

**CITY OF CEDARBURG  
COMMON COUNCIL  
JULY 30, 2018**

**CC20180730-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 30, 2018, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor O'Keefe called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Mike O'Keefe, Council Members Dan von Bargen, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garan Chivinski, Patricia Thome, Rod Galbraith

Also Present - City Administrator/Treasurer Christy Mertes, Director of Public Works and Engineering Tom Wiza, City Clerk Constance McHugh, Director of Parks, Recreation and Forestry Mikko Hilvo, Planner Jon Censky, Assistant City Attorney Johnathan Woodward, Attorney Joseph Wirth of Piper, Schmidt and Wirth, Architect Don Stauss, Greg Zimmerschied; interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor O'Keefe's 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.

**APPROVAL OF MINUTES**

Motion made by Council Member Thome, seconded by Council Member Galbraith, to approve the minutes of the July 9, 2018 meeting. Motion carried unanimously.

**PUBLIC HEARING: CONSIDER ORDINANCE NO. 2018-10 REZONING A .182 ACRE PARCEL AND A .337 ACRE PARCEL LOCATED ALONG THE NORTH SIDE OF MILL STREET BETWEEN WASHINGTON AVENUE AND HANOVER AVENUE FROM B-3/HPD CENTRAL BUSINESS DISTRICT/HISTORIC PRESERVATION DISTRICT TO B-3/HPD/PUD CENTRAL BUSINESS DISTRICT/HISTORIC PRESERVATION DISTRICT/PLANNED UNIT DEVELOPMENT DISTRICT**

Mayor O'Keefe opened the public hearing on this matter at 7:02 p.m.

Planner Censky said the reason the applicant, Greg Zimmerschied, needs the Planned Unit Development Overlay District (PUD) is the flexibility it provides in administering the basic use zoning district regulations and the need for the Council to consider certain code modifications to make these plans work. More specifically, due to the shape and limited depth of this property, the applicant finds it necessary to request adjustments to the parking stall size, parking offset/setback and vision triangle. The PUD District was amended a few years ago to provide this flexibility by releasing the handcuffs of the base district regulations to allow the Council to work with developers for unified development that better reflects the character of Cedarburg.

These plans are in support of TID No. 3 approved back in 2014, which included a cash grant Developer's Agreement requiring the developer to create a total real estate increment with an equalized value of \$950,000 to be realized no later than January 1, 2020. The plans serve as the first step in the approval process for the applicant to honor his commitment. This project will consist of three buildings; one facing Washington Avenue, another facing Hanover Avenue, and the third facing Mill Street, for a total commercial space of 6,900 square feet.

The applicant proposes to support this project with 25 onsite parking stalls and 34 street stalls that are located within 250 feet of the entrance to these buildings. According to Section 13-1-82(h)(1) and (g) of the Zoning Code, one parking space is required per one hundred fifty (150) square feet of gross floor area plus one per employee. This results in a parking requirement of 59 stalls for the project. Section 13-1-83 (b)(3) states that available nearby on-street parking may be counted toward visitor parking needs. This may only be allowed when on-street parking is permitted in a specific location, and then only when such on-street parking spaces are within two hundred fifty (250) feet of the entrance they are intended to serve. Accordingly, by using the existing street stalls available to these proposed buildings coupled with the number of proposed onsite stalls, this project is technically Code-compliant in regards to parking. While the Plan Commission had a lengthy discussion about parking, they believed that the peak demand for parking for the various uses in the area differs from one to the other and therefore they felt that there is sufficient street parking in the area to support the existing businesses in addition to the needs of this project.

Due to the size and depth of the existing parcel the applicant is unable to design a layout that conforms to the basic district regulations. Accordingly, as part of the PUD request, the applicant is seeking approval to adjust the following standards of the underlying B-3 basic use District:

1. Code Requirement – Sec. 13-1-80 Traffic Visibility States: No obstructions, such as structures, parking, or vegetation shall be permitted in any district between the heights of two and one-half feet and ten feet above the plane through the mean curb grade within the triangular space formed by any two existing or proposed intersecting street or alley right-of-way lines and a line joining points on such lines located a minimum of fifteen feet from their intersection. In the case of arterial streets intersecting with other arterial streets or railways, the corner cutoff distance establishing the triangular vision clearance space shall be increased to fifty feet.

Nonconformity – The southwest corner of the Hanover Avenue building encroaches on this clearance triangle by 3 feet and the southeast corner of the Washington Avenue building encroaches on the triangle by 6 feet. Two sets of tables and chairs also encroach at this location.

2. Code Requirement – Sec. 13-1-82(f) (3) Parking Requirements (Landscaping) states: A perimeter greenbelt of at least five (5) feet in width shall be installed along the street frontage and along all interior lot lines.

Nonconformity – Parking is proposed up to the Mill Street right-of-way line and ranges between 3.2 feet and .6 feet along the north property line.

3. Code Requirement – Sec.13-1-82 (c) Parking Stall Size states: Each parking space shall not be less than one hundred and eighty square feet, exclusive of the space required for ingress and egress.

Nonconformity – The five parking stalls on either side of the dumpsters and directly behind the Mill Street building measure 150 square feet.

Because the building facing Washington Avenue is located in the Historic Preservation District (HPD) the applicant was before the Landmarks Commission for a recommendation on the issuance of the *Certificate of Appropriateness* for this building only. At the June 14, 2018 meeting, the Commission did recommend issuance of a conditional Certificate of Appropriateness for the building footprint, location and mass but asked that the architectural/design be changed so that it looks less like a replica of an old building in the downtown district. They advised that the Secretary of the Interior Standards indicated that new buildings in a historic district shall be differentiated from the old.

For these plans to be approved as shown, the Council will need to approve the adjustments to the standards of the underlying B-3 District as outlined above. Also, 34 of the 59 parking stalls required for this development will be offsite. Staff has listed the following comments for consideration:

- The Fire Department needs assurance that the parking lot turning radius is adequate for their equipment.
- Fire protection needs will be determined as the project progresses.
- Parking is a concern with high traffic generating uses such as restaurants.
- Impact fees will be applied.
- The basements must be designed for high groundwater and potential petroleum contamination.

At the July 2, 2018 meeting, the Plan Commission recommended approval of this project by unanimous vote. In addition, on June 14, the Landmarks Commission recommended Certification of Appropriateness for the Washington Avenue building with the condition that the Architectural plans are to be modified to make it look less like a replica of an old building.

Council Member Thome asked if the five parking spaces on site that are designated as compact need to be marked. Architect Don Stauss said these spaces will be marked as compact.

Council Member Burkart said it is difficult to cross the intersections near this site. This proposal includes buildings that encroach on the vision triangles. Planner Censky said this was discussed at the Plan Commission as this tends to occur in historic downtown districts. Mr. Zimmerschied said it may be possible to place right turn only signs in the parking lot.

Council Member Arnett said he likes the project. As part of the branding process the Branding Committee heard the need for more restaurants in Cedarburg. Restaurant uses are proposed for this site.

Council Member Chivinski said there are four parking spaces on Mill Street towards Hanover Avenue. He asked if this is proposed to accommodate the Code. Mr. Stauss said some parking spaces were removed to soften the edge. He said the Plan Commission was receptive to providing latitude in terms of parking. Mr. Zimmerschied said he and Architect Stauss will continue to work with the Plan Commission, if necessary, to make this a great project for Cedarburg.

Irma Hammer of Chicago, representing the estate of Tony Fisher, said that she is very disappointed that no one contacted the neighbors about this project. She said this project impacts the Lily Pad and others and as a courtesy the project should have been discussed with them.

Planner Censky said all adjacent neighbors were notified of the Plan Commission meeting regarding this proposal. Property owners within 300' were mailed a notice of this Public Hearing. This is done to encourage people to come to City Hall to view the plans.

Mr. Zimmerschied said that he has been in contact with Denise Boerner of the Lily Pad. He said it may be possible to work out some arrangement for parking and access to the backyard of the Lily Pad.

Mary Ann, Rusch, W62 N541 Washington Avenue, asked if the on-site parking will be available from Hanover Avenue. Mr. Zimmerschied said access to the parking will be from Mill Street only.

Motion made by Council Member Thome, seconded by Council Member von Barga, to close the public hearing at 7:22 p.m. Motion carried unanimously.

Mayor O'Keefe said this is a very exciting project. He continually hears that Cedarburg needs more dining options. This project will provide that.

Motion made by Council Member Galbraith, seconded by Council Member Thome, to adopt Ordinance No. 2018-10 to rezone a .182 acre parcel and a .337 acre parcel located along the north side of Mill Street between Washington Avenue and Hanover Avenue from B-3/HPD Central Business District/Historic preservation District to B-3/HPD/PUD Central Business District/Historic Preservation District/Planned Unit Development District. Motion carried unanimously.

**CONSIDER REFERRAL OF PROPOSED ANNEXATION OF AN APPROXIMATELY ONE ACRE PARCEL OF LAND AT 7404 WESTERN AVENUE IN THE TOWN OF CEDARBURG TO THE PLAN COMMISSION**

Motion made by Council Member Burkart, seconded by Council Member von Barga, to refer the proposed annexation of the property at 7404 Western Avenue in the Town of Cedarburg to the Plan Commission. Motion carried unanimously.

**CONSIDER RESOLUTION NO. 2018-20 REQUESTING A SPEED LIMIT REDUCTION ON SHEBOYGAN ROAD SOUTH OF HWY 60**

Director Wiza said the speed limit on the County portion of Sheboygan Road south of Highway 60 is 55 miles per hour. As new development has occurred along that stretch of Sheboygan Road a number of residents have requested that the speed limit be lowered. The present speed limit on Sheboygan Road from the Fairfield Manor subdivision south is 25 miles per hour. The 30 mile per hour drop is excessive and creates enforcement issues.

Motion made by Council Member von Barga, seconded by Council Member Galbraith, to adopt Resolution 2018-20 requesting that Ozaukee County reduce the speed limit on Sheboygan Road south of Highway 60 to 35 miles per hour. Motion carried unanimously.

**UPDATE ON THE CITY'S EMERALD ASH BORER (EAB) PROGRAM**

Director Hilvo said since 2008 the City has been treating a majority of its ash tree population. In 2008 funding in the amount of \$75,000 was included in the budget. The current amount budgeted is

\$65,000. It is the Department's recommendation to continue with treatment and removal to save as many ash trees as possible. If treatment is discontinued, there will need to be more removals.

Currently 67 ash trees are marked for removal. Thirty four of these have not been treated and 33 were treated with soil injection only. In 2018, 33 ash trees will be removed, compared to 30 in 2017 and 20 in 2016. The City is losing trees that were treated with soil injection only due to a lack of funding. Director Hilvo said Cedarburg is at the peak of infestation now. Within a year or two the insect population will crash. After the invasion wave has passed, the number of insects in the area will drop significantly due to a lack of food. After the invasion wave the City will be able to back off treatment and treat less frequently, while monitoring for re-infestation.

Director Hilvo introduced Wayne White, Master Arborist and owner of Emerald Tree Care. Mr. White said he began treating diseased ash trees in 2002. He said the treatments are accepted as actually working. When the emerald ash borer showed up in 2008 in Newburg it had been there at least since 2004 and probably was already in Cedarburg but it could not be proven. There was a great deal of skepticism regarding treatments and due to a cutback in funding in 2012 trees were not treated as aggressively as they should have been. At this time the insect was exploding here. Some areas were hit harder than others. Mr. White said it is far more costly to remove trees than to treat them. It is prudent to not wait to treat trees until it is too late.

Mr. White praised City Forester Kevin Westphal, who he said is an amazing individual who cares about all the trees in the City. He complimented him on his diverse planting schedule. Mr. White said he is glad to be part of the City's emerald ash borer treatment program.

Director Wiza asked Mr. White if he is moving towards trunk injections rather than soil injections. Mr. White said he prefers soil injection treatments because nutrients are added to keep the trees healthy. However, trunk injections are generally done every two years; therefore, can be more economical.

Council Member Galbraith asked where the City is in terms of treatment and the condition of the ash trees. Mr. White responded by saying the City is in better shape than most cities. He said treatment of ash trees is not a forever thing. It is likely trees will not need to be treated after a few more years.

Mayor O'Keefe and the Council thanked Mr. White for his helpful information.

### **PAYMENT OF BILLS**

Motion made by Council Member Arnett, seconded by Council Member Chivinski, to approve the payment of the bills dated July 19, 2018, transfers for the period 06/28/18 through 07/24/18, and payroll for the period 06/17/18 through 07/14/18. Motion carried unanimously.

### **LICENSE APPLICATIONS**

Motion made by Council Member Galbraith, seconded by Council Member Thome, to authorize the issuance of a new Operators licenses for the period ending June 30, 2019 to:

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Mark A. Adrian  
Tamara J. Behling  
Kathleen S. Benson  
Mark S. Brock  
Lys M. Buck  
Brady S. Curtis

Michael E. Hester  
Howard E. Hockstad  
Ryan S. Kais  
David Kosy  
Daryl M. Kranich  
Dawn M. Priddy

Edward J. Simpson  
Becky A. Steliga  
Michael T. Thorison  
Jennifer L. Wilhelm

Motion carried unanimously.

Motion made by Council Member Galbraith, seconded by Council Member Thome, to authorize issuance of renewal operators licenses for the period ending June 30, 2019 to:

Catherine Davis  
Ron R. Ernst  
Julie B. Gottfried  
Lori A. Haeuser  
LeRoy C. Haeuser  
Nicholas S. Heebsh  
Gerald J. Henning  
Mark Hilgendorf

Andrew J. Kirk  
Paige M. Kleinhans  
Keri L. Klemann  
Christine A. Krause  
Adam J. Leiphart  
Neal C. Maciejewski  
Kari S. Midtbo Schwartz  
Judith A. Murphy

Robert Nash  
Andrea J. Patnode  
Cynthia M. Petted  
Robert J. Roden  
Richard J. Roden  
Jeannette M. Schupp  
Warren Seifert  
Joseph P. Willbrandt

Motion carried unanimously.

**CITY ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes said there were no internal candidates for the positions in the Clerk's and Treasurer's offices. The deadline for applications is August 7.

City Administrator/Treasurer Mertes said because the Go365 program recently discussed at the Personnel Committee has an employer contribution she will be bringing it to the Council as part of the 2019 budget.

**COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member Chivinski thanked Department Heads who hosted him and provided him with tours. He will continue to meet with other Department Heads. He also said the Library Board encourages new Council Members to tour the Library.

Council Member Thome said the Cedarburg Foundation Gala is September 22.

**MAYOR'S REPORT**

Mayor O'Keefe issued a proclamation proclaiming July 23, 2018 as Mr. Miller Day honoring special needs bus driver Dwight Miller.

**ADJOURNMENT – CLOSED SESSION**

Motion made by Council Member Burkart, seconded by Council Member Chivinski, to adjourn to closed session at 8:21 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 2017CV000334 Anita Clark 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 an amendment to 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 July 9, 2018 closed session minutes. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Burkart, Verhaalen, Chivinski, Thome and Galbraith voting aye.

**RECONVENE TO OPEN SESSION**

Motion made by Council Member Thome, seconded by Council Member Galbraith, to reconvene to open session at 9:04 p.m. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Burkart, Verhaalen, Chivinski, Thome and Galbraith voting aye.

**CONSIDER PURCHASE OF A PARCEL OF LAND THAT IS A PORTION OF N69 W5269 COLUMBIA ROAD FOR CONSTRUCTION OF A SANITARY SEWER PUMP STATION**

Motion made by Council Member von Bargaen, seconded by Council Member Burkart, to purchase a parcel of land that is a portion of N69 W5269 Columbia Road from BMO Harris Bank in the amount of \$100,000 for construction of a sanitary sewer pump station. Motion carried unanimously.

**CONSIDER AMENDMENT TO AN OPTION TO PURCHASE A CITY-OWNED PROPERTY AT N144 W5888 PIONEER ROAD**

Motion made by Council Member Thome, seconded by Council Member Galbraith, to approve an amendment to the option to purchase the property known as N144 W5888 Pioneer Road. Motion carried unanimously.

**ADJOURNMENT**

Motion made by Council Member Arnett, seconded by Council Member Burkart, to adjourn the meeting at 9:06 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC  
City Clerk