

**Common Council
of the City of Onalaska**

Tuesday, November 10, 2015

1

1 The Meeting of the Common Council was called to order at 7:00 p.m. on Tuesday, November
2 10, 2015. It was noted that the meeting had been announced and a notice posted at City Hall.

3
4 Roll call was taken, with the following members present: Mayor Joe Chilsen, Ald. Jim Binash,
5 Ald. Jim Bialecki, Ald. Barry Blomquist, Ald. Jim Olson, Ald. Harvey Bertrand, Ald. Bob Muth

6
7 Also Present: City Clerk Cari Burmaster, City Attorney Sean O’Flaherty, Financial Services
8 Director/Treasurer Fred Buehler, City Engineer Jarrod Holter, Land Use and Development
9 Director Brea Grace, Parks and Recreation Director Dan Wick

10
11 **Item 2 – Pledge of Allegiance**

12
13 The Pledge of Allegiance was recited.

14
15 **Item 3 – Public Input: (limited to 3 minutes/individual)**

16
17 Mayor Chilsen welcomed public input at this time.

18
19 **Andy Lefebre, Pastor of Rivers Harvest Church**
20 **1001 Quincy St.**
21 **Onalaska**

22
23 “I would just like to say a prayer, but before I do I want to mention this gentleman who sat in the
24 back in the church got up before the sermon was done. The pastor said, ‘Sir, where are you
25 going?’ He said, ‘I’m going to get a haircut.’ [The pastor] said, ‘Can’t you wait until the end of
26 the sermon?’ [The man] said, ‘I didn’t need one before you started.’ If you would like to bow
27 your head, I am just going to say a quick prayer for you guys: *‘Father, we just thank you for*
28 *these gentlemen. We thank you, Lord, for your hand upon their lives. We ask that you would*
29 *bless them. Lord, you said in James 1 if we ask for wisdom you would give it. So Lord, we ask*
30 *for your wisdom in making the decisions for this city. We thank you for this, and we give you*
31 *glory. In Jesus’ name, Amen.’ ”*

32
33 **Nancy Tolvstad**
34 **369 5th Avenue North**
35 **Onalaska**

36
37 “You might remember me; you honored me with a Proclamation Day on March 10, and that was
38 for Onalaska research that I have done with the help of my daughter, Carol Krogan. I don’t
39 believe any members of the Council have had a chance to view it.” Nancy referred to past City
40 of Onalaska businesses and noted she has nine books. Nancy invited Council members to visit
41 the museum located at the library on Monday, November 16. Nancy said she will have all of her
42 research at the Library from 10 a.m. until 8 p.m. Nancy also noted she will be the program for
Reviewed 11/12/15 by Cari Burmaster

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2

43 the Onalaska Historical Society meeting, which will be held at 6:30 p.m. on Tuesday, November
44 17 in the library conference room. Nancy said she will be sharing information regarding the
45 Black River Dam and Lake Onalaska, as well as the bench located at the first rest area north
46 along State Trunk Highway 35. Yellow tape was placed in front of the bench for the dedication.
47 Nancy also complimented the “spectacular” views at the rest area as well as the Cemetery
48 Committee.

49

50 **Dale Olson, Partner at Springbrook Community Assisted Living**
51 **861 Critter Court**
52 **Onalaska**

53

54 “I’m here this evening to ask your consideration for the parking along Critter Court for our
55 daytime visitors from the community here in Onalaska who come to use our facilities. Our
56 parking is kind of stretched, and we have a lot of visitors from within the community who use
57 our pool and our other therapy processes. I want to thank you for your consideration of that
58 parking tonight.”

59

60 **Shawn McAlister**
61 **1408 Johnson Street**
62 **Onalaska**

63

64 “I’m here to support our Tourism Collaboration that is on the agenda for discussion tonight. But
65 most importantly, I would like to say thank you for the City Attorney O’Flaherty and Alderman
66 Binash and Mayor Chilsen for all of the work that they’ve done in helping get this completed.
67 It’s been an amazing ride for the last two years that we’ve been working on it, and I can’t think
68 of any more than these three people who have put a lot of work and hard into it. I’ll be available
69 if there are any questions during the discussion, and thank you so much for your discussion of it
70 tonight.”

71

72 **Paul Gleason**
73 **1859 Sand Lake Road**
74 **Onalaska**

75

76 “With your permission, both Mr. [Dennis] Aspenson and I would like to address Item 9-B [under
77 the Board of Public Works on the Non-Consent Agenda] at the time it comes up under the
78 agenda rather than now.”

79

80 The Council agreed to Paul’s request.

81

82 Mayor Chilsen called three times for anyone else wishing to provide public input and closed that
83 portion of the meeting.

84

Reviewed 11/12/15 by Cari Burmaster

85 **Item 4 – REPORT FROM THE MAYOR:**

86

87 A. Library statistics for October

88

89 Mayor Chilsen reported that 11,853 individuals visited the library in October. There also were
90 23 groups and 564 patrons, and the library was paid \$150 in rent.

91

92 B. Recycling Award from Wisconsin Department of Natural Resources

93

94 Mayor Chilsen read a letter from the Wisconsin Department of Natural Resources congratulating
95 the City of Onalaska for its superior performance based on its recycling program exceeding
96 Wisconsin DNR expectations and providing a higher standard of service to its residents. The
97 letter stated the Wisconsin DNR is presenting the City of Onalaska with a 2105 Recycling
98 Excellence Award for overall programs. The Recycling Excellence Awards Program is designed
99 to encourage and award communities for outstanding efforts, innovation and performance in
100 recycling while providing examples on how to increase the effectiveness of local recycling
101 programs.

102

103 C. Approval of **Resolution 46-2015** – to join the La Crosse County Convention and Visitors
104 Bureau

105

106 Mayor Chilsen read Resolution 46-2015.

107

108 Motion by Ald. Olson, second by Ald. Binash, to approve Resolution 46-2015 – to join the La
109 Crosse County Convention and Visitors Bureau.

110

111 On voice vote, motion carried.

112

113 D. Approval of Bylaws for LCCVB

114

115 Mayor Chilsen noted that the Council had been given a copy of the bylaws.

116

117 Motion by Ald. Bialecki, second by Ald. Muth, to approve the Bylaws for LCCVB.

118

119 On voice vote, motion carried.

120

121 E. Approval of **Ordinance 1524-2015** – to amend Chapter 4 of Title 2, Section 7 of the
122 Code of Ordinances of the City of Onalaska Relating to the Tourism Commission
123 (Suspend rules to give ordinance its First, Second, Third and Final Readings)

124

125 Motion by Ald. Bertrand, second by Ald. Bialecki, to suspend the rules and give Ordinance
126 1524-2015 its First, Second, Third and Final Readings.

Reviewed 11/12/15 by Cari Burmaster

127
128 On voice vote, motion carried.
129

130 Motion by Ald. Olson, second by Ald. Bertrand, to approve Ordinance 1524-2015 – to amend
131 Chapter 4 of Title 2, Section 7 of the Code of Ordinances of the City of Onalaska Relating to the
132 Tourism Commission (First, Second, Third and Final Reading).

133
134 On voice vote, motion carried.
135

136 **RECOMMENDATIONS FOR APPROVAL AND/OR POSSIBLE ACTION FROM THE**
137 **FOLLOWING COMMITTEES/COMMISSIONS/BOARDS:**

138
139 All items listed under the consent agenda are considered routine and will be enacted by one
140 motion. There will be no separate discussion of these items unless a council member requests
141 removal, in which event the item will be removed from the consent agenda and considered in the
142 order of business in the non-consent agenda.

143
144 **Item 5 – Consent Agenda**
145

146 A. Approval of minutes from the previous meeting(s)
147

148 **FINANCE COMMITTEE**
149

- 150 B. Accept Omni Center financials for 2015
151 C. Accept City Financials for 2015
152 1. General Fund
153 2. Water-Sewer-Storm Sewer
154 D. Accept Gundersen Health Systems Parking Ramp 3rd Quarter 2015 financials
155 E. Bethany Lutheran Homes refunding the City's CDA Bonds in November 2015 – FIO
156 F. Authorization to purchase three Watch Guard in-car video systems not to exceed \$17,760
157 for the police department and fund will be the usage of a \$4,000 grant and the sale of
158 police cars and equipment totaling \$13,760.00
159 G. Authorization to purchase a Bellhole bucket for the Cemetery, a non-budgeted item not to
160 exceed \$1,313.00

161
162 **JUDICIARY COMMITTEE**
163

- 164 H. Approval of **Ordinance No. 1510-2015** – to amend Section 8-4-3(c) of the Code of
165 Ordinances of the City of Onalaska relating to Grave Opening Fees (Third and Final
166 Reading)

- 167 I. Approval of **Ordinance No. 1511-2015** – to amend Chapter 1 of Title 9, Section 50 of
168 the Code of Ordinances of the City of Onalaska relating to Private Wells (Third and Final
169 Reading)
170 J. Approval of **Ordinance No. 1512-2015** – to amend Chapter 4 of Title 6, Section 50 of
171 the Code of Ordinances of the City of Onalaska relating to Trees and Shrubs (Third and
172 Final Reading)
173 K. Approval of **Ordinance No. 1514-2015** – to amend Chapter 2 of Title 7, Section 5 of the
174 Code of Ordinances of the City of Onalaska relating to License Fees (First and Second
175 Reading)
176 L. Approval of **Ordinance No. 1515-2015** – to amend Chapter 2 of Title 7, Section 16 of
177 the Code of Ordinances of the City of Onalaska relating to Restrictions on Temporary
178 Class “B” Fermented Malt Beverage or Wine Licenses (First and Second Reading)
179 M. Approval of **Ordinance No. 1516-2015** – to amend Chapter 2 of Title 7, Section 4 of the
180 Code of Ordinances of the City of Onalaska relating to Classes of Licenses (First and
181 Second Reading)
182 N. Approval of **Ordinance No. 1517-2015** – to amend Chapter 1 of Title 9, Section 28 of
183 the Code of Ordinances of the City of Onalaska relating to Service Connections (First and
184 Second Reading)
185 O. Approval of **Ordinance No. 1518-2015** – to create Chapter 1 of Title 1, Section 10 of the
186 Code of Ordinances of the City of Onalaska relating to City of Onalaska Fee Schedule
187 (First and Second Reading)
188 P. Approval of **Resolution 44-2015** – Resolution to approve 2016 Fee Schedule
189 Q. Approval of **Ordinance No. 1520-2015** – to amend Chapter 1 of Title 9, Section 34 and
190 35 of the Code of Ordinances of the City of Onalaska relating to Stop Boxes and the
191 installation of Meters and Meter Transceiver Units (First and Second Reading)
192

193 **ADMINISTRATIVE COMMITTEE**

- 194
195 R. Approval of Operator’s Licenses as listed on report dated November 4, 2015
196 S. Approval of Special Events Permit:
197 a. La Crosse Area Family YMCA for Winter Running Series for December 5, 2015,
198 January 9, 2016, and February 13, 2016 from 8-10 a.m. each day starting at the
199 YMCA North, 400 Mason Street, Onalaska
200 T. Approval of Pawn Broker License for Pawn America Wisconsin LLC, 1235 Crossing
201 Meadows Drive, Onalaska from 1/1/16-12/31/16
202 U. Approval for burial of ashes:
203 a. Request from Judy Slaback to allow burial of ashes for Delores Roberts in Block
204 128, Lot 5, Grave 4 with her husband James Roberts
205 V. Approval of allowing sale of cemetery lots in Sections 172 through 176, and Sections 203
206 through 207 in the City of Onalaska Cemetery starting January 1, 2016
207

208 **BOARD OF PUBLIC WORKS**

Reviewed 11/12/15 by Cari Burmaster

- 209
210 W. Approval of utility plan for dedication of water main at 1631 Sand Lake Road
211 X. Approval of geotechnical engineering services for Riders Club Road and County Road
212 PH & Braund Street project to Chosen Valley Testing in the amount of \$5,180
213

214 **PLAN COMMISSION**

- 215
216 Y. Conditional Use Permit filed by William Thomas, N8618 County Road TT, Holmen, WI
217 54636, approved to allow a wholesale automotive sales business at 702-704 Sand Lake
218 Road, Onalaska, WI 54650, zoned Neighborhood Business (B-1) (Tax Parcels #18-675-
219 12 & 18-675-13) (FIO)
220

221 **UTILITIES COMMITTEE/MASS TRANSIT**

- 222
223 Z. Accept Shared Ride Transit 2015 financials
224

225 **TOURISM COMMISSION**

- 226
227 AA. Approval of the use of Special Project Funds in the amount of \$253,000 toward
228 Omni Center projects
229

230 Motion by Ald. Bialecki, second by Ald. Olson, to approve the Consent Agenda.

231
232 On voice vote, motion carried.
233

234 **Non-Consent Agenda**

235
236 **Item 6 – RECAP ITEMS PULLED FROM THE CONSENT AGENDA**

237
238 As there were no items removed from the Consent Agenda, Item 7 was addressed next.
239

240 **Item 7 – FINANCE COMMITTEE**

- 241
242 A. Vouchers
243

244 Motion by Ald. Muth, second by Ald. Binash, to approve the vouchers expended since the last
245 Common Council meeting on October 13, 2015, in the amount of \$2,200,065.96.
246

247 On voice vote, motion carried.
248

- 249 B. Property Insurance Fund:

250 1. Termination of Local Government Property Insurance Fund effective 01/01/16
Reviewed 11/12/15 by Cari Burmaster

251 **Resolution 42-2015** (revised)

252

253 Motion by Ald. Muth, second by Ald. Olson, to approve termination of Local Government
254 Property Insurance Fund effective 01/01/16 – Resolution 42-2015 (revised).

255

256 On voice vote, motion carried.

257

258 **Item 8 – JUDICIARY COMMITTEE**

259

260 A. Approval of **Ordinance No. 1513-2015** – to annex land located in the Southeast ¼ of the
261 Northwest ¼ in Section 10, Township 16 North, Range 7 West from the Town of Medary
262 to the City of Onalaska (First and Second Reading) (Hegenbarth Annexation)

263

264 Motion by Ald. Blomquist, second by Ald. Binash, to suspend the rules and give Ordinance No.
265 1513-2015 its First, Second, Third and Final Readings.

266

267 On voice vote, motion carried.

268

269 Motion by Ald. Blomquist, second by Ald. Bertrand, to approve Ordinance No. 1513-2015 – to
270 annex land located in the Southeast ¼ of the Northwest ¼ in Section 10, Township 16 North,
271 Range 7 West from the Town of Medary to the City of Onalaska (First, Second, Third and Final
272 Reading) (Hegenbarth Annexation).

273

274 On voice vote, motion carried.

275

276 B. Approval of **Ordinance No. 1519-2015** – to amend Article B of Chapter 1 of Title 15 of
277 the Code or Ordinances of the City of Onalaska relating to Plumbing Code (First and
278 Second Reading)

279

280 Motion by Ald. Blomquist, second by Ald. Binash, to suspend the rules and give Ordinance No.
281 1519-2015 its First, Second, Third and Final Readings.

282

283 On voice vote, motion carried.

284

285 Motion by Ald. Blomquist, second by Ald. Binash, to approve Ordinance No. 1519-2015 – to
286 amend Article B of Chapter 1 of Title 15 of the Code of Ordinances of the City of Onalaska
287 relating to Plumbing Code (First, Second, Third and Final Reading).

288

289 On voice vote, motion carried.

290

291 **Item 9 – BOARD OF PUBLIC WORKS**

292

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293 A. Review and consideration of parking restrictions along Critter Court

294

295 Ald. Bialecki noted that in 2014 Springbrook Community Assisted Living had requested more
296 enhanced parking, but this request was denied as there was concern regarding public safety
297 vehicles.

298

299 Mayor Chilsen reminded Ald. Bialecki that there must be a motion on the floor.

300

301 Motion by Ald. Bialecki, second by Ald. Olson, to approve two-hour parking on the west side of
302 Critter Court from 500 feet south of South Kinney Coulee Road to the end of the cul-de-sac.

303

304 Ald. Bialecki referred to a color-coded map Jarrod had distributed to the Council and noted that
305 two-hour parking would only be allowed in the yellow-colored areas.

306

307 Ald. Muth said that while he favors assisting businesses, he also stated, "I'm kind of
308 apprehensive about this because normally everything is set up to have off-street parking, and
309 now we're going to facilitate the ability for visitors of this business to have parking. I think it's
310 going to add an additional burden to our Police Department to try to enforce this. I think there's
311 a good possibility that people from the Gundersen parking lot are going to utilize this. I'm just
312 kind of fearful of the problems that are associated with adopting this, and in the future any
313 business that needs additional parking off-premise. I'm kind of concerned – are we setting a
314 precedent for that too? I guess I'm not totally on board with this."

315

316 Ald. Bertrand asked Ald. Muth if he believes the chance that individuals from Gundersen will
317 utilize this parking will offset the value that it would have by the use of the facility. Ald.
318 Bertrand acknowledged it is possible that individuals from Gundersen might utilize the parking
319 spaces, but he also said, "It seems to me that the benefit of the facility there using that would
320 offset that risk."

321

322 Ald. Muth expressed concern that Gundersen employees will utilize the parking spaces and
323 visitors to Springbrook will be unable to do so. Ald. Muth also noted that the Police Department
324 will have to enforce the parking regulations daily and said, "I think there are people who are
325 going to say it's worth \$15 to park there all day, and I think there are going to be some issues."

326

327 Ald. Bialecki said he agrees with Ald. Muth in that he also is a strong advocate for off-street
328 parking. However, Ald. Bialecki also said he believes both Public Works and public safety have
329 given their approval to the parking changes. Ald. Bialecki referred to the minutes from the
330 November 3 Board of Public Works meeting and said the parking changes will be examined for
331 one year. Ald. Bialecki said the Police Department does not have sufficient staff to monitor the
332 parking on Critter Court on a daily basis and stated this item could be called back and
333 reexamined in one year if issues arise.

334

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335 Ald. Binash noted there have been past concerns regarding turn radius for emergency vehicles
336 and other individuals parking in these areas. Ald. Binash said it is his understanding the revised
337 parking will be limited to approximately eight spots and will not encumber entrances to any
338 other businesses located along Critter Court. Ald. Binash said he agrees with Ald. Bialecki about
339 allowing parking on a trial basis and stated, "It might be up to the people over at Critter Court to
340 be somewhat diligent in policing this on their own and making sure that the parties that are down
341 there are actually going into their business."

342

343 Ald. Bertrand asked if there would be any difficulties associated with reversing the revised
344 parking rules if it becomes necessary.

345

346 Ald. Bialecki said this point "was made up front at [the Board of] Public Works."

347

348 On voice vote, motion carried, 5-1 [Ald. Muth].

349

350 B. Review and consideration of water main special assessment for 1631 Sand Lake Road –
351 Parcel #18-5822-001, Parcel #18-4519-000 prior to subdivision

352

353 Motion by Ald. Bialecki, second by Ald. Olson, to discuss a water main special assessment for
354 1631 Sand Lake Road – Parcel #18-5822-001, Parcel #18-4519-000 prior to subdivision.

355

356 Jarrod referred to a resolution passed in 1989 for a water main installed along Sand Lake Road.
357 There were deferred assessments at that time; specifically, they were deferred until hookup.
358 Jarrod said the City of Onalaska issued a Notice of Special Assessment that shows "there was
359 none in the paperwork that was provided in 2007 once the tax parcel number changed again
360 later." Jarrod said the parcel is being hooked up along Sand Lake Road as there is a structure
361 under construction that will be hooked up. The deferred assessment has come due, and it is for a
362 section of the area that was deferred. Jarrod said the parcel in question has a deferred assessment
363 of \$6,621.60 of the \$10,620.00 that originally was assessed.

364

365 Paul Gleason, who is representing Elmwood Partners, noted that Elmwood Partners is not at this
366 point the party being assessed as it is not the current property owner. However, Paul noted that
367 Elmwood Partners had purchased the property in 2007 from the party who owned it in 1989
368 when it was assessed. Paul noted that Council members have a copy of the original Final
369 Resolution regarding assessment, which states in part that the assessments may be paid either in
370 cash or in nine annual installments, with interest. Paul said the document does not allow
371 deferred. Paul referred to a handout containing a schedule prepared by the city that shows "some
372 intent to collect it over nine years." Paul admitted he does not know whether or not it was
373 properly deferred and said he was "heavily involved" because some of the other property
374 Elmwood Property owned.

375

376 Paul said, "The crux of the issue – and the reason I think that you should not pursue collection of
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377 the assessment on Parcel No. 18-4519, which was the original parcel assessed – is that in 2007
378 you issued a Statement of Special Assessments in response to a request from a title insurance
379 company that states in part: ‘The following Special Assessments have been levied and are here
380 and are outstanding – none.’ [It was] signed by a city official in 2007. Behind that is another
381 sheet that was issued in 2015 for Parcel No. 18-5822-001, which it was carved out of the first
382 parcel that I referenced. This is in 2015, and it reads: ‘The following special assessments have
383 been levied and are outstanding – none.’ The city has twice verified to title insurance companies
384 that there were no outstanding assessments. This is something that, if it was outstanding in 2007,
385 should have been noted to the title company; the seller, who was the party originally assessed in
386 1989 and would have been obligated to pay it. But by virtue of incorrectly completing the form,
387 that party was let off the hook. At this point I think the only appropriate thing to do is to chalk it
388 up to a mistake and to not pursue that assessment. That’s really the crux of what I have to say.”
389

390 **Dennis Aspenson**
391 **643 L Hauser Road**
392 **Onalaska**
393

394 “[Traditional Trades is] being assessed for these improvements, and I’ll just take up where Paul
395 had left off. We all use the title companies to verify assessments and other issues pertaining to
396 land before we purchase. At that time we negotiate it and have it paid off or negotiate it in the
397 purchase price. Traditional Trades was notified that there was no special assessment on it until
398 we came to get a Plumbing Permit. It was brought to our attention that we needed to pay the
399 [\$6,621.60] before the permit would be issued. We have not pulled that permit for that project
400 on Sand Lake Road. We are in the process tomorrow morning of pulling a permit no matter
401 what [the Council decides]. I am in agreement with Paul, and I hope [the Council] understands
402 and comes forward with a mistake was made and not to pursue it anymore. If we are required
403 [Wednesday] to pay that fee we will pay the fee. We will pay the fee for the permit, but then we
404 will bring suit against the title company for misinformation. Once again, I hope [the Council]
405 looks kindly on waiving this so we don’t set a precedent. And I can assure you it’s really
406 concerning to title companies. Thank you.”
407

