

**CITY OF CEDARBURG  
COMMON COUNCIL  
March 14, 2016**

**CC20160314-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 14, 2016, 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, Art Filter, Rick Verhaalen, Mitch Regenfuss, Patricia Thome, Mike O’Keefe

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Director of Engineering and Public Works Tom Wiza, Deputy City Clerk Amy Kletzien, Planner Jon Censky, Parks, Recreation & Forestry Director Hilvo, 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 O’Keefe, seconded by Council Member Thome, to approve the February 29, 2016 meeting minutes as presented. Motion carried with Council Members Czarnecki, Arnett, Filter, Verhaalen, Thome and O’Keefe voting in favor and Council Member Regenfuss abstaining.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** - None

**PUBLIC HEARINGS**

**CONSIDER ORDINANCE NO. 2016-03 REZONING THE 25.91 ACRE PARCEL ON THE EAST SIDE OF KEUP ROAD DIRECTLY SOUTH OF THE INTERURBAN TRAIL FROM RS-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO RS-3 SINGLE FAMILY RESIDENTIAL DISTRICT; AND ACTION THEREON**

Mayor Kinzel declared the public hearing open to consider Ordinance No. 2016-03 rezoning the 25.91 acre parcel on the east side of Keup Road directly south of the interurban trail from RS-1 Single Family Residential District to RS-3 Single Family Residential District at 7:02 p.m.

Planner Censky explained that Mr. Tillmann is requesting rezoning from the RS-1 Single Family Residential District with a minimum lot size requirement of 20,000 square feet to the RS-3 Single Family Residential District with a 12,000 square foot minimum lot size requirement. City records indicate that this parcel was rezoned to the RS-1 District in 2004 when the Common Council’s goal

was to reduce residential densities in this area by changing the zoning of this and on adjacent property. City records further reveal that rezoning was undertaken over the objection of the property owner. Prior to the 2004 rezoning, this property was zoned RS-4 Single Family District with a minimum lot size requirement of 10,000 sq. ft.

The result of the 2004 zoning change was the submittal and Council approval of a preliminary plat that consisted of 37 single-family lots for this site. With this current zoning change, the applicant will now be able to add six additional Code-compliant lots over the design under the RS-1 District and results in a subdivision of 43 single-family lots ranging in size from 14,532 sq. ft. to 31,333 sq. ft. for this 25.91 acre parcel. The road pattern will remain the same as approved in 2004.

Council Member Thome stated that some of her constituents are concerned about the zoning change that could result in many more homes on the property.

Planner Censky stated that the developer is adding six additional lots. To achieve any more than this, he would have to go through the entire approval process again.

Larry Bernier, W51 N776 Keup Road, spoke on behalf of Heritage Baptist Church, which is adjacent to the proposed subdivision. He expressed concern about the rezoning and the direct or indirect impact this will have on their church. He recently spoke with Mr. Tillmann and many of their questions were answered. The Church is concerned about runoff that may occur onto their property along with the effect of the rezoning. Their property line will be very close to a proposed street and they already have a runoff issue on the parking lot that they are addressing. Their other concern is acquiring additional property for the church and whether it will impact the rezoning.

Planner Censky stated that if the church acquires a portion of this site, they would need to go through the rezoning process for Institutional zoning as opposed to the Residential zoning. For now, the RS-3 and RS-1 limit the use of the site to single-family development. If the subdivision is pursued, there is a process to follow including submitting a grading, draining and erosion control plan which is reviewed by the City Engineer to insure that there will be no greater impact on adjoining properties from a drainage standpoint.

Director Wiza stated that subdivisions need to submit plans that include sanitary sewer, water, storm drainage, etc. for review. This has not been done for this site to-date which will be reviewed closely. The developer did construct a regional pond at the southeast corner.

Mayor Kinzel stated that City staff will review the plans and would not allow any adverse effect or negative impact on neighboring properties.

In answer to Council Member Filter's question, Director Wiza stated that he is listening to Mr. Bernier's concerns and a consultant who represents the developer is also present (Consultant Troy Hartnes of R.A. Smith) and they will produce detailed plans to address their concerns.

