

**MINUTES
CITY OF PORT WASHINGTON
CITY COUNCIL MEETING
June 2, 2009**

A duly convened meeting of the Common Council was called to order at 7:30 p.m. by Mayor Scott Huebner in the Council Chambers. Council members present: Aldermen Mike Ehrlich, Paul Neumyer, Jim Vollmar, Burt Babcock, Tom Hudson, David Larson and Dan Becker. Also present: City Administrator Mark Grams, City Planner Randy Tetzlaff, City Engineer Rob Vanden Noven, and City Attorney Eberhardt. The Pledge of Allegiance to the Flag was recited.

CONSENT AGENDA

- A. Approve Minutes of the Previous Meeting – May 19, 2009
- B. Approve Original Operator's License Applications – David C. Purtell, Peter M. Keller, Amy D. White, Sara J. Schanen and Michelle E. Wetzel
- C. Approve Temporary Class "B" Retailer's License Applications (Picnic) – The Marine Leatherneck Club/Southwest corner of North Lake St. & Jackson St./July 18, 2009 (Fish Day), Ozaukee Lodge #17/Fish Day Grounds – Port Marina/July 18, 2009 (Fish Day) and Greater Port Washington Kiwanis Club/Kiwanis Pavilion/July 18, 2009 (Fish Day)
- D. Approve Temporary Bartender's License Applications – The Leathernecks-Scott D. Bowman, Joseph J. Masnica, Richard A. Stahnke, Michael Kultgen, Jeffrey D. Brown, Allen J. Larson, John E. Stelling, Rudolph E. Scharnweber; Ozaukee Lodge #17-Craig G. Heatwole, Neil R. Johnson, Sidney N. Arthur, David E. Tainter, Calvin L. Ford; Kiwanis Club-Michael P. Ehrlich, Jim L. Olson, Linda K. Wells, Carol L. Boehle, Dennis L. Williamson, Karen Oleski
- E. Approve Renewal Combination "Class B" Retailer's License (Tavern) – NewPort Shores, Inc. (John W. Weinrich) 407 E. Jackson St., Pasquale C. Montalto/Sundance/551 N. Wisconsin St., JAZ Enterprises, Inc. (Joseph A. Zankl) 101 E. Main St., Bernie's, Inc. (Marcia Endicott) 102 E. Grand Ave., Gopher One (Donna R. Ferraino) 605 W. Grand Ave., Sir James Pub, LLC (Herbert James) 316 N. Franklin St.
- F. Approve Renewal Combination "Class A" License – Port Tobacco, LLC (Jennifer L. Groh) 215 N. Franklin St., Port Washington Mobil, LLC (Subhash N. Patel) 1880 N. Wisconsin St., Sanfilippo Bros., Inc. (Joseph J. Sanfilippo) 101 W. Seven Hills Rd., Tri-Par Oil Co., Inc. (Robert Norskog) 1430 W. Grand Ave.
- G. Renewal Class "B" Fermented Malt License – Dockside Deli, Inc. (Mary Ann Voigt) 218 E. Main St.
- H. Approve Renewal Class "A" Fermented Malt License Applications – M & CP Investment, Inc. (Charles E. Prendergast, Jr./Quik Stop Shoppe for 1100 S. Spring St. and 1605 N. Wisconsin St.
- I. Approve "Special Class B" License – Vines to Cellar, Inc. (James M. Wirsching-Neuser) 114 N. Main St.
- J. Approve Cabaret Licenses – NewPort Shores, Inc. (John W. Weinrich) 407 E. Jackson St., Pasquale C. Montalto/Sundance/551 N. Wisconsin St., Gopher One, Inc. (Donna R. Ferraino) 605 W. Grand Ave.

MOTION BY ALDERMAN HUDSON, SECONDED BY ALDERMAN BECKER TO APPROVE THE CONSENT AGENDA. **Motion carried unanimously.**

MAYOR'S BUSINESS

- A. Committee Appointments – No action taken.

OFFICERS'/STAFF REPORT

A. Update On Projects:

1. N. Spring Street – City Engineer Vanden Noven reported that the project is back on schedule. The binder, asphalt, surface course, pavement markings, punch list items and lawn restoration are done. The project is ahead of schedule and should be open next week.
2. Upper Lake and Veteran's Park Restrooms – The walls are up, the plumber is working and it is scheduled to open the 4th of July. On the Veteran's Park Restrooms – no schedule as yet.
3. Fisherman's Park Bridge – Shirley Schanen Gruen donated a sign that celebrates the bridge's history, which is on the north side of the bridge. 2009 Street Improvements – A pre-construction meeting will be held tomorrow and we should know more about the contractor's schedule.
4. City Engineer Vanden Noven received a call from the DNR Fisheries person. Someone is going to be working on the "Fish Refuse Boxes" in Sauk Creek.
5. The exterior of the water tower on the north side is being painted this week.

PUBLIC COMMENTS/APPEARANCES – Mike Metz, 136 E. Van Buren St. – Said he came to speak on two issues. One was about the nuisance notice sent to him by the Building Inspector Dennis Wiese. He and his wife met with the building inspector to discuss the orders written in the letter. They explained to Mr. Wiese that they feel as though they were singled out because of the opposition to portions of the street re-development plan in the St. Mary's neighborhood. He said while he would not disclose the source of the complaint, he essentially eluded to the fact that it was most likely brought on by the controversy surrounding the re-development project. He said one of the ordinance violations was chipping paint on the garage and trim on the house. There are many other homes and businesses in Port that are in worse condition than what their property is. With the current economy, forcing someone to do major renovation on their home or else levy fines daily is forcing them to choose between a house payment and food or fixing the cosmetics of a house. The second point was regarding the re-development issue; he stated his concerns and comments in a respectful and polite manner. He said they heard from other people that things were said about them from people at City Hall and in the City, and feels he is targeted for speaking out on behalf on his neighbors.

COMMITTEES

A. Finance and License Committee

1. Approve Bid For Sanitary Sewer Lateral Construction For Upper Lake Park Restrooms – MOTION BY ALDERMAN HUDSON, SECONDED BY ALDERMAN BABCOCK TO APPROVE THE BID FROM BUTEYN PETERSON FOR THE SANITARY SEWER LATERAL CONSTRUCTION FOR UPPER LAKE PARK RESTROOMS. **Motion carried unanimously.**
2. Approve Engineering Proposal For Street And Utility Improvements To Chestnut, Division and S. Wisconsin Streets – MOTION BY ALDERMAN BABCOCK, SECONDED BY ALDERMAN LARSON TO HIRE GREMMER FOR LOCAL LET FOR THE ENGINEERING PROPOSAL FOR STREET AND UTILITY IMPROVEMENTS TO CHESTNUT, DIVISION AND S. WISCONSIN STREETS. **Motion carried unanimously.**

BOARDS/COMMISSIONS

A. Park And Recreation Board

1. Approve Memorandum Of Understanding With Port Washington Youth Baseball – MOTION BY ALDERMAN BABCOCK, SECONDED BY ALDERMAN LARSON TO APPROVE THE MEMORANDUM OF UNDERSTANDING WITH PORT WASHINGTON YOUTH BASEBALL AS PRESENTED. **Motion carried unanimously.**

B. Plan Commission

1. Public Hearing To Rezone Property On The Eastside Of Highway 32 Near The Intersection of Sauk Road From AG To B-3 – City Planner Randy Tetzlaff gave a brief description of the request to rezone property. Mayor Huebner declared open the public hearing. MOTION BY ALDERMAN HUDSON, SECONDED BY ALDERMAN BECKER TO CLOSE THE PUBLIC HEARING. **Motion carried unanimously.**
2. Ordinance 2009-4 (Rezone Property On The Eastside Of Highway 32 Near The Intersection Of Sauk Road From AG To B-3) **1st Reading**
3. Public Hearing To Rezone Property At 725 S. Spring St. From RS-4 To RM-1. City Planner Randy Tetzlaff gave an overview of the zoning request. Mayor Huebner declared open the public hearing. MOTION BY ALDERMAN HUDSON, SECONDED BY ALDERMAN EHRLICH TO CLOSE THE PUBLIC HEARING. **Motion carried unanimously.**
4. Ordinance 2009-5 (Rezone Property At 725 S. Spring St. From RS-4 To RM-3) **1st Reading**
5. Public Hearing For A Conditional Use Grant Request At 601 N. Wisconsin St. For Outdoor Dining – City Planner Randy Tetzlaff gave highlights of the Conditional Use Grant Request. Mayor Huebner declared open the public hearing. Bob Binsfeld, 600 N. Wisconsin St. – He reported that when he talked to the neighbors about the request for outdoor dining, they had no objections. MOTION BY ALDERMAN HUDSON, SECONDED BY ALDERMAN BECKER TO CLOSE THE PUBLIC HEARING. **Motion carried unanimously.**
6. Consider Conditional Use Grant For 601 N. Wisconsin St. To Permit Outdoor Dining – Mayor Huebner said he appreciates the upgrades. MOTION BY ALDERMAN BECKER, SECONDED BY ALDERMAN NEUMYER TO APPROVE THE CONDITIONAL USE GRANT REQUEST AT 601 N. WISCONSIN ST. FOR OUTDOOR DINING SUBJECT TO FINAL REVIEW OF THE CITY ATTORNEY. **Motion carried unanimously.**
7. Public Hearing For A Conditional Use Grant Request To Permit An Aquaponics Facility At 233 E. Pier St. – City Planner Tetzlaff gave highlights for the request for a Conditional Use Grant. He said the applicant presented a plan before the Plan Commission at the May 19th Meeting and the plan was rejected. The Commission supported the use, but had concerns of the structure being proposed next to his garage. The applicant then filed an objection to the Board of Appeals. The City Attorney reviewed it, but said it could only be reviewed by the Council. At the last Plan Commission Meeting, the applicant presented a revised plan for a different location on S. Milwaukee St. on the Jadair Property, which is an industrially zoned area. That plan was approved by a unanimous vote. However, the applicant would prefer to have it near his house for security and oversight reasons. The City Planner said they were advised by the City Attorney prior to the meeting that this body could only consider

the plan that was presented to the Plan Commission and not a revised one. The applicant said based on this information that following the public hearing he would like to withdraw his application and may come back to the Plan Commission with a new design.

Mayor Huebner declared open the public hearing. Tim Lewein, Saukville – Said he purchased the property across from 233 Pier St. approximately one year ago and has been refurbishing it with the intent of upgrading the area. He put considerable time and money into the project to keep it aesthetically acceptable to the Historical Society. He feels a greenhouse is something he would not be interested in because it's not conducive to the area. Pat Wilborn, 233 E. Pier St. – Mr. Wilborn said he was speaking on the Conditional Use Grant. He said he modified his request. The Plan Commission accepted the proposal to put a structure up on Milwaukee Street on the Jadair site. He said, while reasonable in terms of providing access to his facility, it would create some start-up costs that do directly enhance the probability of success of my development of the aquaponics model. However, the Jadair site does hold a degree of promise. He said he was here to request a Conditional Use Grant for a greenhouse for the purpose of development of an aquaponics model on his property that would involve testing, experimentation and education. He said all are consistent with a Conditional Use in a B-4 District. He said all activities would occur inside and does not feel his request for a CUG would create any adverse conditions in the neighborhood. The City Planner showed some pictures of his property as to where the proposed structure would go. He said he appreciates the time and looks forward to bringing this up in the future. However, he said at this point, he would like to withdraw his request for a CUG. MOTION BY ALDERMAN LARSON, SECONDED BY ALDERMAN BECKER TO CLOSE THE PUBLIC HEARING. **Motion carried unanimously.**

8. Consider A Conditional Use Grant For An Aquaponics Facility At 233 E. Pier St. – No action based on motion by the applicant to withdraw.

C. Board of Public Works

1. Ordinance 2009-6 (Regulating The Discharge Of Fat, Oil, Grease, Sand And Other Substances Into Public Sewers) **1st Reading** – City Administrator Grams said there are three items to be clarified on Page 3, #2 & #3 in regards to who the City would send the necessary orders for the traps to be brought up to code. The City Attorney said that the choice of the three persons in the proposed ordinance (owner/tenant/user) would potentially be responsible for compliance. In reviewing similar ordinances of other communities, most of the municipal ordinances provide that the property owner at his/her expense is responsible for maintaining the grease traps in the efficient operation at all times and for removing and disposing of any trapped materials, as well as maintaining records of the dates and means by which disposal of the trapped debris was made. Examples of municipalities where the property owner is responsible are the Village of Belgium, City of Cedarburg, Village of Germantown, Village of Saukville, City of Sheboygan and City of West Bend. There are other municipalities who don't specify in their ordinance whether it's the property owner or tenant who is responsible for installing and maintaining grease traps, etc. The Village of Grafton and the City of Madison don't

specify – instead those ordinances say that no person shall discharge sewage into the sewer system without an interceptor or trap installed. It's a matter of public policy. In some instances the lease itself may ultimately determine who is responsible for the cost of compliance. Dan Buehler, WWTP Superintendent, said the City Attorney explained it for all situations involved and who ultimately is responsible.

Alderman Vollmar said the object is to keep fat, oil and grease (FOG) out of the sewer system and don't allow it to go down. The way to do that is to have an interceptor or grease trap. The user or the restaurant owner is responsible for making sure no grease goes down the system. He thinks that in the Implementation section of the proposed ordinance, all three (owner/tenant/user) should get approval for a grease trap. Alderman Larson asked if nobody does that and they are caught, who then is responsible? Alderman Vollmar said the person who took the grease and put it down the sewer is responsible. Alderman Hudson said that this is something the operator could have retrofitted without having to change the building structure. Mayor Huebner feels it should be the owner and should write it into his lease. Alderman Ehrlich said it's the tenant who is responsible to make sure he complies with a grease trap. Alderman Hudson said he thinks the owner is going to suffer, so the owner should be responsible to have the grease trap in the building. Alderman Babcock said isn't the tenant the user? Have it read owner/user. Alderman Becker agrees with Alderman Babcock. Tenant and user seem to be addressing the same thing. Alderman Hudson said it should be the operator of the restaurant. The operator of the business should be responsible, whether it is the owner or tenant. The City Administrator said the City Attorney would revise the ordinance to define that.

UNFINISHED BUSINESS

- A. Consider Enforcement Actions Against Port Harbor Investment, LLC Regarding Their Building At 122 N. Franklin St. – City Administrator Grams referred to the memo from the City Attorney regarding various options that the City can take and what letters were written to Port Harbor Investments. He said he and other City officials took a look at the building recently and part of the old bank building around the roof area is coming apart and concrete and stone is falling down on the sidewalk. The Fire Chief emailed him indicating that when he was down there on Sunday, he felt this was a dangerous situation and put up barricades on part of the sidewalk. The City Administrator said that we're at a point where something has to be done. He said the City Planner and him feel that the best alternative is to look at going to Circuit Court and actually appointing a receiver to take over this building to at least, at a minimum, have some repairs done. Then ultimately come up with a final result as far as what we want to do with the current owners and whether to put it into a receivership and put it on the market. It's something that we have to do immediately. City Planner Tetzlaff said this gives us an opportunity to sell the property. He said we know of two parties that are still interested in acquiring the property and rehabbing it. The City Administrator asked the City Attorney if he could go to the courts and try to speed up the process to get it done sooner? City Attorney Eberhardt said the City could apply to the court to get equitable relief to do what is necessary to secure the building or to take it down as a preventative measure. He said to prepare and serve legal documents in a prompt fashion on the short end would be no less

than six months, assuming there is no appeal. In terms of timing, any court action under the razing statute or to get repairs done, such actions would be given preference. That means while it sounds good, the case may come before the court in 30 to 45 days as opposed to 4-6 months. The first step is to issue notice to the owner. Alderman Vollmar said there's a nuisance process or judgment process and the first step is to ask him if he objects to the City fixing the front so we can take the barricades off the street and put it as an assessment on the property. Then if we want to take legal action we should take Eric's advice on legal actions that are available to us. If it's a dangerous situation on the street, then the City could do the repairs without asking the owner. MOTION BY ALDERMAN BABCOCK, SECONDED BY ALDERMAN HUDSON TO PROCEED WITH #IV, PUBLIC NUISANCE APPROACH OF THE CITY ATTORNEY'S MEMO. City Administrator Grams said that in the meantime we could still try to get a hold of Mr. Duzinski to tell him what action the City Council took. Alderman Vollmar said that if it's a dangerous situation, can't we fix it? Alderman Ehrlich said we should hire a licensed contractor so we aren't liable. The City Engineer said we could construct a net to catch the debris and assess it because it's an improvement for the property owner. Vote taken on the motion.
Motion carried unanimously.

NEW BUSINESS

FORTHCOMING EVENTS – Pirate's Fest this weekend. Alderman Hudson said 30 days has elapsed since we sent a request to the Union Pacific Railroad for repairs to the at-grade crossing on W. Grand Avenue. City Administrator Grams said we would now send a letter to the Office of the Commissioner of Railroads.

PUBLIC COMMENTS/APPEARANCES – Tim Lewein, Saukville – As far as the railroad is concerned, if you can encourage them to put a gate system up, then they don't have to blow their whistle. Any time they improve it, you have the opportunity to come along and encourage the railroad to do that. You can get monies from the Federal government to defer the cost.

ADJOURNMENT – MOTION BY ALDERMAN LARSON, SECONDED BY ALDERMAN BABCOCK TO ADJOURN THE MEETING OF THE CITY COUNCIL AT 9:26 P.M.
Motion carried unanimously.