

**CITY OF CEDARBURG
COMMON COUNCIL
December 10, 2018**

**CC20181210-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 10, 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 Bargen, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garan 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, Planner Jon Censky, Police Chief Thomas Frank, Lieutenant Michael McNerney, Sergeant Joseph Kell, 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 Galbraith, to approve the minutes of the November 26, 2018 meeting as presented. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Amber Psket, N28 W6360 Alyce Street, explained that she recently sent an email to each Council Member and the Mayor regarding her concerns about the fluoridation process in the City. She explained the contents of the email; asking the City to stop adding synthetic fluoride to the municipal water. Cedarburg does have natural levels of fluoride. The feeding of hydrofluoric acid is hazardous. She provided resources for the type of fluoride that is being used and various adverse health effects that have been linked to it. The Lancet Medical Journal has classified fluoride as a neuro toxicant. A Cedarburg Light & Water pamphlet shows fluoride as in inorganic contaminant that is added to our water. Most people are not aware of what sodium fluoride actually is and in this case it is hydrochloric acid, which is not actually occurring from the soil; it is a manmade hazardous waste as a byproduct of the aluminum and phosphate issues. The gases produced from these factories and repurposed into various forms of synthetic fluoride are delivered to the water companies and are redistributed into the water. The vats it is delivered in are labeled toxic. It claims to be neutralized when it is put into the water; however, she emphasized the word hydro. It is not good for a person's teeth despite what we have been told. A person can have too much fluoride, which creates a bone breakdown due to excessive fluoride. There is no shortage of fluoride (water, food, toothpaste, dentist applications, and pharmaceutical drugs) and it is

impossible to regulate. She urged the Common Council to review the information that she provided. She would like to get it out of the municipal water and fix what can be fixed - Know Better, Do Better.

PUBLIC HEARING

CONSIDER ORDINANCE NO. 2018-26 AMENDING SEC. 13-1-46(g) AND 13-1-27(g) OF THE ZONING CODE DECLARING EXISTING HOMES IN THE RS-5 AND RS-6 RESIDENTIAL DISTRICTS AS LEGAL CONFORMING BUILDINGS; AND ACTION THEREON

Mayor O'Keefe declared the public hearing open at 7:04 p.m. to consider Ordinance No. 2018-26 amending Sec. 13-1-46(g) and 13-1-27(g) of the Zoning Code declaring existing homes in the Rs-5 and Rs-6 Residential Districts as legal conforming buildings.

Planner Censky explained that at a recent meeting of the Plan Commission when considering an infill home request on Sheboygan Road it was noted that because the home lacked compliance with the setback requirement of the zoning district, it was classified as legal non-conforming. During that discussion it was also noted that since many homes in the City's older neighborhoods existed prior to the adoption of the City's Zoning Code, it is likely that they are noncompliant to setback requirements as well. Noting that the intent of the non-conforming law is to eventually phase such structures out of existence in favor of conformity, Commissioners asked staff to find a way to protect homes in those older neighborhoods.

The City's research reveals that the older neighborhoods are areas that are in close proximity to the Downtown Historic District and are within either Rs-5 Single-Family Residential or Rs-6 Single-Family/Two-Family Residential Districts. While these districts are intended to preserve the character of the City's original neighborhoods, they have setback requirements that are inconsistent with original development patterns. More specifically, the setback requirement in these districts would have all homes located at the same distance of 25 feet back from the ultimate road right-of-way where the original development pattern provides a more staggered pattern. Accordingly, staff is of the opinion that the best way to protect these neighborhoods is to remove the cloud of non-conformity that hangs over these homes by adjusting the setback requirement.

Therefore, in order to preserve the original development patterns of Cedarburg's older residential neighborhoods, the intent of the attached Ordinance is to render all existing homes to a legal conforming status with respect to setback. This is accomplished by establishing the setback requirement for lots based on the existing location of the home. If the existing building is ever damaged or destroyed due to a calamity, the building will be restored to, or replaced at, the location it had immediately before the destruction occurred. All future building changes or additions will be based on the home's current location on the lot. New homes proposed for vacant lots within these districts shall be setback in accordance with current code requirements.

