

Chilton, Wisconsin  
March 5, 2019

The regular meeting of the Chilton Common Council held in the Council Chambers at the City Hall was called to order at 6:30 p.m. with Mayor Jaeckels presiding.

**AGENDA POSTING:**

On 3/01/19, copies of the agenda were delivered to the Mayor, Aldermen, City Department Heads, City Attorney and were made available to the media, and posted on the City Hall bulletin board and posted on the City web page.

**ROLL CALL:**

Mayor Rick Jaeckels and six members of the Council were present at roll call:

Council Member Tom Reinl	Council Member Mike Goebel
Council Member Ron Gruett	Council Member Clayton Thornber
Council Member Kathy Schmitzer	Council Member Dan Hilton

Absent and excused Council member Mark Willems.

Other city officials present were Building and Plumbing Inspector Paul Birschbach, Police Chief Craig Plehn, Director of Public Works Todd Schwarz, City Attorney Derek McDermott and City Clerk Helen Schmidlkofer.

General attendance: Faye Burg, Delta Publications.

Those in attendance recited the Pledge of Allegiance.

**APPROVE THE MINUTES:**

Motion by Hilton, seconded by Gruett and carried to approve the minutes of the council meeting held on February 19, 2019.

**REPORT OF OFFICERS:**

**MAYOR:**

- On 2/21/19, Scott from Horizon gave me an update regarding their project. The building is dried, windows, patio doors, etc. are in. Mechanical rough ins were complete on floors two thru three. Drywall started on 2/25 and brickwork on 2/22. Horizon is on target yet for late May or early June completion.
- Hwy F: I did reference this at the General Gov't meeting. I did make contact with Calumet County Administrator Romenesko. He is checking with the county Highway Commissioner and Chairman of the Highway Committee for a March meeting.
- Last Wednesday I attended the Calumet County Civic Assoc. meeting. WI League of Municipalities Deputy Director Curt Witynski provided a presentation on 2019-2020 legislative session and an executive summary. Copies are available.
- AARP is offering a "Community Challenge." The Community Challenge is giving grants to fund quick action projects in areas such as housing, transportation, public space and "Smart Cities" that spark change and help build momentum to improve livability for all residents. I did forward this information to Jim Barany for his mural project. I keep hearing favorable responses for the mural project.

**CITY CLERK:**

- Fire Chief Schoenborn shared that Brindlee Mountain Fire Apparatus, LLC has waived the \$3,000.00 commission fee regarding the 1997 Pierce Saber Pumper.
- Annual dog licenses are due March 31<sup>st</sup>.
- Future committee meeting dates and times were distributed.
- The annual open book is scheduled for April 11, 2019 4-6 PM and Board of Review is scheduled for April 29, 2019 8:15 AM to 10:15 AM.

**APPROVE FINANCIAL REPORT:**

Moved by Reinl, seconded by Hilton and carried to accept the March 1, 2019 financial report.

**APPROVE OPERATOR LICENSE:**

Moved by Schmitzer, seconded by Goebel to approve the two-year license application to serve fermented malt beverages and intoxicating liquors from March 5, 2019 to June 30, 2020 for Youa Vang. Motion carried. Clerk Schmidlkofer noted the applicant has been approved by the Chilton Police Department.

**APPROVE LIQUOR LICENSE:**

Moved by Reinl, seconded by Thornber to approve a “Class B” picnic license for City of Chilton Fire Department for their “Annual Brat Fry” April 27, 2019 and waive the fee. Person in charge, Chris Hilton. Motion carried.

**DIRECTOR OF PUBLIC WORKS:**

- The Department is removing snow at intersections and catch basins.
- Wastewater Leadman Keuler and I will be meeting with a couple of industries within the City next week.
- Building Inspector and I are working with Calumet County regarding the jail project.
- At past meetings, I was made aware that there were several questions regarding when a building permit involves city and state requirements. I thought I would take the opportunity seeing Mr. Birschbach is here tonight he would explain the process for commercial and industrial building permits.

Birschbach came forward and addressed the council to highlight the procedure for permits. He explained when a permit is submitted he determines what the purpose or use of the proposed building is. In particular, when City of Chilton code applies and at what point State of WI requirements are applicable and the developer needs state approval. Schwarz added Birschbach and I sit down with the developer to make sure everyone is on the same page. Discussion included water retention at which time the council discussed several dry ponds and retention pond locations within the city.

Council member Gruett questioned, “Can the city budget handle the overtime for snow removal? The Department is doing a great job but that has to take time.”

DPW Schwarz replied, “Yes we are okay. In fact, some cities are having a salt shortage but we are not.”

**MOVED TO UNFINISHED BUSINESS:**

Mayor Jaekels said, “Three council meetings ago the council addressed the zoning law at 1251 E. Chestnut Street. Mr. Austin has several shipping containers at this address which is zoned C-1, the containers are not permitted.”

Attorney McDermott said, “CREI the property owner of the old Wal-Mart site is where Mr. Austin has located a number of shipping containers, of which the numbers have gone up and down as the days and weeks have gone by. That property is zoned C-1 and the location of the shipping containers is not permitted or has a conditional use. They can only be located if they were deemed structures and met the requirements as an accessory building per state and local code. Mr. Austin has told us on a number of occasions the intent is not to turn them into storage facilities but rather treated as inventory to be refurbished and re-sold. There is nothing in the City’s zoning code that allows anything like that in a C-1 zoned district. The only definition in the zoning code that would allow for this would be a conditional use in an I-1 or I-2 District under the definition of a junk yard. I am sure he would take issue with calling his inventory junk, but if you read the actual definition of a junk yard, it applies.

McDermott then read Municipal Code Chapter 16.09(5) (a) Junk or Salvage Yard. An area consisting of buildings, structures, or premises where junk, waste, discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards, house wrecking and structural steel materials and equipment yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition.

It has to be in I-1 or I-2 zoning with a conditional use permit. It is my understanding that Mr. Austin has found a potential site owned by Mr. Hostettler, 442 Clay Street. A number

of containers are already on site and DPW Schwarz and I have explained to Mr. Hostettler that a conditional use permit needs to be filed immediately. DPW Schwarz noted that Hostettler did file a conditional use permit today. The request for a conditional use goes to Plan Commission to establish conditions and then that recommendation comes to the council for that site. I bring that up because there are still units on the 1251 E. Chestnut Street site. Two weeks ago, the council voted to extend the violation date 30-days to give him an opportunity to get them off site. This hasn't happened yet but there seems to be a solution if the conditional use permit goes thru with the Hostettler property. Under the zoning code, the location of the shipping containers at the CREI property is a violation under C-1 zoning. Each day is considered a separate offense and the enforcement is handled thru citations. The details of which are given by the Public Works Director or his designee. Under Municipal Code 20.04, the fine is \$1.00 to \$100.00 per violation for the first offense. Right now, each day would be considered a separate offense. You get into second or subsequent offense but that is defined as a conviction on the first offense and we are not that far yet. What DPW Schwarz is looking for is direction from the council in light of that decision to give a grace period of 30 days, which is up Thursday at mid-night. Again looking for direction on the issue of zoning code violation at the CREI site. I would say the citation could be issued to both Mr. Austin and CREI LLC the owner of the property, because the owner of the property was made aware of the violation.”

Reinl asked McDermott what he would suggest. McDermott said, “Here is a thought because I don't think we want to be running around for citations every day. My thought is on day 8, citations for 7 days be issued and frankly, if they are gone you don't issue them. Because that is our goal to get them off that site because that is the violation. Monitor it; it is not another 7 day grace period because now there is violation every day that can be cited.”

Thornber said, “The concern I have is in Chapter 16.09(4) (u) Storage or Wholesaling. Land uses primarily oriented to the receiving, holding, and shipping of materials for a single business or a single group of businesses. Such a land use, in which any activity beyond loading and parking is located outdoors, is considered an outdoor storage and wholesaling land use. Examples of this land use include equipment yards, lumberyards, coal yards, landscaping materials yard, tank farms, construction materials yards, and shipping materials yards. Such land uses do not include the storage of inoperative vehicles or equipment, or other materials typically associated with a junkyard or salvage yard. Contractors' storage yards are considered accessory in the “contractor shop” land use category. Retail outlets associated with this principal use shall be considered an accessory use. It could easily be misconstrued that containers are shipping materials.”

DPW Schwarz said, “If you look in the ordinance “a shipping container” is considered a structure. 16.04 (44) SHIPPING CONTAINER. A shipping container with strength suitable to withstand shipment, storage and handling and designed to be moved from one mode of transport to another without unloading and reloading. It is a reusable transport and storage unit for moving products and raw materials between locations or countries, which are repurposed for other uses. (A shipping container is considered a structure.) Then in Municipal code Chapter 16.05 (5) ACCESSORY BUILDINGS. (i) Shipping containers are not allowed in residential districts. Repurposed shipping containers that meet State and City of Chilton requirements are allowed in commercial and industrial zoning districts.”

Thornber then questioned, “How does this become an accessory building until it is put to that use? Once again, the definition of a storage container by code is a structure.”

Substantial discussion took place referencing various sections of Chapter 16, shipping materials verses shipping containers.

Schmitzer inquired, “Would there be a reason or grounds for the Plan Commission to deny the conditional use at 442 Clay Street?”

McDermott said, “When you get into conditional uses those are permitted with

conditions. You can't use a conditional use to just say no. In other words, a conditional use is a permitted use with conditions. So the Plan Commission will review and then apply or recommend appropriate conditions on the use like height, set back, locking the doors. It gives you the opportunity to put conditions on a use."

Discussion continued regarding complaints, property owner, extension to the grace period, references in Chapter 16 and legal opinion. A property owner on Clay Street has containers, as well as LDS and WPS properties. The City created an ordinance in 2017 to address this issue. (The owner on Clay Street is grandfathered in.) When Austin was at the council meeting he told the council 30 days would be more than enough time. DPW Schwarz did stop by one of the property owners of CREI and the owner said that after the weekend all containers would be off the property.

Moved by Reinl, seconded by Goebel that on March 14, 2019 (8<sup>th</sup> day after the 30-day extension) the City of Chilton Police Department issue \$100.00 daily citations to both parties CREI, LLC and Mr. Austin.

Chief Plehn said, "Do realize that the citation will be more than \$100 due to court costs?"

Attorney McDermott addressed the municipal codebook references because Thornber had different page numbers. Clerk Schmidkofer reassured the council that the codebooks are updated by her and staff in a timely manner.

McDermott asked the council if they would still want to do something if the containers are all gone by March 14? The 30-day letter was the warning. The goal is to get rid of the containers at this address. So if the containers are gone, does the council still want to issue citations? That means you have to monitor every day.

Mayor Jaeckels said, "DPW Schwarz or the designee would still have to send the information to the Police Department for a citation." DPW Schwarz said he could appoint the Police Chief as his designee per code. (Plehn declined)

Plehn said, "The Department would need a written statement of why there is a violation, what day it was and then we would have to receive this daily. The Department has to do this electronically so none of the municipal code stuff is even entered into the database. This is not done instantly, if you issue a citation on Friday he might not get it until Monday, just so you know."

McDermott said he plans to write up a narrative on the sections of the zoning code and has most of it written out already.

Schmitzer questioned, "Chief Plehn needs a couple of days to issue a citation due to the software, right?" (No response was given)

Chief Plehn confirmed that each citation would be processed separately and each would have court costs. Each citation is a separate event. A different date for each violation and that is why we need a written statement and someone to verify that they are in violation of said zoning code and that the City forwards the information to cite both parties for the violation. McDermott cited municipal code 20.04, each day shall constitute a separate offense. Plehn replied the Department would do whatever the City wants. Discussion then took place on the type of citation delivery, which Chief Plehn said would be by regular mail service.

Mayor Jaeckels called for a roll call vote.

Gruett – yes	Willems – absent	Reinl – yes	Thornber – yes
Schmitzer – yes	Hilton – yes	Goebel - yes	

Six votes cast. Six votes aye. Motion carried.

**MOVED TO NEW BUSINESS:**

Paul Birschbach conveyed the 2018 annual building and plumbing information. 8 new

homes, 100 residential home improvements, 12 accessory buildings, 13 commercial building improvements, 4 industrial building improvements and 74 misc. permits. Total building permits in 2018 – 211 for a value of \$10,915,753.16 compared to 2017 a total of 216 permits for a total value of \$4,868,997.80.

**MOVED BACK TO AUDIENCE PARTICIPATION:** None

Birschbach exited the council chambers at 7:31 PM.

**REPORT OF COMMITTEES:**

Council members reviewed the February 13, 2019 Housing Authority minutes.

**UNFINISHED BUSINESS:**

DPW Schwarz reported on the final case closure letter from the Dept. of Natural Resources (DNR) with continuing obligations regarding the Spetta/City of Chilton Landfill property located at W1509 Lime Kiln Road. All current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans. Schwarz noted the total cost to the City for cleanup was \$51,408.86.

**NEW BUSINESS:**

Moved by Schmitzer, seconded by Thornber to approve the mayoral re-appointment of Mary Pagel to the Housing Authority from 3/5/2019 to 1/05/2024. Motion carried.

There is an open position on the Housing Authority Board at this time.

Each year the City receives money from Calumet County as reimbursement for dog license collection. Since the Eastshore Humane Association houses the City's stray animals, the City budgets money to offset some of their expenses.

Moved by Hilton, seconded by Goebel to approve the donation of \$800.00 to Eastshore Humane Association, Inc. Roll call vote.

Gruett – yes	Willems – absent	Reinl – yes	Thornber – yes
Schmitzer – yes	Hilton – yes	Goebel - yes	

Six votes cast. Six votes aye. Motion carried.

**COMMUNICATIONS:**

Distributed the monthly building/plumbing report and Chilton Chamber of Commerce December 12, 2018 minutes.

**APPROVE PAYMENT OF BILLS:**

Moved by Hilton, seconded by Reinl to pay the bills. Voucher No. 83367 through Voucher No. 83433 or accounts payable and payrolls totaling \$476,714.40. Roll call vote.

Gruett – yes	Willems – absent	Reinl – yes	Thornber – yes
Schmitzer – abstain	Hilton – yes	Goebel - yes	

Six votes cast. Five votes aye. (Schmitzer-abstain) Motion carried.

**ADJOURNMENT:**

Moved by Schmitzer, seconded by Hilton to adjourn at 7:36 p.m. on March 5, 2019. Motion carried.

Helen Schmidlkofer  
City Clerk