



OFFICIAL MINUTES OF A COMMON COUNCIL MEETING

MINUTES OF A REGULAR COMMON COUNCIL MEETING OF THE 34TH COMMON COUNCIL HELD ON **JULY 21, 2020** AT 7:45 PM., IN THE COUNCIL CHAMBERS, 2000 N. CALHOUN ROAD, BROOKFIELD, WI

- Call to Order: Mayor Steven V. Ponto called the meeting to order at 7:50 p.m.
- Announcements: The next regularly scheduled meeting of the Common Council is Tuesday, August 18, 2020, at 7:45 pm (subject to change).
- Roll Call: City Clerk Kelly Michaels called the roll and noted the following members in attendance:
- 14 Members present: Daniel Sutton, Bill Carnell, Rick Owen, Bob Reddin, Jenna Meza, Michael Jurken, Mike Hallquist, Mark Nelson, Gary Mahkorn, Scott Berg, Christopher Blackburn, Jerry Mellone, Kathryn Wilson, Brad Blumer. (Number of members needed to meet quorum requirements: 10)*
- Members excused: None*
- Staff Present: City Attorney Jenna Merten, Director of Public Works Tom Grisa, Director of Community Development Dan Ertl, Director of Finance and Administration Robert Scott, City Clerk Kelly Michaels, Fire Chief Charlie Myers, Todd Willis, Kevin Beck*
- Pledge: Alderman Brad Blumer led the Council in the Pledge of Allegiance.
- Presentations: Commended Renee Lowerr, Buck Jurken, and Jeff McCarthy for their dedicated years of service and leadership as Alderman.
- Commended Therese Hrica for nearly 20 years of service upon her retirement on April 1st.
- Public Comment: 45 EMAILS WERE RECEIVED IN FAVOR OF THE REQUEST TO WAUKESHA COUNTY FOR A PUBLIC MASK REQUIREMENT.
- 47 EMAILS WERE RECEIVED IN OPPOSITION OF THE REQUEST TO WAUKESHA COUNTY FOR A PUBLIC MASK REQUIREMENT.

The following spoke regarding Addendum Items #1 and #2 (#1 - Resolution approving a reinstatement of Declaration of State of Emergency for the City of Brookfield, and #2 – Resolution requesting Waukesha County to take action to require masks to slow the spread of COVID-19) --

Against:

Carol Johnson, 17800 Caribou Pass, Unit C
Dave Dayler, Saloon on Calhoun, 17000 W. Capitol Dr.
Erin Osben, 15070 Froedtert Dr., Elm Grove
Greg Ray, N61 W21587 Masters Dr., Menomonee Falls
Heidi Anderson, 3345 Nassau Dr.
Embassy Suites, 1200 S. Moorland Rd.
John Puchner, MD., 13150 Greenmoor Dr., Elm Grove

Christopher Sickler, 16640 Ridgeview Dr.
Mark Vance, 2315 Rockway Ln. W
Penelope Becker, 2315 Rockway Ln. W
Anthony Maresca, MD, 20910 Saxon Ct.
Chris VanderBloemen, 3455 Pilgrim Rd.
Sean Karlson, 2128 Northview Rd.
Joshua Klotz, S46 W225343 Meadow View Ct. W
Ray Chesner, 2580 Buena Vista Dr.
Matthew Trehwella, 3177 Hwy 167, Richfield WI
Thomas Benson, 15000 San Marcos Ct.
Noel Saubers, 4315 Beaufort Dr.
Craig Dedo, 17130 Burleigh Pl.
Linda Saubers, 4315 Beaufort Dr.
Ernest Kreitschmann, 18185 Surrey Ln.
Andrea Wahhab, 17350 Evergreen Ct.
Luke Pliska, N25 W24 200 River Park Dr. #209, Pewaukee
Isabel Patrick, N104 W10659 Willow Creek Rd., Colgate
Chuck Bloom, 20855 Macaulay Dr.
Whitney, 991 N. Brookfield Rd., Brookfield
Dave Marcello, 18140 Hoffman Ave.
Linda Boucher, 2340 Kevenauer Dr.
Peter Faraciano, Pistol Pete's, 16755 W. Lisbon Rd.
Robin Moore, 16175 Elderlawn Pkwy.
Joshua Parr, 4250 Williams Ct.
Ryan Kehoe, MD, 14295 Woodmount Dr.
Charles Braley, 14110 Lindsay Dr.
Scott Seaman, 1565 Spring Dr.
Rob Sayas, 2370 N. 130th St.
Tom Oster, S63 W14861 Garden Terr., Muskego
Christine File, 14220 Woodmount Dr.
Joel Lueneburg, 2345 Hollyhock Ln.
Crispian Trehwella, 470 Whistle Dr. #12, Hartford
Jessica Burt, 3960 N. 165th St.
Theresa Hext, 4680 Shagbark Ct.

For:

None spoke

Did Not Speak but were opposed:

Rose Neitzel, 3400 Hollywood Ln
Dimitri Glavas, 18025 W. Capitol Dr
Jean Bennett, 1475 Spring Dr.
David Bennett, 1475 Spring Dr.
Kathy Matthews, 13760 Tremont St.
Braden Zils, 2595 Buckingham Pl.
Conrad Zils, 2595 Buckingham Pl.
Dan & Erin Turchin, W290 N3237 Hillcrest Dr.

Tammy Francour & Randall Francour, 760 Adelman Ave.
Carol and Jon Heup, 785 S. Calhoun Rd.
Jacob Patrick, N104 W20659 Willow Creek Rd.
Juan Marin, 255 State Rd 85, Hartford
Jodi and Kevin Elentery, 1425 Spring Dr.
Joan and Vince Shiely, 16935 Vanderbilt St.
Nancy Maederer, 1620 N. Calhoun Rd.
Mary Minotte, 15460 Grandview Dr. Upper
Brad Hext, 4680 Shagbark Ct.
Bart and Patti Bohne, 3200 Cullen Dr.
Michelle Hoerig, 15755 Sky Cliff Dr.
Jason Bracke, 4215 N. 160th St.
Marlissa Trehwella, 470 Whistle Dr. #12, Hartford
Natalie Frye, 940 Madera Cir., Elm Grove
Chuck and Sharon Bloom, 21415 Almesbury Ct.
David Weber, 4540 Comptom Ct.
Jeff Pennington, 220 S. Water Rd., Wales
Any Olafsson, 20440 Bartlett Dr.
John Carrigg, 1460 Spring Dr.
Margaret Trehwella, 3177 Hwy 167, Richfield
Rochelle Trehwella, 3177 Hwy 167 Richfield
Darby Muckerheide, 3643 Wis G, Jackson
Robert Zabel, 210 Betty Ln.
Isaiah Muckerheide, 3643 Division Rd., Jackson
Mary Jo Baas, 2920 San Gabriel Dr.
Maja Cuellar, 14180 Ranch Rd.

Motion by Alderman Reddin, seconded by Alderman Sutton, to move the agenda out of order to consider Addendums #1 and #2. Motion carried unanimously.

Motion by Alderman Berg, seconded by Alderman Carnell to postpone the matter to the next meeting (August 18, 2020). Motion failed unanimously.

Motion by Alderman Hallquist, seconded by Alderman Blackburn to approve the resolution approving a reinstatement of Declaration of State of Emergency for the City of Brookfield.

Motion by Alderman Nelson, seconded by Alderman Hallquist to amend the resolution to include an expiration date for the State of Emergency of August 18, 2020 and put back on the August 18th agenda to renew the order if necessary.

On the amendment: Carried 11-3 with Alderman Owen, Meza and Mellone casting the dissenting votes.

On the main motion as amended: Carried 8-6 with Alderman Sutton, Reddin, Owen, Meza, Mahkorn and Mellone casting the dissenting votes. **Resolution No. 9914-20***

Motion by Alderman Nelson, seconded by Alderman Mahkorn to deny the resolution requesting Waukesha County to take action to require masks to slow the spread of COVID-19. Motion carried 10-4 with Aldermen Carnell, Hallquist, Blackburn and Wilson casting the dissenting votes.

The Council recessed at 11:25 pm
Meeting resumed at 11:39pm.

Public Hearing #1: (11:39 pm – 11:44 pm) Mayor Ponto read the request of Brookfield Family Dentistry, Thomas T. Tang, owner, 17185 W. North Ave., amending Section 17.98.050 of the Municipal Code regarding Specific Zoning Overlay Areas, creating overlay areas including

the Civic Center/Ruby Isle Area. In addition, amending the land use recommendation of Map 3 – Future Land Use in the City of Brookfield 2050 Comprehensive Plan, from Mixed Use – Higher Density to Shopping/Services Focused – Lower Density, rezoning from “B-3” Regional Business to “B-1” Local Business, permitting a Conditional Use in a floodplain and amending “MSO” Modified Suburban Overlay District Ordinance #2361-14. In addition, establishing the “MSO” Modified Suburban Overlay District on the property located at 17185 W. North Avenue.

Motion by Alderman Nelson, seconded by Alderman Mahkorn to adjourn the public hearing. Motion carried unanimously.

Public Hearing #2: (11:44 pm – 12:02 am) Mayor Ponto read the request of Wingspan Development Group LLC, 3880 W. Wheelhouse Rd., Suite B, Milwaukee, WI 53208, c/o Jason Macklin Director of Development, to rezone one lot, property tax key #1141-998-005, from “O&LR/C #2” Office and Limited Residential/Commercial District No. 2 to Planned Development District General Plan – Residential No. ___” for the purpose of demolishing a mid-box retail building and redeveloping the site with a luxury apartment complex of two buildings consisting of up to 231 dwelling units per the general plan entitled TRU Planned Development District.

Motion by Alderman Nelson, seconded by Alderman Mahkorn, to adjourn the public hearing. Motion carried unanimously.

Consent Agenda:

The following were removed from the Consent Agenda: Alderman Jurken asked that Item 29 C ii be removed from the Consent Agenda (for the purpose of abstaining).

Attorney Merten requested item #21 be amended administratively to include the following additions: In section 8.33.050 (k) on page 3 of 10, it reads with all applicable county and state codes, it should also include “local codes” at the end of the sentence; On page 4 #N, add “and Chapter 14 of this code”.

Alderman Hallquist requested Item #23 be removed from consent. Alderman Wilson requested Items #20 and #21 removed from consent.

Motion by Alderman Nelson, seconded by Alderman Hallquist, to approve all items on the Consent Agenda except for items #20 #21, #23 and #29 C ii. Motion carried unanimously.

1. Minutes of the June 16, 2020, meeting of the Common Council.

Plan Commission

2. Request of Congregational Home Residence and Rehabilitation, 13900 W. Burleigh Rd., Brookfield, WI 53005 – Kris Sptel, NHA, President/Chief Executive Officer, for approval to schedule a public hearing to amend Map 3 of the City of Brookfield 2050 Comprehensive Plan changing the land use recommendation of 3220 and 3230 Lilly Road from Housing Focused – Lower Density to Natural, Recreation and Community Facility – Community Facility and rezone 13900 W. Burleigh Road from “R-2” Residence District to “PDD-M” Planned Development District – Mixed Use General Plan in association with a 21 bed (21,044 sq. ft.) CBRF (Community Based Residential Facility) addition and wellness center at 13900 W. Burleigh Road.
3. Request for a public hearing amending Section 17.98.050 of the Brookfield Municipal Code creating the Civic Center Area Overlay District and the respective regulations and design standards and listing the certain properties to which this Overlay applies.

4. Request for a public hearing amending Section 17.98.050 of the Brookfield Municipal Code creating the South Gateway Area Overlay District and the respective regulations and design standards and listing the certain properties to which this Overlay applies.
5. Legislative Referral by Ald. Owen – Proposed amendments to Chapter 15 and 17 of the Municipal Code authorizing saunas as a permitted use in single-family residential zoning districts. Request to schedule a public hearing.
6. Request of Ruth E. Dugan Appointment Trust for extraterritorial approval of a certified survey map (CSM) combining lands to create a new one lot CSM located at 18795 W. Bluemound Road, Town of Brookfield.

Finance Committee

7. Vouchers exceeding \$50,000 requiring immediate action (*see attached*).
8. Resolution approving acceptance of CARES Act sub grant funding from the Wisconsin Elections Commission for unanticipated 2020 elections costs. **Resolution No. 9892-20***
9. Resolution approving 2020 General Fund budget amendment requested by the Director of Finance and Administration: transfer \$45,000 from contingency account 07001700-590000 to various Elections expenditure accounts, and to recognize related CARES Act grant revenue from the Wisconsin Elections Commission, to provide funding for unanticipated 2020 elections expenditures. **Resolution No. 9893-20***
10. Resolution approving professional services agreement with ThirdWave Corporation for enterprise content management solution consulting services for \$50,800. **Resolution No. 9894-20***
11. Resolution approving annual support agreement and license agreement for MUNIS software with Tyler Technologies, Inc. **Resolution No. 9895-20***
12. Request of the Police department to purchase replacement forensic computer equipment from Digital Intelligence for \$66,270.
13. Request of the Police department to purchase replacement squad vehicle light bar equipment from General Fire Equipment for up to a total of \$77,000

Legislative & Licensing Committee

14. Resolution approving the applicants for Original Bartender/Operator Licenses: Kevin M. Lux. **Resolution No. 9896-20***
15. Resolution approving the applicants for a Renewal Bartender/Operator license: Denice Benitez, Sarah M. Binder, Sarah E. Henkel, Fallon C. Posnanski, Henry T. Posnanski II, Steven S. Zimdars. **Resolution No. 9897-20***
16. Resolution approving Renewal Alcohol Licenses: **Resolution No. 9898-20***
 - a. Class A Beer:
 - i. Chipotle Mexican Grill #558, 15375 W. Bluemound Rd.
 - ii. Game Show Battle Rooms, 12565 W. Feerick St.
 - b. Class B Beer & C Wine:
 - i. Good Land Wing Co., 15375 W. Bluemound Rd.
 - c. Class B Beer & Liquor:
 - i. American Legion Post 449, 3245 N. 124th St.
 - ii. Courtyard by Marriott, 16865 W. Bluemound Rd.
 - iii. Elite Brookfield, 13825 W. Burleigh Rd.
 - iv. Jake’s Restaurant, 21445 W. Gumina Rd.
 - v. Maxim’s Restaurant, 18025 W. Capitol Dr.
 - vi. TGIFriday’s, 17430 W. Bluemound Rd.
 - vii. The Red Mill Inn, 1005 Elm Grove Rd.
 - d. Reserve Class B Beer & Liquor:
 - i. Buffalo Wild Wings, 16750 W. Bluemound Rd.
 - ii. Jake’s Burger, 18905 W. Capitol Dr., Suite 110

- iii. Wasabi Sushi Lounge, 15455 W. Bluemound Rd.
- 17. Resolution approving Renewal Alcohol Licenses: **Resolution No. 9899-20***
 - a. Class A Beer & Liquor:
 - i. Danielle’s Deli, 15655 W. North Ave.
 - ii. Trader Joe’s #726, 12665 W. Bluemound Rd.
 - b. Class B Beer & Liquor:
 - i. Ground Round, 1005 S. Moorland Rd.
 - ii. Life Time Athletic, 17585 Golf Pkwy.
 - iii. Mr. B’s – A Bartolotta Steakhouse, 18380 W. Capitol Dr.
 - iv. Sharon Lynne Wilson Center for the Arts, 3270 Mitchell Park Dr.
- 18. Resolution approving Temporary Class B Beer licenses for Brookfield Village LTD, 2848 N. Brookfield Rd., Brookfield Beer Garden, July 23 and August 20, 2020, from 4:00 p.m. to 9:00 p.m., sold and served on parking lot at 18725 Hoffman Avenue. **Resolution No. 9900-20***
- 19. Resolution approving the Fireworks User Permits for Brookfield Academy, 3215 N. Brookfield Road, for their *Senior Send Off and Homecoming/Founder’s Fest*, July 31 and September 18, 2020 (respectively), 9:00 and 8:00 pm, at their athletic fields. **Resolution No. 9901-20***
- 20. ~~Ordinance prohibiting the Feeding of Wild Animals and altering the public nuisance definitions.~~ (Removed from Consent)
- 21. ~~Ordinance creating a prohibition of Human Health Hazards.~~ (Removed from Consent)

Board of Public Works

- 22. Resolution approving Revision #3 to the State/Municipal Agreement between the State of Wisconsin Department of Transportation and the City of Brookfield for improvements to Calhoun Road from North Avenue to Capitol Drive. **Resolution No. 9902-20***
- 23. ~~Resolution approving the contract with Corrective Asphalt Materials, LLC (CAM, LLC) for the application of approximately 70,000 sq. yards of Reclamite on various roadways within the City of Brookfield for \$61,600.~~ (Removed from Consent)
- 24. Resolution approving the amended Snow and Ice Control Policy. **Resolution No. 9904-20***
- 25. Resolution reconfirming the Christmas Tree Pickup Policy. **Resolution No. 9905-20***
- 26. Resolution reconfirming the Neighborhood Traffic Calming Policy. **Resolution No. 9906-20***
- 27. Resolution approving the State/Municipal Agreement between the State of Wisconsin Department of Transportation and the City of Brookfield for Storm Sewer Improvements near Capitol Drive and N. 138th Street. **Resolution No. 9907-20***

Water and Sewer Board

- 28. Resolution reconfirming the Outdoor Water Sprinkling Policy. **Resolution No. 9908-20***

Council as a Whole

- 29. Mayor’s Appointments:
 - a. Board of Zoning Appeals:
 - i. Mark Krause – appoint to fulfill the 3-year term of Robert Buikema expiring May 1, 2022.
 - b. Library Board:
 - i. Stanley Fox – reappoint to 3-year term starting July 1, 2018 and expiring July 1, 2021.
 - ii. Jim Heinrich – reappoint to 3-year term expiring July 1, 2023.
 - c. Police & Fire Commission:
 - i. Dean Marquardt – reappoint to a 5-year term expiring May 1, 2025.
 - ii. ~~Buck Jurken – appoint to fulfill the 5 year term of Frank Pasternak expiring May 1, 2022.~~
(Removed from Consent)

30. Resolution commending Buck Jurken for 10 years of service and leadership as an Alderman. **Resolution No. 9889-20***
31. Resolution commending Jeff McCarthy for 7 years of service and leadership as an Alderman. **Resolution No. 9890-20***
32. Resolution commending Ron Balzer for 16 years of service and leadership as an Alderman. **Resolution No. 9888-20***
33. Resolution commending Renee Lowerr for 12 years of service and leadership as an Alderman. **Resolution No. 9887-20***
34. Resolution commending Therese Hrica for nearly 20 years of service upon her retirement. **Resolution No. 9891-20***

NON-Consent Agenda:

35. Act on any items removed from the consent agenda:

20. Motion by Alderman Mahkorn, seconded by Alderman Sutton to adopt an ordinance prohibiting the Feeding of Wild Animals and altering the public nuisance definitions. Motion carried unanimously. **Ordinance No. 2608-20***

21. Motion by Alderman Mahkorn, seconded by Alderman Blumer to refer back to L&L Committee, an ordinance creating a prohibition of Human Health Hazards. Motion carried unanimously.

23. Motion by Alderman Owen, seconded by Alderman Berg to adopt a resolution approving the contract with Corrective Asphalt Materials, LLC (CAM, LLC) for the application of approximately 70,000 sq. yards of Reclamite on various roadways within the City of Brookfield for \$61,600. Motion carried unanimously. **Resolution No. 9903-20***

- c. Police & Fire Commission:

- ii. Buck Jurken – appoint to fulfill the 5 year term of Frank Pasternak expiring May 1, 2022. Motion by Alderman Nelson, seconded by Alderman Sutton to appoint Buck Jurken to the Police & Fire Commission. Motion carried 13-0-1 with Alderman Alderman Jurken abstaining.

Legislative & Licensing Committee

36. Motion by Alderman Mahkorn, seconded by Alderman Blumer, to approve the resolution affirming the recommendation of the Legislative & Licensing Committee to grant an Original Bartender/Operator License for an applicant with a record: Brittany A. Eisenman. Motion carried unanimously. **Resolution No. 9909-20***
37. Motion by Alderman Mahkorn, seconded by Alderman Owen, to approve the resolution affirming the recommendation of the Legislative & Licensing Committee to grant a Renewal Class B Beer and Liquor license applicant with an agent with a violation: Vino Cappuccino, 2848 N. Brookfield Rd.; Agent: Andreas Protopapas. Motion carried unanimously. **Resolution No. 9910-20***

Council as a Whole

38. Motion by Alderman Nelson, seconded by Alderman Reddin, approving the resolution granting a temporary premise extension to Saloon on Calhoun with Bacon, 17000 W. Capitol Drive. Motion carried 13-1 with Alderman Berg casting the dissenting vote. **Resolution No. 9911-20***
39. Motion by Alderman Nelson, seconded by Alderman Reddin, approving the resolution granting a temporary premise extension to Pistol Pete’s Neighborhood Bar & Grill, 16755 W. Lisbon. Motion carried unanimously. **Resolution No. 9912-20***
40. Motion by Alderman Nelson, seconded by Alderman Owen, approving the resolution granting a temporary premise extension to Mitchell’s Fish Market, 275 N. Moorland Road. Motion carried unanimously. **Resolution No. 9913-20***

★ Pursuant to Section 19.85(1)(e) and (g) of the Wisconsin Statutes to consider Item 41, for the purpose of conducting public business when competitive or bargaining reasons require a closed session and for conferring with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is likely to become involved, specifically to consider the claim filed by J.P. Cullen, to discuss the settlement offer from J.H. Findorff, and to discuss potential litigation regarding claims arising from the construction of the Brookfield Conference Center. You are further notified that at the end of the Closed Session, the Council will convene in open session pursuant to §19.85(2), Stats. for possible additional discussion and action concerning any matter discussed in closed session and/or the remainder of the agenda.

41. Consider the claim filed by J.P. Cullen, settlement offer from J.H. Findorff, and potential litigation regarding claims arising from the construction of the Brookfield Conference Center.

Motion by Alderman Nelson, seconded by Alderman Reddin, to enter into Closed Session pursuant to Section 19.85(1)(e) and (g) as stated above. Motion carried unanimously by a voice vote. Closed Session start time: 12:19 am

Motion by Alderman Nelson, seconded by Alderman Owen to enter into open session. 12:30 am. Motion by Alderman Nelson, seconded by Alderman Reddin to deny the claim filed by J.P. Cullen and to authorize the City Attorney to consider settlement negotiations and pursue litigation as discussed in closed session. Motion carried unanimously.

★ Pursuant to Section 19.85(1)(e) and (g) of the Wisconsin Statutes to consider Item 42, for the purpose of conducting public business when competitive or bargaining reasons require a closed session and for conferring with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is likely to become involved, specifically to consider the City's claim against the City of New Berlin for the unpaid Poplar Creek Interceptor maintenance costs. You are further notified that at the end of the Closed Session, the Council will convene in open session pursuant to §19.85(2), Stats., for possible additional discussion and action concerning any matter discussed in closed session and/or the remainder of the agenda.

42. Consider whether to authorize the Mayor and City Clerk to execute and file a notice of circumstances and claim against the City of New Berlin for unpaid Poplar Creek Interceptor maintenance costs, if and when the Mayor determines it is appropriate to do so.

Motion by Alderman Nelson, seconded by Alderman Reddin, to enter into Closed Session pursuant to Section 19.85(1)(e) and (g) as stated above. Motion carried unanimously by a voice vote. Closed Session start time: 12:32 am.

Motion by Nelson, seconded by Owen to move back into open session (12:45 am)

Motion by Nelson, seconded by Reddin to authorize the Mayor and City Clerk to execute and file a notice of circumstances and claim against the City of New Berlin for unpaid Poplar Creek Interceptor maintenance costs, if and when the Mayor determines it is appropriate to do so. Motion carried unanimously.

43. Mayor's assignment of legislative referrals and requests for services:
 - a. Referred to the Plan Commission to amend the Code to establish a set of building code and potential permitting processes for tree houses that exceed 30 sq. ft. size. Explore explicit regulations (permit, size, allowable, offset, etc. for tree house structures) - Referred by Alderman Hallquist

44. Motion by Alderman Mahkorn, seconded by Alderman Hallquist, to adjourn the meeting. Motion carried unanimously. Meeting concluded at 12:46 am.

RESPECTFULLY SUBMITTED
KELLY MICHAELS, CITY CLERK

** May be viewed in the City Clerk's Office.*