In answer to Council Member Burkart's question, Planner Censky confirmed that a vast majority of the homes in the highlighted area is affected in the Rs-5 and Rs-6 districts.

In answer to Council Member Chivinski's question, Planner Censky stated that attention was drawn to this situation when a homeowner wanted to rebuild in this area and was not able to do so at the time, and needed to seek a variance from the Board of Appeals. It caused the City to review the areas and discovered that many of the homes along Sheboygan Road are very close to the ultimate road right-of-way and don't meet the setback requirements. Nearby neighborhoods also indicated that a vast majority of the original home stock are located in those areas. It made the City ask why these homes should be declared legal non-conforming, not allowing homeowners to add on to their homes.

In answer to Council Member Verhaalen's question, Planner Censky explained that the 25 ft. setback is a standard and was intended for new houses. It appears no one took into consideration the existing housing stock.

Council Member Arnett asked if a house burned down now, would the owner be able to rebuild it if it were within the existing setback. Planner Censky stated that the laws changed in respect to legal non-conforming; however, if it were a disaster they could by using the same footprint. If the house were to be rebuilt it would have to meet the required setback.

Council Member von Barga asked what some of the unintended consequences could be. Planner Censky stated that the older neighborhoods do not have a pattern and are staggered; whereas, new developments all have the 25 foot setbacks.

Planner Censky added that the staggered homes add charm to the City.

Council Member Verhaalen stated that it is good to give more freedom to homeowners with no affect to what is already there.

There was no public comment.

Motion made by Council Member Burkart, seconded by Council Member Thome, to close the public hearing at 7:13 p.m. Motion carried without a negative vote.

Motion made by Council Member Thome, seconded by Council Member Arnett, to adopt Ordinance No. 2018-26 amending Sec. 13-1-46(g) and 13-1-27(g) of the Zoning Code declaring existing homes in the Rs-5 and Rs-6 Residential Districts as legal conforming buildings. Motion carried without a negative vote.

NEW BUSINESS

CONSIDER ORDINANCE NO. 2018-27 AMENDING SEC. 14-1-70 OF THE CODE OF ORDINANCES ESTABLISHING THE ULTIMATE RIGHT-OF-WAY WIDTH FOR CERTAIN SECTIONS OF CEDARBURG'S STREET SYSTEM

Planner Censky explained that this proposed change came from a meeting of the Plan Commission when they were considering an infill residential home request on Sheboygan Road and were informed that before a building permit could be issued, dedication of the ultimate road right-of-way was required. Because the right-of-way dedication requirement for Sheboygan Road is substantial

at 40 feet from center (80 feet total), that requirement coupled with the limited buildable area of the site, rendered the site unbuildable. While the applicant did eventually secure a waiver to the dedication requirement from the Plan Commission, staff was asked to study the right-of-way widths of roads in the City's older neighborhoods and consider making changes as necessary to establish more reasonable widths.

The ultimate road right-of-way width requirement is set forth in the Subdivision Code and is based on the classification of the road as follows: local streets = 60' (i.e. 30' from center line), collector streets = 80' (40' from center line), and major arterials = 100' (50' from center line). After consulting with the City Engineer Tom Wiza on his needs for conducting work on public road/utility projects within the public right-of way it was determined that the current width requirement of certain older roads in the City far exceed his needs. Accordingly, Ordinance No. 2018-27 was drafted to reduce the width requirement for Bridge Road, Columbia Road and sections of Washington Avenue and Sheboygan Road as shown in the attached Ordinance. These are the main roads that cut through the older neighborhood of the City this Ordinance will serve to further protect and preserve those historic neighborhoods.

Director Wiza added that this is a recognition that streets such as Columbia Road and Sheboygan Road near downtown are intended to remain as is. When Sheboygan Road was rebuilt, the Department of Transportation was providing some funding and they asked the City to provide bike lanes and other amenities. It was determined that you cannot put that type of template on these existing older streets. The two choices are to bulldoze everything and change it to what the Code states or you look at what you have and make the decision to keep the historic neighborhoods as they are.

Motion made by Council Member Thome, seconded by Council Member Burkart, to adopt Ordinance No. 2018-27 amending Sec. 14-1-70 of the Code of Ordinances establishing the ultimate right-of-way width for certain sections of Cedarburg's street system. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2018-28 AMENDING SEC. 3-6-3 TO 3-6-7 OF THE MUNICIPAL CODE ADJUSTING THE IMPACT FEES FOR LIBRARY FACILITIES, POLICE DEPARTMENT FACILITIES, WATER SUPPLY FACILITIES, PARK FACILITIES, AND WASTEWATER TREATMENT PLANT; ORDINANCE NO. 2018-29 AMENDING SEC. 9-2-6(c) ADJUSTING THE SANITARY SEWER CONNECTION FEE; AND ORDINANCE NO. 2018-30 AMENDING SEC. 14-1-84 ADJUSTING THE FEES IN LIEU OF PARKLAND AND AMENDING SEC. 14-1-100(g) ADJUSTING THE PUBLIC SITE FEES BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES; AND ACTION THEREON

Director Wiza explained that this is an annual inflationary adjustment to the impact and development fees. He brought attention to the Engineering News Record that has established a Construction Cost Index that reflects what building or construction will cost. For 2018 it went up 2.9% and our current ordinances call for an annual adjustment of the Construction Cost Index.

Council Member Arnett calculated the fees for a new single family home at \$8,068 and asked how this compares to other communities. He asked if the City was putting them at a disadvantage.

Director Wiza stated that impact fees vary throughout the communities. The City's impact fees may be a way of controlling future tax increases. These fees pay for police station debt and library debt; the sewer connection fee is a water recycling facilities fee which covers the costly lift station upgrades. These upgrades are primarily because the City has new growth; thereby, the new homes pay their share of the growth as opposed to spreading it over the utility rates and tax base of the existing residents.

Council Member Arnett confirmed with Director Wiza that the impact fees are a policy decision. Director Wiza added that if the Council felt that the City's fees were high enough and wanted to eliminate the inflationary index going forward then the fees could be frozen. Impact fees help new developments pay their own way.

City Attorney Herbrand added that an impact study has been done by Baker Tilly that provided the basis for the fees.

City Administrator/Treasurer Mertes stated that once the debt is paid on the Police Station and Library the City does not collect for them any longer.

Council Member Galbraith stated that it does not appear that the impact fees have slowed any new development in the City.

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to adopt Ordinance No. 2018-28 amending Sec. 3-6-3 to 3-6-7 of the Municipal Code adjusting the impact fees for Library facilities, Police Department facilities, Water Supply facilities, Park facilities, and Wastewater Treatment Plant. Motion carried without a negative vote.

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to adopt Ordinance No. 2018-29 amending Sec. 9-2-6(c) adjusting the sanitary sewer connection fee. Motion carried without a negative vote.

Motion made by Council Member Arnett, seconded by Council Member Thome, to adopt Ordinance No. 2018-30 amending Sec. 14-1-100(g) adjusting the public site fees based on the construction cost index published in the Engineering News Record and calculated based on the annual increase in the CCI indices. Motion carried without a negative vote.

CONSIDER REVISIONS TO POLICY FC-4: INVESTMENT POLICY; AND ACTION THEREON

City Administrator/Treasurer Mertes explained that Port Washington State Bank requested a change in the collateralization offered to the City. The request was reviewed by the ad hoc Debt/Investment Committee on November 28 and they recommended approval of the policy changes: 1) to accept letters of credit from the Federal Home Loan Bank and 2) limiting the length of maturities on other investments.

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to approve revisions to Policy FC-4: Investment Policy. Motion carried without a negative vote.

