

**CITY OF CEDARBURG
COMMON COUNCIL
August 13, 2018**

**CC20180813-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, August 13, 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 Michael O’Keefe, Council Members Dan von Barga, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garon Chivinski, Patricia Thome, Rod Galbraith

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Tom Wiza, City Planner Jon Censky, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor O’Keefe’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 Burkart, to approve the minutes of the July 30, 2018 meeting as presented. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS – None

PUBLIC HEARINGS

CONSIDER RESOLUTION NO. 2018-21 TO AMEND THE COMPREHENSIVE LAND USE PLAN – 2025 FOR LOT 3 OF CSM 3769 ON THE EAST SIDE OF EVERGREEN BLVD. APPROXIMATELY 224 NORTH OF PIONEER ROAD FROM THE HIGH-MEDIUM DENSITY RESIDENTIAL CLASSIFICATION TO THE OFFICE CLASSIFICATION; AND ACTION THEREON

Mayor O’Keefe declared the public hearing open at 7:02 p.m. to consider Resolution No. 2018-21 to amend the Comprehensive Land Use Plan – 2025 for Lot 3 of CSM 3769 on the east side of Evergreen Blvd. approximately 224 north of Pioneer Road from the High-Medium Density Residential classification to the Office classification.

Planner Censky explained that Dr. Mantel has decided to add a third parcel, as well as the two that were rezoned in June, to build an orthodontics clinic. Accordingly, the Land Use Plan amendment and rezoning process for this third site is the same as that which was just completed for the first two sites. He added that Dr. Mantel’s plan is to secure the proper zoning now and then follow-up with

detailed development plans later this year. Dr. Mantel proposes combining all three lots together into one and then to construct a 4,000 square foot clinic with supporting onsite parking similar to Today's Dentistry across the street.

Steve Bassewitz, N13 W6869 Pheasant Court, asked if Planner Censky knew the size of the proposed clinic compared to Today's Dentistry. Planner Censky stated the Plans will be submitted and reviewed by the Plan Commission after the zoning change is approved. Mr. Bassewitz asked if condominiums will be built south of the proposed clinic. Planner Censky explained that the landowner is working on an agreement with the neighbors.

In answer to Council Member Arnett's question, Planner Censky stated that four more parking spaces will be added.

In answer to Steve Bassewitz's questions regarding the proposed clinic, Dr. Mantel explained that she wants to start building the clinic early next year, the building will be no larger than Today's Dentistry, and there will be a larger parking lot to relieve any parking problems.

Motion made by Council Member Thome, seconded by Council Member von Bargaen, to close the public hearing.

Motion made by Council Member Arnett, seconded by Council Member Thome, to adopt Resolution No. 2018-21 to amend the Comprehensive Land Use Plan – 2025 for Lot 3 of CSM 3769 on the East side of Evergreen Blvd. approximately 224 north of Pioneer Road from the High-Medium Density Residential classification to the Office classification. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2018-11 TO REZONE THE ABOVE PROPERTY FROM RD-1 TWO FAMILY RESIDENTIAL DISTRICT TO B-4 OFFICE AND SERVICE DISTRICT; AND ACTION THEREON

Mayor O'Keefe called the public hearing open at 7:09 p.m. to consider Ordinance No. 2018-11 to rezone the above property from RD-1 Two Family Residential District to B-4 Office and Service District.

Planner Censky explained that this is the second step in the process to rezone the proposed property.

There was no public comment.

Motion made by Council Member Thome, seconded by Council Member Galbraith, to close the public hearing.

Motion made by Council Member von Bargaen, seconded by Council Member Thome, to adopt Ordinance No. 2018-11 to rezone the above property from RD-1 Two Family Residential District to B-4 Office and Service District. Motion carried without a negative vote.

CONSIDER RESOLUTION NO. 2018-22 TO AMEND THE COMPREHENSIVE LAND USE PLAN – 2025 FOR THE PARCEL LOCATED AT N56 W6093 PORTLAND ROAD

**FROM THE GOVERNMENTAL AND INSTITUTIONAL CLASSIFICATION TO THE
COMMERCIAL CLASSIFICATION; AND ACTION THEREON**

Mayor O'Keefe called the public hearing open at 7:10 p.m. to consider Resolution No. 2018-22 to amend the Comprehensive Land Use Plan – 2025 for the parcel located at N56 W6093 Portland Road from the Governmental and Institutional classification to the Commercial classification.

Planner Censky explained that the petitioner is requesting rezoning of this parcel to make the former Baptist Church building more marketable for leasing purposes. Specifically, under the I-1 Institutional zoning, the petitioner is limited to nonprofit or quasi-public uses, such as a church, library, school or government office, etc.; whereas, the uses permitted in the B-3 Central Business District are commercial in nature. Since this site borders the B-3 Central Business District are commercial in nature. Since this site borders the B-3 District across Mill Street to the north, behind the property and is located across from Cedar Creek Park, the applicant feels the uses listed in the B-3 District are compatible with the area and more appropriate for the site than the limited uses permitted in the Institutional District.

Planner Censky said that before any decision on this project can be made, the 2025 Land Use Plan and zoning must be amended so both documents are consistent with each other and they reflect the use being proposed. Accordingly, the first step is to amend the Land Use Plan from the Governmental and Institutional classification to the Commercial classification.

In answer to Council Member Chivinski's question, Greg Zimmerschied said that two neighbors are open to a wide variety of businesses at this location.

In answer to Council Member Verhaalen's question regarding setbacks in the B-3 District, Planner Censky explained that this district does not need setbacks and allows up to the public right-of-way. Limitations include no on-site parking which will limit the use and opens the door for low intensive B-3 uses.

In answer to Council Member Burkart's question, Planner Censky stated that this site is not designated as a historical building; however, it likely qualifies.

Greg Zimmerschied stated that the building has great bones and was purchased 10 years ago to maintain and preserve it.

There was no public comment.

Motion made by Council Member Thome, seconded by Council Member Galbraith, to close the public hearing.

Motion made by Council Member Arnett, seconded by Council Member Chivinski, to adopt Resolution No. 2018-22 to amend the Comprehensive Land Use Plan – 2025 for the parcel located at N56 W6093 Portland Road from the Governmental and Institutional classification to the Commercial classification. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2018-12 TO REZONE THE ABOVE PROPERTY FROM I-1 INSTITUTIONAL AND PUBLIC SERVICE DISTRICT TO THE B-3 CENTRAL BUSINESS DISTRICT; AND ACTION THEREON

Mayor O'Keefe called the public hearing open at 7:19 p.m. to consider Ordinance No. 2018-12 to rezone the above property from I-1 Institutional and Public Service District to the B-3 Central Business District.

Planner Censky explained that this is the second step in the process to rezone the site from I-1 Institutional and Public Service District to the B-3 Central Business District.

Motion made by Council Member von Bargaen, seconded by Council Member Galbraith, to close the public hearing.

Motion made by Council Member Thome, seconded by Council Member Chivinski, to adopt Ordinance No. 2018-22 to rezone the above property from I-1 Institutional and Public Service District to the B-3 Central Business District. Motion carried without a negative vote.

NEW BUSINESS

CONSIDER MAYOR O'KEEFE'S REAPPOINTMENT OF ERIC ARVOLD TO THE COMMUNITY DEVELOPMENT AUTHORITY (TERM EXPIRES 09/06/22); AND ACTION THEREON

Motion made by Council Member Thome, seconded by Council Member Burkart, to approve Mayor O'Keefe's reappointment of Eric Arvold to the Community Development Authority (term expires 09/06/22). Motion carried without a negative vote.

CONSIDER CONTRACT EXTENSION FOR GROUNDWATER MONITORING AT THE FORMER CITY/TOWN LANDFILL SITE ON PLEASANT VALLEY ROAD; AND ACTION THEREON

Director Wiza explained that Stantec has been completing the DNR required semi-annual groundwater monitoring and reporting at the Pleasant Valley landfill for approximately 20 years. Stantec has again agreed to hold their price for 2019 and 2020 at the same amount as the previous three contracts. The cost is \$10,050/year with the City paying 66 2/3% and the Town of Cedarburg paying 33 1/3%. He said that staff recommends approval of the contract extension with Stantec because the Town of Cedarburg approves and they do a good job of monitoring the 12 wells on 40 acres. Director Wiza explained that he also received a quote today from DJ Burns for 25% less. He said there is not a time crunch and that other firms could be considered. He questioned the ethics of having one firm provide a bid ahead of time and then awarding the contract to someone who submits a bid after the first bid is public. He suggested that he put together an RFP and include the scope of work that is involved, which could be mailed to a number of firms to bid on the project. Director Wiza explained that it may be more complicated because this is an inter-municipal contract with the Town of Cedarburg.

In answer to Council Member Verhaalen's questions, Director Wiza explained that the landfill site on Pleasant Valley Road was a joint landfill with the Town of Cedarburg but has been dormant for many years. The DNR requires that the City and Town maintain what is there because it has been

capped. The groundwater needs to be monitored in the Spring and Fall along with monitoring the drinking water wells of nearby properties. Stantec has been agreeable to holding their price for the last eight years because they have the process down to a template. There has been no effort on the City's part to continue the process and contact nearby owners for well testing. Director Wiza approached Stantec four years ago to inquire about only testing once per year and they did not see that as a possibility. In regard to the reports, Director Wiza said they show that iron is high (marginal contaminant) with more significant readings from nitrates. If nitrates are elevated and infants are exposed to them it can have some issues with a blue baby syndrome. None of the readings have caused this type of concern. The only concern at this time is MTEB (in small parts) which was added to leaded gasoline. The theory is that it did not come from the landfill but from an adjoining property that may have dumped some gasoline because it is in small parts. There has not been any pattern or increase during the monitoring.

In answer to Council Member Burkart's question regarding arsenic, Director Wiza said that most arsenic is natural occurring and he suspects that they have looked at all of the parameters and decided which wells can be dropped off over the years. It is a very narrow list that they need to test for.

Council Member Galbraith expressed concern for rubber stamping an extension every two years and thought that a long term contract would be better. He was surprised that the City does not require a bid process for something of this nature. He has a difficult time simply extending a contract for two years for the past ten years without any ability to have the price negotiated.

In answer to Mayor O'Keefe's question as to how long the City has worked with Stantec, Director Wiza said that Stantec acquired Northern Environmental who held the previous contract and they have been doing the work for as long as he has been with the City, over 20 years.

Council Member Galbraith said that he had a hard time approving this contract with such short notice.

Council Member Verhaalen asked Director Wiza how much time it would require from him to bid out this contract. Director Wiza explained that an RFP and scope of work would need to be done. Some benefits of Stantec doing the work include testing a dozen wells over a 40 acre site. It would take some time on his part to find the wells and keys to explain the work to another company. If the City decides to bid this work out every two years, the amount of his time would add up. He asked the Council what parameters they want to set to determine qualifications on the consultants. There is a certain level of complication involving the types of firms available for the work and the Town of Cedarburg agreeing to a particular consultant.

Council Member von Bargen said that a 25% savings will be approximately \$2,500/year or \$1,600 for the City.

Council Member Verhaalen questioned whether it would cost the City more than the savings amount, with the added work for Director Wiza.

Council Member Galbraith stated that the City could create its own template for future RFPs.

Director Wiza said that Stantec has formed relationships with the individual landowners that have wells tested and this would need to be reestablished with any new firm.

In answer to Council Member Thome's question, Director Wiza said that there are five homes that are tested. It is a doable task and an eligibility list would need to be created.

In answer to Council Member Galbraith's question, Attorney Herbrand stated that the City will need to reach out to qualified contractors for this work. Director Wiza will contact local firms to determine if they can do groundwater testing.

Council Member Thome said that there are many factors and the homeowners have a sense of security working with Stantec. There is justification to make certain that the City is making the best use of the expense. If the City and Town can agree to get a longer contract, she would feel more comfortable reaching out to other firms for quotes.

Mayor O'Keefe asked if the required qualifications can be listed in the RFP. Director Wiza said that he is not sure if a certified hydrogeologist is a legal requirement and he will need to ask the DNR.

In answer to Council Member Arnett's question, Director Wiza said the work involves testing, sampling and monitoring that involves chain of custody and following a strict protocol from the DNR.

Director Wiza expressed concern for different firms testing the site and producing slightly different results, maybe because of their procedure, and then reading more into it.

Council Member Verhaalen asked if surface water was tested at the site. Director Wiza said that it was all groundwater and shallow well monitoring.

City Attorney Herbrand stated that the City will want to run any RFPs through the Town to make sure they are on board.

Council Member Chivinski stated that this may be a good time to take inventory of all the agreements the City is involved in with the Town, to determine if it is a good mix and they are paying their fair share.

Council Member Thome said that if it is the consensus of the Council to get bids on this service, that it is for a longer time period than two years.

In answer to Mayor O'Keefe's questions, Director Wiza opined that the site will need to be monitored indefinitely. City Administrator/Treasurer Mertes said that any contract will include a clause to allow the City to stop services if the monitoring becomes unnecessary.

Council Member von Barga asked if there were other short term contracts that will be up for renewal soon.

Director Wiza said that the garbage and recycling contract will be up for renewal in December 2020. This is a seven year contract and the City does get proposals on this service; although, there are not many choices. Most engineering contracts are bid separately for each project.

City Attorney Herbrand stated that the City has the option to choose the lowest responsible bidder for monitoring the site.

Council Member von Bargaen agrees with Council Member Thome that it would be advantageous to get a long term lower bid.

Mayor O'Keefe was in favor of hiring a local firm for the monitoring service.

Motion made by Council Member Galbraith, seconded by Council Member Burkart, to table the consideration for the extension of the contract for groundwater monitoring until the time that the RFPs can be brought forward for consideration by the Common Council. Motion carried without a negative vote.

CONSIDER PAYMENT OF BILLS DATED 08/08/18, TRANSFERS FOR THE PERIOD 7/25/18 THROUGH 08/08/18; AND PAYROLL FOR THE PERIOD 07/15/18 THROUGH 7/28/18; AND ACTION THEREON

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to approve payment of bills dated 08/08/18, transfers for the period 7/25/18 through 8/8/18, and payroll for the period 07/15/18 through 7/28/18. Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Burkart, to approve new Operator License applications for the period July 1, 2018 through June 30, 2019 for Audry L. Krick and Megan N. Shodeen. Motion carried without a negative vote.

Motion made by Council Member Chivinski, seconded by Council Member Thome, to approve renewal Operator License applications for the period July 1, 2018 through June 30, 2019 for Elizabeth A. Albers, David J. Burnside, James P. Dennis, B.J. Homayouni, Christopher M. Homayouni and Douglas E. Yip. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes stated that four interviews are scheduled for the part-time accounting position in the Treasurer's Office and five interviews are scheduled for the part-time Administrative Assistant position in the Clerk's Office.

COMMENTS AND SUGGESTIONS FROM CITIZENS – None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

MAYOR'S REPORT - None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Thome, seconded by Council Member Arnett, to adjourn to closed session at 8:07 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. Approval of July 30, 2018 closed session minutes. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Galbraith voting in favor.

RECONVENE TO OPEN SESSION

Motion made by Council Member Arnett, seconded by Council Member Thome, to reconvene to open session at 8:45 p.m. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Galbraith voting in favor.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to adjourn the meeting at 8:45 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk