

**CITY COUNCIL MINUTES  
FORT ATKINSON, WISCONSIN  
May 19, 2009**

1. CALL MEETING TO ORDER

A regular meeting of the City Council was called to order by President Mielke at 7:00 p.m. in the Council Chambers of the Municipal Building.

2. ROLL CALL

On call of the roll, members present were:

Loren Gray  
Davin Lescohier  
Richard Schultz  
Mark Zastrow  
John Mielke

Also present were the City Manager, City Clerk/Treasurer, City Engineer, City Attorney Parks & Recreation Director and Assistant City Engineer.

3. APPROVAL OF MINUTES OF APRIL 28, 2009 SPECIAL AND CLOSED SESSION COUNCIL MEETINGS, AND OF MAY 5, 2009 REGULAR COUNCIL MEETING

The minutes of the April 28, 2009 special and closed session Council meetings, and of the May 5, 2009 regular Council meeting were approved by consent.

4. PUBLIC HEARINGS

a. PUBLIC HEARING ON CLASS A BEER LICENSE FOR STOP-N-GO SOUTHSIDE SHELL, 1680 JANESVILLE AVENUE.

Pres. Mielke opened the public hearing on the Class A beer license for Stop-N-Go Southside Shell, 1680 Janesville Avenue and stated if anyone wished to speak on this topic, he or she should come to the podium and state his or her name and address for the record.

After three calls and hearing no comments, Pres. Mielke closed the public hearing.

The City Manager informed the Council that Southside Shell currently has a Revolving Loan with the City which needs to be taken care of, as well as an outstanding invoice with the Water Department.

Cm. Zastrow, seconded by Cm. Gray, moved to approve the Class A beer license for Stop-N-Go Southside Shell at 1680 Janesville Avenue, contingent on the seller paying off its revolving loan and outstanding invoices to the City. The motion carried on a voice vote.

5. PETITIONS, REQUESTS AND COMMUNICATIONS

- a. REQUEST BY FORT ATKINSON BOYS & GIRLS CLUB TO HOLD FLY-IN AT THE AIRPORT ON MAY 30, 2009.

The City Manager said the request is for a fundraiser for the Boys & Girls Club. The hours of the event will be 7:30 a.m. - 11:00 a.m. This event was held last year, and there were no issues with it.

Chip Day, representing the Boys & Girls Club, said there will be people flying in from all over southern Wisconsin for the event. There will also be a Ford Mustang rally held at the same time. Also on that day, there is a run/walk being sponsored by the Hospital, as well as a "cow tag" drop raffle.

The City Attorney asked the Boys & Girls Club representatives if there will be liability insurance provided. It was indicated they would be obtaining insurance through their corporate office for this event.

Cm. Schultz, seconded by Cm. Lescohier, moved to approve the request by the Fort Atkinson Boys & Girls Club to hold a fly-in at the Airport on May 30, 2009. The motion carried on a voice vote.

6. RESOLUTIONS AND ORDINANCES

None.

7. REPORTS OF OFFICERS, BOARDS AND COMMITTEES

Cm. Zastrow, seconded by Cm. Gray, moved to accept and file the minutes of the Water Tower Committee meeting held April 30, 2009; the minutes of the Public Library Board meeting held April 6, 2009; the Electrical, Building and Plumbing Permit Reports for April, 2009; the minutes of the License Committee meeting held May 11, 2009; and the Minutes of the Jefferson County Economic Development Consortium meeting held April 8, 2009. The motion carried on a voice vote.

8. UNFINISHED BUSINESS

- a. REQUEST BY COUNCILMAN SCHULTZ TO RESCIND THE ORDINANCE RESTRICTING FISHING ON THE RIVERWALK.

Cm. Zastrow, seconded by Cm. Gray, moved to refer the Ordinance to the Ordinance Committee.

Pres. Mielke indicated this is not a public hearing, but he will allow approximately 15 minutes for public comment.

The City Attorney said the job of the Ordinance Committee would be to decide to either repeal the Ordinance, keep it as is, or make modifications to it, which may also include a public hearing. The City Manager said the members of the Ordinance Committee are Councilmen Schultz and Lescohier and President Mielke.

Cm. Schultz addressed the Council at this time. He said he did not find referral to a Committee all that objectionable; he did question the value of referring it to a Committee. He said as a community, this matter has been discussed for a year and a half, and he doesn't think there is any question where the community stands. He also said that during discussions, references were made to a silent majority who are just not speaking up. He said it appears clear that silent majority does not exist. He said it is also clear by the results of the recent Council election, where three new members were elected. Cm. Schultz said he believes he received his 63% of the vote due to his position on the fishing ban. This community is overwhelmingly against this Ordinance.

Cm. Schultz said he is recommending that a task force be created to look at the issues. He said things to be looked at are the possibility of putting in permanent fishing pole holders, trash cans, policing, and signs. He said the City went right to a "nuclear option" on the matter. He wonders what the Ordinance Committee would do now that they didn't do in the past on this matter. The first thing to do is to repeal the ban and then start talking about the issues and dealing with them in a real way so that fishing and people can be compatible on the riverwalk. Cm. Schultz said he would like to see the task force committee become permanent, as there will be other issues in the future that will need to be addressed. He hopes the motion to refer this matter to the Ordinance Committee is voted down, and that Ordinance No. 661 be repealed.

Pres. Mielke said he feels the ban needs to go; it needs to change. He said he would like a committee to look at the real issues, and have those be part of the solution. The committee should decide on the compatible uses and address the legitimate issues that have been raised. He does not feel this would be a setback for the ban movement.

Cm. Schultz said there are a lot of people in the community who should have input on this matter with different perspectives. Another point is it is fishing season, and we shouldn't drag this matter out. He said there are no signs there at this time indicating there is a ban, because there is no real desire on anyone's part to enforce it, so why keep it on the books.

Cm. Gray said he feels Cm. Schultz makes some very valid arguments. He seconded the motion to move it to the Ordinance Committee because it seemed like a reasonable thing to do. He agrees that the major opinion on the issue is that the Ordinance itself should not exist. His concern is that, while he wants the Ordinance repealed, he wants safety on the riverwalk. Something needs to happen to satisfy the compatibility issues that exist now with fishing and non-fishing activities on the riverwalk. It needs to be usable for everyone safely. There are groups within the City that have an interest in the riverwalk that would be willing to help monitor the problems. It is difficult for the City to monitor everything that goes on in the City because of its limited resources.

Cm. Lescohier said he would like to see the City avoid “yo-yoing” back and forth. He said referring it back to the Ordinance Committee gives the public another opportunity to get in front of the Council. He is comfortable with sending it back to the committee to get the public input.

Cm. Gray asked Pres. Mielke if he felt the Ordinance Committee could generate that kind of discussion and activity prior to bringing back a recommendation to the Council. Pres. Mielke said he would hope they would; that would be the whole point in referring it to the Committee in his mind. Cm. Gray said he felt that if there is a way to establish a committee that would deal with and look into the issues relevant to the riverwalk and use of the riverbanks outside of the Ordinance Committee; that is where the City would get the best information to come forward. He said if it is referred to the Ordinance Committee, the issue is the Ordinance, not how do we get around it.

Cm. Schultz said he is recommending that a task force be set up and that the Council members provide nominations to the Council President, who he would like to determine the size and membership of the task force committee. He would like people who are both for and opposed to the ban on the committee.

Pres. Mielke said the motion before the Council at this point is to refer the Ordinance to the Ordinance Committee. Pres. Mielke then opened the meeting to the audience and asked that similar comments not be repeated.

Frank Micale, President of the Rock River Koshkonong Association, said his group was vocal on their opposition to the ban. They tried to point out that the previous Council did not do a well thought out job when adopting the Ordinance. He would support Cm. Schultz’s effort to remove this fishing ban and go back and look at the question. They never said there were not problems, but they felt the Council took the easy way out and just banned the activity rather than addressing the particular problems being experienced. Their group believes that if the “bad actors” would have been addressed at the time of the problem, there would not have been a need for the ban. There are probably things that could be done to make fishing more compatible with the other uses on the riverwalk, but those were never looked into either.

Their group circulated petitions in and outside of the City, and got over 1,000 signatures and were only out getting signatures for a couple of weeks. In closing, he asked that the Council support Cm. Schultz's request and repeal the ban at this meeting and then go back and look at the problems that are being complained about to address them in a different way. Their group would not be opposed to helping the City out to add things to make fishing more conducive along the riverwalk.

Jim Furley said he also agreed with Cm. Schultz and that the matter be taken care of at this meeting. If this goes back to the Ordinance Committee, it will go on for weeks or months. Tourists want to fish now, as so do the local people.

Tom Freeman, President of the Wisconservation Club said he wanted to thank Cm. Schultz for getting this issue back to the Council. He said he realizes there are problems, but they seem to be quite minor and could be resolved quite easily. If the Council would look to the community and organizations, there are players that want to help. They could come forth with the dollars, efforts and labor hours and if we work together, we should be able to take care of the issues. It is evident by the change in leadership in the City that the public was opposed to the ban. He agrees with a task force being appointed.

Sandy Mayer, President of High Pointe Properties said she was involved with the creation of the riverwalk from the beginning when the original rules were being discussed. Fishing was discussed approximately six years ago. It was decided there would not be skateboarding, bicycles, and many activities that would not be safely allowed. The riverwalk is too narrow in a number of areas to accommodate many uses. It was decided at that time to allow fishing and then wait and see how it worked out.

Ms. Mayer wanted to set the record straight that it was not the business owners who have been accused of starting this fishing ban, it was the City's Parks and Recreation and City staff members who observed problems. They did ask for the business owners' opinions on the matter. It simply is an issue of compatible use, safety and public use for all. She wanted to make sure that everyone keeps all the facts in mind and to not get into the hype of the issue. She is not in favor of repealing the Ordinance; there are things that could be looked at. Repealing the Ordinance would be a step backwards and is a poor procedure for the City. It would be like a yo-yo if the Council adopts the Ordinance and then repeals it. There were qualified people as well as City staff giving recommendations that developed the Ordinance.

Cm. Schultz asked if the motion is voted down, would the Council then have the opportunity to move to appoint a task force. Pres. Mielke said that was the motion. Cm. Zastrow said it could be a portion of the Ordinance Committee deliberations to create a task force.

Cm. Lescohier said we have been very passively enforcing the Ordinance, and asked if the Police Department is receiving any complaints of people using the area where fishing is banned for fishing now. The City Manager said the rationale for it not being signed yet is due in part to the flooding that took place last year. The signage was going to be placed on the railing along the riverwalk, which after the floodwaters receded, the railings needed to be repainted prior to the signage installation. That delayed sign placement for most of the year. Then winter came. Next, the candidates started coming out and there seemed to be a campaign issue on this fishing ban, so it was decided to delay the signing. The signage the City was looking at was permanent, and we did not want to spend all the money to do the permanent signage when there was a possibility of the Ordinance being repealed.

Cm. Schultz again said he is opposed to sending this Ordinance back to the Ordinance Committee. He wants to see it go to a task force.

Pres. Mielke requested a roll call vote on the motion to refer the Ordinance to the Ordinance Committee. On call of the roll, the motion failed on a 2-3 vote with Cm. Gray, Cm. Schultz and Pres. Mielke voting against the motion.

Cm. Schultz moved that a task force be created to study the issues on the riverwalk and that the President of the Council be empowered to appoint the committee as to what size he deems reasonable as well as the membership he deems appropriate from nominations from the City Council.

Cm. Gray said before a second is made to Cm. Schultz's motion, are you going to refer the whole discussion about the Ordinance as part of the motion to the task force? Cm. Schultz said yes; he then questioned if the question of rescinding the Ordinance should be a separate motion.

Pres. Mielke said he understood Cm. Schultz to say he favored the creation of a task force to examine the issue. Cm. Schultz said that was true. Pres. Mielke said he took it from the comments made by Cm. Schultz that the task force would struggle with that issue and come back with a recommendation.

Cm. Schultz then restated his motion as follows: "to create a special task force, the membership and size of which will be up to the President of the Council from nominations from members of the Council to deal with all questions on the riverwalk, including whether the ban should be repealed and recommendations for solutions to the Council to the problems that we genuinely have." Pres. Mielke called for a second to the motion, which was not made. Therefore, the motion failed due to lack of a second.

Cm. Schultz, seconded by Cm. Gray, moved to repeal the fishing ban Ordinance No. 661.

Cm. Gray said his concern with Cm. Schultz's previous motion was that there have been a number of people talking about urgency, fishing season, etc. There is no way there will be a task force that is going to actually get formed, meet and come up with a decision before it is the middle of the summer. If there is urgency about allowing fishing on the riverwalk, it has to be done as a separate item.

Cm. Zastrow said that is why having the Ordinance Committee look at the issue first to determine through public hearing/public input and the potential formation of a ad hoc committee, if that was deemed a reasonable input. The Ordinance Committee can identify what the issues truly are. That is why that was, and still is, the best route to go.

Cm. Lescohier said that with the absence of signs on the riverwalk, fishing is essentially allowed right now along the riverwalk, which is why he voted for sending it to the Ordinance Committee. We have nothing that would allow the Police Department from stopping anyone from casting a line from the area between the Legion Dugout to the pedestrian bridge.

Cm. Schultz said if we aren't going to enforce it, why have it on the books.

Cm. Zastrow said it was clearly stated at this meeting why that hasn't happened – flooding, etc. There is no one that can disagree with that.

Cm. Schultz said the other issue is, should there be a ban and do we listen to the community. He doesn't question that a huge majority of the community is saying this is the wrong way to go.

Cm. Zastrow said he takes huge exception to a huge majority. He is the sole person sitting on the Council that supported it, and will continue to support it, and evidently tonight went from representing the silent majority to representing the silent minority without even knowing it. This was not an ill thought out program, maybe there is some tweaking that could be done, but by no means is it something that should just be cast aside.

Pres. Mielke said he would have preferred some committee to examine the real issues related to use on the riverwalk.

Cm. Schultz said if the Ordinance is repealed, we can come back with the ad hoc committee that will look at the other issues without dealing with the fishing ban.

Pres. Mielke said the question before the Council is shall Ordinance No. 661 be repealed. On call of the roll, the motion passed on a 4-1 vote with Cm. Zastrow voting against the motion.

Cm. Gray, seconded by Cm. Schultz, moved that with the assistance of the City government and President of the City Council, that an ad hoc committee be

formed to look into the issues of compatible uses on the riverwalk, not limited only to fishing, and to report back to the Council within a reasonable date with recommendations as to how we may enhance the safety of all activities that are allowed on the riverwalk. The motion carried on a 4-0 voice vote with Cm. Zastrow abstaining.

9. NEW BUSINESS

a. REVIEW AND APPROVE QUOTES FOR SEWER INVESTIGATION AND REPAIR SERVICES FOR WATER STREET LIFT STATION.

The City Manager said that following the flood last year, we had a tremendous amount of infiltration at the Wastewater Treatment Plant and we consequently budgeted \$15,000 to investigate the situation. Items to be investigated are leaky manhole covers and where the infiltration is coming from.

The following quotes were received:

AECOM (formerly Earthtech) Sheboygan, Wisconsin	\$11,280
Baxter and Woodman Madison, Wisconsin	\$ 8,900

The Wastewater Supervisor is recommending the bid be awarded to Baxter and Woodman at a price of \$8,900. The City has worked with Baxter and Woodman in the past and they have the capability of doing this project for us. With the remaining funds, we will begin to do repairs.

Cm. Gray asked if this is the area where there was a large amount of water backing up during the flood last year. The City Manager said it is more the infiltration into the sanitary sewer system that is being investigated.

Cm. Schultz, seconded by Cm. Gray, moved to approve the quotes from Baxter and Woodman in the amount of \$8,900 to perform the sewer investigation project. On call of the roll, the motion carried unanimously.

b. REVIEW AND APPROVE BIDS FOR 2009 STREET PROGRAM.

There are two components to the 2009 Street Program; one for milling, pulverizing and paving, and the second for chip seal. The asphalt work was budgeted for \$333,500 and the low bid is \$261,263.37. For the chip seal, the budget was \$85,000 and the low bid is for \$77,124.65. The following is a complete list of the bids received:

<u>CONTRACTOR</u>	<u>MILLING, PULVERIZING &amp; PAVING</u>	<u>CHIP SEAL</u>
B.R. Amon & Sons	\$261,263.37	No bid
Frank Bros., Inc.	\$269,097.94	No bid
Jefferson Co. Hwy. Dept.	\$310,891.37 *	\$53,289.64 *
Payne & Dolan, Inc.	\$327,657.34	No bid
Fahrner Asphalt	No bid	\$77,124.65
Scott Construction, Inc.	No bid	\$87,734.13

\* Estimate only

The City Attorney has ruled that the County Highway bid was an estimate and not an actual bid, so it cannot be accepted.

Cm. Gray asked how many years the City has been using the chip seal application rather than other applications. The City Engineer said it has been our preferred method for between six to eight years. The slurry seal application previously used left bad surfaces. The City Engineer said the slurry seal application works until the pavement underneath begins to crack.

Cm. Gray, seconded by Cm. Schultz, moved to approve the bid from B.R. Amon & Sons for the milling, pulverizing and paving project in the amount of \$261,263.37, and the bid from Fahrner Asphalt for the chip seal project in the amount of \$77,124.65. On call of the roll, the motion carried unanimously.

10. MISCELLANEOUS

a. REQUEST TO SET AIRPORT COMMITTEE MEETING DATE.

The City Engineer is requesting to set an Airport Committee meeting date. Cm. Zastrow is the Council representative on the Airport Committee and indicated the date was fine with his schedule. The meeting was set for Thursday, June 11, 2009 at 4:30 p.m.

b. GRANTING OPERATOR LICENSES.

Cm. Lescohier, seconded by Cm. Gray, moved to approve the following list of applicants for operator licenses for the 2008-2010 license period:

Regular:

Richard L. Akins	Bienfangs
Gwen E. Housley	Paddy Coughlins
Cindy S. Didion	Soap-n-Pepper
Karen L. Johnson	Soap-n-Pepper

Lawrence E. Mullen	Legion Dugout
Nicole E. Nichols	KP Mart
Sara J. Schreiber	Soap-n-Pepper
Andrea M. Virsnieks	Salamones
Jaquelyn M. Weber	Lions Quick Mart

The motion carried on a voice vote.

c. CITY, SEWER AND WATER FINANCIAL STATEMENTS AS OF APRIL 30, 2009.

The City Manager said everything seems to be in order at this time. We don't seem to be having the budget crises at this point that other communities are, because we don't rely on sales tax for any of our revenues, where most of them are getting hit. Our expenditures are a little below the percentage through April and fortunately the snow season is over and we shouldn't have any huge overages like last year.

Cm. Gray asked if there are any foreseeable problems with the Governor's proposed reductions in State spending. The City Manager said we are going to have some real issues with that, especially depending on how they tie the levy limits to the shared revenue cuts. It appears the shared revenue cuts are now going from 1% to at least 5% and possibly higher. We get a little over one million dollars in shared revenues, so it will be about a \$50,000 cut. The compounding comes when our revenues go down and the amount we can increase our levy stays the same. There are a number of fees charged to the City by the State that will be increasing next year as well.

Cm. Schultz, seconded by Cm. Gray, moved to accept and file the City, Sewer and Water Financial Statements as of April 30, 2009. The motion carried on a voice vote.

11. CLAIMS, APPROPRIATIONS AND CONTRACT PAYMENTS

a. VERIFIED CLAIMS.

Cm. Gray, seconded by Cm. Lescohier, moved the bills in the amounts of \$340,867.86 for the City (Fund 1); \$17,309.08 for the Sewer Utility (Fund 2); \$53,045.15 for the Water Utility (Fund 3); \$68,710.57 for Long-Term Borrowing (Fund 4); \$601.00 for Downtown Economic Development (Fund 13); \$1,796.00 for Northwest Corridor Development (Fund 14); and \$131,447.54 for Payroll #9 as per Schedule N-94 on file in the office of the City Clerk/Treasurer and as audited and approved by the Finance Committee be allowed and orders be authorized drawn on the proper funds for their payment. On call of the roll, the motion carried unanimously.

12. ADJOURNMENT

Cm. Schultz, seconded by Cm. Lescohier, moved to adjourn the May 19, 2009 regular City of Fort Atkinson Council meeting at 8:08 p.m. The motion carried on a voice vote.

/s/ Matt Trebatoski  
City Clerk/Treasurer