

**CITY OF CEDARBURG
COMMON COUNCIL
March 9, 2015**

**CC20150112-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 9, 2015, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Acting Mayor Radtke called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council - Council Members John Czarnecki, Ron Reimer, Art Filter, Paul Radtke, Mitch Regenfuss, Patricia Thome, Mike O'Keefe

Excused - Mayor Kip Kinzel

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, Library Board Member Steve Ruggieri, Mayoral Candidate John Kuerschner, 4th District Alderperson candidate Brook Brown and 2nd District Alderperson Candidate Jack Arnett, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Acting Mayor Radtke'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.

Council President Radtke stated that as Acting Mayor, he will retain his right to vote as Council Member of the 4th Aldermanic District.

APPROVAL OF MINUTES

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to approve the minutes of the February 23, 2015 meeting as presented. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Steve Ruggieri, W52 N621 Highland Drive, thanked the Common Council for their support for the Joint Library plan. The Ozaukee County Board approved the plan at 3% annual increase rather than the proposed 1%, resulting in 100% reimbursement by 2020 to libraries for service to residents from non-librariated areas.

NEW BUSINESS

CONSIDER RECOMMENDATION OF POLICE CHIEF TO DENY NEW OPERATOR'S LICENSE APPLICATION OF BRETT J. WEBER; AND ACTION THEREON

City Attorney Herbrand stated that a letter had been sent to Brett Weber according to the City's policy offering him the opportunity to speak at this meeting. The basis for the Police Chief's denial of this license is fourth degree sexual assault.

Police Chief Frank stated that after reviewing the report of the applicant it was clear that the offense was not a typical fourth degree sexual assault and it directly related to the license.

Attorney Herbrand stated that denial can be based on a habitual offender and this applicant rises to this level.

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to deny the new operator's license application of Brett J. Weber. Motion carried without a negative vote.

CONSIDER OUTDOOR ALCOHOL BEVERAGE LICENSE FOR THE CEDARBURG ART MUSEUM AT W63 N675 WASHINGTON AVENUE; AND ACTION THEREON

Motion made by Council Member Reimer, seconded by Council Member Czarnecki, to issue an Outdoor Alcohol Beverage License to the Cedarburg Art Museum at W63 N675 Washington Avenue.

Planner Censky stated that this request was reviewed by the Landmarks Commission on February 26 and the Plan Commission on March 2. Both Commissions approved the request unanimously. The area will be fully enclosed appropriately for the downtown historic district with a four foot high dog eared cedar fence connecting to the existing fence.

Marlene McGrew, N41 W393 Madison Avenue, stated that she owns the store adjacent to the Cedarburg Art Museum to the south and she questioned the exact outline of the fence.

City Planner Censky reviewed the fenced area with Ms. McGrew.

Ms. McGrew stated that people have been walking on her property after the bushes were eliminated between the properties and that parking is also a problem.

Planner Censky stated that the request for an outdoor alcohol beverage license will be used for occasional functions and not on a continuous basis.

Council Member Thome confirmed with Planner Censky that the fencing will extend from the existing fence and will enclose the entire area.

Ms. McGrew opined that by issuing an outdoor alcohol beverage to the Cedarburg Art Museum it will hurt the other organizations who fundraise.

Nancy Pipkorn, N66 W6466 Cleveland Street, stated that she has lived at this address for over 30 years and she is not opposed to the alcohol beverage license; however, she had questions and concerns. She asked that the Common Council establish a closing time for the outdoor area of 11:00 p.m. because groups of people and music can become loud and they are located within a residential area. Her second concern was for a flood light that goes on at dusk that should be repositioned because it shines on homes on St. John Avenue.

Planner Censky stated that the City has an ordinance in regard to light shining on properties and this will be addressed by sending a letter to the museum.

Acting Mayor Radtke reviewed a list of outdoor alcohol beverage licenses issued in the City showing time restrictions that may have been imposed when the license was granted.

Attorney Herbrand stated that amplified sound or music is not permitted in the outdoor seating area by ordinance.

Ann Denk, W62 N598 Washington Avenue, asked that the Common Council address the impact of 70 to 80 visitors parking downtown. She also asked the Council to govern the number of events held by the Cedarburg Art Museum and to limit the hours of operation. She does not want to see the outdoor area used every night and the area turn into a bar. In regard to amplified music, Fiddleheads occasionally will have a musician and she can still hear the music with her windows closed.

City Attorney Herbrand stated that the Common Council can put an end time on the outdoor alcohol beverage license.

Action Mayor Radtke stated that the Common Council has the ability to revoke the license if they are abusing it.

Council Member O'Keefe stated that he was not comfortable setting an end time.

Marlene McGrew stated that the downtown merchants will be open on Friday evenings and the Council should be mindful that the outdoor area may be open every Friday night.

Chris Christon, W70 N392 Fox Pointe Avenue, spoke on behalf of the Cedarburg Art Museum. She stated that the purpose for applying for the alcohol outdoor beverage license is for a few special events. They will not operate as a tavern and will not be open every weekend. They plan on using the area on July 25 for a sculpture event at the Museum. Their intention is to use the license three or four times per year and not on an ongoing basis.

In answer to Council Member Thome's question, Ms. Christon stated that the Art Museum has one wedding booked for this summer.

Ms. Christon continued to say that most of their events end between 9 p.m. – 10 p.m. because they do not have good lighting for into the night events. The museum is small and they would like to capitalize on the outdoor space a few times per year. They feel they have established good barriers

between the neighbors and the crowds have not been rowdy or loud. Ms. Christon agreed to meet with Planner Censky to discuss the flood light shining on St. John Avenue.

Acting Mayor Radtke stated that the license can be discussed anytime throughout the year, if there are any concerns about this outdoor alcohol beverage license.

Motion carried without a negative vote.

REVIEW OF THE 2014 ANNUAL REPORT FOR NR216 MUNICIPAL STORMWATER COMPLIANCE; AND ACTION THEREON

Director of Engineering and Public Works Wiza explained that as part of the City's NR216 storm water permit, the City must prepare an annual compliance report for submission to the DNR which documents our storm water program accomplishments. As in previous years, AECOM has been retained to assist in compiling the necessary information and performing the required water quality testing.

Director Wiza stated that the DNR requires that the report be reviewed with the governing body. Because the document is very lengthy, Director Wiza provided the following review:

Permit Conditions Imposed on the City:

- Implement a storm water public education and outreach program – accomplished with Cedar Post articles.
- Must inform the public of activities required under the permit – accomplished through the City website and Engineering Department brochures.
- Maintain a program to detect and remove illicit discharges – AECOM assists with dry weather sampling at outfalls.
- Enforce erosion and sediment control for construction sites.
- Monitor post construction water quality controls – best management practices checked/ponds.
- Continue a pollution prevention program.
- Achieve compliance with target of 40% suspended solids reduction – the City is very close to this percentage.
- Maintain and update the City storm sewer mapping – the GIS mapping is current.

Annual Accomplishments:

- Cleaned virtually all catch basin sumps as well as six hydrodynamic separators (approximately 100 tons were removed that would have gone into Cedar Creek).
- Issued 17 erosion control permits and one storm water management permit.
- Provided a full display rack of storm water related information brochures at City Hall.
- Published storm water articles in the Spring and Fall Cedar Post issues.
- Maintained and updated a storm water webpage.
- Provided the rotating display rack with storm water literature to the County Fair.
- Assisted AECOM with illicit discharge investigations.
- Swept downtown streets weekly and residential streets monthly.
- Collected and disposed of approximately 94 tons of street sweepings that is landfilled.
- Collected and composted approximately 1,135 tons of leaves, brush and yard waste.

- Collected and recycled (or burned) 1,940 gallons of used motor oil.
- Installed 33 new catch basins with two foot sumps which incorporate the “Dump to Waste Drains to Stream” logo on the cast iron curb head.

Director Wiza stated that a copy of the report is available in the Engineering office for further review.

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to accept the 2014 Annual Report for NR216 Municipal Stormwater Compliance. Motion carried without a negative vote.

CONSIDER RESOLUTION NO. 2015-04 CLOSING TID NO. 2; AND ACTION THEREON

City Administrator/Treasurer Mertes explained that TID No. 2 was created in January 2007, near Highways I and 60. The TID was set up to occur in four phases over 20 years. The planned residential development to provide sewer and water to the TID No. 2 fell through and there haven't been any prospective developments since for the subdivision. Since the creation date, there also has been a change in ownership of the property and the new co-owners are uncertain if they want to sell. A sliver of land next to the creek that the City needs to access for the utilities is owned by the developer that had the subdivision plat approved before the economy collapsed. The TID was planned in phases, borrowing was completed for the first phase and the City only incurred administrative and engineering expenditures in the last 8 years. The borrowing was callable in 2015 and was paid in full on Monday, March 2.

City Administrator/Treasurer Mertes further explained that Todd Taves of Ehlers has recommended that the City dissolve TID No. 2 and create a new TID when there is development ready to start. Since there are no plans in the works for development, the district is already halfway through its life and the current value is less than the starting base value; therefore, the best option is to close TID No. 2. She stated that the City would need to make up \$1.2 million before it would reach the starting base value of \$2.9 million in 2007.

City Administrator/Treasurer Mertes stated that after the 2015 debt payment, there is approximately a \$190,000 loss to be incurred by the City. This resulted from bond issuance and interest costs and engineering, legal, financial advisors, audit and administrative fees. She explained that the General Fund will have to take on this loss. The General Fund - fund balance will be at \$1,967,000 after this, which is well above the suggested fund balance policy.

The Economic Development Board recommended the district be dissolved at their February 24 meeting.

In answer to Council Member Regenfuss' question, City Administrator/Treasurer Mertes stated that the loss is from legal fees, annual fees to the State and the audit.

In answer to Council Member O'Keefe's question, Director Wiza explained that the obstacles include uncertain bedrock and crossing the river for a lift station and sanitary sewer. The City relied heavily on residential development and at the same time the economy took a downturn and the developer moved away. He explained that many analyses have been done and the topography is

wrong for sewer lines. It would result in a financial loss for the taxpayer. Eminent domain or an easement across property could be done but it would be very difficult.

City Administrator/Treasurer Mertes stated that approving Resolution No. 2015-04 will allow the City to close TID No. 2.

Council Member Thome read the following statement:

I am not happy that we have to have this discussion. I will support City staff and our financial advisor's recommendations because we hire them to give us their best advice.

Back in 2001 (that era), had the Council moved forward with staff and financial advisors' recommendation on the original TID No. 2 proposal, the City would not be writing off \$190,000 today.

When City staff and Ehlers created the original TID No. 2 plan it encompassed a smaller, more manageable area. The plan was extremely conservative and was projected to close within a reasonable period of time. The Council was advised by staff and financial advisors to move forward with the plan. They rejected the advice.

In 2007, a new Council created the current TID No. 2 that the City is examining today. Unfortunately financial markets fell apart and it was doomed almost from the beginning.

I recognize there are no guarantees then or now. But had the Council moved forward with the original recommendation, the City would have had space for growth opportunities. The City has lost numerous businesses over the past 15 years because there was no place for them to go in Cedarburg.

Let us learn from those mistakes. Let's plan and prepare with the future in mind. TIDs for that area will be proposed again. The City needs to examine proposals with an open mind and work proactively to prepare for the City's future.

Acting Mayor Radtke stated that he is leaving the Council in April and he knows that the Economic Development Board and Members of the Common Council are still supportive of a development and it is by no means a dead project. This chapter is closing; however, the City is still going to work towards developing the property in the future.

