

**CITY OF CEDARBURG  
COMMON COUNCIL  
January 8, 2018**

**CC20180108-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 8, 2018, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council – Mayor Kip Kinzel, Council Members John Czarnecki, Jack Arnett, Dick Dieffenbach, Rick Verhaalen, Patricia Thome, Mike O’Keefe

Vacant - Aldermanic District 5

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Deputy City Clerk Amy Kletzien, Water Recycling Center Superintendent Eric Hackert, Jon Butt from Symbiont, Dale Romsos from SEH, Patrol Officer Brian Emmrich, former Council Member Mitch Regenfuss, retiring Sergeant Rick Leach, 3<sup>rd</sup> Aldermanic District Candidates Kristin Burkart and Ryan Hammetter, 5<sup>th</sup> Aldermanic District Candidate Garan Chivinski, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Kinzel’s 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.

**APPROVAL OF MINUTES**

Motion made by Council Member Thome, seconded by Council Member O’Keefe, to approve the minutes of the December 11, 2017 meeting as presented. Motion carried without a negative vote with Aldermanic District 5 vacant.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** – None

**NEW BUSINESS**

**CONSIDER RESOLUTION NO. 2018-01 COMMENDING MITCH REGENFUSS FOR HIS YEARS OF SERVICE ON THE COMMON COUNCIL; AND ACTION THEREON**

Motion made by Council Member Arnett, seconded by Council Member Thome, to adopt Resolution No. 2018-01 commending Mitch Regenfuss for his years of service on the Common Council. Motion carried without a negative vote with Aldermanic District 5 vacant.

**CONSIDER RESOLUTION NO. 2018-02 COMMENDING RETIRING SERGEANT RICK LEACH FOR HIS YEARS OF SERVICE; AND ACTION THEREON**

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to adopt Resolution No. 2018-02 commending retiring Sergeant Rick Leach for his years of service. Motion carried without a negative vote with Aldermanic District 5 vacant.

Rick Leach stated that it has been an honor and a privilege to serve the City of Cedarburg for the past 31 years; adding that it has been a great place to work and raise his family.

**CONSIDER REQUEST OF DONNA TAYLOR OF THE ANVIL PUB & GRILLE AT N70 W6340 BRIDGE ROAD TO AMEND THE PREMISE DESCRIPTION OF THE CLASS "B" BEER AND "CLASS B" LIQUOR LICENSES TO SERVE ALCOHOL INSIDE A TENT IN FRONT OF THE RESTAURANT FOR AN EVENT TO BE HELD ON JANUARY 16, 2018 FROM 7:00 P.M. TO 11:30 P.M.; AND ACTION THEREON**

Donna Taylor of the Anvil Pub & Grille is seeking permission to amend the establishment's premise description to serve alcohol in a 20' x 20' tent in front of the Anvil on January 16, 2018 for its 10<sup>th</sup> year anniversary/customer appreciation party.

Motion made by Council Member Czarnecki, seconded by Council Member Arnett, to approve the request of Donna Taylor of the Anvil Pub & Grille at N70 W6340 Bridge Road to amend the premise description of the Class "B" Beer and "Class B" Liquor licenses to serve alcohol inside a tent in front of the restaurant for an event to be held on January 16, 2018 from 7:00 p.m. to 11:30 p.m. Motion carried without a negative vote with Aldermanic District 5 vacant.

**CONSIDER PROPOSAL FROM SYMBIONT ENGINEERING SERVICES RELATED TO WDNR PERMIT COMPLIANCE; AND ACTION THEREON**

Superintendent Hackert explained that this is a continuation of the partnership with Symbiont Engineering when the City decided to contest its permit. The Water Recycling Center operates under a Department of Natural Resources Wisconsin Pollutant Discharge Elimination System (DNR WPDES) permit that has reporting requirements. As part of those requirements an Operational Evaluation Report is due by March 31, 2018 and a Compliance Alternative Source Reduction, Improvements, and Modifications Status Report is due by March 31, 2019. The Water Recycling Center staff will be working closely with Symbiont to comply and produce these reports.

Council Member Arnett asked for an update on the phosphorous guidelines. Superintendent Hackert said the Total Maximum Daily Load (TMDL) has gone to the Environmental Protection Agency for a determination. When the numbers are received, the Water Recycling Center will have numbers to work towards and will help in the analysis on the Center to see if the phosphorous limits can be met.

In answer to Council Member O'Keefe's question, Superintendent Hackert stated that he does not see the focus switching to agriculture because the plant is a permanent facility and they can impose regulations.

Council Member Arnett asked if there is any alternative to building a new plant if the limits cannot be met. Superintendent Hackert stated that technology is improving and may allow the City to push off making a major decision on the plant. The City is close; however, the regulations have gotten so tight that if there is one bad month it is enough to push the City off for the whole year. They are working on not ever having a bad month.

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to approve the proposal from Symbiont Engineering Services related to WDNR permit compliance. Motion carried without a negative vote with Aldermanic District 5 vacant.

**CONSIDER APPROVAL OF CHANGE ORDER RECEIVED FROM VINCO FOR EXTRA WORK TO ADDRESS UNKNOWN SUBSURFACE CONDITIONS AT THE WESTERN ROAD COMMUNICATIONS MONOPOLE SITE; AND ACTION THEREON**

Director Wiza explained that the City awarded a \$291,160 contract to Vinco to construct the Western Road communications monopole. While excavating for the 30 foot by 30 foot foundation, the contractor encountered intact concrete slabs and footings apparently from an old building, which did not show up in the soil boring log taken prior to construction. Before proceeding with the excavation, the contractor had to remove what appeared to be a 75 year old birch tree very close to the proposed monopole center and they were surprised to find poured concrete below it.

He further explained that it took the contractor two extra days to remove the old foundations, but that was not the only challenge. The soil boring had showed intact bedrock at 10 foot depth, but when exposed, the bedrock surface in the excavation was only 7 foot deep at the middle of the excavation and 10 foot at the edges. That would have forced a major redesign and enlargement of the foundation; however, after discussions they agreed to remove the dome of bedrock to expedite the foundation construction and minimize redesign costs.

As a result, Vinco's itemized change order request is for \$18,739. Although this is expensive, the consulting engineer SEH and City staff agrees that this was the most economical course of action. Because the removed foundation rubble could not be reused as backfill, Public Works crews purchased and hauled the crushed stone required to backfill the foundation. The City's cost for crushed stone was \$1,939; however, they saved approximately \$2,600 by doing the hauling.

Director Wiza explained that this type of problem usually stops work on a project; however, Mike Johnson did a fantastic job of keeping everyone on task and it only slowed the project down for five days.

In answer to Council Member Czarnecki's question, Dale Romsos explained that one soil boring was done and added that he does not foresee any additional change orders.

Director Wiza stated that the soil boring in this case was done to determine the quality of the bedrock and to test the strength of it for the monopole.

Council Member Dieffenbach complimented Director Wiza for using City resources to help solve the problem.

In answer to Council Member Dieffenbach's question, Dale Romsos said that the steel will be delivered next week and the monopole should be completed by the end of January.

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to approve the change order received from Vinco in the amount of \$18,739 for extra work to address unknown subsurface conditions at the Western Road communication monopole site. Motion carried without a negative vote with Aldermanic District 5 vacant.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 12/07/17 THROUGH 12/29/17, TRANSFERS FOR THE PERIOD 12/09/17 THROUGH 01/05/18, AND PAYROLL FOR THE PERIOD 12/03/17 THROUGH 12/30/17; AND ACTION THEREON**

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to approve the payment of bills for the period 12/07/17 through 12/29/17, transfers for the period 12/09/17 through 01/05/18, and payroll for the period 12/03/17 through 12/30/17. Motion carried without a negative vote with Aldermanic District 5 vacant.

**CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON**

Motion made by Council Member Dieffenbach, seconded by Council Member Czarnecki, to approve new Operators License applications for the period ending June 30, 2018 for Nicholas A. Baylen, Keri L. Dietrich, and Brian C. Tiegs. Motion carried without a negative vote with Aldermanic District 5 vacant.

**ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes provided an update from Mercury Maine on the Cedar Creek Cleanup. They have completed the removal of all of the water based equipment just prior to the ice setting in. All of the dredging work, as well as sand cover placement activities are complete within Columbia Pond and the Wire & Nail Pond. The majority of the residential restoration activities were also completed as planned. They anticipate completing the removal/disposal of the sediment from the park during the winter months to allow restoration activities to begin in early spring. They are currently working on the restoration plan for the park.

City Administrator/Treasurer Mertes reported that Attorney Herbrand, DJ Burns and she attended the County Executive Committee meeting and the County Board meeting when they passed a resolution to start the In Rem process to forgive the taxes on the Amcast property.

In answer to Council Member Verhaalen's question, City Attorney Herbrand said they will start the tax foreclosure for the Amcast site when they start the process for all the other tax foreclosures. They plan to assign and forgive the Amcast taxes. The resolution that passed states the property would transfer to the CDA or Oliver Fiontar LLC, whichever is determined to be the best route. City Attorney Herbrand stated that the County did want assurance that there was an end project in sight that will hopefully create some increment.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** - None

**COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member Arnett explained that he participated in a brief telephone call with the consulting firm that is hired for the branding initiative. The team is very impressed with Cedarburg after they interviewed approximately 80 people. From the interviews, they sensed a concern for accommodating growth while protecting the downtown. They stated that they have never had a higher engagement percentage during the interview process. The next step will be a community survey with links on the City website and public service group sites.

**MAYOR'S REPORT** – None

**ADJOURNMENT – CLOSED SESSION**

Motion made by Council Member Thome, seconded by Council Member Czarnecki, to adjourn to closed session at 7:37 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 Council with respect to litigation in which it is or is likely to become involved, more specifically, to discuss Ozaukee County Case Number 2017CV000469 Steven W. Banas et al vs. City of Cedarburg et al, and State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session, more specifically, to consider cellular tower leases for location on the monopole being constructed on Western Avenue, to consider granting an option to purchase a City-owned property at N144 W5888 Pioneer Road, and to consider the possible purchase of a parcel of land that is a portion of N69 W5269 Columbia Road for construction of a sanitary sewer pump station.. Approval of December 11, 2017 closed session minutes. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Thome, and O'Keefe voting aye and Aldermanic District 5 vacant.

**RECONVENE TO OPEN SESSION**

Motion made by Council Member Dieffenbach, seconded by Council Member Czarnecki, to reconvene to open session at 8:45 p.m. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Thome, and O'Keefe voting aye and Aldermanic District 5 vacant.

**DISCUSSION AND POSSIBLE ACTION ON THE OFFER TO PURCHASE A PARCEL OF LAND THAT IS A PORTION OF N69 W5269 COLUMBIA ROAD, CEDARBURG, WISCONSIN, FROM HARRIS N.A. FOR THE CONSTRUCTION OF A SANITARY SEWER PUMP STATION PURSUANT TO THE RELOCATION ORDER DATED JUNE 26, 2017**

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to approve the offer to purchase a parcel of land that is a portion of N69 W5269 Columbia Road, Cedarburg, Wisconsin, from Harris N.A. for the construction of a sanitary sewer pump station pursuant to the relocation order dated June 26, 2017 with a contingency on the ability to construct. Motion carried without a negative vote with Aldermanic District 5 vacant.

**DISCUSSION AND POSSIBLE ACTION ON GRANTING AN OPTION TO PURCHASE  
THE FORMER SEWER REMOTE RECEIVING SITE AT N144 W5888 PIONEER ROAD  
TO PIONEER REAL ESTATE DEVELOPMENT, LLC**

Motion made by Council Member Thome, seconded by Council Member Arnett, to grant an option to purchase the former sewer remote receiving site at N144 W5888 Pioneer Road to Pioneer Real Estate Development, LLC. Motion carried without a negative vote with Aldermanic District 5 vacant.

**ADJOURNMENT**

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to adjourn the meeting at 8:47 p.m. Motion carried without a negative vote with Aldermanic District 5 vacant.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk