

In Attendance:

Mayor Steve Bierce, Aldermen B. Bergman, C. Brown, B. Dziwulski, R. Grosch and J. Kara. J. Wamser was absent and excused.

Also in Attendance:

Attorney S. Riffle, Administrator S. Klein, DPW Director M. Wagner, Utility Manager J. Mueller, Park & Recreation Director N. Phalin, City Planner & Community Development Director N. Fuchs, and Clerk/Treasurer K. Tarczewski.

1. Call to Order and Pledge of Allegiance

Mayor Bierce called the meeting to order at 7:00 p.m. and requested everyone stand for the Pledge of Allegiance.

2. Public Comment

Mr. Kara stated there were several people in attendance for item #11. Mayor Bierce told everyone that they could speak on that item at that time.

3. Consent Agenda

3.1 Approval of Account Payable Listing Dated December 7th, 2020

3.2. Approval of Common Council Meeting Minutes Dated November 2nd, 2020

Mr. Bergman stated he would be abstaining from Item #3.2. **A motion was made and seconded (B. Dziwulski, J. Kara) to approve the consent agenda.** Motion Passed: 5-For, 0-Against., 1-Abstain.

4. Discussion and Possible Action Regarding **Resolution 20-12-26** Pertaining to the Park and Open Space Plan

Nick Phalin was present for the open space plan. Mr. Phalin stated that 3,000 surveys were sent out to random City and Village households and 805 surveys were returned. Mr. Phalin stated the responses were very favorable in regards to the job done in Parks and Recreation. Mr. Phalin felt it was unique that 60.4 percent were interested in a potential tax increase of \$1-10 per month per household. Mr. Phalin stated one of the goals over the next five years is to have more diversity in amenities. A disc golf course at Balmer Park, all-inclusive splash pad and walking trail and fitness area at the Sports Complex are a few ideas. He said the goal is to improve the playground at South Park and there is a possibility of permanent pickle ball courts. Mr. Phalin stated he was excited to have this document as a guide for the department and looked forward to continuing to serve the community.

Mr. Bergman felt it was a great report and asked when the survey was sent out. Mr. Phalin stated it went out in early January, pre-pandemic. He said residents had six weeks to return it and surveys were accepted through the end of April. Mr. Bergman discussed the goals and how they were rated by interest. He asked Mr. Phalin what short term goals he sees the Common Council approving. Mr. Phalin stated it depends on the budget and sponsorship dollars, donations and grants. Mr. Phalin said a walking path at the Sports Complex is viable and he plans to apply for a Community Development

Block Grant in 2021. He noted a grant was received in 2020 for 2021. Mr. Phalin feels a Community Center would be a reach funding wise, but it is something to work towards.

Mr. Bergman asked about the possibility of a dog park. Mr. Phalin stated there has been some traction and halting regarding disc golf and a dog park. He said a disc golf course at Balmer Woods was approved by the Joint Board and a Village resident had volunteered to put a proposal together. Mr. Phalin stated Balmer Park could not have both a dog park and a disc course. The parking lot is limited, and with baseball and soccer, he was not sure about the green space. Mr. Phalin stated he is not aware of a great location for a dog park, although Yench Road had been discussed in the past. Mr. Phalin noted that although there is no dog park in Pewaukee, there are dog parks throughout Waukesha County at the County Parks.

Mr. Grosch stated he would like to see the parks more accessible to the neighborhoods. Mr. Phalin stated he attended a recent Bike & Pedestrian meeting and works closely with Ms. Wagner when a plan is being worked on to see how it could connect the parks with the community better.

Mr. Kara asked about a recent article in the Freeman regarding President Knutson from the Village talking about a community center and reaching out to the City. Discussion took place regarding the Village Board meeting and a parcel of land they were considering for a community center. Mayor Bierce stated he was approached by President Knutson and advised him the City is willing to listen.

A motion was made and seconded (B. Dziwulski, R. Grosch) to approve Resolution 20-12-26 pertaining to the Park and Open Space Plan. Motion Passed: 5-For, 0-Against.

11. Discussion and Possible Action Regarding the Sanitary Sewer Rates Established for the Waukesha Sewer Area

This item was taken out of order.

Ms. Wagner stated while looking for historical information, she came across a memo from 1998 from Attorney Riffle's office stating the City is not allowed to have two different rates for the same service in our community. She said in 2017, Jeff Weigel had gone to Common Council to establish two rates due to a large difference in outside billing from the City of Waukesha. An approval for two tiers was written in 2017 and customers were charged as of the first quarter of 2018. In looking at the memos, it was sent to Attorney Riffle for concurrence and Mr. Riffle advised that there cannot be two rates. Ms. Wagner stated over the last three years \$268,000.00 has been overcharged to customers in the Waukesha sewer district. Ms. Wagner recommended Common Council rescind the 2017 establishing two tiers of sewer rates back to one rate which is currently \$110 per quarter. Ms. Wagner stated this will result in a \$56,000.00 loss per quarter until the City can adjust the sanitary sewer rates. Ms. Wagner recommended the City refund customers for the last three years. Discussion took place regarding the Waukesha rates over the last 3 years.

