

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,  
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

February 2, 2010.

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. MEMBERS ABSENT: None. LEGAL COUNSEL PRESENT: McDonell.

**APPROVAL OF MINUTES.** It was moved by Olsen and seconded by Winship to acknowledge receipt and filing of the following: Preliminary Financials for December, 2009; CDA minutes of 12/14/09; and Whitewater Police Department Consolidated Monthly Report for December, 2009. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**APPROVAL OF PAYMENT OF INVOICES.** It was moved by Olsen and seconded by Winship to approve payment of city invoices in the total sum of \$238,689.37. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum, Stewart. NOES: None. ABSENT: None.

**REPORTS.** City Manager Brunner and Councilmember Taylor presented a Proclamation to the UW-Whitewater Football team in recognition of their National Championship. Library Director Stacey Lunsford informed the Council that their fundraising consultant has advised them that in these economic times, it would be difficult to fundraise the amount of money needed to build the desired addition to the Library. The Library Board will be reviewing their plans.

**CITIZEN COMMENTS** None.

**COMMON COUNCIL ANNOUNCEMENTS.** None.

**RESOLUTION PURSUANT TO WISCONSIN STATUTE 74.33(1)(c) RESCINDING  
REAL ESTATE TAX CONCERNING /WUP-0334- REAL ESTATE TAX, CITY OF  
WHITEWATER, WALWORTH COUNTY.** City Attorney McDonell stated that the property owner is being improperly assessed due to legal description errors. Richard Rozelle of Delta Electric was taxed for property owned by the City. In order to cancel this tax, a Resolution rescinding the tax is needed.

**RESOLUTION PURSUANT TO WISCONSIN STATUTE 74.33(1)(c)  
RESCINDING REAL ESTATE TAX CONCERNING /WUP-0334 –  
REAL ESTATE TAX, CITY OF WHITEWATER, WALWORTH COUNTY**

WHEREAS, real estate tax was assessed to Rozelle Investments, LLC, under Account # /WUP-0334, and

WHEREAS, the real estate described in the real estate tax bill for /WUP-0334 was not owned by Rozelle Investments, LLC, on January 1, 2009, and

WHEREAS, said real estate was owned by the City of Whitewater on January 1, 2009, and therefore was exempt by law from taxation.

WHEREAS, it is appropriate to correct said error under the procedures set forth in Wisconsin Statute 74.33(1)(c).

Now, therefore, BE IT RESOLVED that the City of Whitewater hereby rescinds the real estate tax assessed to Rozelle Investments, LLC, under Account No. /WUP-00334 for the year 2009.

Resolution introduced by Councilmember Olsen, who moved its adoption. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE CORRECTING SECTION NUMBERS IN CHAPTER 16.14, SEWER USE CHARGES.** An ordinance correcting reference numbers in the Sewer Use Charges ordinance was presented.

**ORDINANCE CORRECTING SECTION NUMBERS  
IN CHAPTER 16.14 - SEWER USE CHARGES**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code, Section 16.14.56, **Amalgam Separators – General Conditions**, passed on September 15, 2009, incorrectly used the section number 16.14.56. The section should have been numbered 16.14.576. Section 16.14.576 is hereby substituted as the section number for **Amalgam Separators – General Conditions**.

**SECTION 2:** Whitewater Municipal Code, Section 16.14.57, **Amalgam Separators – Maintenance**, passed on September 15, 2009, incorrectly used the section number 16.14.57. The section should have been numbered 16.14.577. Section 16.14.577 is hereby substituted as the section number for **Amalgam Separators – Maintenance**.

**SECTION 3:** Whitewater Municipal Code, Section 16.14.046, **Amalgam Separator**, passed on September 15, 2009, incorrectly used the section number 16.14.046. The section should have been numbered 16.14.046. Section 16.14.046 is hereby substituted as the section number for **Amalgam Separator**.

**SECTION 4:** Whitewater Municipal Code, Section 161.14.309, **Sand Interceptor**, passed on September 15, 2009, incorrectly used the section number 161.14.309. The section should have been numbered 16.14.309. Section 16.14.309 is hereby substituted as the section number for **Sand Interceptor**.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Winship.  
AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None. FIRST READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF ORDINANCE AMENDING CHAPTER 12.08.010 STREET OBSTRUCTIONS.** DPW Director Fischer stated that the proposed ordinance would clarify language relating to the prohibition of mowing any grass towards the Street. Fischer explained that this is a Department of Natural Resources requirement. Grass in the sewer system results in phosphorous going into the sewers.

**AN ORDINANCE AMENDING CHAPTER 12.08  
STREET OBSTRUCTIONS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, do hereby ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 12.08, Section 12.08.010, is hereby amended to read as follows:

12.08.010 Prohibited.

- (a) No person, except as provided in Section 12.08.020, shall place, deposit, keep, or cause to be placed, deposited or kept in or upon any street, alley, gutter, sidewalk or public ground within the limits of this city any stone, brick, timber, lumber, iron, wood or other material for building, or any wood, snow, rubbish, earth, grass clippings or lawn debris, or any thing or substance whatever; nor shall any person burn or cause to be burned any such substance in any public street or alley; nor shall any person leave any automobile, truck, trailer, equipment or other vehicle standing or parked in or upon any street, alley, sidewalk, or public ground so as to encumber the same, or so as to obstruct, impede, or hinder travel thereon; nor shall any person leave, or cause to suffer any box, barrel, crate, cask, bale, package, merchandise, or other thing to stand, be or remain upon any street, alley, sidewalk, gutter, or public ground longer than may be actually necessary for the act of delivering or receiving the same.
- (b) Any person violating any of the provisions of this section shall forfeit and pay a penalty of not less than twenty-five dollars nor more than two hundred fifty dollars, together with the costs of prosecution.

Ordinance introduced by Councilmember Olsen. Seconded by Councilmember Binnie. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None. FIRST READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**SECOND READING OF ORDINANCE ADOPTING CITY OF WHITEWATER COMPREHENSIVE PLAN 2030.**

Councilmember Olsen indicated that after the Public Hearing held on January 19<sup>th</sup>, he had been contacted regarding the revision to the comprehensive plan relating to the Hoffmann property (Walworth Ave. near Indian Mound Pkwy). Olsen stated that the property was once approved for commercial use in light of the fact that the Technology Park was going to be located there. Olsen stated that an inquiry to develop a grocery store on that location was put forth, and city representatives expressed interest. The developer chose not to pursue the matter at that time due to the poor economy, but left on good terms and would possibly be back when the economic outlook improved. Olsen was disappointed that the store would be out of the question now based on the new comprehensive plan. Olsen expressed displeasure with the manner in which the comprehensive plan was handled.

In response to the question of whether, under the current proposed use, a grocery store could be developed at that location, Neighborhood Services Director Parker stated that if the specific plans for the grocery store fit in with the neighborhood, that it could be developed.

City Manager Brunner explained that the document is a planning tool for future growth and development; a *suggestion* that certain areas should be developed in a certain manner. The Comprehensive Plan document is shared with developers. At their last meeting, the Council changed the designation for the Hoffmann property to “future neighborhood.” The property is currently zoned “AT”, “agricultural transition”. If there is a desire to rezone the parcel, an application process is necessary and Plan Commission and Council would be required to approve the rezoning ordinance. Olsen disapproved of the process, stating that the Comprehensive Plan is often presented as a firm plan, and that to change the plan would result in one extra hoop to go through. Councilmember Kienbaum expressed that the Plan is not set in stone, and that if it were, she would not be willing to vote for it.

Jeff Knight, member of CDA and Technology Park Board, said he has had strong concerns from the beginning. He stated there are issues with high traffic volumes at the Indian Mound Parkway intersection now, and that the area would not be able to handle the traffic that a larger business would generate. Knight said he had raised his concerns from the beginning and did express them to the City Manager. City Manager Brunner agreed that commercial development of the parcel had been discussed during the sessions held for adoption of the South Side Neighborhood Plan.

Tom Hinspater, resident of Panther Court is disappointed in how the dialogue has changed. Hinspater stated that initially a Doctor’s or Dentist’s office was discussed, but now a larger business such as a grocery store is being mentioned. He questioned where that came from. He indicated he does not understand the change from the last Council meeting. Hinspater stated that

the discussion is contrary to what was discussed at the January 19<sup>th</sup> meeting and it is now a whole different program.

City Attorney McDonell confirmed that the Comprehensive Plan is a general plan. The Hoffmann property was previously proposed to be designated as a “community business” area, but is now proposed to be designated as a “future neighborhood.” McDonell stated that both designations are somewhat general and that from McDonnell’s perspective, a grocery store would likely fit into the “community business” designation but not into the “future neighborhood” designation. McDonell stated that it must be understood that projects will be reviewed at the Plan Commission level prior to being developed.

Councilmember Binnie stated that it is clearly the preference at this time that major commercial projects develop in other areas; however, there is nothing the Council could do to prevent any developer from attempting to develop a certain property. The Comprehensive Plan is not set in stone. It is intended to provide guidelines as to what the preference is at this time.

**AN ORDINANCE CREATING CHAPTER 1.31, ADOPTING THE COMPREHENSIVE PLAN OF THE CITY OF WHITEWATER, WISCONSIN.**

The Common Council of the City of Whitewater, Wisconsin, do ordain as follows:

SECTION 1: Whitewater Municipal Code Chapter 1.31 is hereby created to read as follows:

1.31.010 General Provisions.

- (1) Pursuant to sections 62.23(21) and (3) and 66.1001 of Wisconsin Statutes, the City of Whitewater, is authorized to prepare and adopt a comprehensive plan as defined in sections 66.1001(1)(a) and 66.1001(2) of Wisconsin Statutes.
- (2) The Common Council of the City of Whitewater has adopted and followed written procedures designed to foster public participation in every stage of the preparation of its comprehensive plan as required by section 66.1001(4)(a) of Wisconsin Statutes.
- (3) The Plan and Architectural Review Commission of the City of whitewater, by a majority vote of the entire Commission recorded in its official minutes, has adopted a resolution recommending to the Common Council the adoption of the document entitled “CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN,” containing all of the elements specified in section 66.1001(2) of the Wisconsin Statutes.
- (4) The City of Whitewater has held at least one public hearing on this ordinance, in compliance with the requirements of section 66.1001(4)(d) of Wisconsin Statutes and provided other opportunities for public involvement per its adopted public participation strategy and procedures.

1.31.020 Adoption of Comprehensive Plan.

- (1) The Common Council of the City of Whitewater, Wisconsin, do, by enactment of this ordinance, formally adopt the document entitled “CITY OF WHITEWATER 2030 COMPREHENSIVE PLAN,” pursuant to section 66.1001(4)(c) of Wisconsin Statutes.

SECTION 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the Common Council and publication/posting as required by law.

Ordinance introduced by Councilmember Taylor. Seconded by Councilmember Winship. AYES: Winship, Binnie, Singer, Stewart, Taylor. NOES: Olsen, Kienbaum. ABSENT: None. SECOND READING APPROVED: February 2, 2010.

Kevin M. Brunner, City Manager

Michele R. Smith, City Clerk

**APPOINTMENT OF CITIZEN MEMBERS TO URBAN FORESTRY COMMISSION AND BIRGE FOUNTAIN COMMITTEE.** City Manager Brunner and Council President Singer have met, and have recommended the following appointments to the newly-created Urban Forestry Commission: Richard Ehrenberg, Tiiu Gray-Fow, Peter Disley, Wyatt Welter and Beverly Stone. Also recommended is appointment of Alan Luckett to the Birge Fountain Committee. Councilmember Olsen said that he had a problem with the appointment of Richard Ehrenberg to the Urban Forestry Committee. Olsen stated that Ehrenberg was one of the individuals who created problems with the prior Tree Commission, and that his actions contributed to the dissolution of that Committee. Councilmember Singer indicated that Mr. Ehrenberg had been interviewed and was very supportive of the process. Previous issues were discussed and the hierarchy was explained to him. Councilmember Taylor stated that misconduct with Tree Commission matters were predominantly with one person. Olsen stated that he was on the Tree Commission and he had an opportunity to view the problems. Councilmember Binnie indicated that Olsen had attended only one meeting. Binnie indicated that Ehrenberg is the person with extensive experience as it relates to the Commission and that there were many dysfunctions. Binnie believes they came from both staff members and commission members. He stated it is time for a fresh start and he is hoping that everyone can act effectively and professionally.

It was moved by Councilmember Singer to appoint Alan Luckett as a member to the Birge Fountain Committee. Seconded by Councilmember Olsen. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Singer to approve appointment of the following members to the Urban Forestry Commission; Tiiu Gray-Fow, Peter Disley, Beverly Stone, Wyatt Welter, and Richard Ehrenberg. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Olsen to remove Ehrenberg from the list of appointees to the Urban Forestry Commission. Seconded by Kienbaum. AYES: Olsen, Kienbaum. NOES: Taylor, Winship, Binnie, Singer, Stewart. ABSENT: None. MOTION FAILS.

It was moved by Councilmember Winship to amend the appointments as follows: Disley and Gray-Fow to serve two-year terms, Stone and Welter to serve three-year terms, and Ehrenberg to serve a one-year term. Seconded by Binnie. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

**CONCEPTUAL REVIEW OF A ZONING ORDINANCE AMENDMENT WHICH PROVIDES STANDARDS AND REQUIREMENTS FOR RETAIL BUSINESSES THAT VACATE LARGE RETAIL BUILDINGS. ALSO, A DISCUSSION BY THE COUNCIL REGARDING WHETHER THEY WOULD PREFER TO CONSIDER PASSING A COMPREHENSIVE ORDINANCE THAT REGULATES BOTH THE DEVELOPMENT OF LARGE RETAIL BUSINESS BUILDINGS AS WELL AS THE DISCONTINUANCE OF USE OF SUCH BUILDINGS AND REFERRAL TO PLAN COMMISSION FOR PUBLIC HEARING.**

Councilmember Binnie indicated that he does not like to impose stipulations on businesses, but that it is clear that there are many cities where big box businesses have moved and left scars. In some instances, a building has been vacated and replaced with another large building, creating a real blight for a community. Binnie indicated that he wouldn't want to negatively impact the owner of a building if they are simply leasing space. City Attorney McDonell stated that the process would be to go before the Plan Commission, where a Public Hearing would be held. Councilmember Kienbaum does not support rules that make it harder for a business to come to Whitewater. She indicated that one of the biggest complaints she receives relates to people saying Whitewater has too many rules in comparison with neighboring communities. Councilmember Winship would like to explore rules and conditions businesses have to comply with to develop a "big box" store. It was suggested that a model ordinance be developed, then taken to Plan Commission. City Manager Brunner stated that in communities he has previously worked in, handling of these matters was dealt with via Development Agreement. Kienbaum and Olsen supported that method. Councilmember Binnie would like to see a plan that works for the future. It was moved by Councilmember Binnie to support further development of a possible comprehensive big box ordinance, referring the issue to the Plan and Architectural Review Commission. Seconded by Councilmember Winship. AYES: Taylor, Winship, Binnie, Singer, Stewart. NOES: Olsen, Kienbaum. ABSENT: None.

**ADOPTION OF AMENDMENT TO PERSONNEL MANUAL, RELATING TO EMPLOYEE RESIDENCY REQUIREMENT.**

Councilmember Olsen had brought forth a request to require that employees holding certain positions within the City be required to live within the city limits. The proposal brought forth listed certain management positions that would be required to live in the City. The proposal allows those employees currently living out of the City limits the ability to continue to do so, even if they move from where they currently reside. The change would not affect any included position that currently exists. However, should an individual move to another position within the City, the residency requirement would be in effect. DPW Director Fischer stated that the residency-required positions in the proposal were not across the Board. He noted that Police Lieutenants were not included in the requirement. Fischer also stated that the pool of good applicants will be reduced if we require City residency. Police Chief Coan argued that the Lieutenant positions should not have residency requirements; that these positions are normally filled on an internal promotion basis, and that an outstanding applicant might be passed by because they are not willing to move into the City. Councilmember Taylor suggested that the Downtown Whitewater Director be added to the list. City Manager Brunner stated that the City does not supervise that position, and therefore cannot require residency. It was requested that the Community Development Director and Coordinator positions be added to the list where residency is required. Singer stated that the CDA is "selling" Whitewater and it would be advantageous if those employees lived here. City Manager Brunner

agreed with Singer's proposal and indicated that the current employee has been working toward certification to become the CDA Director, and is aware that city residency would be required upon appointment to that position.

It was moved by Councilmember Olsen to approve the amendment to the Personnel Manual relating to employee residency requirement with the addition of Chief Information Officer to the list of employees that would be required to reside in the city. Seconded by Councilmember Winship. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

It was moved by Councilmember Binnie to include all non-exempt staff in the amendment to require employee residency. Seconded by Councilmember Singer. AYES: Binnie, Singer, Kienbaum. NOES: Olsen, Taylor, Winship, Stewart. ABSENT: None. MOTION FAILS.

It was moved by Councilmember Binnie to add the CDA Coordinator to the list of employees that would be required to reside in the City. Seconded by Councilmember Singer. AYES: Olsen, Taylor, Winship, Binnie, Singer, Kienbaum. NOES: Stewart. ABSENT: None.

It was moved by Councilmember Binnie to drop the final sentence: "The Common Council may consider offering financial incentives to affected employees when implementing this policy." Seconded by Stewart. AYES: Olsen, Winship, Binnie, Singer, Kienbaum, Stewart, Taylor. NOES: None. ABSENT: None.

**ACTION ON APPLICATION FOR CLASS "A" BEER LICENSE FOR WALGREEN'S, 1041 W. MAIN STREET, KATHY SCHULTZ, AGENT.** The alcohol licensing committee met prior to the Council meeting and has recommended approval of a license that would allow Walgreen's to sell packaged beer. It was moved by Binnie and seconded by Olsen to approve a Class "A" Beer license for Walgreen's, Kathy Schultz, Agent, 1041 W. Main Street, Whitewater. AYES: Olsen, Taylor, Winship, Binnie, Stewart, Kienbaum, Singer. NOES: None. ABSENT: None.

**ACTION ON APPLICATION FOR "CLASS B' (BEER & LIQUOR) LICENSE FOR 214 WHITEWATER ST. LLC (HAWK'S NEST BAR), PATRICK J. DUFER, AGENT, 214 WHITEWATER STREET.** Dan Caravette of 214 Whitewater Street LLC is in the process of purchasing the Hawk's Nest Bar at 214 Whitewater Street. The Alcohol Licensing Committee met prior to the Council meeting and recommended approval of the transfer of the license. It was moved by Binnie and seconded by Olsen to approve a Class "B" Beer License for 214 Whitewater St., LLC, Patrick Dufer, Agent. AYES: Olsen, Taylor, Winship, Binnie, Stewart, Kienbaum, Singer. NOES: None. ABSENT: None

**COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS.** Councilmember Winship requested that a proposed ordinance be discussed regarding overlay zoning limiting the number of unrelated residents in R-1 zoning to two (for rental purposes). Councilmember Kienbaum asked to discuss what can be done to encourage retail businesses to come to Whitewater and for information as to what is being done to encourage them. Councilmember

Olsen requested that an ordinance prohibiting “all you can drink” alcohol specials be brought to Council. Olsen also requested that a closed session be held to discuss a personnel matter.

**ADJOURN.** It was moved by Olsen and seconded by Kienbaum to adjourn the meeting at 8:10 p.m. AYES: Olsen, Taylor, Stewart, Winship, Binnie, Singer, Kienbaum. NOES: None. ABSENT: None.

Respectfully Submitted,

Michele R. Smith  
City Clerk