Consultant Troy Hartnes of R.A. Smith stated that the preliminary grading plan is started and the water will be directed away from Heritage Baptist Church. He also added that six additional lots is the maximum that they will want to add and the street configuration will not change.

Larry Berneir expressed another concern, that the previous ministry tried to purchase the 29+ acres at one time and went through a lengthy process; however, Richard Tillman had the right of first refusal and submitted a bid and bought the property. During this process they found in legal documents, several areas of the 29 acre parcel have bedrock located six feet down. This may involve additional expense and possible blasting to remove the bedrock. He expressed concern for any future blasting in this area.

Consultant Troy Hartnes stated that they are aware of the bedrock and the site has been graded so that the area where bedrock exists has been raised. They will avoid blasting because of the additional cost.

In answer to Council Member O'Keefe's question, Planner Censky stated that the adjacent homes on Bobolink Avenue are also zoned RS-3.

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to close the public hearing at 7:15 p.m. Motion carried without a negative vote.

Motion made by Council Member Filter, seconded by Council Member Thome, to approve Ordinance No. 2016-03 rezoning the 25.91 acre parcel on the east side of Keup Road directly south of the interurban trail from RS-1 Single Family Residential District to RS-3 Single Family Residential District as recommended and in consideration of the concerns of the neighbors. Motion carried without a negative vote.

**CONSIDER RESOLUTION NO. 2016-03 AMENDING THE COMPREHENSIVE LAND USE PLAN – 2025 FOR THE PROPERTY LOCATED AT N70 W6828 BRIDGE ROAD FROM MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL USE TO MIXED SINGLE FAMILY/TWO FAMILY RESIDENTIAL USE; AND ACTION THEREON**

Mayor Kinzel declared the public hearing open to consider Resolution No. 2016-03 amending the Comprehensive Land Use Plan – 2025 for the property located at N70 N6828 Bridge Road from Medium Density Single Family Residential Use to Mixed Single Family/Two Family Residential Use at 7:16 p.m.

Planner Censky stated this site is located at the northwest corner of Bridge Road and Evergreen Boulevard. The intent of the owner is to request of the Plan Commission a second driveway off of Evergreen Boulevard. The existing driveway is a single access drive off of Bridge Rd. Before the Plan Commission can consider this request, the City needs to address and correct the existing non-conforming situation on the lot. The site currently supports a duplex structure; however, it is in a zoning district that permits only single family structures. Because of this inconsistency, the structure is labeled as a legal non-conforming structure. The Code permits the structure to continue to exist; however, it prevents the City or the owner from doing anything to the structure that would intensify the use of the structure. To correct the zoning and to render the existing structure conforming, the applicant is here for two reasons. First, to amend the Comprehensive Land Use Plan under this agenda item and secondly to pursue a rezoning to reflect the change to the Land Use Plan which will take place under the next agenda item. He added that if these two items are approved tonight, then the applicant wants to appear before the Plan Commission to request the second driveway and this action is not taking place tonight.

Mayor Kinzel stated that the two letters that were received from citizens prior to the meeting do not apply to tonight's agenda items.

In answer to Mayor Kinzel's question, Deputy City Clerk Kletzien confirmed that tonight's public hearings were properly noticed.

There was no public comment.

In answer to Council Member Czarnecki's question, Planner Censky stated that tonight's action does not affect whether or not the owner applies for the second driveway. In any event he would prefer this structure be labeled a conforming structure.

In answer to Council Member Filter's question, City Planner Censky stated that the two letters received from citizens will be germane to the Plan Commission at their next meeting and these two people will be notified.

In answer to Council Member Verhaalen's question, Director Wiza stated that there has been a long-term drainage issue in the backyard. All the drainage from the neighborhood runs down to that point and he is not sure if the proposed driveway would help or hurt this issue.

Motion made by Council Member Thome, seconded by Council Member O'Keefe, to close the public hearing at 7:22 p.m. Motion carried without a negative vote.

Motion made by Council Member Thome, seconded by Council Member Regenfuss, to adopt Resolution No. 2016-03 amending the Comprehensive Land Use Plan – 2025 for the property located at N70 W6828 Bridge Road from Medium Density Single Family Residential Use to Mixed Single Family/Two Family Residential Use. Motion carried without a negative vote.

**CONSIDER ORDINANCE NO. 2016-04 REZONING THE PROPERTY LOCATED AT N70 W6828 BRIDGE ROAD FROM RS-5 SINGLE FAMILY RESIDENTIAL DISTRICT TO RS-6 SINGLE FAMILY/TWO FAMILY RESIDENTIAL DISTRICT; AND ACTION THEREON**

Mayor Kinzel declared the Public Hearing open to consider Ordinance No. 2016-04 rezoning the property located at N70 W6828 Bridge Road from RS-5 Single Family Residential District to RS-6 Single Family/Two Family Residential District at 7:23 p.m.

Planner Censky stated that this is the final step in the rezoning process where the applicant is requesting approval to rezone this property. The intent of this action is to reflect the change to the Comprehensive Land Use Plan – 2025 as amended in Resolution No. 2016-03. If this rezoning and Land Use Plan amendment is approved, the applicant will follow-up with his original request for the Plan Commission to consider adding a second driveway.

There was no public comment.

Motion made by Council Member Regenfuss, seconded by Council Member Thome, to close the public hearing at 7:24 p.m.

Motion made by Council Member Regenfuss, seconded by Council Member Thome, to adopt Ordinance No. 2016-04 rezoning the property located at N70 W6828 Bridge Road from RS-5 Single Family Residential District to RS-6 Single Family/Two Family Residential District. Motion carried without a negative vote.

**UNFINISHED BUSINESS**

**UPDATE ON DISCUSSIONS WITH THE CEDARBURG SCHOOL DISTRICT REGARDING THE FUNDING OF THE CEDARBURG HIGH SCHOOL TENNIS COURTS AND CONSIDER INTERGOVERNMENTAL AGREEMENT FOR TENNIS COURT RECONSTRUCTION AND USE; AND DIRECTION OR ACTION THEREON**

Council Member Arnett stated that the City received a revised agreement from the Cedarburg School District with the following major points:

- The District is proposing the City spend \$133,104, which reflects 29.5% of the reconstructions cost. This is based on the City usage estimate of 25% of actual days and 29.5% of “reserved” days. The City proposed using the 25%, actual use, but the District proposed the fee based on reserved time.
- The District proposed that the City pay 50% of all ongoing annual maintenance despite the fact that the City’s usage is 25% to 29.5%.
- Additionally, the District proposed that the decision to move forward with these annual maintenance costs is solely at the discretion of the District despite the City being responsible for half the costs. In other words, the City does not get a vote on these costs but are responsible to pay half of them.
- The agreement does not protect the City from future fee increases for other facilities. It does waive future tennis court fees, but not fees for other uses such as basketball. The City could still be charged fees for other facilities.
- The District removed language providing the City access to the JV courts during construction this summer.
- The District is proposing that the agreement expire in 10 years. However, the lifespan of the courts is approximately 25 years. So, theoretically, the City could be charged tennis court fees starting in year 11 for the remaining 15 years of useful life of the courts.

Council Member Arnett stated that it seems the District is actually moving farther away from previous drafts by only offering a 10 year waiver of tennis court fees vs. a 25 year waiver; not addressing the City’s primary concern about paying a six figure contribution to the District and still being subject to other non-tennis court fees as early as next year; and asking the City to pay 50% of maintenance costs with no right to approve such costs when the City uses the courts below 30%. The proposed agreement does lower the proposed City contribution from \$212,500 to \$133,104, a decrease of \$79,396. He wants to go back to the District with another idea and asked the Council for suggestions.

Council Member Regenfuss stated he is not in favor of the City contributing money in this fashion. The cost of the School District facility should be spread equally among the School District. If they decide to implement fees to the City for our programs, we will have to make decisions at that time.

Council Member Czarnecki said that the facilities the school is claiming to be their property is actually the property of the residents of the City of Cedarburg and residents in the District. The residents already pay for these facilities and the Town of Cedarburg contributes nothing. He suggested that the tennis courts be paid through taxes of the School District and the Cedarburg Recreation Department should continue to request to use their facilities when necessary.

Council Member Arnett explained that the School District will most likely implement fees. If the fees are too high the City may need to find another location.

Council Member Verhaalen stated that the City also uses the basketball and volleyball courts. Council Member Arnett said that the City is looking for protection against fees being implemented down the road.

Council Member Regenfuss stated that it is cleaner for the School District to collect through the tax base and charge for usage.

Council Member Arnett stated that the School District will be reconstructing the tennis courts in any event.

Mayor Kinzel stated that he is always in favor of intergovernmental agreements because they are a cost savings. This new agreement is basically a tax shift on City residents to save the school money.

Council Member Verhaalen stated that there was no dialog between the City and the School District over the proposed agreement from the City. They only responded with their own proposal. This proposal does not allow the City to use the JV courts during the reconstruction.

Director Hilvo stated that the City will be grinding and filling the City's four courts to make them playable. It will be difficult for the program supervisors to cover both locations.

In answer to Council Member Verhaalen's question, Director Hilvo stated that he sent a request to the School District last month to use the JV courts for summer programs and they have not responded.

Council Member Thome stated that this agreement would put the burden back on the City to modify our program.

Council Member Regenfuss stated that if the School District handles the cost of the courts, it is possible that the City may still pay the same fees. The children in the program will be impacted by the School District's decision. The children learning tennis will be going into their school system to play in their programs.

Mayor Kinzel stated that the School District charges the City a custodial fee to open and close the facility for indoor court programs and that makes sense. Because the City taxpayers pay the District, the City should have some options to use the facilities without paying a fee.

Motion made by Council Member Filter to send the original proposal #2 back to the Cedarburg School District for consideration because it is fair and equitable.

Council Member O'Keefe stated that he has been silent and since this last offer from the School District he is leaning toward not paying for the courts and the School District imposing fees.

Council Member Czarnecki stated that the residents of Cedarburg will pay but through a different form.

Council Member Verhaalen suggested that the City reject the current offer and ask the School District if they want to submit another offer.

Motion failed for lack of a second motion.

Motion made by Council Member Verhaalen, seconded by Council Member O'Keefe, to reject the Cedarburg School District counter proposal and the City is open to any other ideas from the District in terms of funding the tennis courts and an intergovernmental agreement for tennis court reconstruction and use. Motion carried with Council Members Arnett, Filter, Verhaalen, Thome and O'Keefe in favor and Council Members Czarnecki and Regenfuss opposed.

### **NEW BUSINESS**

#### **CONSIDER AWARD OF CONTRACT FOR THE ANNUAL CONCRETE SIDEWALK REPLACEMENT PROJECT; AND ACTION THEREON**

Director Wiza explained that this is an annual project to identify and replace sidewalk slabs that are tripping hazards in certain areas of the City. Staff received four bids for the 2016 concrete sidewalk replacement project with the low bid coming from Marvin Gleason Contractor's, Inc. in the amount of \$49,945.00. The City budgeted \$45,000 for sidewalk repairs, and the net City cost of the project will be within budget, as some work is billed back to the homeowners. Director Wiza stated that Marvin Gleason Contractor's did the work last year and they did a good job. The Public Works and Sewerage Commission recommends awarding the contract to Marvin Gleason Contractor's.

In answer to Council Member Arnett's question, Director Wiza stated that slabs are identified by a one inch tripping hazard and the price is high because of the work involved to replace and restore each section. Twenty percent of the City is inspected each year and in that area the defective walk is identified for replacement. The biggest culprit for the slab replacements is the roots of the street trees.

Motion made by Council Member Filter, seconded by Council Member Arnett, to award the 2016 concrete sidewalk replacement project to Marvin Gleason Contractors, Inc. in the amount of \$49,945.00. Motion carried without a negative vote.

#### **CONSIDER BIDS RECEIVED FOR THE 2016 STREET AND UTILITY PROJECT; AND ACTION THEREON**

Director Wiza stated that the City received a total of four bids for the 2016 Street and Utility project. This is a big project and it is not something that the City could sustain each year; however, there are a number of streets (Bridge Road, Jackson Street and Hanover Avenue) where there is major utility work that needs to be done. This work includes sewer, water, and laterals. The low bid was received from Dorner, Inc. in the amount of \$2,526,778 which is about 10% over budget.

The majority of this overrun is the laterals on Bridge Road, which were added later in the process and was not in the original budget.

In answer to Council Member Arnett's question, Director Wiza stated that the City is replacing lead laterals. The water main was replaced on Bridge Road approximately 25 years ago; however, they did not do the services. When the City took a closer look at the project and realized there were lead services they discussed it with Cedarburg Light & Water and they determined that they should be replaced. Director Wiza clarified that the City does not have a lead problem because the water is treated and the sample drinking water at the tap has not contained any lead. The City may receive future requirements to systematically remove all lead services and it is best to replace the laterals during this project. The Public Works and Sewerage Commission recommended the award of contract to Dorner, Inc. with some concern that the wastewater and water amounts were high; however, not every year is the same for any of the utilities and the next two years of the Capital Plan are lower. Dorner, Inc. has done this project for the City a couple of times and has always done a good job.

Motion made by Council Member Thome, seconded by Council Member Arnett, to award the 2016 Street and Utility project to Dorner, Inc. in the amount of \$2,526,778. Motion carried without a negative vote.

**REVIEW APRIL 2016 COMMON COUNCIL MEETING SCHEDULE; AND ACTION THEREON**

City Administrator/Treasurer Mertes stated that occasionally in the past the Council has combined meetings in April; however, due to the Public Works facility borrowing it is necessary to convene on April 25. The Organizational meeting on April 19 will be short.

It was the consensus of the Common Council to meet on April 11, 19 and 25, 2016.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 2/26/16 THROUGH 3/4/16, ACH TRANSFERS FOR THE PERIOD 2/25/16 THROUGH 3/11/16, AND PAYROLL FOR THE PERIOD 2/4/16 THROUGH 2/27/16; AND ACTION THEREON**

Motion made by Council Member Filter, seconded by Council Member Thome, to approve the payment of bills for the period 2/26/16 through 3/4/16, ACH transfers for the period 2/25/16 through 3/11/16, and payroll for the period 2/4/16 through 2/27/16. Motion carried without a negative vote.

**LICENSE APPLICATIONS**

**CONSIDER APPROVAL OF NEW OPERATORS LICENSE APPLICATIONS FOR THE PERIOD ENDING JUNE 30, 2016 FOR THE FOLLOWING; AND ACTION THEREON**

Motion made by Council Member O'Keefe, seconded by Council Member Arnett, to approve new Operators License applications for the period ending June 30, 2016 for James M. Hintz, and Kendall R. White. Motion carried without a negative vote.

**CITY ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes stated that the City's computer system was hacked last Thursday. All computer work that was done on Wednesday was lost. No data was stolen and the employees were able work on other projects during this time. The full system was up and running Friday.

This was unrelated to the County problem; whereas, the City does not have any information in the County's payroll system so City employee's personal information was not compromised.

The borrowing resolution will be presented at the next Common Council meeting and the City is adding \$1 million to the borrowing for the sewer utility, building the Sheboygan Road lift station and improving the Keup Road lift station.

K-9 Officer Jake has torn his ACL and will be out until summer.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** - None

**COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member Filter took the opportunity to thank Deputy City Clerk Kletzien, Administrative Assistant Valenta and City Administrator/Treasurer Mertes for a job well done over the years he has served on the Common Council.

City Attorney Herbrand updated the Common Council on the status of the Spring Street railroad crossing. The City did file a complaint against Canadian National with the office of the Railroad Commissioner last November. At that same time the Railroad Commissioner resigned so a response was delayed until a new Commissioner was recently appointed with new staff counsel. Attorney Herbrand has spoken with the new counsel twice and has been assured that a Notice of Investigation will be served soon.

**MAYOR'S REPORT** - None

**ADJOURNMENT – CLOSED SESSION**

The Common Council did not go into closed session, reconvene to open session or consider possible lease by the City of the former Federal Tool Building at N52 W5338 Portland Road for Temporary Public Works Operations, as listed on the agenda.

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member Thome, to adjourn the meeting at 7:59 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk