



Common Council

335 South Broadway

De Pere, WI 54115

<http://www.de-pere.org>

Special Untelevised

Minutes

Tuesday, September 1, 2015

6:45 PM

De Pere City Hall Council Chambers

1. Agenda for Said Meeting: The Special Common Council Meeting was called to order on September 1, 2015 at 6:45 PM, De Pere City Hall Council Chambers, 335 S. Broadway Street, De Pere, WI.

Attendee Name	Title	Status	Arrived
Michael J. Walsh	Mayor	Present	
Kevin Bauer	Aldersperson	Present	
James Boyd	Aldersperson	Present	
Scott Crevier	Aldersperson	Present	
Michael Donovan	Aldersperson	Present	
Jim Kneiszel	Aldersperson	Present	
Larry Lueck	Aldersperson	Present	
Dean Raasch	Aldersperson	Present	
Lisa Rafferty	Aldersperson	Present	

2. Hearing to consider the suspension or revocation of the Operator's License issued to Trey Ryan.

The Special Meeting of the Common Council was called to order at 6:46 p.m. The Licensee, Trey W. Ryan, was not present. Aldersperson Raasch moved, seconded by Aldersperson Crevier to recess for 15 minutes. Upon vote, motion carried unanimously. Aldersperson Crevier moved, seconded by Aldersperson Bauer to open the meeting at 6:50 p.m. Upon vote, motion carried unanimously. Mayor Walsh announced the hearing to consider the suspension or revocation of the Operator's License issued to Trey Ryan.

Carla Burns, Court Reporter, transcribed the minutes for the hearing. Her minutes have been placed on file with the City Clerk's Office and are attached as an addendum to these minutes. Green Bay City Attorney James L. Mueller Acted as the Common Council's legal advisor for the hearing, as De Pere City Attorney Judith Schmidt-Lehman brought the charges before the Council and acted in the role of prosecutor.

Green Bay City Attorney James L. Mueller asked the licensee if he had any evidence or exhibits to present; he did not. City of De Pere Attorney Judy Schmidt-Lehman provided her exhibits to the Clerk. Green Bay City Attorney James Mueller asked the licensee if he understood the complaint to which the licensee responded that he did, and he would not be contesting the complaint. City Attorney James Mueller stated that because Trey Ryan would not be contesting the complaint, the proceedings will move directly to closing argument. Aldersperson Donovan moved, seconded by Aldersperson Raasch to enter the exhibits presented by City of De Pere Attorney Judy Schmidt-Lehman into evidence. Upon vote, motion carried unanimously. City of De Pere Attorney Judy Schmidt-Lehman presented her closing argument to the Council. Trey Ryan presented his closing argument to the Council. Mayor Walsh read the closed session language; Aldersperson Crevier moved, seconded by Aldersperson Rafferty to enter into closed session. Upon roll call vote, motion carried unanimously.

c. The Council may then reconvene in open session to take action on any matter discussed in closed session or for such other purposes as are allowed by law.

3. Decision, if any, on the above hearing.

At 7:11 p.m., Alderperson Raasch moved, seconded by Alderperson Kneiszel to enter into open session. Upon roll call vote, motion carried unanimously. Mayor Walsh read the following decision from the Council:

"The Council decided that all allegations are true being that he is a habitual law offender based on his conviction record; and that all the convictions substantially relate to the licensed activity.

Therefore, our disposition is that the operator's license is revoked based on the licensee lacking the proper qualifications to hold the operator's license."

Alderperson Raasch moved, seconded by Alderperson Bauer to approve the decision. Upon vote, motion carried unanimously.

4. Adjournment.

Alderperson Bauer moved, seconded by Alderperson Raasch to adjourn the Special Meeting at 7:14 p.m. Upon vote, motion carried unanimously.

Respectfully submitted,

Shana Defnet, Clerk-Treasurer

IN THE MATTER OF
MEETING OF THE COMMON COUNCIL
OF THE CITY OF DE PERE

Hearing to consider the suspension or revocation
of the operator's license issued to Trey Ryan

DATE: September 1, 2015
TIME: 6:45 p.m. - 7:14 p.m.
LOCATION: De Pere City Hall
335 South Broadway Street
De Pere, Wisconsin

COMMON COUNCIL CHAIRMAN:
Mayor Michael J. Walsh

COMMON COUNCIL MEMBERS:
Scott Crevier
Dean Raasch
Larry Lueck
James Boyd
Jim Kneiszel
Lisa Rafferty
Michael Donovan
Kevin Bauer

ALSO PRESENT:
James Mueller, City Attorney, City of Green Bay
Judith Schmidt-Lehman, City Attorney, City of De Pere
Shana Defuet, Clerk-Treasurer, City of De Pere
Trey Ryan, Licensee

REPORTED BY:
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REGARDING TREY RYAN'S OPERATOR'S LICENSE

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TRANSCRIPT OF PROCEEDINGS

(Licensor Exhibits 1 - 5 marked.)

MAYOR WALSH: Okay. At this time I'd like to call the meeting to order. I'll have the clerk please read the roll.

CLERK DEFUET: Alderperson Bauer?

ALDERPERSON BAUER: Here.

CLERK DEFUET: Boyd?

ALDERPERSON BOYD: Here.

CLERK DEFUET: Crevier?

ALDERPERSON CREVIER: Here.

CLERK DEFUET: Donovan?

ALDERPERSON DONOVAN: Here.

CLERK DEFUET: Kneiszel?

ALDERPERSON KNEISZEL: Here.

CLERK DEFUET: Lueck?

ALDERPERSON LUECK: Here.

CLERK DEFUET: Raasch?

ALDERPERSON RAASCH: Here.

CLERK DEFUET: Rafferty?

ALDERPERSON RAFFERTY: Here.

CLERK DEFUET: Mayor Walsh?

MAYOR WALSH: Here. Thank you. How long do we wait?

MR. MUELLER: That's up to the

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1 committee. I would give him 15 minutes. I
2 would just make a note for the record that it is
3 6:47 and the licensee has not appeared at this
4 time. If you want to just make a motion to
5 recess for 15 minutes.

6 ALDERPERSON RAASCH: I make a motion
7 to recess for 15 minutes.

8 ALDERPERSON CREVIER: Seconded.

9 MAYOR WALSH: Moved by Alderperson
10 Raasch. Seconded by Alderperson Crevier. All
11 those in favor?

12 (All Council members reply aye.)

13 MAYOR WALSH: Opposed?

14 (No response by Council members.)

15 MAYOR WALSH: Carried. Thank you.

16 (Recess held.)

17 MAYOR WALSH: I would entertain a
18 motion to go back to regular order.

19 ALDERPERSON CREVIER: So moved.

20 ALDERPERSON BAUER: Seconded.

21 MAYOR WALSH: Who made it over here?

22 ALDERPERSON CREVIER: Me.

23 MAYOR WALSH: Alderperson Crevier and
24 Alderperson Bauer seconded. All those in favor?

25 (All Council members reply aye.)

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1 MAYOR WALSH: Opposed?

2 (No response by Council members.)

3 MAYOR WALSH: Motion carried. Thank
4 you. "Item 2, Hearing to consider the
5 suspension or revocation of the Operator's
6 License issued to Trey Ryan. Please take notice
7 that: Pursuant to Wisconsin Statutes
8 19.85(1)(b) and (f), the hearing to consider the
9 licensing of Trey Ryan, licensee, may be held in
10 closed session unless the licensee demands that
11 the evidentiary portion of the hearing be held
12 in open session, in which case paragraphs (b)
13 and (f) of Wisconsin Statutes 19.85(1) shall not
14 apply to the evidentiary hearing."