408 Sean summarized the following report he had prepared: “There is no legal rationale to not
409 collect this Special Deferred Assessment. Whether the Council decides to collect it or not would
410 be based purely on a political decision. Originally my initial reaction was that a mistake was
411 made because there was a mistake made, and there was the possibility that that would lead to a
412 rationale for not collecting it. But the crux of the matter is that the property is still benefitting
413 from the water main which was put in. What is most interesting within the law of Wisconsin
414 with respect to this is if this water main had been put in and for some reason this deferred
415 assessment was not done correctly, the city could go back today, have a public hearing, and
416 because it was omitted originally, they could do a special assessment for that water main today,
417 and the city could decide to use the 1989 cost or use the 2015 cost. The statute is set up to make
418 sure that property owners who benefit from the improvements which were put in contribute

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419 towards that payment. That's what leads me to my statement that there is no legal rationale to
420 not collect this."

421
422 Ald. Binash asked if this is considered a special assessment or merely an assessment to be added
423 to the tax rolls. Ald. Binash noted the language does not say "deferred special assessment," but
424 rather just "deferred."

425
426 Sean said this is a deferred special assessment and noted that the practice in 1989 as to how the
427 deferred assessment was done appears to have been followed.

428
429 Ald. Blomquist noted that he has worked with Paul Gleason in the past and described him as
430 being extremely thorough. Ald. Blomquist said, "When you buy a piece of property and you hire
431 a title company, they are supposed to be the protection for me if I'm buying it or for them if
432 they're buying it. The title company has to rely on information that they seek from the city. I
433 just bought a piece of property not too long ago, and they even check the water bills. If the water
434 bill is unpaid, it gets taken out of the seller's price. The assessment was done 26 years ago.
435 Elmwood has owned the property for nine years. It has changed hands, the way I see it, three
436 times. I'm a little troubled because I'm here to protect the interest of the city. But on the other
437 hand, I'm trying to put myself in a position that they're in, too. It has changed hands three times,
438 and at least twice during that time there has been verification from title companies that there was
439 no assessment. Elmwood bought it thinking there was no assessment. Obviously if there was an
440 assessment at that time they would have gone back and had ... if they had known about it they
441 would have negotiated it out in their purchase price. Mr. [Robert] Thorud bought it, and he
442 would have done the same, and I think Mr. Aspenson probably would have done the same and it
443 would have been reflected in the price. I don't know exactly what to think of this. I know if I
444 was in their position I would be tremendously upset thinking I'd have to pay money that I didn't
445 plan on paying."

446
447 Ald. Bialecki referred to Dennis' comments regarding Traditional Trades taking legal action
448 against the title company if it is required to pay the special assessment. Ald. Bialecki then asked
449 what would prevent the title company from "coming back" on the city.

450
451 Sean noted that a City of Onalaska employee had made a mistake and said it is not an actionable
452 mistake, but rather a clerical error. Sean said the most recent error that occurred happened when
453 the property was split and the City of Onalaska and La Crosse County did not communicate
454 about the parcel number so the special assessment did not get split at that time.

455
456 Ald. Binash inquired about the form the title company would request when performing a title
457 search.

458
459 Paul referred to the fifth and sixth sheets, titled "Statement of Special Assessments" given to the
460 Council and said they are requested by a title insurance company before issuing a title policy

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461 requested of the city in order to verify whether or not any special assessments exist on the
462 property. Paul said, “When they come back, as these do, with a statement of no, there are no
463 special assessments, then the title company relies on that in their title policy. Although most
464 buyers may not be aware of this form, buyers rely on it as well to know that there are not any
465 outstanding liabilities against the property that they are not aware of. If you send a message that
466 the city can’t be trusted on these forms, then they’re not going to stand behind whatever
467 statement they make on these forms. I think it’s going to create some problems for the real estate
468 industry because once again, buyers rely on it. If there is not a good representation from the city,
469 buyers don’t know if there’s \$1,000, nothing, \$20,000, \$100,000. The city is the only one in a
470 position to know that, and that’s why title insurance companies request this form.”

471
472 Ald. Binash asked Paul if the title insurance companies would only request that form.

473
474 Paul stated he does not know and said if this special assessment been recorded it would have
475 been found during a routine search. Paul said, “Obviously it wasn’t done, and I don’t know if
476 that’s standard practice now or not. I would like to make one comment to address something that
477 [Sean] said. The only party who benefitted from this is Mr. Meier, who was the owner at the
478 time the property was originally assessed, because he received higher sales proceeds by virtue of
479 not having to make good on paying this assessment. The standard contract would have required
480 him to pay the old assessments out of his sales proceeds. Whatever it was that Elmwood
481 Partners paid him, it would have been reduced by \$10,620. He was the one who benefitted – not
482 any of the subsequent owners.”

483
484 Ald. Bertrand said, “This partially hinges upon a mistake that the city person or persons made in
485 2007, is that correct? Mistakes are made, but to what degree are we, the city, bound to live by a
486 mistake that a city employee makes?”

487
488 Sean said, “It depends upon the type of mistake there is. It depends upon whether it’s a clerical
489 mistake versus a mistake in judgment. If there is a mistake in judgment, which is an operational
490 type of mistake, then there can be negligence within that and that can be actionable. If it’s a
491 clerical mistake, the city doesn’t have a legal duty with respect to that issue. If the tax bill goes
492 out or the city water bill goes out ... This has happened within the past few years where a city
493 water bill was routinely billed at an incorrect amount too low of an amount. That didn’t relieve
494 the property owner from paying the actual amount of the bill once the mistake was discovered.
495 That was another clerical error that was occurring. Or if someone’s bill is sent to the wrong
496 address for some reason it doesn’t relieve the property owner who should have received the bill
497 from paying the obligation.”

498
499 Ald. Blomquist noted the process of verifying that there is no money owed on a property is
500 performed by a title company on a daily basis. Ald. Blomquist said, “If you said this was a
501 \$200,000 mortgage that was taken on this property, the title company sends something to the
502 bank and [through] a clerical error they say, ‘No mortgage. Send it back.’ Then they find out

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503 they're owed \$200,000. Is that in the same vein as what we're talking about? It's kind of a
504 clerical error, but would the bank not go after that? If the title company solicited information
505 from a bank and they said there was no mortgage when in fact there was. What would happen in
506 that situation? It's very similar to this. It's probably just more money. Could the bank say it
507 was a clerical error and you owe us the money anyway?"

508
509 Sean noted that the bank provides a payoff letter for its mortgage. The bank provides an
510 affirmative statement of what is required to be paid, and therefore it is a different situation. Sean
511 said, "In this case, there was a request for a Statement of Special Assessment. Typically when
512 these Statements of Special Assessments come in it's my understanding that both the special
513 assessments and deferred special assessments are picked up by the office. In this case, there was
514 a Statement of Special Assessment requested. There's no request about whether there's a
515 deferred assessment. This is a deferred assessment that doesn't actually start running against the
516 property until hookup occurs. That's why there was nothing down on the tax roll yet. It was a
517 mistake that was made."

518
519 Ald. Bertrand said it is his understanding that the assessment would be payable had it not been
520 for the mistake made by the city employee.

521
522 Sean said the assessment is payable, stating, "It is on the books of the city. It would disappear. I
523 don't know the process that Fred and Jarrod would go through if it's not going to be paid. But
524 typically when these statements come in they're filled out correctly. Clearly in this case it did
525 not occur. I don't mean to repeat myself, but what swayed my opinion the most was that the
526 state statute regarding special assessments is that if this property had been omitted back in 1989
527 that the city could come back now. They actually didn't put a special assessment on it; they
528 forgot. For some reason it got dropped off the resolution. It wasn't properly on it. The city
529 could come back now and place the special assessment on there now because it hasn't hooked up
530 yet. If that had occurred ... and because of that that would not have shown up on any title search
531 because there wouldn't have been a special assessment. It would have been omitted. That's
532 what leads me to my opinion that there is no legal rationale because the city could have placed
533 the special assessment. I'm just reading the statute the way the statute reads. Alderman
534 Blomquist, with respect to your question about the mortgage, that's what makes it somewhat
535 different. The bank can't go back and change the rules because there's no statute that allows
536 them to do it."

537
538 Ald. Bertrand asked Sean if he is stating that the assessment should or should not be made.

539
540 Sean said, "I'm saying that there is no legal reason to not collect the assessment. Any decision to
541 not collect the assessment is a political decision which this Council has the power to make. I'm
542 not saying you're compelled to do it for legal reasons, and I don't have a political opinion."

543
544 Paul referred to a Statement of Special Assessments on the same form the City of Onalaska
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545 utilized in January. Paul said it was from a past transaction, and it shows only deferred
546 assessments. Paul said it clearly supports the fact it is the city's practice to disclose the deferred
547 assessments.

548
549 Sean told Paul he agrees with him, but he also stated, "My only point is that back in 2007
550 number one, it was a different form. Number two, I think the city typically always disclosed the
551 deferred assessments. And number three, I was very clear over and over to say there was a
552 clerical mistake – absolutely."

553
554 Paul admitted he does not understand the legalities of the situation and said, "From the
555 standpoint of equity and fairness and sending the right message to the real estate community, I
556 think it's important that the city stand behind the actions of its employees and not collect this
557 assessment."

558
559 Ald. Binash asked Jarrod and Brea if they ever have encountered situations where individuals
560 wished to hook up to city water from an assessed property and a developer was not aware that
561 there might be a special assessment.

562
563 Jarrod referred to an instance in Nathan Hill where there was an assessment along State Trunk
564 Highway 16 and said every situation is different.

565
566 Ald. Blomquist said, "The standard of the industry is the title company finds this stuff for you as
567 a buyer. It's their responsibility, and of course they rely on whoever they have to seek the
568 information from. I've bought many, many pieces of property, and that's why you pay for title
569 insurance – to make sure that you're protected from other liens or assessments or whatever it
570 might be. You know when you go through a title company you're buying a piece of property if
571 they're representing it free and clear it's supposed to be free and clear. They bought property
572 that really isn't free and clear."

573
574 Ald. Bertrand said, "I'm looking at the rightness and the wrongness of this regardless of what
575 happened with the title company or the city and its signing or not signing a document. It seems
576 as though the assessment should be paid. Clerical mistakes happen, but they don't determine the
577 law. And it seems as though the law should be in the direction of making the assessment."

578
579 Dennis said, "I understand what position you all are in. Not because I'm directly involved in it,
580 but I hope you do what I consider to be the right thing. Somewhere along the line a mistake was
581 made here at this level and passed on to the title company showing that there was no special
582 assessment. At that point neither Paul Gleason nor myself were able to negotiate a price
583 difference to accommodate that price difference. I would hope that, for lack of a better word,
584 you admit a mistake was made, and I would suggest directing [Sean] and the Planning
585 Department and Engineering Department and the Finance Department to review the process so it
586 doesn't happen again. And as Alderman Blomquist stated, \$6,000 is \$6,000. But it could have

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587 been \$260,000, and we would really have a crisis or you could put somebody under. I'm
588 appealing to you all to take that direction when you vote. Thank you for the opportunity."
589

590 Ald. Muth said, "The way I understand this, to me Elmwood is going to be the victim in this
591 whole situation. Mistakes were made by the title company. Mistakes were made by the City of
592 Onalaska staff. The Meier family should have been accountable when they sold the property. I
593 see three other people who should be accountable, and we're making Elmwood accountable. I'm
594 really uncomfortable with this. I understand your point, Sean, and I understand it's the law and
595 everything else. But I just think Elmwood is going to be the victim of a number of mistakes by
596 other people that they relied on for their information. And I hate to see them get punished for
597 doing it the right way – the way they do business – and now they're going to get punished for it.
598 I understand that, but it just doesn't seem right to me."
599

600 Ald. Olson told Ald. Muth he agrees with his comments and asked if it is too late to assess blame
601 to the aforementioned parties.
602

603 Sean said the City of Onalaska does not have the ability to do that.
604

605 Ald. Blomquist said the city only has the ability to assess Traditional Trades and stated, "I don't
606 believe Elmwood is going to suffer from this at all." Ald. Blomquist described himself as
607 someone who likes to negotiate agreements and suggested that perhaps "there is a middle
608 ground." Ald. Blomquist also said, "The other issue that I think we all should think about is that
609 the property is having a very large building built on it that's going to generate a lot of taxes. I
610 don't know that if we as a group up here should try to penalize people who are building our tax
611 base."
612

613 Ald. Olson told Ald. Blomquist he finds his comments to be logical and said, "I think that if the
614 people up here give any thought to making some kind of reduced agreement with them, I don't
615 know if that's in anybody's mind even though we don't have the obligation to do so. I'm always
616 trying to find a way that's equitable and fair to people also. I guess I agree with Barry and Bob
617 on that situation."
618

619 Ald. Binash said it appears to him that the only cost to the city will be the assessed value.
620

621 Ald. Bialecki said it will be the assessed amount.
622

623 Ald. Binash noted that the city would be losing the \$6,621.60.
624

625 Ald. Blomquist asked Fred if the \$6,621.60 is an accounts receivable that has been in the city's
626 ledgers since 1989.
627

628 Fred said yes.

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629
630 Ald. Blomquist said, "It's just hanging out there. It's forgiveness of an accounts receivable."
631

632 Sean asked Ald. Bialecki the intent of his motion.

633
634 Ald. Bialecki said he wanted to put a motion on the floor so the Council could legally discuss
635 this item.

636
637 Sean suggested that Ald. Bialecki withdraw his motion so that a motion to take action may be
638 made.

639
640 Ald. Bialecki said he will withdraw his motion and pointed out that if no motion is made "it goes
641 away."

642
643 Mayor Chilsen asked if anyone will be making a motion and suggested making a motion either to
644 charge or not charge the assessment.

645
646 Sean said, "No action would be the assessment would be charged. Essentially, if you're going to
647 make a motion your motion should be to not charge or charge it at a reduced amount because
648 taking no action is the same as charging."

649
650 Motion by Ald. Blomquist, second by Ald. Bialecki, to approve not charging a water main
651 special assessment for 1631 Sand Lake Road – Parcel #18-5822-001, Parcel #18-4519-000 prior
652 to subdivision.

653
654 Sean noted that this is a deferred assessment that was broken into three pieces and asked, "If
655 you're going to do something with the two-thirds of the deferred assessment, do you want to do
656 something with the other two pieces, neither of which have been paid as of today's date?"

657
658 Ald. Bialecki said, "I would rather not because that's not the issue at hand. It's just the one
659 parcel for [\$6,621.60]."

660
661 On voice vote, motion carried, 4-2 [Ald. Bertrand, Ald. Binash].

662
663 C. Authorization of 2016 Capital Improvements Budget and establish public hearing on
664 December 1, 2015 at 6:30 p.m. Board of Public Works meeting

665
666 Motion by Ald. Bialecki, second by Ald. Binash, to approve authorization of 2016 Capital
667 Improvements Budget and establish public hearing on December 1, 2015 at 6:30 p.m. Board of
668 Public Works meeting.

669
670 On voice vote, motion carried.

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671
672 D. Review and consideration of Final Special Assessments for 2015 Miscellaneous Concrete
673 Project and 2015 Utility Project
674

675 Motion by Ald. Bialecki, second by Ald. Blomquist, to approve Final Special Assessments for
676 2015 Miscellaneous Concrete Project and 2015 Utility Project.
677

678 On voice vote, motion carried.
679

680 **Item 10 – PLAN COMMISSION**
681

682 A. Approval of a substantial modification to the Greens Coulee Community Park Planned
683 Unit Development (PUD) to allow grazing in Zone 2 (adjacent to Clearwater Farms),
684 submitted by Shari Collas, on behalf of Clearwater Farm Foundation, Inc., 760 Green
685 Coulee Road, Onalaska, WI (Tax Parcel #18-675-125)
686

687 Motion by Ald. Bialecki, second by Ald. Muth, to approve a substantial modification to the
688 Greens Coulee Community Park Planned Unit Development to allow grazing in Zone 2 (adjacent
689 to Clearwater Farms), submitted by Shari Collas, on behalf of Clearwater Farm Foundation, Inc.,
690 760 Green Coulee Road, Onalaska, WI.
691

692 Ald. Binash referred to Condition No. 3, which states that a 10-foot buffer be maintained along
693 the wetlands, and said he does not see the necessity for this because it is a small parcel of land.
694

695 Ald. Bialecki said the Plan Commission believed a 10-foot buffer was necessary when this item
696 was approved at the October 27 Plan Commission meeting.
697

698 Ald. Binash reiterated the parcel of land is small and said he believes it is illogical to reduce it
699 further. Ald. Binash also said he believes the Parks and Recreation Department will encounter
700 difficulties when it mows this area.
701

702 Ald. Bialecki said, “Had that been the case, that should have been brought up with the Plan
703 Commission. But I don’t know that anyone argued against that.”
704

705 Motion by Ald. Binash to amend the previous motion and remove Condition No. 3, which states
706 that a 10-foot buffer be maintained along the wetlands.
707

708 Brea noted that there are two setback requirements: one is from the wetlands, as indicated in
709 Condition No. 3, and the other is under Condition No. 6, which states that a 10-foot setback be
710 maintained from the paved path on the west and southeast sides of the fenced-in grazing area.
711 Brea asked Ald. Binash to clarify whether he means the wetlands or the sidewalk.
712

713 Motion by Ald. Binash to amend the previous motion and remove both Condition No. 3, which
714 states that a 10-foot buffer be maintained along the wetlands, and Condition No. 6, which states
715 that a 10-foot setback be maintained from the paved path on the west and southeast sides of the
716 fenced-in grazing area.

717
718 Amendment to the motion dies for lack of a second.

719
720 Ald. Bialecki told Ald. Binash he might have a good point, but he also said he would have voted
721 against the amendment because this item has gone before both the Parks and Recreation Board
722 and the Plan Commission. Ald. Bialecki said he respects the opinion of both bodies.

723
724 Ald. Muth said that while he agrees with Ald. Binash to a point, he also stated he believes the
725 fence will keep the animals within the area away from the sidewalk.

726
727 Ald. Binash, who also sits on the Parks and Recreation Board, noted that the board had never
728 discussed this.

729
730 Dan noted questions have arisen as to who will maintain the buffer zone and said he believes
731 Ald. Binash is attempting to find out if Parks and Recreation staff will have to mow the buffer
732 zone with hand mowers. Dan said he believes the lease agreement between the city and
733 Clearwater Farm will address the fact Clearwater Farm will maintain the buffer zone.

734
735 Ald. Bertrand asked if the city will face challenges if the conditions of approval remain
736 unchanged.

737
738 Dan said he recommends that the city's lease agreement with Clearwater Farm state that
739 Clearwater Farm will maintain this area.

740
741 On voice vote, motion carried, 5-1 [Ald. Binash].

742
743 **Item 11 – REPORT FROM LAND USE AND DEVELOPMENT DIRECTOR**

744
745 A. Update on the November 11th Joint Plan Commission meeting with the Town of Medary
746 Plan Commission to discuss general purposes of cooperative boundary plans

747
748 Brea invited the Common Council to attend the November 11 Joint Plan Commission meeting,
749 which will begin at 7 p.m. at Eagle Bluff Elementary School. Brea said the discussion will
750 include the general intents and purposes of boundary agreements.

751
752 B. Approval of **Resolution 45-2015** – Authorizing Preparation of Cooperative Boundary
753 Plan between the City of Onalaska and the Town of Medary

754
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755 Motion by Ald. Bialecki, second by Ald. Olson, to approve Resolution 45-2015 – Authorizing
756 Preparation of Cooperative Boundary Plan between the City of Onalaska and the Town of
757 Medary.

758

759 On voice vote, motion carried.

760

761 **Item 12 – CLOSED SESSION**

762

763 To consider at motion to convene in Closed Session under Section 19.85(1)(e) of the Wisconsin
764 Statutes for the purpose of deliberating or negotiating the purchasing of public properties, the
765 investing of public funds or conducting other specified public business whenever competitive or
766 bargaining reasons require a closed session:

767

- 768 • IAFF, International Association of Firefighters, Local 4169
- 769 • Consideration, development and approval of negotiating strategy regarding cooperative
770 boundary agreement with Town of Medary

771

772 And under Section 19.85(1)(c) for the purpose of considering employment, promotion,
773 compensation or performance evaluation data of any public employee over which the
774 governmental body has jurisdiction or exercises responsibility:

775

- 776 • Discussion of City Administrator and Department Reorganizations

777

778 And under Section 19.85(1)(g) of the Wisconsin Statutes for the purpose of conferring with legal
779 counsel for the governmental body who is rendering oral or written advice concerning strategy to
780 be adopted by the body with respect to litigation in which it is or is likely to become involved:

781

- 782 • Town of Onalaska Petition for Incorporation

783

784 If any action is required in Open Session, as the result of the Closed Session, the Committee will
785 reconvene in Open Session to take the necessary action and/or continue on with the printed
786 agenda.

787

788 Motion by Ald. Muth, second by Ald. Olson, to convene in Closed Session.

789

790 On roll call vote: Ald. Jim Binash – aye, Ald. Jim Bialecki – aye, Ald. Barry Blomquist – aye,
791 Ald. Jim Olson – aye, Ald. Harvey Bertrand – aye, Ald. Bob Muth – aye. In Closed Session.

792

793 **Adjournment**

794

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20

795 Motion by Alderperson Jim Bialecki, second by Alderperson Jim Olson to adjourn from closed
796 session at 8:44pm.
797 On roll call vote: Ald. Muth – aye, Ald. Olson – aye, Ald. Binash – aye, Ald. Bertrand – aye,
798 Ald. Blomquist - aye and Ald. Bialecki – aye. Motion carried 6-0.
799
800
801 Recorded by:
802
803 Kirk Bey