

In Attendance:

Mayor S. Bierce, Aldermen I. Clark, B. Dziwulski, P. Vetterkind and J. Wamser. Aldermen C. Brown and R. Reinbold were absent and excused.

Also in Attendance:

Attorney S. Riffle, Administrator S. Klein, DPW Director M. Wagner, City Planner & Community Development Director N. Fuchs, City Assessor R. Tuff and Clerk/Treasurer K. Tarczewski.

1. Call to Order and Pledge of Allegiance

Mayor Bierce called the meeting to order at 6:30 p.m. and asked everyone to stand for the Pledge of Allegiance.

2. Public Comment - None.

3. Consent Agenda

3.1 Approve Common Council Meeting Minutes Dated February 6, 2023

3.2 Approve the Accounts Payable Listing Dated June 5, 2023

3.3 Approval of the Pewaukee Fire Department 2023 - 2028 Strategic Plan as Presented at the May 1st, 2023 Common Council Meeting

3.4 Cancel the July 3, 2023 Common Council Meeting due to Independence Day

A motion was made and seconded (J. Wamser, B. Dziwulski) to approve the items on the consent agenda. Motion Passed: 4-For, 0-Against. Mr. Clark abstained from item 3.3.

4. Discussion and Possible Action Authorizing the Release of the Grading Agreement Cash Guarantee in the Amount of \$54,000 to Interstate Partners

Ms. Wagner recommended approval.

A motion was made and seconded (B. Dziwulski, J. Wamser) to approve the release of \$54,000 cash deposit to Interstate Partners. Motion Passed: 4-For, 0-Against.

5. **PUBLIC HEARING**, Discussion and Possible Action Regarding a Conditional Use Permit for Quattro Development/Higher Ground Education for Property Located on Highfield Court (PWC 0906-994) for the Purpose of Constructing a Childcare Facility - *Applicant Requests Item to be Tabled*

Mr. Fuchs stated the petitioner wishes to have this item tabled. They intend to submit new plans and there is no anticipated date for that as of yet.

A motion was made and seconded (B. Dziwulski, P. Vetterkind) to table this item. Motion Passed: 4-For, 0-Against.

6. Discussion and Possible Action Regarding **Ordinance 23-04** to Rezone Property Located at N29 W22817 Marjean Lane (PWC 0914-976) from Rs-5 Single-Family Residential to B-3 General Business for the Purpose of Constructing a 50-Unit Self-Storage Facility as Requested by Regal Development LLC

7. **PUBLIC HEARING**, Discussion and Possible Action Regarding the Conditional Use Permit for Regal Development LLC for Property Located at N29 W22817 Marjean Lane (PWC 0914-976) for the Purpose of Constructing a 50-Unit Self-Storage Facility

Mayor Bierce stated Items #6 and #7 will be taken up at the same time.

Mr. Fuchs stated this proposed development is for a 50-unit mini warehouse/storage facility on Marjean Lane. The parcel is approximately .88 acres. The area is mainly industrial although this development backs up to four residential parcels on Duplainville Road. Mr. Fuchs stated the building would have wood siding, brick veneer on the bottom and would have tinted windows. He said the applicant agreed to provide an aluminum fence 6 feet high and would plant sixteen evergreen trees. Mr. Fuchs stated they would meet the 40 percent minimum green space requirement.

Mr. Fuchs stated the Plan Commission has recommended approval. He said staff also recommends approval with the contingency of final grading, erosion and drainage approval by the Engineering Department.

Mayor Bierce opened the public hearing. No one indicated an interest in speaking so it was immediately closed.

Mr. Wamser stated he was concerned about the proposed materials for the structure. He asked why it wouldn't be masonry so that it would be more fire retardant. He said there was no telling what would be stored in the units.

Mayor Bierce asked if the Fire Chief looked at the plans. Mr. Fuchs stated he is aware of this development and had no objections with the site plan.

Eric Regal stated LP® SmartSide® would be used. He said there won't be any electrical outlets inside the units so no equipment will be run. He said there is a fire hydrant 20-feet north of the property line.

A motion was made and seconded (I. Clark, P. Vetterkind) to approve the rezoning and conditional use permit with contingencies specified by the City Planner. Motion Passed: 4-For, 0-Against.

8. Discussion and Possible Action Regarding a Certified Survey Map for Wildeck, Inc. for Property Located on East North Street in the City of Waukesha for the Purpose of Dedicating the West Half of East North Street that is Currently Highway Right-Of-Way

Mr. Fuchs stated most of the certified survey map is in the City of Waukesha. He said lot #3 is in the City of Pewaukee and is approximately .67 acres. He stated it is the existing parking lot. Mr. Fuchs stated the Plan Commission and staff have recommended approval.

A motion was made and seconded (P. Vetterkind, J. Wamser) to approve the certified survey map. Motion Passed: 4-For, 0-Against.

9. Discussion and Possible Reconsideration of Fox View Court Assessments

Ms. Wagner stated Fox View Court was a 2019 paving project. She said the final close-out documents from the contractor are now available and the assessment notices can be compiled. She said the Homeowners' Association contacted her and stated they were not fully able to voice their concerns over

the project and wanted an opportunity to do so prior to formalizing the assessment notices and sending them out.

Ms. Wagner summarized the project. She said Fox View Court was a late addition to the City's road program in 2019 due to the complaints of the residents and field staff regarding the condition of the road and curb. Upon review, the curb appeared to be failing rapidly and needed to be replaced in its entirety, rather than our typical spot repair while doing road paving. Ms. Wagner stated curbs typically last 50 to 60 years and this one was approximately 25 years. She said the reasons were unknown for the premature failure of the curb, but it was speculated it could be a bad concrete mix, plow damage, or poor installation.

The residents questioned why they should have to pay to replace the curb that failed prematurely. In addition, the 2 units that have access off North Avenue questioned whether they should be included in the assessment roll since their driveways are located off North Avenue. After the public hearing, the Council directed staff to remove the North Avenue access parcels from the road assessment but include them in the curb assessment. Ms. Wagner stated both the residential paving and curb repairs were capped at \$2,650 each.

Ms. Wagner stated after the repairs were completed, she received calls from the residents that first winter that the plows were still hitting the island curb. She said they also sent pictures of the new damage. She mentioned that new marker boards are designed to alert the drivers where the curbs were so no further damage would be done.

Mayor Bierce wanted to clarify that the homeowners were only arguing the curb assessment. Ms. Wagner stated yes because it was believed to have prematurely failed.

Tom Weghorst (N19 W22075 Fox View Court - Unit B) stated he was the President of the Fox View condominium association. He stated there are only four buildings in the development housing two units, so it is a total of eight families in that area. He said only three of the buildings use the Fox View Court entrance and the other building uses North Avenue.

He said in 2018 they notified the City of the condition of the road, calling attention to the sink holes and cracking pavement. He said the curb and gutter had chunks missing out of it and the top was shaved off. He said it was obvious that the damage was done by the snowplow. Mr. Weghorst stated it was a dead-end circle with light traffic so he feels it should have lasted longer than it did.

Mike Kreiter (N20 W22133 North Avenue) stated he has a public works background and thinks he knows what he is talking about when he says the pavement failed prematurely. He stated the "allegatoring" of the pavement is due to a poor base and the asphalt was possibly not at the proper temperature when it was laid.

Mr. Weghorst asked the Common Council to reconsider the proposed special assessment amounts because the road and curb failure was not their fault.

Mayor Bierce stated the decision was made by Council years ago, to require people to have "skin in the game" when it came to road paving projects. He said back then the property owner covered the vast majority of the costs but today they pay a smaller portion due to the accelerated costs. He said to his

knowledge the Council has never voted to let people off of paying their portion of the project. He said that would be unfair for the people who have previously paid.

Mr. Clark stated in 2008, when Peninsula Drive and Rocky Point Road flooded due to a failed drainage system that was in place. He said when the road project came to that area the residents asked for the costs to be offset and they were denied. He said that was in his district. He said he was inclined to deny the current request of the Fox View Court for those reasons.

Mr. Dziwulski stated he 100 percent agrees with charging for the road assessment but disagrees with charging for the curb assessment because the damage looks as if it was caused by the City plow trucks. He added that since the entire curb was replaced instead of only portions of the curb that would indicate there was a larger issue at hand. He said was especially against charging the two residents on North Avenue for the curb assessment because they access their condos from North Avenue and aren't even in that area.

Mr. Wamser stated his issue is the quality of the work. He said there was an issue in Cardinal Meadows and the contractor had to tear out curb because it was poured at a low temperature. He stated he feels the Fox View Court pavement wasn't inspected as well as it should have been. He said there is excessive damage in that area. He said he plows snow with a commercial loader and is instructed to ride the curb and it is done without damage. He said the curbs in Fox View failed prematurely and the North Avenue owners should not have to pay for that.

Mayor Bierce stated the City has inspectors examine the projects and believe they do so with the best good faith efforts. He asked Mr. Wamser if he felt the City should be responsible for all the failures, and not the people that benefit directly. Mr. Wamser stated the City built this and the City tore up the curbs.

Mr. Wamser remarked that he thought the roads were only four to five years old. Ms. Wagner stated they were installed by the developer approximately 25 years ago. She said there was an inspection done at that time, but a bad mix wouldn't necessarily have shown up at that time.

Mr. Vetterkind stated the roads were poorly designed and it is a developer issue.

Mr. Dziwulski stated the issue is that the whole curb had to be replaced, not a spot assessment.

Ms. Wagner commented that if the curb is a spot replacement, 50 percent of it is paid by Storm Water Utility and the other 50 percent is included in the road portion. She said if it is fully replaced, 50 percent of it is still paid by the Storm Water Utility and the other 50 percent is assessed to the property owners.

Mr. Vetterkind stated he doesn't disagree that the City scrapped up the curb, but added it is 25 years old and it's a bad design. He said the City should not be responsible for the costs.

A motion was made and seconded (B. Dziwulski, J. Wamser) to keep the assessment cap of \$2,639 pertaining to the road replacement as it is current allocated; only assessing the properties that access off of Fox View Court. Mr. Clark clarified that this motion is solely for the road and solely pertains to the six property owners that live on Fox View Court. That was confirmed. Motion Passed: 4-For, 0-Against.

A motion was made and seconded (B. Dziwulski, J. Wamser) to remove the two addresses on North Avenue from the curb assessment. Motion Passed: 4-For, 0-Against.

A motion was made and seconded (B. Dziwulski, J. Wamser) to not assess any of the homeowners for the curb repair for all the reasons expressed earlier. Motion Failed: 2-For (B. Dziwulski and J. Wamser), 2-Against (I. Clark and P. Vetterkind). Mayor Bierce broke the tie by voting against the motion.

10. Public Comment - None.

11. 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 roll-call vote as required under §19.85(1)(a), Stats. The purpose of the closed session is for the following:

- §19.85(1)(g): Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, specifically related to the excessive personal property assessment claim of Amazon (A565).

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, I. Clark) to go into closed session at 7:14 p.m. Motion Passed: 4-For, 0-Against via roll call vote.

A motion was made and seconded (B. Dziwulski, I. Clark) to return to open session at 7:27 p.m. Motion Passed: 4-For, 0-Against.

A motion was made and seconded (I. Clark, B. Dziwulski) to authorize the City Attorney to go ahead with the proposed settlement agreement. Motion Passed: 4-For, 0-Against.

12. Adjournment

A motion was made and seconded (P. Vetterkind, B. Dziwulski) to adjourn the meeting at 7:28 p.m. Motion Passed: 4-For, 0-Against.

Respectfully Submitted,

Kelly Tarczewski
Clerk/Treasurer