

Legal Proceedings of the City of Fox Lake Common Council

June 6, 2018

The monthly meeting of the City of Fox Lake Common Council was held on Wednesday, June 6, 2018, at 6:30 p.m., in the Council Chambers. The meeting was called to order by Mayor Tom Bednarek and was followed by the pledge of allegiance. Roll call was taken with alderpersons John Mund, Dan Ault, Dennis Linke, Peter Hartzheim, Robert Jenswold and Donald Zilewicz present. Also attending were city attorney Mike Devitt, city administrator Dean Perlick, police chief Jim Rohr and city clerk Susan Hollnagel.

In the audience were Scott Hurst and Steve Christian of Leroy Meats, their attorney Patrick Madden of Madden Vanderloop S.C., Jim Perkins, Tim, Matt, Richie and Corey Quirk, Ed and Lou Benter, Richard and Sandy Quirk, Darrell Pollesch, Jan Jansen, Joe Williams, Dave Bittner, Becky Bussian, Cheryl Streich, Mike Gabris, Robert Ballweg, Gloria Tegtmeyer, Tim Nehls of Fish Tales Bait & Liquor, Marcy Benz of Snappers Sports Bar, Sara Ruenger and Kelly Simon of the Daily Citizen.

The clerk certified open meeting laws have been complied with.

Approve minutes

Motion by Linke, seconded by Hartzheim to approve the minutes of the May 2 and 23, 2018 council meetings, as typewritten. Vote in favor: Mund, Ault, Linke, Hartzheim, Jenswold and Zilewicz. Motion carried.

Public comments-agenda items

Motion by Mund, seconded by Hartzheim to open the meeting to public comments on agenda items. Vote in favor: Ault, Linke, Hartzheim, Jenswold, Zilewicz and Mund. Motion carried.

Appearing before the Council was Darrell Pollesch to let tell them there are box elder trees growing out of the bridal wreath along the south and west edges of the cemetery.

Public comments-other matters

Motion by Mund, seconded by Hartzheim to open the meeting to public comments on other matters. Vote in favor: Linke, Hartzheim, Jenswold, Zilewicz, Mund and Ault. Motion carried.

Becky Bussian, of the Crocker Street Park committee, updated the council on the amount collected, a little over \$12,000-, for the purchase of park equipment for the Crocker Street Park. She said they would be meeting with a play equipment representative to prepare a plan.

The Mayor said he had received a recommendation of someone who should be added to the City's Wall of Fame. He said this person is the longest running elected official in the City of Fox Lake. He asked Municipal Judge Richard Quirk to come forward. Alderperson Ault read the inscription on the plaque and presented it to Judge Quirk. Quirk said it has been a good ride and said he's not through yet. He thanked the City for the plaque and his name was unveiled on the Wall of Fame plaque.

Consent agenda

Motion by Linke, seconded by Mund to approve the consent agenda, as listed below:

- a. pay the bill, as audited, for accounts payable-check #38269 through #38353 totaling \$137,574.36 (including ACH withdrawals) and payroll checks #58531 through #58570 totaling \$31,979.56.

Vote in favor: Hartzheim, Jenswold, Zilewicz, Mund, Ault and Linke. Motion carried.

Public hearing-Class B liquor-Leroy Meats

Motion by Mund, seconded by Linke to open the public hearing on the Class B reserve intoxicating liquor license application of Leroy Meats of Horicon, Inc., for 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Jenswold, Zilewicz, Mund, Ault, Linke and Hartzheim. Motion carried.

The Mayor stated comments will be limited to two (2) minutes per person, with Leroy Meats and Tim Nehls having five (5) minutes. Scott Hurst, owner of Leroy Meats, stated they had applied for and were granted a Class B intoxicating liquor and beer license in February. He said the vote was unanimous to grant them the license. Hurst said he made his business plan around that. Hurst said they have done nothing wrong. He said he loves this community and plans to have a brat stand that can be used by groups for fund raisers. Hurst said it was a unanimous vote earlier and nothing has changed since that vote.

Tim Nehls, owner of Fish Tails and Liquor, said it was great Leroy Meats came to Fox Lake and that he had patronized their business in Horicon. He was told Leroy Meats' intentions were to have wine and craft beer tasting. He said he didn't object then because he didn't do that kind of thing. Then he was told they were putting in a liquor store. He said when he opened Fish Tails there wasn't gas on the lake so he set up gas, there weren't boats to rent so he set up pontoon and fishing boat rentals and he didn't compete. Nehls said Leroy Meats will be a success without liquor. Nehls said he is a small guy and the liquor sales keep his lights on in the winter.

Robert Ballweg said he has a family real estate business and pointed out business plans change as the business evolves. He pointed out the reserve liquor license comes with a \$10,000- price tag. Ballweg said this sounds like protectionism and suggested letting the market decide.

Sara Ruenger pointed out different clientele will support each business.

Sandy Quirk said the city is finally growing so let it grow. She said the city will not grow without business.

Marcy Benz, owner of Snappers, said the city has made an investment in Leroy Meats and to give them the license.

Darrell Pollesch asked how many in the audience were for growth in the city. He also asked the audience if they could name the members of the Redevelopment Authority. He said the RDA has been working on TIF # 2 and TIF #3 for the last 3 years and now have Leroy Meats and Subway, with Dollar General on the way. Pollesch said he talked with Nehls and agrees, he is a supporter of the city but he can't dictate who gets a license.

Patrick Madden, attorney for Leroy Meats, said they were told there was a license available so they applied for it. They met the qualifications and it flew through with flying colors. He said he understands people make mistakes and the City has taken steps to fix the problem with their request to the Town of Fox Lake to transfer one of their reserve licenses to the city. He said all the criteria has been met, no changes have been made at Leroy Meats. He said if the license is denied, it would be an arbitrary denial of the license. Madden said good comments have been made here tonight. The Mayor thanked everyone for their comments.

Motion by Mund, seconded by Linke to close the public hearing on the Class B reserve intoxicating liquor license application of Leroy Meats of Horicon, Inc., for 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Jenswold, Zilewicz, Mund, Ault, Linke and Hartzheim. Motion carried. Public hearing closed at 6:55 p.m.

Class B reserve intoxicating liquor-Leroy Meats

Motion by Mund, seconded by Linke to grant a Class B reserve intoxicating liquor license to Leroy Meats of Horicon, Inc., 739 W. State Street, for the minimum price of \$10,000-, for the period ending June 30, 2018. Vote in favor: Mund and Linke. Against: Zilewicz, Ault, Hartzheim and Jenswold.

Motion denied. The Mayor said the city has worked hard for growth in the city and now have a chance to see it grow. He vetoed the motion, which he said is the first time he has ever done this.

Public hearing – Class A intoxicating liquor and beer Leroy Meats

Motion by Mund, seconded by Ault to open the public hearing on the Class A intoxicating liquor and fermented malt beverage license application of Leroy Meats of Horicon, Inc., for 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Mund, Ault, Linke, Hartzheim, Jenswold and Zilewicz. Mund asked the difference between Class A and Class B. The Mayor stated with Class A the product is purchased and taken off the premise for consumption, where Class B is purchased and can be consumed on the premise.

Robert Ballweg pointed out a Class A license is essentially a liquor store and he is in favor of granting the license to Leroy Meats.

Motion by Mund, seconded by Linke to close the public hearing on the Class A intoxicating liquor and fermented malt beverage license application of Leroy Meats of Horicon, Inc., for 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Ault, Linke, Hartzheim, Jenswold, Zilewicz and Mund. Motion carried. Public hearing closed at 7:00 p.m.

Class A intoxicating liquor and beer – Leroy Meats

Motion by Mund, seconded by Linke to grant a Class A intoxicating liquor and fermented malt beverage license to Leroy Meats of Horicon, Inc., 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Linke, Hartzheim and Mund. Against: Jenswold, Zilewicz and Ault. Tie vote. The Mayor votes yes. Motion carried.

Public hearing on Class A, Class B license renewals

Motion by Mund, seconded by Linke to open the public hearing on the following renewal applications submitted for the sale of ferment malt beverages and intoxicating liquor, beginning July 1, 2018: Class A license fermented malt beverage and intoxicating liquor-Timothy J. Nehls, Kwik Trip Inc., Leroy Meats of Horicon, Inc., Class B fermented malt beverage-Fox Lake Pizzeria LLC, Class B fermented malt beverage and intoxicating liquor- Robert Ballweg, Benz Group LLC, D & T's Tavern LLC, Marci's on Main LLC, Robert W. Ginther Post 521 of the American Legion Dept of WI, Jeffrey Tappy and James Zindars, for the period ending June 30, 2019. Vote in favor: Hartzheim, Jenswold, Zilewicz, Mund, Ault and Linke. Motion carried. Public hearing opened at 7:05 p.m.

Scott Hurst asked what the Mayor's veto met on the Class B intoxicating license. The Mayor said the motion did not pass so they would not get the Class B intoxicating liquor license. He said the Class A license was approved so they can sell beer and liquor but cannot consume it on site. Devitt said there is a process to follow with the veto and it would come forward to the next meeting. Marcy Benz asked if the Class A license cost \$10,000- also. The clerk said no. Tim Nehls said he was hoping that it would never come to this. He said he appreciated the support from the people that stood up for him, but he hated to see people fighting like this and he didn't want to see it because it tears the community apart. Nehls said against his better judgement, he was willing to let them do what they want to do. He said in the long term, it's just going to cost the city money because now there's going to be a lawsuit and eventually, they're going to get their license. Nehls said he appreciates the support given him and as far as he was concerned, you might as well let them do what they want to do. Zilewicz asked if we can go back and revote, based on what Nehls' has said. Hurst asked if the council can reconsider the Class B intoxicating liquor motion. Hartzheim said what confused him is that you initially said you were just going to do beer and wine tasting. Hurst said he looked at both types of licenses and found that wine is considered an intoxicating liquor so they couldn't do the wine tasting without a Class B liquor license.

Ballweg said he was amazed how the conversation changed once Nehls made his speech. He said this isn't about Nehls, but what is right for the city. The clerk suggested leaving the public hearing open while attorneys Devitt and Madden discuss how to proceed and go to other items on the agenda.

Leased land agreement with John/Barbara Reчек

Motion by Zilewicz, seconded by Linke to authorize the Mayor to sign the revised leased land agreement, with John and Barbara Reчек, for a five (5) year term, with first consideration to renew the lease agreement for an additional five (5) years. Vote in favor: Jenswold, Zilewicz, Mund, Ault, Linke, and Hartzheim. Motion carried.

Resolution 5-2018—Redemption of GO bonds

Motion by Zilewicz, seconded by Mund to adopt resolution 5-2018 a “resolution authorizing the redemption of general obligation refunding bonds, dated September 23, 2018” and authorize Mayor and clerk to sign same. Vote in favor: Zilewicz, Mund, Ault, Linke, Hartzheim and Jenswold. Motion carried.

Transfer Class B license

Motion by Linke, seconded by Mund to approve a Class B (intoxicating liquor and fermented malt beverage) retail license transfer, person to person, from Gary T. Ballweg to Robert W. Ballweg, personal representative, for the period ending June 30, 2018. Vote in favor: Mund, Ault, Linke, Hartzheim, Jenswold and Zilewicz. Motion carried.

2018-2019 Cigarette licenses

Motion by Linke, seconded by Mund to grant cigarette and tobacco products retail licenses to Benz Group LLC, Fish Tales Bait and Liquor and Kwik Trip Inc. Dawn Lewandowski agent, for the period ending June 30, 2019. Vote in favor: Ault, Linke, Hartzheim, Jenswold, Zilewicz and Mund. Motion carried.

2018-2019 Operator licenses

Motion by Linke, seconded by Ault to grant operator licenses to: Rachel Beatty, Marcy Benz, Andrea Bosch, Fred Bohn, Linda Braaten, Margaret Buelow, Steve Christian, Jon Curry, Stacy Dahlke, Jodi Dates, Misty DeMaa, Cyndee Douma, Bruce Dunbar, Michael Ensley, Shelly Ewert, Lori Grande, Barry Hanamann, Rebecca Henne, Randy Hurst, Kristine Isensee, Carol Jahns, Kim Kerwin, Megan Krintz, Michelle Krueger, Hannah Leystra, Jonathan Marthaler, Tracy Marthaler-Scott, Rachel Miller, Lorraine Mund, Teresa Nelson, Royce Neuman, Jacqueline Nowicki, Stacy Penner, Rachel Pittman, Chisa Roeske, Luke Schlavensky, Derek Schoenherr, Kilie Shaw, Angela Sinotte, Darvin Soles, Mary Soles, Samantha Summers, Jeff Tappy, Steven Tetzlaff, Dale Tuel, Shannon Verbos, Amber Walker, Nicole Waterworth, Karen Wiersma, Deborah Wilke, Donald Zilewicz, Diane Zindars and James Zindars, for the period ending June 30, 2019. Vote in favor: Linke, Hartzheim, Jenswold, Zilewicz, Mund and Ault. Motion carried.

Personnel policy changes

Motion by Hartzheim, seconded by Mund to approve the proposed changes to the City of Fox Lake personnel policies and procedures manual, as presented at the May 16, 2018 committee of the whole meeting. Vote in favor: Hartzheim, Jenswold, Zilewicz, Mund, Ault and Linke. Motion carried.

Reconsider Reserve Class B for Leroy Meats

City attorney Devitt said the council could reconsider the motion granting a Class B reserve intoxicating liquor license to Leroy Meats. Motion by Zilewicz, seconded by Jenswold to reconsider granting a Class B reserve intoxicating liquor license to Leroy Meats of Horicon Inc., at 739 W. State Street, for the minimum price of \$10,000-, for the period ending June 30, 2018. Vote in favor: Jenswold, Zilewicz, Mund, Ault, Linke and Hartzheim. Motion carried.

Motion by Jenswold, seconded by Zilewicz to grant a Class B reserve intoxicating liquor license to Leroy Meats of Horicon, Inc., 739 W. State Street, for the minimum price of \$10,000-, for the period

ending June 30, 2018. Vote in favor: Zilewicz, Mund, Ault, Linke, Hartzheim and Jenswold. Motion carried.

Close public hearing on renewal licenses

Motion by Linke, seconded by Ault to close the public hearing on the above listed Class A and Class B license renewal applications for the period ending June 30, 2019. Vote in favor: Ault, Linke, Hartzheim, Jenswold, Zilewicz and Mund. Motion carried. Public hearing closed at 7:30 p.m.

Reconsider Class A beer/liquor license application of Leroy Meats

Motion by Linke, seconded by Mund to reconsider granting a Class A intoxicating liquor and fermented malt beverage license to Leroy Meats of Horicon, Inc., 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Linke, Hartzheim, Jenswold, Zilewicz, Mund and Ault. Motion carried.

Motion by Mund, seconded by Zilewicz to rescind the Class A intoxicating liquor and fermented malt beverage license to Leroy Meats of Horicon, Inc., 739 W. State Street, for the period ending June 30, 2018. Vote in favor: Hartzheim, Jenswold, Zilewicz, Mund, Ault and Linke. Motion carried.

Class A fermented malt beverage/intoxicating liquor licenses

Motion by Mund, seconded by Ault to grant a Class A fermented malt beverage and intoxicating liquor licenses to: Timothy J. Nehls and Kwik Trip Inc. Dawn Lewandowski agent, for the period ending June 30, 2019. Vote in favor: Jenswold, Zilewicz, Mund, Ault, Linke and Hartzheim. Motion carried.

Class B fermented malt beverage license

Motion by Mund, seconded by Ault to grant a Class B fermented malt beverage license to Fox Lake Pizzeria LLC, for the period ending June 30, 2019. Vote in favor: Zilewicz, Mund, Ault, Linke, Hartzheim and Jenswold. Motion carried.

Class B fermented malt beverage/intoxicating liquor licenses

Motion by Mund, seconded by Ault to grant Class B fermented malt beverage and intoxicating liquor licenses to: Robert Ballweg, Benz Group LLC Marcy Benz agent, D & T's Tavern LLC, Leroy Meats of Horicon Inc. Scott Hurst agent, Marci's on Main LLC, Robert W. Ginther Post 521 of the American Legion Dept of WI Donald Zilewicz agent, Jeffrey A Tappy, and James Zindars for the period ending June 30, 2019. Vote in favor: Mund, Ault, Linke, Hartzheim, and Jenswold. Abstain: Zilewicz. Motion carried.

With no other business to come before the Council, motion by Hartzheim, seconded by Zilewicz to adjourn. Vote in favor: Ault, Linke, Hartzheim, Jenswold, Zilewicz, and Mund. Motion carried. Meeting adjourned at 7:37 p.m.