

**CITY OF CEDARBURG  
COMMON COUNCIL  
March 27, 2017**

**CC20170327-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 27, 2017, 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 (arrived 7:07 p.m.)

Excused - Council Member Mitch Regenfuss

Also Present - City Administrator/Treasurer Christy Mertes, Director of Public Works and Engineering Tom Wiza, City Clerk Constance McHugh, Police Chief Tom Frank, City Attorney Michael Herbrand, City Planner Jon Censky, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Kinzel'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**

Council Member Dieffenbach asked that the word "valuable" in the second paragraph on page 29 of the March 13, 2017 minutes be changed to "viable".

Motion made by Council Member Thome, seconded by Council Member Dieffenbach, to approve the minutes of the March 13, 2017 meeting of the Common Council as amended. Motion carried unanimously with Council Members Regenfuss and O'Keefe excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

Matthew Lusk, N72 W5371 Georgetown Drive, said at the February 27, 2017 Council meeting there was a lack of discussion on the pros and cons of adopting the proposed ordinance pertaining to the keeping of chickens. He urged the Council not to pass the ordinance for the following reasons:

- The City is densely populated and keeping chickens could cause issues;
- Chickens attract predators such as mice, rats, raccoons, and coyotes;
- Chickens like to play in the dirt, are messy, and can create two pounds of manure per chicken per week.

Mr. Lusk said some subdivisions in the City have restrictive covenants that do not allow for these types of animals and some Council Members live in these subdivisions. He urged those Council Members who do live in subdivisions with restrictive covenants to recuse themselves from voting.

Mr. Lusk suggested the Council debate the issue more and look at the pros and cons. He said the Town of Cedarburg is more conducive to chickens but does not allow them. He feels the Council will need to spend money to enforce the ordinance.

**DISCUSSION AND POSSIBLE ACTION ON PROPOSED ORDINANCE NO. 2017-04**  
**CREATING SEC. 7-1-26 OF THE MUNICIPAL CODE OF ORDINANCES PERTAINING**  
**TO THE KEEPING OF DOMESTICATED CHICKENS**

Attorney Herbrand presented a revised draft of the ordinance that would allow domesticated chickens in the City based on comments and suggestions made at the February 27, 2017 meeting. The revisions include a clause that the ordinance will not invalidate subdivision deed restrictions, a provision that chickens must be monitored and fenced if allowed to roam free, a provision that in the event the coop is properly screened from view from the street, and if necessary to accommodate the existing structures or historic nature of a property, a chicken coop may be allowed in the side yard or street yard, a clause that the Building Inspector shall have sole discretion for coop design and location, and definitions of a side yard and street yard. There will be a \$50 initial permit fee and a \$25 annual renewal fee.

Council Member Czarnecki said newer subdivisions generally do not allow the keeping chickens. He questioned why this is, and concluded that homeowners realized years ago that chickens should not be permitted in residential neighborhoods.

Council Member Thome said chickens are not allowed in Bridge Commons where she lives because of the small lot sizes.

Council Member Arnett said the Top View Trails, Prairie View and Cedar Pointe subdivisions in his district do not allow chickens but he is not sure of the reasoning behind the prohibition.

Council Member Thome said she represents the entire 6<sup>th</sup> Aldermanic District, not just the 19 homes in the Bridge Commons subdivision that she lives in. She said she does not feel it is necessary for her to recuse herself in this matter. She said she has talked to owners of chickens in the City and no one has indicated that predators are a problem. She realizes there was once an issue with chickens in the Georgetown area but thinks the Building Inspector will be able to handle issues that may arise.

Attorney Herbrand said the ordinance requires a site plan showing the location of all structures located on the applicant's property, the location of all structures located on all abutting property, the coop design, and the site of the proposed coop.

Council Member Verhaalen asked Chief Frank if there have been any chicken related complaints. Chief Frank replied that there have not been any recent complaints; however, there have been a few in the last five years.

Council Member Arnett said meeting the requirements of the proposed ordinance will be burdensome to property owners so he feels there will not be a lot of residents using the ordinance. He said he would be willing to revisit the ordinance if it becomes a problem. He does feel however, that the 5' setback from a rear or side property line and the 30' setback from a neighboring residential structure are not enough. He suggested a 10' side yard setback and a 50'-60' setback from neighboring residential structures.

Council Member Czarnecki asked if existing structures will be grandfathered if the Council revisits and changes the ordinance. Attorney Herbrand said if a homeowner had a lawful use it would become a legal nonconforming use if the ordinance was changed.

Council Member Verhaalen asked if the number of permits issued could be limited. Attorney Herbrand said this may become a logistical nightmare to keep track of.

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to adopt Ordinance No. 2017-04 related to the keeping of domesticated chickens subject to the inclusion of the \$50 initial permit fee and the \$25 annual fee.

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to offer an amendment to the motion to increase the 5' rear or side yard setback to 10' and to increase the 30' neighboring residential structure setback to 50'.

Stacy Berg, W60 N782 Jefferson Avenue, asked if the setbacks apply if the homeowner has a fence.

Council Member Arnett said the Building Inspector does have discretion regarding the location of coops.

Attorney Herbrand cautioned that the Building Inspector has limited discretion. He must look at what the ordinance says and needs direction from the Council.

It was the consensus of the Council that the amendment to the motion increasing the 30' neighboring residential structure setback to 50' be changed to 40'.

With Council Members Czarnecki, Arnett, Dieffenbach, Thome, and O'Keefe voting aye, Council Member Verhaalen voting nay, and Council Member Regenfuss excused, the amendment to the motion carried.

With Council Members Arnett, Dieffenbach, Verhaalen, Thome, and O'Keefe voting aye, Council Member Czarnecki voting nay, and Council Member Regenfuss excused, the original motion to adopt Ordinance No. 2017-04 passed.

**DISCUSSION AND POSSIBLE ACTION ON PROPOSED ORDINANCE NO. 2017-07  
AMENDING SEC. 7-1-25(a) OF THE CODE OF ORDINANCES RELATING TO  
PENALTIES**

Attorney Herbrand said the ordinance pertaining to penalties has been revised to include the ordinance that was just adopted. This ordinance will allow penalties to be assessed if there are violations to the ordinance regulating chickens.

Motion made by Council Member Thome, seconded by Council Member Dieffenbach, adopt Ordinance No. 2017-07 amending Sec. 7-1-25(a) of the Code of Ordinances relating to penalties. Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER APPLICATION FROM THE SHINERY LLC, ELIZABETH REISSMANN,  
AGENT, FOR A “CLASS A” LIQUOR LICENSE FOR THE SHINERY, W63 N706  
WASHINGTON AVENUE, FOR THE PERIOD ENDING JUNE 30, 2017**

Troy Reissmann, co-owner of The Shinery, explained this business will be selling moonshine and moonshine related products for off-premise consumption. Limited sampling is allowed. He explained that moonshine is considered liquor.

Motion made by Council Member Verhaalen, seconded by Council Member Arnett, to approve the application of The Shinery LLC, Elizabeth Reissmann, agent, for a “Class A” liquor license for The Shinery, W63 N706 Washington Avenue, for the period ending June 30, 2017. Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER REQUEST FOR AUTHORIZATION TO HIRE A POLICE OFFICER DUE TO  
A RETIREMENT AND CONSIDER REQUEST TO PROMOTE AN OFFICER TO  
DETECTIVE SERGEANT**

Chief Frank said Detective Sergeant Vahsholtz intends to retire on May 3. He is requesting authorization to hire an officer to bring the staffing level to 20 and to fill the Detective Sergeant opening created by the departure of Sergeant Vahsholtz’s retirement. A current officer will be promoted to the Detective Sergeant position.

Motion made by Council Member O’Keefe, seconded by Council Member Czarnecki, to authorize the hiring of a police officer due to the retirement of Detective Sergeant Vahsholtz and to authorize the promotion of an officer to Detective Sergeant. Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER AWARD OF CONTRACT FOR THE 2017 STREET AND UTILITY PROJECT**

Director Wiza said staff advertised and received bids for the 2017 Street and Utility project. Eight bids were received, with the low bid coming from PTS Contractors, Inc. in the amount of \$1,517,750, which is below the budgeted amount for the project.

Motion made by Council Member Czarnecki, seconded by Council Member O'Keefe, to award the 2017 Street and Utility construction contract to PTS Contractors, Inc. in the amount of \$1,517,750. Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER FINAL PLAT APPROVAL AND APPROVAL OF A DEVELOPMENT AGREEMENT FOR THE SANDHILL TRAILS SUBDIVISION**

Planner Censky said the Preliminary Plat for the Sandhill Trails subdivision was approved at the September 12, 2016 Council meeting. The applicant has been working to address all the conditions of the Preliminary Plat approval and is requesting Final Plat approval as well as approval of the Development Agreement. The Final Plat consists of 43 single-family lots ranging in size from 14,522 square feet to 37,214 square feet and will result in the extension of West Oak Street in the Village of Grafton to Keup Road via Yorkshire Street.

Motion made by Council Member Thome, seconded by Council Member Czarnecki, to approve the final plat and Development Agreement for the Sandhill Trails subdivision subject to the following stipulations:

- The radius of West Oak Street where it connects to this subdivision must be modified to meet the City required 100-foot centerline radius per Chapter 14 of the Municipal Code.
- The right-of-way line at the north end of Sandpiper Lane to maintain a minimum 10-foot distance from the existing water main.
- Sidewalk at the north end of Starling Lane should be connected to the Interurban Trail.
- All impact fees and the fee-in-lieu of parkland dedication will apply at building permit acquisition.
- The developer shall be required to install public sidewalks and street trees along the Keup Road frontage.
- This subdivision shall include the full complement of improvements as required in the City's Subdivision Ordinance and all infrastructure plans (i.e. sewer, water, storm sewer, road, sidewalk, grading, drainage, and erosion control) shall be reviewed and approved by the City Engineer.
- Submittal and City Forester approval of a street tree plan showing size, location and species.
- Label the dashed lines on Lot 9 as wetland limits and wetland setback.

Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER RESOLUTION NO. 2017-05 AUTHORIZING STAFF TO APPLY FOR A DNR RUNOFF MANAGEMENT GRANT**

Director Wiza said to comply with new Total Maximum Daily Load (TMDL) storm water regulations the City is currently updating its storm water model to reflect current suspended solids, nitrogen, phosphorus, and coliform removal levels. The modelling is funded through a 50% DNR matching grant which was received in 2015. The next step will be to identify practical measures to close the gap between where the City is with pollutant removal, and where the City needs to be to meet the new TMDL limits. Staff is recommending the City apply for another DNR 50% matching grant to complete this phase of the work. The estimated cost of the study is \$40,000, which would

result in a City share of \$20,000 if the grant is awarded. \$10,000 would be budgeted in 2018 and \$10,000 would be budgeted in 2019 to meet this obligation.

Motion made by Council Member Czarnecki, seconded by Council Member O'Keefe, to adopt Resolution No. 2017-05 authorizing the Director of Public Works to apply for a DNR Runoff Management Grant. Motion carried unanimously with Council Member Regenfuss excused.

**CONSIDER ORDINANCE NO. 2017-10 AMENDING SEC. 10-1-34 OF THE CODE OF ORDINANCES TO ELIMINATE THE EXISTING LOADING ZONE ON THE WEST SIDE OF WASHINGTON AVENUE LOCATED MID-BLOCK BETWEEN MILL STREET AND WESTERN AVENUE**

Motion made by Council Member Dieffenbach, seconded by Council Member Thome, to adopt Ordinance No. 2017-10 amending Sec. 10-1-34 of the Code of Ordinances to eliminate the existing loading zone on the west side of Washington Avenue located mid-block between Mill Street and Western Avenue.

Director Wiza said there is an approximate 20' loading zone striped off on the west side of Washington Avenue across from the P.J. Piper restaurant. This loading zone was created for local business deliveries, but apparently is now only used occasionally by the County shared ride taxi. Due to the shortage of parking on Washington Avenue, the Public Works and Sewerage Commission recommended that the loading zone on the west side of Washington Avenue mid-block between Mill Street and Western Avenue be eliminated.

Gus Wirth, N48 W6000 Spring Street, and owner of W61N515-517 Washington Avenue, said it is extremely important for businesses in the area to have this loading zone. UPS and Fed Ex use it along with the Post Office, taxi cab service, Coldwell Banker office and food service delivery companies. It is also used as a drop-off point for handicapped persons. Without it vehicles will be double parking.

Mr. Wirth said eliminating this loading zone will impact businesses on both sides of the street. He suggested the Council vote no to the ordinance because gaining one parking spot is not worth it.

Council Member Thome asked if there are loading zones for other businesses along Washington Avenue. Director Wiza said he is not aware of any other loading zones on Washington Avenue. Java House requested one but it was denied.

With Council Members Czarnecki, Dieffenbach, Thome and O'Keefe voting aye, Council Members Arnett and Verhaalen voting nay, and Council Member Regenfuss excused, the motion to adopt Ordinance No. 2017-10 carried.

**CONSIDER AGREEMENT WITH SHORT ELLIOT HENDRICKSON INC. FOR GENERAL ENGINEERING SERVICES RELATED TO THE POSSIBLE CONSTRUCTION OF A MONOPOLE**

Director Wiza said SEH was hired to do a monopole feasibility study and it was determined that construction of a new monopole is feasible. Because there are still a lot of complicated issues it will

be important to have the consultant's technical expertise and input. SEH has proposed a general services agreement where the firm will charge an hourly rate and make themselves available as needed. Once it is better defined as to how the City should proceed, it may then be prudent to obtain a proposal for monopole design and construction administration services.

Council Member Dieffenbach suggested there be a not to exceed amount specified. He said he does not want to see an open ended agreement.

City Administrator/Treasurer Mertes said the original agreement contains \$28,700 as the estimated cost to prepare bids specifications and related documents. She suggested the agreement be capped at this amount as it would get the City through the design phase if necessary.

Motion made by Council Member Czarnecki, seconded by Council Member Thome, to approve the agreement with SEH for general engineering services related to the possible construction of a communications monopole in an amount not to exceed \$28,700. Motion carried unanimously with Council Member Regenfuss excused.

#### **CONSIDER AMENDMENT TO RENEW THE PARKING LOT LEASE WITH US BANK**

City Administrator/Treasurer Mertes said the lease with US Bank for the parking lot south of the Senior Center and Community Center Gym expired on February 28, 2017. US Bank has sent an amendment to renew the lease for five more years. She said the Council may want to consider other options.

Motion made by Council Member Thome, seconded by Council Member Arnett, to renew the parking lot lease with US Bank for five years. Motion carried unanimously with Council Member Regenfuss excused.

The Council directed City Administrator/Treasurer Mertes to contact US Bank regarding the possible purchase of this area or obtaining the right of first refusal and to contact the Cedarburg School District to see if there is interest in transferring ownership to the City of a small triangular piece of property adjacent to the leased property.

#### **CONSIDER MAYOR KINZEL'S APPOINTMENT TO THE PERSONNEL COMMITTEE**

Motion made by Council Member Arnett, seconded by Council Member O'Keefe, to approve Mayor Kinzel's temporary appointment of Council Member Thome to the Personnel Committee for the purpose of hearing two complaints filed. Motion carried with Council Members Arnett, Dieffenbach, Verhaalen, Thome and O'Keefe voting aye, Council Member Czarnecki abstaining, and Council Member Regenfuss excused.

#### **PAYMENT OF BILLS**

Motion made by Council Member Arnett, seconded by Council Member Czarnecki, to approve the payment of the bills for the period 03/10/17 through 03/17/17, ACH transfers for the period 03/08/17 through 03/22/17, and payroll for the period 02/26/17 through 03/11/17. The motion carried unanimously with Council Member Regenfuss excused.

**LICENSE APPLICATIONS**

Motion made by Council Member O’Keefe, seconded by Council Member Czarnecki, to authorize the issuance of new Operators licenses for the period ending June 30, 2017 to Kelly L. Dockery, Dustin J. Halyburton, Aaron J. Hickey, and Troy D. Reissmann. Motion carried unanimously with Council Member Regenfuss excused.

Motion made by Council Member O’Keefe, seconded by Council Member Thome, to authorize the issuance of a renewal Operators license for the period ending June 30, 2017 to Annette L. Chiddister-Woods. Motion carried unanimously with Council Member Regenfuss excused.

Motion made by Council Member Thome, seconded by Council Member Dieffenbach, to grant temporary Class “B” beer licenses to Cedarburg Fireman’s Park, Inc. for Maxwell Street Days, Firemen’s Park, W65 N796 Washington Avenue, for May 20, July 16, September 3, and October 1, 2017 from 8:00 a.m. to 10:00 p.m. Motion carried unanimously with Council Member Regenfuss excused.

Motion made by Council Member Verhaalen, seconded by Council Member Arnett, to grant a temporary Class “B” beer license to Cedarburg Fireman’s Park, Inc. for the Ozaukee County Fair, Firemen’s Park, W65 N796 Washington Avenue, for August 2, 2017 through August 6, 2017, 8:00 a.m. to 11:30 p.m. Motion carried unanimously with Council Member Regenfuss excused.

**CITY ADMINISTRATOR’S REPORT**

City Administrator/Treasurer Mertes said the 2016 Annual Financial Report was included in the agenda packet. The full audit will be presented to the Council in May.

**COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member Thome said she attended the Cedarburg Fire Department banquet on March 25 and said it is phenomenal to see the work that goes into the Department.

Council Member Arnett said the Light and Water Commission has tentatively agreed to site a new water tower near the existing water tower on Sherman Blvd. and Wauwatosa Road. The Commission will be reaching out to neighbors for comments and input.

Council Member Arnett said a new hotel is scheduled to be built in Grafton. He inquired as to the impact this will have on the City’s current hotel study that was recently done, and whether the study should be updated.

Council Member Arnett said at a previous meeting he and Council Member Czarnecki agreed to participate in discussions regarding the building of a new communications monopole. He invited all members to these discussions.

Council Member Arnett thanked the Council and staff for their professionalism at the March 13 Council meeting.



In terms of the monopole that is proposed to be constructed, Council Member Czarnecki suggested it be started as soon as possible.

**ADJOURNMENT – CLOSED SESSION**

Motion made by Council Member Dieffenbach, seconded by Council Member O’Keefe, to adjourn to closed session at 8:40 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the investing of public funds or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, more specifically, to receive an update regarding the Amcast site and to discuss negotiations regarding the possible construction of a new monopole tower on City-owned property located on Western Avenue adjacent to the water tower, and State Statutes 19.85(1)(g) to confer with legal counsel for the Council who is rendering oral or written advice concerning strategy to be adopted with respect to litigation in which it is or is likely to become involved, more specifically, to discuss the Prochnow Landfill. Approval of closed session minutes of 01/09/17. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Thome and O’Keefe voting aye and Council Member Regenfuss excused.

**RECONVENE TO OPEN SESSION**

Motion made by Council Member Dieffenbach, seconded by Council Member Czarnecki, to reconvene to open session at 9:46 p.m. Motion carried on a roll call vote with Council Members Czarnecki, Arnett, Dieffenbach, Verhaalen, Thome and O’Keefe voting aye and Council Member Regenfuss excused.

**ADJOURNMENT**

Motion made by Council Member O’Keefe, seconded by Council Member Thome, to adjourn the meeting at 9:47 p.m. Motion carried unanimously with Council Member Regenfuss excused.

Constance K. McHugh, MMC/WCPC  
City Clerk