Brook Brown, N25 W5060 Hamilton Road, stated that the City has already invested \$180,000 and questioned whether it was lost. He asked if there was an option to reload \$180,000 into another proposal. This is important to know before making a decision.

Acting Mayor Radtke stated that he had an informal conversation with Ehlers prior to this meeting and was told that there is no way to regain the \$180,000. If a new TID works, the City may get their money back.

Council Member Czarnecki stated that the City is just stopping the loss.

Jack Arnett, W70 N463 Cedar Pointe Avenue, asked what the savings is going forward.

City Administrator/Treasurer Mertes stated that the debt is paid in full and the majority of the remaining fees are administrative costs and State filing fees.

In answer to Council Member O'Keefe's question, Director Wiza stated that some of the engineering work would need to be redone; however, there is some value in what was done. The City has a strong base but would need to do some adjustments. He stated that the system planning studies will stand. The engineering is not a total loss, possibly 75% can be recouped.

In answer to Council Member Czarnecki's question, City Administrator/Treasurer Mertes stated that if the City does some engineering work ahead of opening a new TID, those expenses can be included in the project costs of a new TID.

Motion made by Council Member Reimer, seconded by Council Member O'Keefe, to adopt Resolution No. 2015-04 closing TID No. 2. Motion carried without a negative vote.

CONSIDER CHANGES TO SECTION 6-5 OF THE PERSONNEL MANUAL RE: PROCEDURE OF DEPARTURE FOR EMPLOYEES (EXIT INTERVIEW PROCESS); AND ACTION THEREON

Acting Mayor Radtke stated that the Personnel Committee discussed these changes to ensure that the employees who are leaving are heard.

City Administrator/Treasurer Mertes stated that the Personnel Committee recommended minor changes to the existing policy. The changes clarify that the Payroll Officer will be the employee that provides the interview questionnaires to the exiting employees, and will provide the completed questionnaires to the City Administrator or Mayor if deemed necessary.

In answer to Council Member Regenfuss' question, City Administrator/Treasurer Mertes stated that she will review the completed questionnaire and Deputy Treasurer/Payroll Officer Livingston will put a copy in the persons employment file.

Council Member O'Keefe stated that this is a unique opportunity for an honest assessment and the goal is to make the process easy.

Motion made by Council Member Thome, seconded by Council Member Czarnecki, to approve changes to Section 6-5 of the Personnel Manual re: Procedure of Departure for Employees (exit interview process) as defined. Motion carried without a negative vote.

CONSIDER ESTABLISHING A PERMANENT DATE AND TIME FOR TRICK OR TREAT; AND ACTION THEREON

Acting Mayor Radtke stated that citizens have talked to him about establishing a permanent date for Trick or Treat and knowing the date far in advance.

Council Member Filter stated that he does not like to have Trick or Treating after dark for the safety of the children.

Council Member O'Keefe stated that the hours allow for daylight from 5 p.m. – 6:30 p.m. for younger children.

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to establish the last Saturday in October each year from 5 p.m. – 8 p.m. as the permanent date and time for Trick or Treat. Motion carried with Council Members Czarnecki, Radtke, Regenfuss, Thome and O'Keefe voting in favor and Council Members Reimer and Filter opposed.

PAYMENT OF BILLS

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to approve payment of bills for the period 2/20/15 through 2/27/15, ACH transfers for the period 2/21/15 through 3/6/15, and payroll for the period 2/15/15 through 2/28/15. Motion carried without a negative vote.

LICENSE APPLICATIONS

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to authorize the issuance of a new Operators license for the period ending June 30, 2015 to Brandon J. McCarthy, Sean M. Rodgers, Linda M. Schaefer and Daniel B. Swarthout. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes highlighted the new format for her report that was done by Deputy Clerk Kletzien.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT - None

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to adjourn the meeting at 8:20 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk