

**CITY OF CEDARBURG
COMMON COUNCIL
August 25, 2008**

CC20080825-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, August 25, 2008 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:00 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, Steve Glamm, Noel Jepson, Paul Radtke, Michael Maher, Kip Kinzel, Amy Goyette

Also Present - City Attorney Kaye Vance, City Administrator Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Planner Jon Censky, Director of Parks and Recreation Mikko Hilvo, City Clerk Constance McHugh, Economic Development Coordinator Linda Skalecki, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' request, City Clerk McHugh 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.

PUBLIC HEARING – CONSIDER ORDINANCE NO. 2008-13 ALLOWING SOLAR PANELS ON PUBLICLY OWNED SITES AS A CONDITIONAL USE WITHIN THE I-1 INSTITUTIONAL AND PUBLIC SERVICE DISTRICT THAT SHALL BE EXEMPT FROM YARD AND DISTANCE REQUIREMENTS

Mayor Myers declared the public hearing on Ordinance 2008-13 allowing solar panels on publicly owned sites as a conditional use within the I-1 Institutional and Public Service District that shall be exempt from yard and distance requirements open at 7:03 p.m. City Clerk McHugh verified that proper legal notice had been given with publication in the *News Graphic* on August 7, 2008 and August 14, 2008.

Planner Censky said Cedarburg Light & Water is pursuing a grant to fund the installation of an energy saving solar panel on their site. Before Light & Water can proceed, a change to the Zoning Code is necessary to add solar panels to the list of conditional uses within the I-1 Institutional District. The Plan Commission recommended that the ordinance be drafted to list solar panels as a conditional use exempt from the yard and distance requirements on publicly-owned sites in the I-1 Institutional District. The solar panel will be in a highly visible location to show customers Light & Water's ongoing cost-savings efforts.

Motion made by Council Member Reimer, seconded by Council Member Jepson, to close the public hearing at 7:06 p.m. Motion carried without a negative vote.

August 25, 2008

Council Member Glamm asked Attorney Vance if the City is on solid ground if it limits solar panels to publicly-owned sites.

Attorney Vance said the case law on solar panels is not well developed, but she believes there should not be a problem as long as solar panels are not turned down in a frivolous manner.

Council Member Radtke said solar panels are a terrific idea and he is in favor of the concept, but not the proposed location. He said the solar panel will be in the public eye. He said there are better places to locate the panel.

Planner Censky said this is why the Plan Commission classified solar panels as a conditional use, not a permitted use. He said the intent of the ordinance is to allow the Plan Commission to work with the owners of solar panels.

Mayor Myers said Cedarburg Light & Water still must come back to the Plan Commission with a plan and a request for a conditional use permit. This agenda item is simply a change in the Zoning Code to allow solar panels under certain conditions.

Council Member Kinzel said he agrees with Council Member Radtke. He said he understands the concept, but the proposed panel is big and in a visible location. He said this matter will need final approval by the Plan Commission.

Council Member Jepson said he doesn't think the proposed location is a bad one or that it will bother a lot of people.

Planner Censky said that when this matter goes to the Plan Commission there will be a public hearing and an opportunity for comments. The Plan Commission also was concerned about the location and made it clear to General Manager Lythjohan.

Mayor Myers again reminded the Council this is just a Zoning Code change. This has nothing to do with the actual siting of the solar panel.

Motion made by Council Member Glamm, seconded by Council Member Maher, to adopt Ordinance 2008-13 allowing solar panels on publicly owned sites as a conditional use within the I-1 Institutional and Public Service District that shall be exempt from yard and distance requirements. Motion carried without a negative vote.

APPROVAL OF MINUTES

Motion made by Council Member Radtke, seconded by Council Member Jepson, to approve the minutes of the July 28, 2008 meeting. Motion carried without a negative vote.

REPORTS OF BOARDS, COMMISSIONS, AND COMMITTEES - None

COMMENTS AND SUGGESTIONS FROM CITIZENS

Haly Besaw, W63 N346 Hillcrest Avenue, said service needs to be a part of any garbage contract the City enters into. She said that residents in her neighborhood have a problem with a particular

August 25, 2008

Waste Management garbage collector in terms of rudeness, garbage strewn everywhere, lids left in driveway, and garbage not being picked up.

Ms. Besaw said part of the bike trail in the City is blocked off. She suggested that someone look into this.

Ms. Besaw said that Cedarburg is a walkable community and the creek walk is very important to the community and the downtown.

John Pangborn, N31 W7100 Lincoln Blvd., Council President of Advent Lutheran Church, said Advent Lutheran Church strongly supports the extension of the creek walk. He said as of late today he signed the easement and stated the terms of easement are acceptable to the Church. He said it has never been the Church's intention to cause a delay in the project.

Bob Loomis, W75 N729 Tower Avenue, said he supports the creek walk and urged the Council to move ahead with it.

Mr. Loomis also spoke about the Emerald Ash Borer, which has recently been sited nine miles from Cedarburg. He said that it is just a matter of time before the Borer gets here. He said the Council needs to address this issue in the budget cycle. If the Council does nothing, the cost to cut down the trees destroyed by the Borer will be far greater than the cost to have treated the City's ash trees.

Mr. Loomis said he is also concerned about what is done to ash trees on private property. He received an estimate of \$195 from a private contractor to treat two ash trees on his property. He suggested the Council enter into a City-wide contract so that residents can treat private trees at a reduced cost.

David Kukla, 738 Horns Corners Road, said he has fully supported the creek walk since the beginning because it is a worthwhile project that will be good for Advent Church, businesses, tourism, and will improve the downtown. He said Advent Church is not the obstacle or reason for the delay. He said the project has stalled because of the process and politics. He said he has faith the Council will do what is best for the greater good of the community. Mr. Kukla said the project deserves approval.

Elaine Halladay, N100 W5966 Oxford Drive, said that she supports the creek walk.

Paul Rushing, W62 N700 Sheboygan Road, said the majority of Cedarburg residents support the extension of the creek walk. He said there is a viable and reasonable plan for the expansion and the Council needs to build on that plan. He agreed there are many details that need attention; however, they are minor compared to the obstacles that been overcome so far. He urged the Council to approve the project to show everyone that Cedarburg is a city of action.

Joe Kultgen, Kultgen Investments, said if this project takes another two years, his property will be off the table and he will fight the City on this. He said that he is willing to work with the Council now.

Kristina Hokanson, W67 N724 Franklin Avenue, said Cedarburg is a destination for visitors and those who live here. She said the creek walk will be a benefit to the citizens of Cedarburg and businesses. She said this is a vision for Cedarburg. She would like to see it move forward.

CONSIDER ACCEPTANCE OF EASEMENTS FOR PHASE I OF THE CREEK WALK PROJECT

Director Wiza stated he did not have the easement documents with him this evening. He said that there has been a lot of correspondence between the property owners and the City consultant regarding the necessary easements.

Council Member Goyette asked if all property owners have signed the same document.

Attorney Vance said that she understands Advent Lutheran Church signed the easement this afternoon.

Steve Banas, W58 N438 Hilbert Avenue, said that all property owners signed the first easement; however, changes have been made to that form recently. He said that he executed the latest version today.

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to accept the easements for Phase I of the Creek Walk project conditioned upon all property owners executing the most recent version of the easement document provided by the City.

Council Member Jepson said he is very much in favor of a creek walk and thinks it will be a benefit to the community. He said he has heard people say it is “visionary.” He has looked at walks in other cities; however, when he looks at the plan for this creek walk, he thinks what the City will end up with will be very unattractive. He said that if the current plans are put in place people will be very disappointed. He said he is concerned that there is no plan in place to get to the next phase of the project. He said the City has no idea how to deal with Phase II of this project while there are other capital projects that must be dealt with. He said that it is foolish to go ahead with this plan. It is assumed that the creek walk will bring people to the community but there is no knowledge of this. He stated the City does not have a good plan to move forward or a good plan that will work. He said the City deserves the best.

Council Member Goyette said she shares the same concerns. She said that she believes the walk will be unattractive. She is also concerned about the cost. She feels the project will go nowhere. The “vision” has no plan for lighting, aesthetics, and landscaping. She said the decision to move forward calls for reasoned action on the part of the Council. The Council needs to do it right the first time.

Council Member Maher said he has spent a lot of hours thinking about this issue to make the best and most informed decision he can. He said that he loves the idea of this project and realizes there are a lot of people in favor of the project; however, he shares the concerns of Council Members Jepson and Goyette. Not knowing if the City will be able to finish the project is a concern. He said he doesn’t see the project happening without eminent domain. He concluded by saying he doesn’t want to start a project that can’t be finished or that will have to be paid for from taxpayer dollars.

August 25, 2008

Council Member Kinzel said the project has a good chance of dying if the Council does not get moving on something soon. He said that to kill the project now would amount to the project being over for a long time. He agreed there have been challenges, but the City has made much progress. If the project stops, Council Member Kinzel said a lot of residents and business owners will be disappointed.

Council Member Reimer said he has been contacted by more residents about this issue than other issues. All the residents he has spoken to are in support of the project. He was prepared to vote against the project until he heard that all easements have been signed. He said this gives him hope for Phase II of the project. He said this is the right time to do the project.

Council Member Glamm said anytime a public building is being built everyone has a different view. The creek walk is no exception. He said Council Members Reimer and Kinzel are right that if the project is not approved soon it will be dead. He doesn't see it coming back. He said the Council needs to take a leap of faith. The Council owes it to the people who had a vision for Cedarburg as a destination. He said there are no guarantees, but the Council must do something to keep up, grow, and attract people to Cedarburg.

Council Member Radtke said his biggest frustration is that this project has not been the easiest thing to do. The project may have taken a while and may continue to take a while, but this is what the Council needs to do. He said eventually all phases will be done. He said it is time to get the project started. He does not want to see it disappear.

Council Member Jepson suggested the idea that a TID district be created downtown and the City purchasing the Car Maid property be looked into.

Council Member Kinzel said property owners see value in this project and he thinks they will be interested in improving their properties. He said there is a need to keep the downtown vital. The downtown is an asset that has been ignored.

Council Member Maher said he has heard about hope and faith in terms of Phase II of the project. He said that he cannot rely on hope and faith. The Council needs to find a way to make the entire project a reality.

Mayor Myers said that he has been behind the plan since the beginning. He agreed the City may need to look at eminent domain in the future. He also agreed that if the Council does not approve the project it will die. He said the Council needs to take into consideration some of the points made by Council Members Jepson and Goyette tonight. He said he hopes the project will move forward tonight and that the Council will try to improve the project.

The motion to accept the easements for Phase I of the Creek Walk project conditioned upon all property owners executing the most recent version of the easement document provided by the City carried with Council Members Reimer, Glamm, Radtke, Maher, and Kinzel voting in favor and Council Members Jepson and Goyette voting against.

CONSIDER BIDS RECEIVED FOR PHASE I OF THE CREEK WALK PROJECT

Director Wiza said staff advertised for and received bids for the construction of Phase I of the Creek Walk project. The low bidder has since officially requested to withdraw their bid and staff concurs with that request. The second low bidder was Quasius Construction at a cost of \$420,312.31.

Director Wiza said there are many loose ends that have not been fully resolved, such as conditions in the DNR permit which have caused some scope changes in the contract work quantities. The DNR permit also requires a screening fence along the backside of Car Maid. If the contract is awarded, it is likely that some change orders will have to be issued and some items negotiated after the award. He said that this is not the best way to proceed; however, it is getting late in the summer and the contract would need to be awarded soon if the Council wants the project to begin this fall.

Tony Curreri, Eagle Construction, said his company was the next lowest bidder. He said he heard there were changes in the contract. He said the normal procedure is to inform all bidding parties of the changes and provide them with an opportunity to revise their numbers. He said this procedure is fair for both the City and the contractors. He said he is asking for that kind of consideration and stated he could revise his proposal within 48 hours.

Attorney Vance said if there is substantial alteration in the project, the City can issue an addendum to those who bid on the project.

Director Wiza said his understanding of the public bidding law is that once a project is bid the Council must accept the bids and award the project or reject the bids.

Attorney Vance said that it is an issue of whether there is a substantial change. She said according to Crispell-Synder, the change is not substantial; however, not being an engineer she doesn't know. She said that she can't be sure there would not be legal implications.

Council Member Goyette said negotiating changes during construction is not always the preferred way of doing business as the Council has recently learned with another contractor. She said the Council thought it had a reputable contractor with a low bid, but found out it was not in the best position to renegotiate once the work began. She said she doesn't want to go through that again.

Director Wiza said that it would take at least one month to re-bid the project. The work would not be able to be done this fall. Work would have to wait until mid-summer next year. The DNR grant extension expires on June 30, 2009.

Mayor Myers said the City did not initiate the changes. Rather, the City is caught in the middle. He said it is time to get moving on the project. If the Council does not accept the bids tonight the work will not get started this fall. He said re-bidding is not an option. He said it is not the City's fault the specifications have changed.

Council Member Goyette asked if the City would incur obligations if the Council accepts the bid and the easements are not signed.

Attorney Vance said that the contract will not be in effect until the Mayor signs it. She suggested he not be authorized to execute the contract until all easements are in place.

August 25, 2008

Motion made by Council Member Glamm, seconded by Council Member Radtke, that the Council authorize Mayor Myers to enter into a contract with Quasius Construction for construction services regarding Phase I of the Creek Walk project in an amount not to exceed \$420,312.31, provided that no later than September 8, 2008 there is resolution of any conflict between the DNR permits and any attachments to the easements from the property owners.

Council Member Jepson said he cannot vote in favor of the motion. He did however; thank Director Wiza and Attorney Vance for their service to the community and their efforts on this project.

Council Member Goyette said she is extremely leery of the “visionary” theory that she has heard. She said she needs to do what is in the best interest of the City. She said sometimes things do not work out as planned. She said this process is not setup to succeed.

With Council Members Reimer, Glamm, Radtke, Maher, and Kinzel voting in favor and Council Members Jepson and Goyette voting against, the motion carried on a roll call vote.

CONSIDER AWARD OF CONTRACT TO CRISPELL SYNDER FOR CONSTRUCTION LAYOUT AND FIELD STAKING FOR PHASE I OF THE CREEK WALK PROJECT

Motion made by Council Member Glamm, seconded by Council Member Kinzel to authorize Mayor Myers to enter into an agreement with Crispell-Snyder for construction layout and staking of Phase I of the Cedar Creek walkway in an amount not to exceed \$12,900, contingent upon execution of the contract with Quasius Construction for construction services. With Council Members Reimer, Glamm, Radtke, Maher, and Kinzel voting in favor and Council Members Jepson and Goyette voting against, the motion carried on a roll call vote.

CONSIDER PROPOSALS FOR REFUSE AND RECYCLING COLLECTION AND DISPOSAL

Director Wiza said the City’s contract with Waste Management will expire on December 31, 2008. Staff solicited five-year service proposals from both Waste Management and Veolia Environmental Services. Prices were requested for the current service level of 6-32 gallon containers of refuse and up to 2-18 gallon recycling bins per week and pricing for 96 gallon refuse cart pickup and both 96 and 64 gallon bi-weekly recycling cart pickup.

Director Wiza said that based on their low bid and positive service record with the City, staff is recommending the Council enter into a five-year contract with Waste Management for refuse and recycling services. Staff is recommending the City continue with 6-32 gallon container refuse service for \$5.96/unit per month and switch to 64 gallon carts for bi-weekly collection of recyclables at \$3.25/unit per month versus the current plan of 2-18 gallon container weekly recyclable pickup at a cost of \$4.48/unit per month. The switch to carts would save approximately \$65,000 per year. The monthly cost for refuse collection would be \$26,328 and the monthly cost for recycling collection would be \$14,357. There is an increase of \$8,400 if 96 gallon carts are used for bi-weekly recyclable pickup.

Council Member Radtke asked if the City has any recourse for those people who are not happy with the service from certain Waste Management employees.

Attorney Vance said the City can complain about the service to Waste Management.

Director Wiza said staff has pursued the litter issue and have not found it to be a big problem.

Council Member Radtke said that he is in favor of continuing the use of 2-18 gallon containers for weekly pickup of recyclables. He said that people don't want the materials around for two weeks.

Council Member Jepson thanked Ms. Besaw for her comments regarding garbage collection. He asked that she call him directly if there are continued problems. He agrees with Council Member Radtke that the current method of recycling collection should be maintained. He said that he thinks a large number of people prefer using 2-18 gallon containers. He said people will have a hard time storing the cart.

Mayor Myers said the Council is faced each year with budget concerns. This is a way to save money. He said that people will get used to recycling carts and bi-weekly collection of recyclables.

Council Member Reimer said the Council tries hard to find money for defibrillators and squad cars. He said that the \$65,000 savings from switching to bi-weekly collection of recyclables with carts will go along way.

Economic Development Coordinator Skalecki said the use of carts will promote recycling, which is something the Cedarburg Tourism, Promotion and Development Committee is trying to promote as well.

Motion made by Council Member Jepson, seconded by Council Member Glamm, to enter into a five-year contract with Waste Management continuing with the 6-32 gallon container for refuse services and switching to 64 gallon carts for bi-weekly collection of recyclables.

Ms. Besaw again stated there has been a service problem involving an employee of Waste Management. She has been assured the problems would be taken care of but have not.

Attorney Vance stated that the City cannot interfere with an employer-employee relationship.

Council Member Maher said that one of his concerns is that there are many small homes in his district with small garages. He questioned whether residents will have room in the garage for the recycling carts, whether the carts will be left outside, and whether an ordinance is necessary to regulate placement of the carts.

City Administrator/Treasurer Mertes explained that the cost of the new contract, if approved, will cost approximately \$190,000 more than refuse and recycling collection in 2008.

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to terminate debate. Motion carried without a negative vote.

With Council Members Reimer, Glamm, Jepson, Maher, Kinzel, and Goyette voting in favor and Council Member Radtke voting against, the motion to enter into a five-year contract with Waste Management, continuing with the 6-32 gallon container for refuse services and switching to 64 gallon carts for bi-weekly collection of recyclables carried on a roll call vote.

CONSIDER RESOLUTION 2008-20 ADOPTING THE OZAUKEE COUNTY ALL HAZARDS MITIGATION PLAN

Motion made by Council Member Glamm, seconded by Council Member Reimer, to adopt Resolution 2008-20 adopting the Ozaukee County All Hazards Mitigation Plan. Motion carried without a negative vote.

LICENSE APPLICATIONS

Motion made by Council Member Maher, seconded by Council Member Glamm, to authorize issuance of renewal Operator's Licenses for the period ending June 30, 2009 to: Lindsey J. Berndt, Jodie Thierfelder, Krystal L. Poppe, James W. Baum, Mary K. Steinbrecher, and Susan J. Seatz. Motion carried without a negative vote.

Motion made by Council Member Glamm, seconded by Council Member Reimer, to authorize issuance of a new Operator's License for the period ending June 30, 2009 to: Susan J. Lorenz. Motion carried without a negative vote.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said an update on economic development efforts from Economic Development Coordinator Skalecki was included in the Administrator's Report.

City Administrator/Treasurer Mertes encouraged the Council to read the information provided from Forester Westphal on the Emerald Ash Borer and watch the DVD that is available. She said that this issue will be discussed at budget time.

Mayor Myers suggested this issue be placed on a future agenda.

COMMENTS AND SUGGESTIONS BY CITIZENS - None

REPORTS AND COMMENTS BY COUNCIL MEMBERS

Council Member Radtke encouraged other Council Members to talk with Economic Development Coordinator Skalecki about some of the exciting things she has going on.

MAYOR'S REPORT

Mayor Myers issued proclamations to Eagle Scouts John Williams and Matt Bromley.

Mayor Myers said he has been approached by a City resident who does business in Italy about becoming a sister city to a city in Italy. He said he will be pursuing this idea.

ADJOURNMENT – CLOSED SESSION

August 25, 2008

Motion made by Council Member Reimer, seconded by Council Member Radtke to adjourn to closed session at 9:45 p.m. pursuant to State Statutes 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved and 19.85(1)(e) to deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, specifically sewer back up matters and the 2008 Street and Utility Project contract. Approval of closed session minutes of July 14, 2008. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Kinzel, seconded by Council Member Reimer, to adjourn the meeting at 10:15 p.m. Motion carried without a negative vote. Meeting did not reconvene into open session.

Constance K. McHugh, CMC
City Clerk