B. LEONARD SECONDED THE MOTION. E. SADOWSKI FELT THAT HE MADE A MISTAKE IN DECEMBER BY VOTING FOR THIS POSITION. A CITY OF THIS SIZE NEEDS CHECKS AND BALANCES AND A CLERK/TREASURER POSITION WOULD PROVIDE THOSE CHECKS AND BALANCES. TWO SETS OF INTERVIEWS HAVE TAKEN PLACE FOR THE ADMINISTRATIVE SERVICES DIRECTOR/ASSISTANT CITY ADMINISTRATOR POSITION. THE CLERK/TREASURER WOULD REPORT TO THE COMMON COUNCIL ALONG WITH THE CITY ADMINISTRATOR. THE CLERK/TREASURER IS A MAYORAL APPOINTMENT REVIEWED BY THE COMMON COUNCIL. E. SADOWSKI STATED THAT ADMINISTRATIVE COSTS WOULD BE SAVED ON THIS POSITION. ATTORNEY SEWELL STATED THAT ADVERTISING AND INTERVIEWING COULD TAKE PLACE FOR A CLERK/TREASURER, BUT THE ACTUAL HIRING WOULD NEED TO WAIT UNTIL THE CHARTER ORDINANCE IS EFFECTIVE. THE COMMON COUNCIL NEEDS TO DECIDE HOW TO STRUCTURE THE POSITIONS. IT WAS CLARIFIED THAT THE ADMINISTRATIVE SERVICES DIRECTOR/ASSISTANT CITY ADMINISTRATOR POSITION WAS NEVER FILLED. L. MORRISON STATED THAT THE GOVERNMENT CANNOT BE DONE BY ONE PERSON. THE CITY SHOULD MOVE TOWARDS GETTING ASSISTANCE IN WHATEVER POSITION IS DECIDED UPON. E. SADOWSKI FELT THAT THIS MOTION WAS GOOD FOR THE CITY. R. MISKELLEY FELT THAT THE ADMINISTRATIVE SERVICES DIRECTOR WOULD HAVE GIVEN THE CITY ADMINISTRATOR THE MOST HELP. B. LEONARD CALLED THE QUESTION. **A ROLL CALL VOTE WAS TAKEN: J. KRICKHAHN, AYE; B. LEONARD, AYE; E. SADOWSKI, AYE; M. DE YOE, AYE; G. MAC DOUGALL, AYE; L. MORRISON, NAY; R. MISKELLEY, NAY. MOTION CARRIED.**

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Attorney Sewell stated that discussion and possible action on the clerk and treasurer positions should be put on the next Common Council agenda. Job descriptions of the clerk and treasurer were provided to the Commissioners in their packets.

The following were asked to be on the next Common Council agenda:

- Discussion and possible action to create the position of Clerk/Treasurer in the City of Delafield
- Discussion and possible action to appoint an interim clerk & treasurer
- Instructions to staff to combine the clerk/treasurer job responsibilities in a job description for the October 15, 2007 meeting including salary. It was understood that hiring could not take place until the charter ordinance took effect.
- A summary on how the jobs are structured now and who presently has the responsibilities in order to determine the impact. B. Leonard would like to see how streamlining could take place. M. Carlson clarified that the city administrator salary was not increased when the new responsibilities were added.

6. MAYOR'S REPORT

- Board of Delafield Fund
- Meetings with many people regarding the City of Delafield
- Radio station at the Del Hotel appearance – he asked for respect of free speech.
- Will be attending Wisconsin Leagues of Municipalities Conference

7. NEW BUSINESS

a. DISCUSSION AND POTENTIAL ACTION REGARDING STARBUCKS AT VILLAGE SQUARE BUSINESS PLAN OF OPERATION.

J. Krickhahn stated that the comments made by P. Craig at the last meeting confirmed that there were to be no drive-throughs at Village Square with the exception of a bank. After reviewing his notes J. Krickhahn stated that in September 2003 there were discussions that approved a business plan of operation with a site plan showing the different buildings. The only thing that the Common Council at that point in time had agreed could change was that the developer could move the building locations as long as the square footage did not go over 150,000 sf. However, when the formal plan went to the Plan Commission on that building in the southeast corner, the drawing changed and a drive-through was included. There should not have been a drive-through put on the drawing unless there was to be a bank in that building. Mayor Schuman stated that the drive-through was not on his agenda request. J. Krickhahn stated that this had to do with Starbucks. Attorney Sewell stated as long as it was reasonably related to the business plan of operation, it could be discussed. J. Krickhahn stated that Starbucks is located in the building that was drawn with a drive-through; this was not

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on the initial SIP that the Common Council had discussed and seen. M. Carlson stated that the Council did not see the SIP at that time; it saw the general development plan. He explained the process: the development is approved in two stages – the general development plan is approved first and then the specific implementation plan (SIP) is approved. The way the SIP is approved is that the Plan Commission accepts testimony and reviews it and then makes a recommendation to the City Council. J. Krickhahn stated that the Common Council never had the opportunity to see the plan with the drive-through. Mayor Schuman stated that the SIP was approved by the Council. The original intent was not to allow a drive-through and the Village Square Settlement Agreement states that there shall not be a drive-through and drive-through restaurant. His argument was that on a May Plan Commission agenda it stated “Starbucks a restaurant offering specialty coffee.” He felt that Starbucks was a restaurant with a drive-through. There was not supposed to be a drive-through, only a drive-through bank. He was under the impression that this building was going to be a drive-through bank, not a restaurant with a drive-through. He felt that the Plan Commission made an error and the Common Council owes it to the citizens to make it right. This is not what the citizens were told back in September 2003. Attorney Sewell stated that the Plan Commission gave approval for the business plan of operation. He stated that 17.33 gives the power to approve business plans of operation to the Plan Commission. If the Common Council wanted to do something about that, the Common Council would need to amend the zoning ordinance to amend to change the process because this process is set forth in the City’s zoning code. This would entail a Class 1 notice and a public hearing. He stated that it would be a grey area to do this on a retroactive basis.

B. Leonard requested an agenda item for the next meeting for discussion and possible action regarding the Village Square Settlement Agreement and SIP issues. She would like clarification to see what was approved by the Common Council as an SIP and see if it has been materially altered. That would determine if the drive-through should have come before the Council and not the Plan Commission.

R. Miskelley stated that in the May 30th meeting minutes Roger Dupler indicated “a drive-through was approved as part of the Phase I SIP with an anticipated use as retail” and then it gets into an entire discussion as to what a restaurant is and what a drive-through is. B. Leonard reiterated that she needs to see the actual SIP that the Council approved. R. Miskelley stated that they came before the Plan Commission looking for an approval of a business plan of operation. He did not see how a City Council could overturn a Plan Commission action on a business plan of operation. Attorney Sewell stated that the Common Council could not overturn it now, but the City would have to amend the zoning ordinance. Whether this would be retroactive is a question that needs to be answered. He discussed the approval process; it is not dependent on the contract.

G. Mac Dougall asked if it would be reasonable to say that anything that goes before the Plan Commission regarding this particular development be considered a major change in the future and therefore should come

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before the Common Council. It was clarified that this is not a conditional use, but a plan of operation. G. Mac Dougall again asked if everything that goes on in Village Square should be decided on by the Common Council. He felt that the City had some kind of obligation to Starbucks. R. Miskelley stated that this was reported at a May 30 Plan Commission meeting. M. Carlson clarified that the SIP come before the Council. The general development plan did not, but was defined in the Settlement Agreement. It was stated by R. Miskelley that the Council does not approve business plans of operation that the Plan Commission makes. The drive-through was approved as part of the Phase I SIP with an anticipated use as retail.

J. Krickhahn stated that Starbucks was approved in May, but they have not taken any steps for sign requests nor has cement been poured on the side of the building where Starbucks was authorized to be. He reviewed the mistakes including approval of other operations to open at 5 a.m. with closing times of 2 a.m. In the last few months, Starbucks has not taken any forward motion. He did not feel that the drive-through should have been approved. He did not believe that Starbucks would come in. He was trying to prevent the City and neighborhood from future embarrassment.

Attorney Sewell stated that the agreement was being mixed with the process. The only way you can require all of the Village Square's business plans of operation to come before the Common Council is to change the zoning ordinance. A lot of consideration would need to take place before taking this action. He asked how much control the Common Council wanted to have over the Plan Commission in regards to business plans of operation. The Plan Commission could be advised that the Common Council was not happy with what has happened as guidance or the Common Council could say that the business plans of operation have become problematic and now need to be reviewed by the Common Council. Attorney Sewell stated that the Plan Commission can do what it did.

Documentation of the SIP that the Common Council approved and the date were requested by J. Krickhahn for the next Common Council meeting.

R. Miskelley requested that Attorney Sewell's interpretation of a legal ruling whether the Common Council has a right to overturn the Plan Commission's action on this specific item and what the process is if the Common Council chooses to change their charter so that they can have final determination over the rules and regulations of the Plan Commission. Attorney Sewell stated that the issues with the business plan of operation is in Chapter 17 of the zoning code. This would be like any other type of change to the zoning code and would require a notice of the change, a public hearing before Plan Commission, the Plan Commission would make a recommendation to Common Council before the City Council could act, and if the Plan Commission does not make a recommendation to the City Council within 60 days the City Council could act without the Plan Commission's recommendation. As to the ability to change the approval that has already been given, there are going to be questions as to whether it can be done. He referenced the Lake Bluff case. There is a question if enough has been done that they now have vested rights. B. Leonard asked what would happen if

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the Plan Commission based their decision on inaccurate, incorrect, or misleading information. Attorney Sewell would need to look at this.

b. DISCUSSION AND POTENTIAL ACTION REGARDING DETERMINATION OF MAJOR AND/OR MINOR CHANGE TO CONDITIONAL USE PERMITS.

J. Krickhahn stated that he made a mistake when the major/minor changes were discussed. In his opinion, the Plan Commission is very young and green. He felt that it was the Common Council's decision to determine major/minor changes. He did not mean any disrespect to the Plan Commission. R. Miskelley stated that there are very seasoned planners on the Plan Commission and it is a very seasoned group.

Mayor Schuman stated that the difference between a major and a minor change is a public hearing. A major change is the overall complexity. If for some reason the Common Council would determine that a minor change is a major change, it could be sent back to the Plan Commission. M. Carlson stated that the Common Council makes the final determination as to whether it is major or minor.

Criteria and guidelines for major and minor changes will be distributed. This will be put on the next agenda.

c. DISCUSSION REGARDING ASSESSMENT POLICIES AND INFRASTRUCTURE/SEWER/WATER SYSTEM POLICIES.

A Comprehensive Plan for the City of Delafield was referenced. L. Morrison asked if it was the goal of the City to eventually have everyone be on sewer. Currently, new development is encouraged to locate in an area that can efficiently and economically be served by existing and planned streets and public utilities. Policies need to be developed for existing structures that are on the pathway of a sewer servicing a new development. G. Mac Dougall stated that if something simple needed to be done showing the route where sewer and water would go if it went in. A policy showing the process in simple language of what happens when people hook up should be developed. Attorney Sewell stated that the process for special assessments is a complex one. The special assessment process can be done either before or after the project. The City needs to do a good job telling how the citizens how the process would work. The legal ramifications need to be understood. The policies engaged should be reviewed. The key is communication. It was stated that the alderpersons need to tell the City if they want to have a neighborhood meeting. M. Carlson suggested asking the City Engineer or Public Works Director provide the Public Works Committee with infrastructure policies that are in place in other communities in the region.

J. Krickhahn would like to review water usage. What is to stop a bottled water plant coming into Delafield and selling water? Should an ordinance be drawn up prohibiting this type of business to protect the water? Attorney Sewell stated that the protection may be that any kind of water bottling plant would be an industrial use. Almost all industrial uses are conditional uses.

CITY OF DELAFIELD COMMON COUNCIL MINUTES

8. ADMINISTRATOR'S REPORT

- October 20th brush collection pick-up
- Memo on follow up on noise complaint by Well House #2 was distributed to the commissioners.
- Finance Advisory Board meeting – a fiscal plan for 2008 has been prepared by Staff. 2007 was a good fiscal year and they are suggesting front loading some expenses.

9. CLERK'S REPORT

None.

10. FINANCIAL REPORT

a. APPROVE VOUCHER LIST

L. MORRISON MOTIONED TO APPROVE THE VOUCHER LIST. G. MAC DOUGALL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

11. CORRESPONDENCE

- a. Letter to Hans Huber dated September 19, 2007 addressing parking spaces at Fishbone's.
- b. Letter from Time Warner Cable dated September 19, 2007 regarding update on the status of Time Warner's negotiations with Big Ten Network.
- c. Letter from Jon Brodie, M.D. dated September 20, 2007 complimenting the Delafield Fire Department for their assistance on September 18, 2007.
- d. Email from Kevin Krysinski, CPA, Johnson Block & Company, Inc. dated September 27, 2007 regarding the Wisconsin Clerk and Treasurer Statutes for cities.

12. ADJOURNMENT

E. SADOWSKI MOTIONED TO ADJOURN FROM THE MEETING. L. MORRISON SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 9:48 P.M.

Minutes prepared by:

Accurate Business Communications, Inc.