15 "(b), pursuant to Wisconsin Statutes 19.85,
16 the Council may convene in closed session after
17 the evidentiary hearing is conducted to
18 deliberate concerning the matter as a judicial
19 or quasi-judicial trial or hearing before the
20 Council."

21 And then, "The counsel may then reconvene in
22 open session to take action on any matter
23 discussed in closed session or for such other
24 matters as are allowed by law."

25 MR. MUELLER: So I think to begin

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1 with we'll just clean up some procedural matters
2 at this point. The licensee, Mr. Ryan, do you
3 have any exhibits or evidence that you're going
4 to move into evidence for the hearing today that
5 you'd like marked?

6 MR. RYAN: No.

7 MR. MUELLER: You are not. City
8 Attorney Schmidt-Lehman, do you have any
9 exhibits that you'd like to mark?

10 MS. SCHMIDT-LEHMAN: I have already
11 marked my exhibits. Thank you.

12 MR. MUELLER: Okay. At this point,
13 Mr. Ryan, you have received this Complaint?

14 MR. RYAN: Yes.

15 MR. MUELLER: And you've reviewed it
16 and understand what it means?

17 MR. RYAN: Yes.

18 MR. MUELLER: Are you denying any of
19 the allegations that have been made in the
20 Complaint?

21 MR. RYAN: No.

22 MR. MUELLER: You are not. So you
23 are not contesting any of the allegations in the
24 Complaint?

25 MR. RYAN: No.

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1 MR. MUELLER: The reason I'm asking
2 this is want to make sure you understand the
3 procedure and your due process rights. So is
4 what you're looking for today -- if you're not
5 going to move any evidence for a factual basis,
6 are you just looking to request that the Council
7 be lenient with your sentencing?

8 MR. RYAN: Yeah, pretty much. I
9 mean, I know it's probably for sure going to be
10 suspended, but I guess -- I mean, I really don't
11 know. I just need it to work by myself.

12 MR. MUELLER: And what we'll do if
13 you're not -- we don't need to go through the
14 evidentiary hearing if you're not contesting any
15 of the allegations in the Complaint.

16 MR. RYAN: Okay.

17 MR. MUELLER: What we'll do is we'll
18 skip right to closing arguments. You understand
19 what that is, right? That's not you producing
20 any facts or evidence.

21 MR. RYAN: Okay.

22 MR. MUELLER: It's just you basically
23 making whatever closing statement you'd like to
24 make for the committee for their consideration.
25 All right? So what we'll do is, Attorney

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1 Schmidt-Lehman, if you have exhibits, we'll move
2 those into evidence if that's okay with the
3 chair, with the mayor.

4 MAYOR WALSH: Yes.

5 MR. MUELLER: So those will be moved
6 in. Have you given a copy to the licensee?

7 MS. SCHMIDT-LEHMAN: Yes, I'm giving
8 them to him right now.

9 MR. MUELLER: I'll give you a minute
10 to review those and object to any of them.

11 MS. SCHMIDT-LEHMAN: I'm giving you a
12 copy of the Affidavit of Service to Trey Ryan.
13 I'm giving you a certified copy of your license
14 application which was, I think, in December
15 of 2014. This is a certified copy of the
16 minutes of the City Council meeting in January
17 of 2015 where they approved your license subject
18 to a six-month review. This is a copy of the
19 OWI conviction in Brown County Circuit Court
20 with the date of offense of March 2015 and a
21 conviction date of June 2015. And then lastly
22 is a copy of the License Committee minutes from
23 the prehearing that they held on July 21st, just
24 so you know what they are. I'm giving to the
25 clerk Exhibits 1 through 5 --

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1 CLERK DEFUET: Thank you.

2 MS. SCHMIDT-LEHMAN: -- and move for
3 their admission.

4 MR. MUELLER: Mr. Ryan, do you have
5 any objection to entering these exhibits into
6 evidence?

7 MR. RYAN: No.

8 MR. MUELLER: Chairman, at this time
9 I think it's proper to make a motion to enter
10 these into evidence.

11 MAYOR WALSH: Okay. Is there a
12 motion?

13 ALDERPERSON DONOVAN: Moved.

14 ALDERPERSON RAASCH: Seconded.

15 MAYOR WALSH: Moved by Alderperson
16 Donovan. Seconded by Alderperson Raasch. All
17 those in favor?

18 (All Council members reply aye.)

19 MAYOR WALSH: Opposed?

20 (No response by Council members.)

21 MAYOR WALSH: Motion carried. Thank
22 you.

23 MR. MUELLER: Those exhibits have
24 been entered into evidence. At this point we
25 will move forward to the closing argument stages

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1 at this point. The licensor, the City of
2 De Pere, will go first.

3 MS. SCHMIDT-LEHMAN: Thank you.
4 Since the licensee has not challenged the
5 Complaint, the allegations are taken as true,
6 and I think that you will see that in a very
7 short period of time, if you look at the
8 licensee's application, he amassed four
9 alcohol-related violations between June of 2013
10 and August of 2014. And upon that record, the
11 Council voted to grant him an operator's license
12 but was concerned about his conviction record
13 and granted the license on the condition that
14 his conviction and arrest record be reviewed
15 within six months or in a six-month period, and
16 that was done and discovered that an OWI, a
17 fifth alcohol-related conviction for OWI first,
18 occurred in March of 2015, three months after
19 the Council granted an operator's license.

20 Under state statute, licensees must meet
21 certain qualifications to hold any liquor or
22 alcohol-related license. One of the conditions
23 is that habitual offenders are not qualified to
24 hold liquor licenses. It is the opinion of the
25 police department and myself that five

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1 alcohol-related convictions within a
2 two-and-a-half year period constitute a habitual
3 law offender.

4 There's actually a case from the Wisconsin
5 Supreme Court in 1987 that gave the following
6 definition of a habitual law offender, and the
7 case -- I just lost my place, but it's
8 Smith vs. City of Oak Creek. The citation is
9 139 Wis.2d 788. The definition is as follows:
10 A person who has habitually been a law offender
11 is someone who has committed several offenses or
12 has repeatedly violated the law. The phrase
13 does not require a trial or conviction for each
14 or any offense. What is required is that the
15 offenses were committed, the law was violated,
16 and the fact of each violation can be shown.

17 The documents that have been entered into
18 evidence and Mr. Ryan's admissions show that
19 those violations have, in fact, occurred and
20 constitute -- it's believed or pursued that
21 those violations constitute being a habitual law
22 offender. So the police department would seek
23 the revocation of the operator's license based
24 on the short period of time that the offenses
25 occurred and the fact that all of the offenses

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1 occurred while Mr. Ryan was, in fact, under the
2 legal drinking age of 21. Thank you.

3 MR. MUELLER: Mr. Ryan, this is your
4 opportunity to present your closing argument to
5 the Council.

6 MR. RYAN: I don't know. I mean, I
7 guess I had five, and I'm not expecting to hold
8 my license, and I guess -- I don't know. I'd
9 just like to say sorry to Mr. Boyd. You stuck
10 your neck out there for me, and I got in trouble
11 again, so I want to say sorry for that.

12 MR. MUELLER: At this time the
13 parties have concluded their closing arguments.
14 I think it would be proper, if there's no
15 objection from either of the parties, to have
16 the Common Council go into closed session to
17 deliberate, and you can do so by making a motion
18 and rereading paragraph 2(b) of the agenda.

19 MAYOR WALSH: Okay. Is there any
20 objection from the two parties?

21 MS. SCHMIDT-LEHMAN: No objection.

22 MR. RYAN: No.

23 MAYOR WALSH: Okay. Item (b),
24 "Pursuant to Wisconsin Statutes 19.85(1)(a), the
25 Council may convene in closed session after the

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1 evidentiary hearing is conducted to deliberate
2 concerning the matter as a judicial or
3 quasi-judicial trial or hearing before the
4 Council." I would entertain a motion to go into
5 closed session.

6 MR. MUELLER: And if you could also
7 read (c).

8 MAYOR WALSH: "The Council may then
9 reconvene in open session to take action on any
10 matter discussed in closed session or for such
11 other matters as are allowed by law." Now I'd
12 entertain a motion.

13 ALDERPERSON CREVIER: So moved.

14 ALDERPERSON RAFFERTY: Seconded.

15 MAYOR WALSH: Moved by Alderperson
16 Crevier. Seconded by Alderperson Rafferty. All
17 those in favor?

18 MR. MUELLER: I need a roll call.

19 MAYOR WALSH: I'm sorry. Roll call
20 vote.

21 CLERK DEFUET: Alderperson Bauer?

22 ALDERPERSON BAUER: Aye.

23 CLERK DEFUET: Boyd?

24 ALDERPERSON BOYD: Aye.

25 CLERK DEFUET: Crevier?

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1 ALDERPERSON CREVIER: Aye.

2 CLERK DEFUET: Donovan?

3 ALDERPERSON DONOVAN: Aye.

4 CLERK DEFUET: Kneiszel?

5 ALDERPERSON KNEISZEL: Aye.

6 CLERK DEFUET: Lueck?

7 ALDERPERSON LUECK: Aye.

8 CLERK DEFUET: Raasch?

9 ALDERPERSON RAASCH: Aye.

10 CLERK DEFUET: Rafferty?

11 ALDERPERSON RAFFERTY: Aye.

12 MAYOR WALSH: Motion carried. Thank
13 you.

14 (Closed session held.)

15 MAYOR WALSH: Okay. We're back in
16 open session. Item 3 is, "Decision, if any, on
17 the above hearing." The Council has come to a
18 decision, and the Council has decided that all
19 the allegations are true being that he is a
20 habitual offender based on his conviction record
21 and that all of the convictions substantially
22 relate to the license activity. Therefore, our
23 disposition is that the operator's license is
24 revoked based on the licensee lacking the proper
25 qualifications to hold the license. I would

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1 entertain a motion on that.

2 ALDERPERSON RAASCH: So moved.

3 ALDERPERSON BAUER: Seconded.

4 MAYOR WALSH: Moved by Alderperson
5 Raasch. Seconded by Alderperson Bauer. Any
6 discussion?

7 (No response by Council members.)

8 MAYOR WALSH: If not, all those in
9 favor?

10 (All Council members reply aye.)

11 MAYOR WALSH: Opposed?

12 (No response by Council members.)

13 MAYOR WALSH: Motion carried. Thank
14 you. I would entertain a motion to adjourn.

15 ALDERPERSON BAUER: So moved.

16 ALDERPERSON RAASCH: Seconded.

17 MAYOR WALSH: Moved by Alderperson
18 Bauer. Seconded by Alderperson Raasch. All
19 those in favor?

20 (All Council members reply aye.)

21 MAYOR WALSH: Opposed?

22 (No response by Council members.)

23 MAYOR WALSH: Motion carried. Thank
24 you.

25 (Hearing is adjourned at 7:14 p.m.)

STATE OF WISCONSIN)

COUNTY OF BROWN)

I, CARLA BURNS, a Notary Public and
Registered Professional Reporter in and for the State of
Wisconsin, do hereby certify that the foregoing proceedings
were taken at said time and place and is a true and
accurate transcript of my original machine shorthand notes
and that the appearances were as noted initially.

Dated at Green Bay, Wisconsin
This 14th day of September, 2015.

A handwritten signature in cursive script that reads "Carla Burns". The signature is written in dark ink and is positioned above the printed name and title.

CARLA BURNS, RPR
Notary Public, State of Wisconsin
My commission expires on 7/21/2018.(FC)