Mr. Kara stated he was in favor of the refund but felt there were issues that need to be taken up with Waukesha, especially the return flow at \$69.00. The City needs to establish a new sewer rate because the \$110.00 rate is not adequate.

Attorney Riffle stated there is no legal obligation to refund customers. The City is responsible for adjusting the rates, so the City does not put utilities at jeopardy. Mr. Grosch asked if residents in the Pewaukee Lake Sanitary District pay the same rate. Ms. Wagner stated residents pay \$110.00 for Village, City and Lake Pewaukee Sanitary District and only the City of Waukesha is a different rate.

Ms. Wagner said the City is working on a current rate study and the rates should be established and brought to Common Council for approval in late January or early February. She stated the first quarter billing in 2021 will cover all the cost throughout the entire service area.

Mr. Bergman requested residents be allowed to speak.

James Lewek (W276N592 Arrowhead Trail) stated he was the President of Cloverland Farms HOA that includes 54 properties. He felt not all services such as police and fire were multi-tiered. When the higher rate for 190 residents is graduated across 5,000 residents, the burden is fantastically small. Mr. Lewek asked why this was not shared across the entire City.

Attorney Riffle stated the City should not have and legally could not have done two separate rates and the City is trying to fix it as quick as they can. Attorney Riffle also stated under Chapter 196, anyone feeling the City has discriminatory rates can go to the Public Service Commission and seek the order saying the rates are discriminatory. There is no authority under Chapter 196 to do anything retroactively.

Mayor Bierce stated in his opinion the City is going to have to take a hit during the 4th quarter. As far as refunding, he felt the good of the many versus the good of the few. He felt it was a pocket issue that is easy to define.

Ms. Brown stated there were a lot of things going on and this issue will come back. She said Waukesha County is charging return flow and unmetered rates. Ms. Brown felt there were more issues to be resolved. Waukesha is increasing their rates again by 25 percent and the residents are going to get hit year after year and she felt it was unfair to the residents.

Mr. Bergman asked why the City is billing for Waukesha sewer services and if Waukesha could bill residents directly. Attorney Riffle stated the City entered into an inter-municipal agreement with the City of Waukesha, otherwise we would not have sewer services to those areas. Attorney Riffle said Waukesha can charge the City differently from what they charge their own residents. He noted that a complaint to the PSC can be made.

A motion was made and seconded (B. Dziwulski, J. Kara) to return the rate and refund residents for what they were overcharged.

Discussion took place regarding a letter that was sent out stating if rates are changed, there is no requirement to proactively refund payments. Mr. Bergman stated he wants to follow what the City Attorney has advised and move forward. He would like to remove the refund of \$268,000.00 from the motion. Mr. Dziwulski believed it was the right thing to do and did not want it to be removed from the motion. Attorney Riffle stated refunds would go to current homeowners. Further discussion took place regarding the City having no legal basis to refund.

Mr. Kara called the question. Attorney Riffle stated it was not appropriate to take more comment from the public.

A motion was made and seconded (B. Dziwulski, J. Kara) to return the rate and refund residents for what they were overcharged. Motion Passed 3-For, 2-Against (B. Bergman, R. Grosch).

5. Discussion and Possible Action to Waive the Second Reading and Approve **Ordinance 20-09** Related to the Salaries of Non-Union Employees

Mr. Klein stated this is standard and approved annually after the budget is approved.

A motion was made and seconded (C. Brown, B. Dziwulski) to waive the second reading and approve Ordinance 20-09 related to the salaries of non-union employees. Motion Passed: 5-For, 0-Against.

6. Discussion and Possible Action to Waive the Second Reading and Approve **Ordinance 20-10** Related to the Salaries of Union Employees

A motion was made and seconded (B. Dziwulski, R. Grosch) to waive the second reading and approve Ordinance 20-10 related to the salaries of union employees. Motion Passed: 5-For, 0-Against.

7. Discussion and Action Regarding **Ordinance 20-11** to Rezone Land Located on Watertown Road (PWC 0960-988) from UC Upland Conservancy, F-1 Floodplain, I-1 Urban Institutional, LC Lowland Conservancy, Rm-3 Multi-Family Residential, Rs-4 Single-Family Residential, M-2 Limited Industrial and B-6 Mixed Use Business to P-1 Park and Open Space, UC Upland Conservancy, F-1 Floodplain and LC Lowland Conservancy for the Purpose of Constructing a 5-Stall Parking Lot for the Regional Trail that Will be Built on the County-Owned Abandoned Railroad Corridor As Requested by the Waukesha County Department of Public Works

Mr. Fuchs stated Waukesha County submitted for a trail and trail head at the end of North Avenue which was denied by the City. They have resubmitted with a new location, south of Watertown Road. At the November Plan Commission meeting the site and building plans were approved and Mr. Fuchs is recommending approval of rezoning to a P-1 park district. He said environmental districts will remain in place.

A motion was made and seconded (B. Dziwulski, R. Grosch) to approve Ordinance 20-11 to rezone the Waukesha County land located on Watertown Road. Motion Passed: 5-For, 0-Against.

8. Discussion and Possible Action to Consider the Request of Waukesha County Department of Parks and Land Use to Waive Fees Associated with the Rezoning Petition and Site and Building Plan Review

Mr. Fuchs stated the County is looking for the City to consider this a joint application and project. The County is looking to have the application fees waived. The letter provided specifically states the rezoning and site and building plan review fees. The County is also asking for public hearing costs and engineering review fees to be waived. Mr. Fuchs stated the letter does not request building permit or zoning permit fees. Mr. Fuchs felt the intent was for a waiver of all development and upcoming permit fees. Mayor Bierce asked if fees have ever been waived before and Mr. Fuchs did not believe so.

Ms. Brown stated she was against waiving the fees. She asked if the County would charge us.

Mr. Grosch stated the County is building a bike and hike path through the City of Pewaukee and he does not have a problem with waiving the fees.

Mr. Kara asked if there were any expenses that they are asking to be waived that are not fee-based that are directly associated with costs that the City would incur.

Mr. Bergman agreed with Ms. Brown. He was in favor of the trail but against waiving the fees.

Mr. Dziwulski concurred.

A motion was made and seconded (B. Bergman, C. Brown) to deny waiving the fees associated with the Waukesha County recreational regional trail. Motion Passed: 4-For, 1-Against (Grosch).

9. Discussion and Possible Action to Approve Resolution **20-12-25** Establishing the 2021 Fee Schedule

Ms. Tarczewski reviewed the changes to cemetery burials and impact fees.

Mr. Bergman questioned the impact fees and why fees were raised so much. Mr. Fuchs stated the changes are a result of the impact fee study that was recently completed. He said there is a formula that is used to drive the changes. Mr. Bergman commented these are not fees most residents pay, it is the price to get into the community for a resident. He said although it does not affect most residents, he was surprised at the high cost to build a structure. Mr. Bergman asked how it compares to other neighboring communities. Mr. Fuchs stated he is not aware of any comparisons and stated it is based on needs and costs.

Mr. Kara asked what consultant and study resulted in the increases. Mr. Fuchs stated the consultant was Clark Dietz Inc. He said the final study would to be brought forward to the Common Council for review. He was not sure if a draft was brought forward. Mr. Kara felt it was premature to put the fees in.

Attorney Riffle stated the City is unable to set fees until approving the resolution and study.

A motion was made and seconded (B. Bergman, B. Dziwulski) to adopt all fees presented except the impact fees. Motion Passed: 5-For, 0-Against.

Ms. Wagner asked if the City would still collect what is currently on the fee schedule, and Attorney Riffle confirmed.

10. Discussion and Possible Action to Approve Another Emergency Declaration

Mr. Klein needed to reaffirm what Common Council did the first time the Emergency Declaration was approved. He said Chief Bierce wanted it reaffirmed since the City is through the first phase of reimbursements.

A motion was made and seconded (B. Bergman, R. Grosch) to update and reaffirm the emergency declaration. Motion Passed: 5-For, 0-Against.

12. Discussion and Possible Action to Approve The Waters Development Agreement and Establish the Amount of the Letter of Credit in the Amount of \$1,309,209.84

Ms. Wagner stated there is another development in the community. They are putting together additional public infrastructure which needs a development agreement and letter of credit. The Waters will include 15 cottages, a main building with memory care wing, cafeteria and senior living apartments. Discussion took place regarding the public roadways, connections to the location and municipal water and sewer. Ms. Wagner stated the improvements are at a cost of just over \$1 million,

plus the 20 percent per ordinance. She asked to establish the letter of credit in the amount of \$1,309,209.84 and to approve the development agreement contingent on approval of the City Attorney and City Engineer.

A motion was made and seconded (J. Kara, Dziwulski) to approve The Waters Development Agreement contingent on any requirement of the City Attorney and City Engineer and to establish the letter of credit in the amount of \$1,309,209.84 in a form approved by the City Attorney. Motion passed 5-For, 0-Against.

13. Discussion and Possible Action Regarding the Special Assessment Against W220 N475 Springdale Road (PWC 0916-997)

Ms. Wagner stated this was an old assessment that was part of an agreement with the Town of Brookfield installing a sewer through the parcel. When the assessment was levied, it was \$46,192.00 with 7.49 percent annual interest. The assessment now totals \$109,000.00 with interest. The landowner, which is now the former owner's son is asking the City to put together a reasonable and fair assessment. Ms. Wagner is asking for the Common Council's blessing to have a discussion with the Town of Brookfield and review the inter-municipal agreement.

Mayor Bierce asked what the value of the land was in 1989 and what it is now. Ms. Wagner did not have that information.

Mr. Bergman stated the interest rate at an initial borrowing rate has changed. Mr. Bergman asked if the document was drafted with a set rate based on the initial borrowing rate. Ms. Wagner stated the Town of Brookfield borrowing was refinanced at a lower interest rate. She said Mr. Esser was willing to pay the assessment plus interest but would like to pay the interest on the actual cost. Ms. Wagner stated she will come back to Common Council with findings and a potential amendment to the inter-municipal agreement.

Mr. Kara was fine with discussing it with Brookfield but felt it should not be our battle to compel Brookfield to change it.

Mr. Bergman asked if there was a pending sale. Ms. Wagner confirmed there was interest in the property, but she was not aware of a pending sale. Ms. Mueller stated when she spoke with Mr. Esser, he indicated this had nothing to do with a pending sale.

Mr. Riffle asked why Mr. Esser does not go directly to the Town of Brookfield and why the City should do the leg work. Ms. Wagner stated it is a City assessment.

No action was taken. Mr. Bergman suggested City staff tell Mr. Esser to go directly to the Town of Brookfield.

14. Discussion and Possible Action Regarding an Amendment to the Swan View Farms Developers Agreement

Ms. Wagner stated there was a change at the last minute and Attorney Riffle did a separate amendment to the developer's agreement instead of amending the original document. This allows Mr. Tomich to construct homes while gas and electric and communication utilities are being installed. This allows him to be prepared for the Parade of Homes in 2021. Mayor Bierce asked why it was a prerequisite in the first place. Attorney Riffle stated it is not unprecedented and it has been done in the past. Everything else will be in but he will not be able to pump sewage out until the lift station is

in. Ms. Wagner stated there is a delay with the lift station. It is currently under construction but in order to start, he needs power, which will not be in service until February or March. He needs to have building permits in January or February in order to meet the August deadline for the Parade of Homes. Attorney Riffle stated he cannot get an occupancy permit and cannot sell the homes until they have utilities. He stated under the agreement they must remain titled in the developer or builder that the developer sells it to. Attorney Riffle was not concerned and felt there was no risk to the City.

Mr. Bergman mentioned there have been a few calls regarding the weight limit on Swan Road, and he has been working with Engineering. Mr. Bergman asked that it be pointed out to the developer and felt he needed to be diligent with his trades. Ms. Wagner stated the restrictions on Swan Road from Hwy 164 were in the agreement.

A motion was made and seconded (B. Bergman, B. Dziwulski) to approve the amendment to the Swan View Farms agreement contingent on final approval by the City Attorney and City Engineer. Motion Passed: 5-For, 0-Against.

15. Discussion and Possible Action to Approve Comfort **Resolution 20-12-27** Declaring Official Intent to Reimburse Expenditures Pertaining to the Land Acquisition for a New Department of Public Works Site

Mr. Klein stated the Council will be discussing this in closed session and thought it would be prudent to pass a comfort resolution so that the City could borrow for the land's purchase. Attorney Riffle stated this was not necessary at this time.

16. Public Comment

No public comment was made.

17. Closed Session – You are hereby notified that the Common Council and staff of the City of Pewaukee will convene into closed session after all regular scheduled business has been concluded and upon motion duly made and seconded and acted upon by rollcall vote as required under §19.85(1)(a), Stats. The purpose of the closed session is for the following:

- §19.85(1)(e): Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

You are further notified that at the conclusion of the Closed Session, the Common Council may convene into open session pursuant to 19.85(2), Stats., for possible additional discussion and action concerning any matters discussed in closed session and for adjournment.

A motion was made and seconded (B. Dziwulski, R. Grosch) to go into closed session at 8:52 p.m. Motion Passed via roll call vote: 5-For, 0-Against.

18. Adjournment

A motion was made and seconded (B. Dziwulski, R. Grosch) to adjourn the meeting from closed session at 9:19 p.m. Motion Passed: 5-For, 0-Against.

Respectfully Submitted,
Kelly Tarczewski
Clerk/Treasurer