

**City of Burlington
Official Minutes
Common Council
Robert Miller, Mayor
Beverly R. Gill, City Clerk
August 17, 2011**

1. CALL TO ORDER - ROLL CALL

Mayor Bob Miller called the meeting to order at 6:47 p.m. starting with roll call. Aldermen present: Bob Prailles, Ed Johnson, Peter Hintz, Jim Prailles, Tom Vos, Steve Rauch, Katie Simenson
Absent: Jeff Fischer

Also present: City Administrator Kevin Lahner, City Attorney John Bjelajac, Assistant to the Administrator Megan Johnson, Police Lt. Mark Anderson, Treasurer Steve DeQuaker, Streets and Parks Supervisor Dan Jensen, Utility Director Connie Wilson, Library Director Gayle Falk, Tom Foht of Kapur Engineering

2. PLEDGE OF ALLEGIANCE

Mayor Miller led the council, staff and audience in the Pledge of Allegiance.

3. CITIZEN'S COMMENTS

None

4. CHAMBER OF COMMERCE REPORT

None

5. APPROVAL OF COMMON COUNCIL MINUTES FOR AUGUST 2, 2011

A motion was made by Vos with a second by Simenson to approve the Common Council Minutes of August 2, 2011. With all in favor, the motion carried.

6. LETTERS AND COMMUNICATIONS

None

7. REPORTS BY ALDERMANIC REPRESENTATIVES AND DEPARTMENT HEADS

Alderman Jim Prailles reported that he wanted to correct what had been stated in the local newspaper in regard to recusing himself from voting on the liquor license applications for Lucky Star/WAN, LLC. The paper reported that he had recused himself from voting because of Wanasek. He stated that the report was inaccurate and wrong and requested the newspaper correct the statement. He further said that he had done work for both parties and that was the reason for abstaining from voting.

The second issue Alderman Jim Prailles wanted to comment on was the article in the paper that quoted Alderman Rauch's statement regarding stalling on the vote because of Wanasek. Alderman Jim Prailles reported that the statement was untrue.

Alderman Bob Prailles questioned if there had been any progress in the request that had been made for a stop sign at Edgewood and Ridgeview. Lahner reported that he did not have information at this time.

Johnson requested information on a building at 801 North Pine Street that someone had been remodeling but, now the work has stopped. Lahner will request an update from the building inspector on this property and report back to council.

8. REPORTS 1-2

A motion to approve Reports 1-2 was made by Rauch with a second by Hintz. With all in favor, the motion carried.

9. PAYMENT OF VOUCHERS

A motion was made by Simenson with a second by Johnson to approve pre-paid, vouchers and reimbursements in the amount of \$324,958.45. Roll Call Ayes: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Simenson. Nays: None Motion carried 7-0

10. LICENSES AND PERMITS

A motion was made by Bob Prailes with a second by Vos to approve the Operator's Licenses as presented. With all in favor, the motion carried.

Aldermen Hintz and Jim Prailes requested to be recused from the vote and discussion on the awarding of the Combination "Class B" License.

A motion was made by Johnson with a second by Simenson to award the Combination "Class B" License to Lucky Star.

Bob Prailes commented that it was his understanding the Brickyard had contacted the city regarding the liquor license for the BBC in the middle of June. Lahner replied that was correct and information had been given to them at that time for a renewal of the license. Lahner stated that it wasn't until later that he became aware of the difficulties in the renewal of the license due to tax liens. Bob Prailes said better communication from the city regarding the process would have been beneficial to WAN, LLC.

Vos stated that the city does not have a policy of a "first come, first serve" for liquor licenses.

Simenson questioned how council should decide to issue the license as it is not "first come, first serve". She stated that both applications are before council and her concern was issuing a license to a vacant building.

Vos said in his opinion, the former BBC building which is set up as a bar would become worthless without a liquor license. He questioned if Lucky Star would be harmed if they don't get the license at this time but waited for another license to become available. He also added that in his opinion, the liquor license from the BBC had technically never left the control of WAN, LLC.

Atty. Bjelajac offered clarification on a land contract for the sale of bar property. He stated that the sale of bar property through a land contract is one separate item. He said when a bar is sold there is a contingency in the land contract that the purchaser must be qualified to get the liquor license to operate the bar. The purchaser of the real estate is a separate issue. He further stated there is no interlocking relationship between the liquor license that is issued and the purchaser of the real estate. He also did not feel it was the city's responsibility to provide advice on business plans as the parties involved should be astute enough to realize what needed to be done.

Rauch said there were two applications in which one was filed timely and one was not. He agreed with the city attorney as he did not think it was the duty of the city to hold anyone's hand during the permitting process. He said that Lucky Star had put a lot of money into their remodeling for Phase One and would like to move on to Phase 2. He further stated that Lucky Star was on the agenda for the July 17th meeting and should have received the license at that time.

Alderman Bob Prailes then suggested that Rauch was back on the "first come, first serve" basis for the granting of a liquor license. Bob Prailes then said that consideration should be given to the business that would offer the most to the community. He then stated that WAN, LLC had legally applied for the license that was before the council this evening.

Lahner said that WAN, LLC did apply but could not be considered at the July 17th meeting due to publication requirements. WAN, LLC had then requested that council not act on the lone license application at the July 17th meeting. WAN, LLC requested that both applications be considered at a later date.

Johnson questioned if there was a period of time that a license can be held without having someone using it. The mayor replied that the business could keep the license as long as they renewed it.

In regard to the Reserve License, Rauch would not want to see someone sit on the license without using it and would like to see a mechanism in place so that doesn't happen.

Lahner replied there already is something in place with the state law that allows the council to hold a hearing to have the license returned to the city. He added that he had been in contact with Mr. Jim Jones of the Boneyard who currently holds the Reserve License and he is willingly returning the license. Lahner stated that the city will be returning the fee for the Reserve License.

Attorney Pete Ludwig, representing Lucky Star said that in the eyes of the law, the timing of the applications meant nothing; it was only the merits of the situation. He stated that they have been in business for over three decades and have not had any health or liquor violations. They had recently remodeled and created an area for a bar and have been waiting for an opportunity to acquire the license. He concluded by stating that Lucky Star was a viable business and the other applicant only had an empty building.

Atty. Brian Wanasek, representing WAN, LLC said the bar will reopen immediately once there is a license. He said a large amount of money had been invested in BBC but it will all be worthless without a liquor license.

Mr. Jim McCourt, 200 Origen Street argued that in prior years tough decisions had to be made and nobody was excused; he felt that all seven members of the council should be voting on this issue as they were elected to represent the people.

Atty. Bjelajac explained that under the city's Code of Ethics there were reasons not to be included in a vote or discussion. Among those reasons: financial interest, close business ties or political association. It was because of close business association that the three aldermen had been justifiably recused.

Mr. Jim McCourt, 200 Origen Street stated that the aldermen should have the opportunity to say whether they will vote and not be told they can or cannot vote.

Mr. Bill Milatz, 801 Teutonia, a bartender for over forty years, stated that he had never seen such a quandary with licensing. He said that historically, the license has always stayed with the building.

Mr. John Puntillo, owner of John's Main Event said that the city has always been helpful in the past if he had forgot to pick up and pay for his license. He also said that the license should stay with the building.

Mr. Fred Mabson, owner of Fred's had also been lax in picking up his license and had been reminded by the city to pick up his license.

Mr. Paul Giamio, 181 Kendall Street spoke in favor of granting the license to WAN, LLC.

Mr. Kevin Bird, 2903 Browns Lake Drive, stated that the business was vacant because it was owned by Mr. Jeff Fischer and WAN, LLC could not just step in and start running it. Bird stated that if they had known on June 18th that they could have applied for the license at that time, they would have applied.

Roll Call Ayes: Johnson, Rauch, Simenson Nays: Bob Prailes, Vos Motion carried 3-2 to award the liquor license to Lucky Star.

11. APPOINTMENTS AND NOMINATIONS

None

12. PUBLIC HEARING

None

13. RESOLUTIONS

A. RESOLUTION 4492(17) "A RESOLUTION TO APPROVE TASK ORDER NUMBER EIGHT WITH KAPUR & ASSOCIATES FOR CIVIL ENGINEERING SERVICES WITH THE SANITARY SEWER AND FORCEMAIN IMPROVEMENT PROJECT ON THE STH 11 LIFT STATION IN THE AMOUNT OF \$38,000"

A request for a second reading and a motion to approve was made by Hintz with a second by Simenson. Roll Call Ayes: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Simenson Nays: None Motion carried 7-0

14. ORDINANCES

A. ORDINANCE 1929(6) "AN ORDINANCE TO CONSIDER REDISTRICTING THE BOUNDARIES OF THE ALDERMANIC DISTRICTS"

A request for a second reading and a motion to approve was made by Johnson with a second by Simenson. Roll Call Ayes: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Simenson Nays: Rauch Motion carried 6-1

B. ORDINANCE 1930(7) "AN ORDINANCE TO CONSIDER AMENDING THE OFFICIAL TRAFFIC MAP TO CREATE A NO PARKING ZONE ON SOUTH PINE STREET FROM DUNFORD DRIVE TO THE BYPASS"

A request for a second reading and a motion to approve was made by Jim Prailes with a second by Simenson. Roll Call Ayes: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Simenson Nays: None Motion carried 7-0

15. MOTIONS

None

16. ADJOURN INTO CLOSED SESSION

A motion was made by Hintz with a second by Jim Prailes to adjourn into closed session at 7:51 p.m. Roll Call Ayes: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Simenson Nays: None Motion carried 7-0

17. RECONVENE INTO OPEN SESSION

A motion was made by Vos with a second by Rauch to reconvene into open session. With all in favor, the open session began at 8:05 p.m.

There were no recommendations from closed session.

18. ADJOURNMENT

A motion was made by Vos with a second by Rauch to adjourn the meeting. With all in favor, the meeting adjourned at 8:06 p.m.

Beverly R. Gill
City Clerk
City of Burlington
Racine and Walworth Counties