

**CITY OF CEDARBURG
COMMON COUNCIL
July 13, 2009**

CC20090713-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 13, 2009 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:30 p.m. The meeting began with a moment of silence followed by the Pledge of Allegiance.

Roll Call: Present - Common Council – Mayor Gregory Myers, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Kip Kinzel, Bob Loomis

Also Present - City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Attorney Kaye Vance, Deputy City Clerk Amy Kletzien, Town Administrator Jim Culotta, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' request, Deputy City Clerk Kletzien verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings Law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

DISCUSS ISSUES RELATED TO THE TOWN OF CEDARBURG AND PROCHNOW LANDFILL

Mayor Myers stated that this meeting was called because, as of last week, City officials were under the impression that they were in discussions with the Town to put together a comprehensive agreement to cover boundary, development, landfill, water, and shared services issues. Surprisingly, the City found out through a press release that the Town was filing eminent domain over the Prochnow Landfill which the City has an interest in the trustee agreement. After several letters and FAQs were released by the Town, the City felt it was imperative for the Common Council to meet to discuss the Town's action and the City's alternatives; and perhaps prepare a response so that the members of the Cedarburg Community, which we are of one community, understands what is happening. Mayor Myers indicated that citizens may not know what is happening because the eminent domain issues were discussed by the Town of Cedarburg in closed session. It was his understanding that eminent domain is a public policy issue that should be discussed in open session.

Mayor Myers stated that several documents have been prepared by city staff for consideration and review by the Common Council. Copies of the documents were distributed to the audience.

Council Member Loomis stated that a response is necessary because the Town of Cedarburg distributed some misinformation. The information distorted the City's views and actions of late, and it is important to set the record straight. He has reviewed the proposed letter and Frequently Asked Questions and he is in full support and agreement in the presentation and the information that is being presented. It gives an accurate depiction of the City's position and how reasonable the City has been. The City of Cedarburg is seeking to be one community, not a divided community. The City wants shared services and agreement on the Town's request for a boundary agreement. It is important to convey this information and he is in favor of sending it out in a newsletter format to the community.

He suggested a change to FAQ 4 – the fourth sentence should be changed to read: The Town has representatives on the Leisure Services Commission and the Joint Library Board.

Council Member C. Reimer echoed Council Member Loomis' statements. He proposed a change to the first paragraph to read: When you say you are from Cedarburg the response is always positive: everyone loves the feel and uniqueness of the City and Town community and tells us we are fortunate to live here. **The Town's latest action is heading towards severing this relationship.** And begin the second paragraph with: The envied community has been in existence for over a century and a half... The Common Council agreed with the change.

Council Member Kinzel conveyed that the Council is not happy to use the word severed.

Council Member Radtke stated the Town has done a poor job of communicating to their residents what is happening between the Town and City. He expressed concern for communicating the repercussions of the Town residents not being able to participate in recreation programs as a resident. He wants the Town to realize exactly what is at stake if the City/Town relationship is severed.

Mayor Myers stated that many Town residents participate in the City's recreation programs and it is disrespectful to the families and children who attend Cedarburg schools to tell them that they can go to other communities. This is one community and the reason why City and Town residents have participated together. Every family with children would understand this and it would not be advantageous for the children living in the Town of Cedarburg.

Council Member Kinzel stated he has sat on both the Leisure Services Commission and the Park & Forestry Board and there have been plenty of children from Jackson and the surrounding communities who want to play with the children they attend school with. Council Member Kinzel doesn't believe that the Town understands the ramifications of having to pay non-resident fees for recreation programs.

Council Member C. Reimer stated his daughter's T-ball team consists of children from Parkview School that live in the Town and City, who are all friends, and it would be a shame for them to not be together.

Council Member Radtke stated it is important to emphasize these facts in the communication to the City and Town residents.

Council Member Loomis stated that Emergency Government services is another area that will suffer. What does the City do if the Town walks away and does not want a shared services agreement? EMS personnel go to fire and rescue calls in the Town and it would be a terrible situation to be placed in to not be able to respond to an emergency in the Town of Cedarburg. A shared services agreement is needed to provide these services in the Town. It goes without saying, that if the Town walks away and divorces itself from the City that there will be serious repercussions. It will result in dramatic increases in fees and a possible cut-off from certain services. Rather than stating the obvious, which the Town has eluded to some in their FAQs, he would prefer to keep silent on this issue.

Council Member Radtke stated that the Town will work hard to make their changes sound okay to their citizens but in reality they may not understand that they will need to pay non-resident fees for programs. Also, programs will most likely be cut back in the City and the amount of participants will be lowered in the programs; thereby, making it even more difficult for a non-resident to be included in a program. To-date, the City and Town residents have preferred sign-up for programs one week prior to any non-resident. This will all go away and even though they are willing to pay more for a program, there will not be a space available. Swimming lessons will fall into the category of non-resident fees and limited space available for the program. Council Member Radtke wants the Town residents to know that they will no longer be a priority when signing up for recreation programs.

Council Member R. Reimer stated that the Town is proposing a new sports center and the Town most likely believes that their needs will be met.

Council Member Radtke believes that it is important to let the Town residents know exactly what is at stake. The Town residents will lose their priority status as a resident when signing up for recreation programs and spots may not be available for certain programs for non-resident applicants.

Council Member Kinzel stated that the Town sports area will not be completed overnight.

The Council decided on the verbiage to be included in the FAQs document in regard to recreation programs. The item will be added between points 4 and 5. The Common Council agreed on specific points and to allow City Administrator/Treasurer Mertes to draft the FAQs accordingly for Council review before mailing.

Mayor Myers stated that the non-resident status for Town residents is not an effort to punish anyone. It is called equity and respect for the City of Cedarburg taxpayers who are funding the tab for these programs. The City does not want this to happen; however, the Town residents need to understand the ramifications of the Town Board's actions.

Council Member Maher commented on point 8 of the FAQs, second sentence, and asked to emphasize that there will be many legal hurdles because this will hurt both City and Town residents financially. It will be a long drawn out process.

Council Member Loomis suggested adding: unnecessary legal expenses are likely to escalate for both the City and Town.

Council Member Radtke stated that the Emergency Services contract may not be renewed in the future and should be mentioned now.

Council Member Loomis stated that this is mentioned in FAQ #4.

In answer to Council Member R. Reimer's question, Mayor Myers stated that the Cedarburg Fire Department owns the equipment located at Fire Station 2; however, the Town owns the building.

In answer to Council Member R. Reimer's question, Council Member Loomis stated that it is difficult to staff Fire Station 2 for fires that occur in the Town; therefore, the equipment comes from the main station because the volunteers come from the south end of Cedarburg and the response time is faster.

Council Member Maher asked if point 3 should include mention of the library referendum.

Council Member Radtke opined that the Town residents will be able to use the library for free regardless.

Council Member Radtke asked what type of agreement there is with the Select Baseball for using city property.

Mayor Myers stated that the Town does not currently own any athletic fields and that is why the City encouraged them to develop fields in the Town. The City supports their efforts as a partial Prochnow landowner and are not using them as a political pawn as referenced by a Town Supervisor.

City Attorney Vance stated that the City and Town were in general agreement during negotiations for the need for additional athletic fields.

Council Member Maher confirmed that the expiring shared services agreement will be included in the FAQs. He suggested that the expiration dates be included for the upcoming contracts.

Council Member Loomis stated that the City does not want to sound threatening because we are trying to be one community. It is an awful position to be in, to realize that the Town wants to divorce itself from the City and a fire agreement is looming. It is a very difficult situation.

Council Member R. Reimer confirmed that the City is not intending to rebuttal errors in the Town's information because all of their errors are not being addressed.

Council Member Loomis stated that the major points are being addressed.

Council Member Kinzel agreed that the Council is providing the City's information correctly.

Council Member C. Reimer opined that the City is leaving some items standing. People somehow believe that the City unilaterally annexes property.

City Attorney Vance stated that annexation is discussed in the FAQs portion.

Council Member C. Reimer asked to state that in Wisconsin no City can unilaterally annex property.

City Attorney Vance stated that this statement may not be completely legally accurate. The City does not annex without a petition of the landowner. A municipality cannot push a landowner to annex. We do not initiate annexation.

Mayor Myers stated that annexation is a private property right that residents of the State have if they choose. The City is being asked to sign away their rights by agreeing to a boundary agreement. The Town, by law, cannot stop a unanimous annexation.

Council Member R. Reimer stated that it appears that a shift in the field occurs each time the City and Town gets close to what should be an agreement. He stated that the City was very responsive in the last offer and had very good reasons for every item in the offer. He opined that most of the items were to the benefit of the Town. For instance, agreeing to a temporary boundary agreement rather than a permanent agreement, this allows a 10-year period to test the agreement.

City Attorney Vance stated the agreement will continue unless there is an affirmative action to stop it. In 2007, a law sponsored by Representative Mark Gottlieb was passed, so towns and cities could easily enter into flexible agreements, to monitor the effectiveness.

Council Member Kinzel stated that he has never been in favor of a boundary agreement because it tramples on the property rights of the Town people. He questions why the Town would want a permanent agreement.

Mayor Myers agreed that a 10-year agreement is appropriate. Ten years from now the situation can be reassessed by the people who are representing the communities.

Council Member Kinzel stated that the two communities have been working together on a hand shake for over 100 years and now the Town wants a permanent separation.

Council Member Radtke stated that in this time of tough economic downturn where communities are hurting for money, we should be looking for less government and not trying to expand and make more.

In answer to Council Member Loomis' question, City Attorney Vance stated that State Statutes allow for successive 10-year agreements and it takes two parties to change it. If only one party disagrees, it will continue. The language is flexible and conditions can be included by either body.

Council Member Loomis stated that he cannot envision the future; however, he can envision scenarios such as massive flooding, failure of the septic systems, change in State law, etc., that may affect the decisions of a future Town Board to make changes to a boundary agreement.

City Attorney Vance stated that an agreement can be fashioned to include partial and permanent situations. Each time the communities get close to an agreement, there seems to be some negative action taken. The City has not received a response to its last offer. As far as the City is concerned, the two communities were still talking.

Council Member C. Reimer stated that it would be disenfranchising the public to agree to a permanent boundary agreement.

Council Member Loomis questioned whether the first underlined word in point 13 was correct.

City Attorney Vance stated that the statement is true and was confirmed by City Planner Censky that the City has approved all Town zoning decisions in its extraterritorial area.

Council Member Loomis stated that the City has not been unreasonable or holding great power and doing evil things to the Town. There has been one exception in the Five Corners area that caused great concerns pertaining to the water.

Council Member R. Reimer confirmed that there are no City residents sitting on any Town boards or committees; whereas, many Town members sit on City committees voting on budget issues and having a say. He doesn't understand how the Town can say that they do not have a voice over budget issues in the City.

Council Member Radtke stated that the City is very concerned about budgetary issues.

Council Member R. Reimer asked how long the FAQs will go on.

Council Member Radtke stated that it is a matter of letting the public know all of the facts.

Mayor Myers stated that the City will have to see what happens with the eminent domain process. Unless the Town wants to discuss an agreement again, the process will need to play out.

Council Member Maher commented on FAQ 10 and asked to cite the recent studies that were published in the newspaper which proves that there are problems.

City Attorney Vance stated besides finding contamination at Five Corners, arsenic was discovered in the ATACO well.

Council Member Kinzel suggested providing some type of link on the City Website that people could reference in combination with the letter.

Council Member Loomis believes that everyone understands that there are water problems in the Town. He stated that in lieu of the study done by the Town for their own utility at \$4 million shows that they have concerns also.

In answer to Council Member C. Reimer's question, City Attorney Vance stated that the Prochnow Landfill is called this because Marvin Prochnow owned the land. In 1996, the EPA ordered the City to extend water for \$600,000. Then the EPA brought action against the proposed responsible parties which were the Town, City, Emerson Electric, Mercury Marine and Prochnow. Prochnow then settled out of that particular liability by donating the clean land in addition to the contaminated landfill part. The contamination is the water and the minor part is the actual area of the land which is approximately 11 acres. There is a plume underneath which is still being tested. Prochnow settled out by consent decree, which transferred the property to a land trust under the control of the trustee. In 1996, everyone was on the same page and it takes the written agreement of Mercury Marine, Emerson Electric, City and Town to transfer the title. If the consent decree and that agreement is brought under question, then Marvin Prochnow's indemnity for donating that property would be brought under question also. The City was owner-operator as well as the Town. It was a joint commission and the City will not be exempt from the liability. If the Town assumes title, they will need to go after the other parties for contributions. The Town does not assume the City's liability in the eminent domain process and will be breaching a 12-year agreement. City Attorney Vance stated that the Town will not be able to take the land and it will be tied up in court for a long time. She stated that it would be cheaper for the Town to enter into the City's proposal and they would get what they want.

Council Member Radtke and Mayor Myers agreed that it would be far more beneficial for the Town to discuss their plans for the Five Corners area in public and to involve the City.

In answer to Council Member Loomis' questions, City Administrator/Treasurer Mertes stated that there are funds available to mail the newsletter from the computer account and no other action is required by the Council.

Council Member Kinzel confirmed that the newsletter will be sent to the entire community of City and Town residents.

Council Member Loomis suggested that City Administrator/Treasurer Mertes send the final draft to the Council to be proofread before it is sent to the residents.

Council Member R. Reimer asked if Town residents should be calling City Council Members and stated it is important for them to call their Town Board representatives.

Council Member C. Reimer stated that if Town residents contact a City Council Member they will talk to them and will encourage them to also discuss their concerns with a Town Supervisor.

Mayor Myers suggested an addition to the letter stating that they are urged to contact their Town Representative which can be found on the Town website at www.town.cedarburg.wi.us in the last paragraph.

Council Member C. Reimer stated that legal expenses and shared services will need to be considered in the budget process for 2010.

Council Member Loomis stated that people need to realize that if the Town walks away and decides to form their own village, then there will most likely have to be cuts in the recreation and other programs for the City.

Council Member Radtke stated that a split between the City and Town would be devastating. The City and Town would be greatly hurt as a community and it may be irreversible. He hopes they think long and hard before going through with their plans.

Council Member C. Reimer stated that children, families and the quality of life will be jeopardized.

In answer to Council Member Kinzel's question, City Administrator/Treasurer Mertes stated that the newsletter should be ready for mailing in a few days.

Motion made by Council Member R. Reimer, seconded by Council Member Loomis, to approve the drafts presented for a letter and FAQs sheet to be mailed to City and Town residents.

Mayor Myers stated that he hopes the Town has a poignant discussion in public as the City has. He stated that there are two very narrow exceptions for closed session and the Town goes into closed session far too often to discuss public policy issues such as eminent domain. Eminent domain should be fully discussed in open session for the sake of the public. These are public issues and the public has a right to know what is going on. City and Town officials are elected to represent the public. The Town Board should not be representing themselves and these issues should be decided by the public.

Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to authorize issuance of 2009-2010 Operator Licenses for the period ending June 30, 2010 to: Angela M. Ward, Tammy M. Potter, Margery B. Potter, Kelly A. Schopp, Elaine R. Schieble, Steven L. McCollough, Michael R. Heebner, Melissa M. Radtke, Gail A. Johnson, Aaron Rhoades, Michael W. Mohr. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to adjourn the meeting at 8:23 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC
Deputy City Clerk