ACTIVE ASSAILANT RESPONSE TRAINING – CEDARBURG POLICE DEPARTMENT

Police Chief Frank introduced Sergeant Joseph Kell who has been training in this area for close to 20 years and Lieutenant Michael McNerney who joined him shortly after. They have presented to community organizations over 40 times. Their presentations are so well received that they have been asked by other jurisdictions to come and assist their law enforcement agencies with presentations. They have also been asked to present at conferences on this topic.

Lieutenant Michael McNerney and Sergeant Joseph Kell provided some background and presented active assailant response training to the Common Council. Training has evolved over time throughout the County and currently all officers receive 8 hours of in-service training per year. New officers receive 24 hours of training involving three training levels. The officers work with the public and private schools to educate the staff, which includes hands-on scenarios and medical training. The entire County will be trained and certified in the ALICE method in 2019. The officers have also conducted training with churches, businesses, and at medical conferences to get the message out. Added precautions have been set in place during Festivals. Medical kits have been placed in various locations downtown. As of 2018, officers have been equipped with their own rifles, suppressors, flashlights, sights, helmets, plate carriers; along with medical bags and breech kits in each squad car.

Council Member Arnett encouraged the officers to keep in touch with the School District, as they go through their renovations, to incorporate some of their knowledge. The officers stated that they have a good relationship with the schools and they advise on a safety committee and meet with them on a regular basis.

Council Member Galbraith stated that there have not been any fatal fires in a school since 1950. Growing up fire drills were common and now active shooters are the 1950 fatal fire. It is important to do what can be done to prevent loss of life. If the Fire Code is preventing the installation of an important piece of equipment, it is worth looking into this.

In answer to Council Member Burkart's question, Lieutenant McNerney explained that they do hands-on training with the teachers once each year.

Council Member Thome stated that Cedarburg is fortunate to have lock-down drills.

Sergeant Kell said that officers walk through the schools each day.

Lieutenant McNerney said that the students have grown up in this environment and they have age appropriate training to educate the students.

Mayor O'Keefe stated that Columbine has created a paradigm shift. He commended the Department for their knowledge and proactive approach in keeping the citizens of Cedarburg safe.

CONSIDER PAYMENT OF BILLS DATED 12/03/18, TRANSFERS FOR THE PERIOD 11/24/18 THROUGH 12/07/18; AND PAYROLL FOR THE PERIOD 11/18/18 THROUGH 12/01/18; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Thome, to approve payment of the bills dated 12/03/18, transfers for the period 11/24/18 through 12/07/18; and payroll for the period 11/18/18 through 12/01/18. Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Thome, to approve new Operator License applications for the period ending June 30, 2019 for Mary E. Sorce. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes explained that City Hall will be closed on Wednesday, November 12 from 11:30 a.m. – 12:30 p.m. for the annual employee luncheon at the Fire Department.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Arnett announced that DJ Burns has invited the Council Members to walk through the former Amcast building as a group. This should be coordinated between him and Deputy Clerk Kletzien.

MAYOR'S REPORT

Mayor O'Keefe suggested that the fluoride concern be discussed at a Public Works and Sewerage Commission meeting.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Arnett, seconded by Council Member Burkart, to adjourn to closed session at 8:25 p.m. pursuant to 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 the sale of City-owned parcels in Business Park off Alyce Street – Parcel No. 13-034-14-000.02 (Outlot #1 CSM No. 2811) and a portion of Parcel No. 13-034-14-000.00 (Outlot #1 CSM 2784). Approval of October 29, 2018 closed session minutes. Motion carried on a roll call vote with Council Members von Barga, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Galbraith voting aye.

RECONVENE TO OPEN SESSION

Motion made by Council Member Galbraith, seconded by Council Member Burkart, to reconvene to open session at 8:49 p.m. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Galbraith voting aye.

CONSIDER OFFER RECEIVED ON A PORTION OF PARCEL NO. 13-034-14-000.00 (OUTLOT #1 CSM 2784); AND ACTION THEREON

Motion made by Council Member von Bargaen, seconded by Council Member Galbraith, to approve the proposed counter offer received on a portion of parcel no. 13-034-14-000.00 (outlot #1 CSM 2784). Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to adjourn the meeting at 8:50 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk