

**CITY OF CEDARBURG  
COMMON COUNCIL  
January 11, 2010**

**CC20100111-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 11, 2010 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:00 p.m. The meeting began with a moment of silence followed by the Pledge of Allegiance.

Roll Call: Present - Common Council – Mayor Gregory P. Myers, Council Members Chris Reimer, Paul Radtke, Michael Maher, Kip Kinzel, Robert Loomis

Excused - Council Members Ron Reimer and Art Filter

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Light & Water General Manager Dale Lythjohan, Police Chief Tom Frank, Deputy City Clerk Amy Kletzien, Library Director Mary Marquardt, Library Board President Sue Karlman, Library Board Members Steve Ruggieri, Vonna Pitel, and Elizabeth Bryde, Board of Review Member Dean Goetter, 5<sup>th</sup> District Candidate James McCoy, Town Supervisor Larry Lechner, Town Management Assistant for Parks and Planning Eric Ryer, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Myers' 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.

**CONSIDER MAYOR MYERS' APPOINTMENTS TO BOARDS, COMMITTEES, AND COMMISSIONS**

Motion made by Council Member Kinzel, seconded by Council Member Radtke, to approve Mayor Myers' appointment of Dean Goetter to the Board of Review as an alternate and Council Member Michael Maher, Sue Karlman, Elizabeth Bryde, Steve Ruggieri, Vonna Pitel, Art Palleon, and Debra Goecks to the Library Board. Motion carried without a negative vote with Council Members R. Reimer and Filter excused.

Deputy City Clerk Kletzien administered the oaths of office to Dean Goetter, Sue Karlman, Elizabeth Bryde, Steve Ruggieri, and Vonna Pitel.

**APPROVAL OF MINUTES**

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to approve the minutes of the December 14, 2009 meeting. Motion carried without a negative vote with Council Members R. Reimer and Filter excused.

**COMMENTS & SUGGESTIONS FROM CITIZENS**

Tim Penno, W60 N997 Sheboygan Road, addressed the current issues between the Town and City of Cedarburg. As a resident, he commended the Council and the City for continuing to protect the economic interests of city residents and their good work as stewards of taxpayer money. He also commended the initial steps taken in an attempt to replace some of the lost revenue and maintain services. Services have been cut to residents and eventually there may be additional cuts in employment, services, and perhaps costs to the city residents. He urges the Common Council to seek other sources of revenue that all growing cities must do to maintain or improve services, the tax levy, and jobs for residents and city employees.

The Council should take any opportunity to increase the tax base, which may come through aggressive annexation. It is important to continue to grow as a community by increasing the opportunity to build our tax base. The City should oppose any action taken towards improvements to the Town Center Plan and also the Town Landfill Park. There are elements within the Town that wish to compete. There is a level of competition that is going on that began with the recreation department programs. It is a possibility that the select programs may eventually move over to the Town park. The library dollars are next, which are being sent to the County rather than directly to any joint venture. These are all aspects of competition.

Town growth will impact City of Cedarburg businesses because people will spend money outside of the City. He impressed upon the Common Council that they are in a competition with the Town of Cedarburg and they need to recognize and take steps to advance the City on behalf of the City resident's interests. It is nice to share costs, but first and foremost the Council represents the citizens of the City of Cedarburg. He asked them to keep this in mind during any future dealings with the Town.

**CONSIDER RESOLUTION NO. 2010-01 DECLARING INTENT TO LEVY SPECIAL ASSESSMENTS AGAINST CERTAIN PROPERTIES ON THE EAST SIDE OF WASHINGTON AVENUE NORTH OF CAMBRIDGE AVENUE FOR INSTALLATION OF NEW CONCRETE CURB AND GUTTER PURSUANT TO SEC. 66.0701 AND 66.0703 OF THE WISCONSIN STATUTES**

Director Wiza stated as part of the proposed north Washington Avenue reconstruction, approximately 2,000 feet of new curb and gutter is planned to be added to the east side of Washington Avenue north of Cambridge Avenue. Policy PW-2 requires that when new improvements are installed that did not previously exist; the abutting properties are typically assessed for the cost. This resolution declares the City's intent to levy special assessments. After this resolution is passed, Director Wiza will prepare a detailed report of the estimated costs and frontage assessments for each property and a public hearing will be scheduled.

In answer to Council Member Loomis' question, Director Wiza stated that this action is consistent with past policy.

Mayor Myers stated that he voted against levying special assessments at the Public Works meeting; however, the Public Works Commission took the right approach. His reasoning for voting against this action is that it is a difficult time to levy special assessments on residents. Staff is correct in following Policy PW-2.

In answer to Council Member Radtke's question, Director Wiza stated that nine city property owners will be charged for special assessments at approximately \$15 per foot with lot frontages ranging from 100' to 200'. The special assessment charges will range from \$1,500 - \$3,000.

In answer to Council Member Maher's question, Director Wiza stated that there was no feedback at the last Public Works Commission meeting. A public hearing will take place in the near future with a presentation of all the assessments.

In answer to Council Member Loomis' question, Director Wiza stated that the developer would have paid the assessment fees when his home was built on Tower Avenue.

In answer to Council Member C. Reimer's question, Director Wiza stated that Policy PW-2 and the Code are consistent in requiring curb and gutter.

Council Member Radtke stated that sidewalk was extended past his home on Van Buren Drive and he was assessed for the improvement.

Council Member Kinzel expressed concern for setting a precedent and charging special assessments.

Council Member Radtke stated it is important to be consistent.

In answer to Council Member Maher's question, Director Wiza stated that this is a preliminary resolution to allow a public hearing. If the curb and gutter is not installed in this project, it would change the water drainage in this area. It would be a benefit to have any water collected in the storm sewer. The Common Council will have a chance to look at this issue again during the public hearing.

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to adopt Resolution No. 2010-01 declaring intent to levy special assessments against certain properties on the east side of Washington Avenue north of Cambridge Avenue for installation of new concrete curb and gutter pursuant to Sec. 66.0701 and 66.0703 of the Wisconsin Statutes. Motion carried with Council Members C. Reimer, Radtke, Maher and Kinzel in favor and Council Member Loomis opposed with Council Members R. Reimer and Filter excused.

**CONSIDER RESOLUTION NO. 2010-02 DECLARING AN INTENT TO PLACE A DEFERRED CHARGE ON THE ASSESSMENT REPORT FOR PROPERTIES IN THE TOWN OF CEDARBURG ON THE EAST SIDE OF WASHINGTON AVENUE IMMEDIATELY NORTH AND SOUTH OF SUSAN LANE FOR THE PURPOSE OF APPORTIONING THE COST OF NEW CURB AND GUTTER**

Two of the eleven properties receiving new curb and gutter on Washington Avenue are in the Town of Cedarburg; therefore, the City may not special assess any cost to them.

Motion made by Council Member Kinzel, seconded by Council Member C. Reimer, to adopt Resolution No. 2010-02 declaring an intent to place a deferred charge on the assessment report for properties in the Town of Cedarburg on the east side of Washington Avenue immediately north and south of Susan Lane for the purpose of apportioning the cost of new curb and gutter.

In answer to Council Member Radtke's question, Director Wiza stated that the property owners will be assessed if they annex into the City.

Mayor Myers stated that the City taxpayers will be paying for the curb and gutter improvements to the two Town properties at this time.

In answer to Council Member C. Reimer's question, Director Wiza stated that the charges will be adjusted according to the Construction Cost Index when or if they annex into the City.

Motion carried without a negative vote with Council Members R. Reimer and Filter excused.

**UPDATE ON THE MERCURY MARINE PLANT NO. 2 CONTRACT OF PURCHASE AND SALE**

City Attorney Vance stated the terms of the purchase and sale of the Plant No. 2 site are close to being finalized. The wording was changed to a "public building" rather than a "public library" to meet the requirements of the project through negotiations. The project will not close until the cleanup is complete and approved by the DNR.

Council Member Loomis asked if the amount of \$300,000 should be inserted into the blank on page 5 and asked that previous Council minutes be reviewed for the proper amount. He wants it confirmed that Mercury Marine will be receiving \$1.5 million and not \$1.8 million.

**CONSIDER ADDITIONAL TESTING OF THE PROCHNOW LANDFILL**

Mayor Myers stated that in light of the threat of eminent domain, the City needs to determine the value of the Prochnow Landfill property and should have an independent test done.

Council Member Loomis opined that this is a prudent request because it has been 10 years since the last round of comprehensive groundwater sampling and it is important to analyze any migration in the plume. It is an unbudgeted item; however, there is \$150,000 in Environmental Reserves for this type of expense.

Motion made by Council Member Loomis to authorize additional testing of the Prochnow Landfill.

In answer to Council Member C. Reimer's question, Light & Water General Manager Lythjohan stated that there are five to seven existing wells that will be used for the sampling. The samples will be compared to the last sampling in 2000.

In answer to several questions by Council Members, Light & Water General Manager Lythjohan stated that the Town is going ahead with their own testing and have indicated that they are not willing to share the results with the City. The Town's report will be available to the public eventually, but it may not be in a reasonable amount of time.

Council Member Loomis expressed that it is in the City's best interest to do an independent test as soon as possible because time is of the essence. The City needs to know the present condition and value of the property for possible negotiations with Mercury Marine.

Motion was seconded by Council Member Kinzel to authorize additional testing of the Prochnow Landfill.

In answer to Council Member Radtke's question, Mayor Myers stated that the Town's report will be available to the public eventually as a public record but that may be too late. He does not want to pay for City testing of the wells if the Town is also testing, especially since the budget was so tight; however, it is important for the City to have the information soon.

Motion carried on a roll call vote with Council Members C. Reimer, Radtke, Kinzel and Loomis in favor and Council Member Maher opposed with Council Members R. Reimer and Filter excused.

**UPDATE ON THE VERIFIED COMPLAINT AGAINST THE TOWN OF CEDARBURG,  
OUTSTANDING PUBLIC RECORDS REQUESTS, AND RECENT TOWN BOARD  
ACTION REGARDING MEDIATION**

City Attorney Vance stated that the City's complaint is being forwarded to Washington County for review. The complaint is comprised of a violation on a July 1, 2009 Town Board meeting agenda where tax key numbers were used to discuss eminent domain proceedings on the Prochnow Landfill, misusing closed session meetings to make decisions, and making decisions with a walking quorum instead of during an open meeting.

City Attorney Vance stated that the District Attorney is very busy and may not have time to address the violation. In that case, the City may have to go forward individually and that may get very involved and costly.

Mayor Myers stated if mediation goes forward, then all the issues will need to be on the table and he is not sure what the Town is willing to discuss.

Council Member Loomis stated that the Town's written response was clear stating that they agree to mediation.

City Administrator/Treasurer Mertes stated she attended the last Town Board meeting and the Town indicated that they would not discuss the Pool or Fire Department Agreements.

Mayor Myers said that is not acceptable.

Council Member Radtke stated that it would make sense to negotiate all of the agreements.

Mayor Myers questioned the mediation process based on what happened last year with the library and spending money on mediation after we have asked city employees to take furloughs. The City and Town do not have much to negotiate anymore.

Council Member Loomis suggested accepting the Town's written offer to mediate after February 3 when they submit possible mediators.

Mayor Myers reiterated that he will not agree to mediation unless all of the issues are on the table for discussion.

Council Member Loomis reviewed the process for mediation.

City Attorney Vance stated that the mediator helps to identify the issues to be mediated.

In answer to Council Member C. Reimer's question, City Administrator/Treasurer Mertes stated that the Town agreed to a meeting with the full Town Board and full Common Council for mediation.

Council Member Loomis stated that no action is required at this meeting. He suggested waiting until the Town's suggested list of mediators is received and go from there.

City Attorney Vance suggested formally proposing a list of mediators at the next Common Council meeting.

Council Member Radtke stated that the Park and Recreation programs along with the Fire Department and Swimming Pool programs need to be discussed.

### **CONSIDER LICENSE APPLICATIONS**

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to authorize issuance of a Festivals license to the Festivals of Cedarburg, Inc. for the Winter Festival to be held on February 13, 2010 from 8:00 a.m. to 10:00 p.m. and February 14, 2010 from 8:00 a.m. 4:00 p.m. Motion carried without a negative vote with Council Members R. Reimer and Filter excused.

### **CITY ADMINISTRATOR'S REPORT** - None

### **COMMENTS & SUGGESTIONS BY CITIZENS** - None

### **REPORTS & COMMENTS BY COUNCIL MEMBERS** - None

**MAYOR'S REPORT**

Mayor Myers issued a Proclamation in recognition of School Crossing Guard Week (January 11-15, 2010).

**ADJOURNMENT- CLOSED SESSION**

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to adjourn to closed session at 7:55 p.m. pursuant to 19.85(1)(e) to conduct specified public business, due to competitive or bargaining reasons that require a closed session, specifically to discuss police, police dispatchers and clerical union pending grievances regarding furloughs and staffing reduction issues and the proposal from Wastewater/DPW employees in response to furloughs. Approval of closed session minutes of 11/23/09. Motion carried without a negative vote with Council Members R. Reimer and Filter excused. Meeting reconvened to open session at 8:30 p.m.

**CONSIDER UNION PROPOSALS**

No discussion took place.

**CONSIDER 2010 FURLOUGH SCHEDULE**

No discussion took place.

**ADJOURNMENT**

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to adjourn the meeting at 8:31 p.m. Motion carried without a negative vote with Council Members R. Reimer and Filter excused.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk