

**CITY OF CEDARBURG
COMMON COUNCIL
January 27, 2014**

**CC20140127-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 27, 2014 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 Chris Reimer, Ron Reimer (participated via speakerphone), Art Filter, Paul Radtke, Michael Maher, Patricia Thome (after taking official oath), Mike O'Keefe

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Clerk Constance McHugh, Economic Development Coordinator Mary Sheffield, Library Board President Sue Karlman, Library Board Member Steve Ruggieri, 6th District Aldermanic applicants Sandy Beck, Patricia Thome, and Peter Welch, 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

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to approve the minutes of the January 13, 2014 meeting as presented. Motion carried with the 6th Aldermanic position vacant.

CONSIDER APPLICATIONS/CONDUCT INTERVIEWS/CONSIDER APPOINTMENT TO FILL THE 6TH DISTRICT ALDERPERSON VACANCY

Individuals applying for the 6th District Aldermanic vacancy are Sandy Beck, N67 W5409 Columbia Road, Patricia Thome, N68 W5760 Bridge Commons Court, and Peter Welch, N62 W6006 Columbia Road. After introductions, the candidates were interviewed by the Council and provided answers to questions submitted to them in advance of the meeting.

Mayor Kinzel thanked the three candidates for stepping forward to apply for the position. Council Member Radtke said the Council has three outstanding applicants to select from. Council Member C. Reimer said it is a good problem for the Council to have three good candidates.

City Clerk McHugh said according to Policy CC-20A on filling aldermanic vacancies, each Council Member votes for one candidate. The individual receiving the least number of votes on the first ballot will no longer be considered a candidate and additional balloting continues using the same process until only one candidate receives a majority of the votes cast. A candidate must receive a majority of votes from the Council, but not less than three, to be elected. In the case of a tie vote for the final two candidates for an aldermanic position, the Mayor will break the tie. Council voting is done by paper ballot and voting results are announced. Ballots must contain the name of the person voting, as well as the name of the person voted for, so that the vote of each member can be ascertainable.

The first round of voting resulted in Council Members Filter, C. Reimer, and R. Reimer voting for Sandy Beck, Council Members O'Keefe and Radtke voting for Pat Thome, and Council Member Maher voting for Peter Welch. Mr. Welch was eliminated.

The second round of voting resulted in Council Members Filter, C. Reimer, and R. Reimer voting for Sandy Beck and Council Members O'Keefe, Maher, and Radtke voting for Pat Thome. The Mayor broke the tie by voting for Pat Thome.

Lynne Buehler, W52 N844 Castle Court, requested that the record reflect that Ms. Beck submitted 82 signatures from 6th District residents and business owners in support of her appointment to the Common Council.

OATH OF OFFICE: COUNCIL MEMBER 6TH ALDERMANIC DISTRICT

City Clerk McHugh administered the oath of office to Council Member Thome and the new Council Member was seated.

CONSIDER MODIFICATIONS TO THE TID #3 DEVELOPERS AGREEMENT THAT WAS APPROVED AT THE DECEMBER 9, 2013 MEETING

Council Member C. Reimer stated that he will be abstaining from discussing and voting on this matter because of his position with the School Board.

City Attorney Vance said that the terms of the Developers Agreement for TID #3 were agreed upon at the December 9, 2013 Council meeting. Greg Zimmerschied, through his legal counsel, has made changes to the Agreement and is requesting the Council accept the changes.

In the second whereas clause on page 1 the following language was added: Whereas, this Agreement is entered into pursuant to Section 66.1105 of the Wisconsin Statutes, as amended (the "Tax Increment Law") and all relevant statutory definitions included therein. Attorney Vance said the added language is acceptable as are the other minor changes proposed on the same page.

On page 2, City Attorney Vance suggested the words "City codes" be added to paragraph C under Section II to indicate that the improvements will be in compliance with all City codes as well as applicable zoning ordinances and all applicable laws.

Mr. Zimmerschied suggested that the following paragraph (Section 1. C.) be removed from the Agreement: “The Developer understands that if TID 3 is created, Developer shall reimburse the City for consultant and administrative costs related to the City’s attempt to create the District”. He said this clause is redundant and is covered under the Remedies on Default clause, Section VII. B. 1. and is not totally accurate because he, as the Developer, will only reimburse the City if he defaults on the agreement.

Attorney Vance said that if the TID is created and there is no increment, the Developer must pay the City. She said she would not recommend striking this paragraph as it protects the City. She suggested the following language be added: “The Developer understands if TID 3 is created, and the Developer does not proceed with the project plan, Developer shall reimburse the City for consultant and administrative cost related to the City’s attempt to create the District”.

Mayor Kinzel said the Developer will not be reimbursing the City if he builds what the Council expects him to build. He agreed this section needs to be more clearly defined.

City Administrator/Treasurer Mertes said language could be added stating that the Developer would reimburse the City the difference if the tax increment does not cover the City’s costs.

Mr. Zimmerschied said this needs to be in only one section of the Agreement, and the better place would be VII. B. 1.

Attorney Vance said she feels this language should be left where it is because this section of the Agreement describes the overall intent.

Mr. Zimmerschied proposed the section read as follows: “The Developer understands that if TID 3 is created, and sufficient increment is not created during the life of the TID, Developer shall reimburse the City for consultant and administrative costs related to the City’s attempt to create the District”. The Council agreed to this language.

Attorney Vance said Mr. Zimmerschied has suggested that the following language be removed from Section II. E. 2: “~~Install all required electrical, telephone, cable, and gas utilities serving the Property underground and in accordance with all ordinances of the City.~~ Provide and submit to the City, valid copies of any and all governmental agency permits related to the construction, use and occupancy of the Project”. She said she would not recommend deletion of this sentence as it is standard language in all development agreements in the City.

Mr. Zimmerschied said that this language does not need to be stated because it is common practice; however, he is willing to leave it as is.

Attorney Vance said Section IV. A. was reworded to the following: “The City will pay to Developer a Cash Grant in annual installments in an amount equal to the Project Value less the Base Value, multiplied by 25% (e.g. Project Value of \$1,050,000 less Base Value of \$50,000 equals \$1,000,000 multiplied by 25% equals \$250,000) plus an annual adjustment for inflation to be calculated by using the most recent bi-annual CPI-U Milwaukee-Racine, WI available prior to cash grant disbursement”. She said Todd Taves of Ehlers said this type of language is never in these types of agreements because the equalization includes the property value. It incorporates what comparable properties are worth.

Mayor Kinzel said the issue is whether the CPI-U is included in the Agreement and continues for the life of the TID, or whether the equalized value is the basis for the payments and is capped for five years.

City Administrator/Treasurer Mertes said adding a CPI component provides the Developer his money back in today's dollars.

Mayor Kinzel said the Developer would like to be paid in today's dollars with no cap. This is something that was overlooked in previous discussions.

Mr. Zimmerschied said if inflation is not adjusted for, he does not know how much he will be paid. He said he needs a guarantee of \$250,000 in today's dollars. This is the amount he needs to count on to offset dollars today.

Council Member Radtke said this would change the numbers that have been discussed and agreed upon. He said he needs to know whether this is a common practice and what the opinion of Ehlers is on this.

City Administrator/Treasurer Mertes said she talked to Todd Taves at Ehlers and did some calculations as to what the impact of using a 1, 2, and 3% interest rate would be instead of an inflation factor. She said that every percentage added one year to the life of the project. She said Mr. Taves said he would not recommend using a CPI factor and suggested it would be easier to use an agreed upon interest rate.

Council Member R. Reimer said he agrees with Council Member Radtke. There have been no discussions thus far stating the Council will proceed with inflation protection.

City Administrator/Treasurer Mertes said Mr. Taves suggested an interest rate be selected and everyone will know what the payments are. Every 1% added to the payment will add one year of life to the TID.

Council Member R. Reimer asked if the CPI applies to the annual payments or just the 25% that is to be multiplied to the base value.

City Administrator/Treasurer said in the first year if the Developer created \$100,000 of value, the City would owe him \$25,000. If the tax increment does not cover the City's expenses, no payment would be made. The 25% figure would not be increased, but the balance owed to the Developer would increase.

Mr. Zimmerschied said the issue is how the payment is paid out over 18 years. He said it must be in today's dollars in order for there to be any benefit to him.

Council Member R. Reimer said there needs to be a cap and the Council needs to know what it will be paying out.

Mr. Zimmerschied said the fair approach is to add a CPI factor to the Agreement. He needs to be paid out at today's dollars. Mr. Taves at Ehlers is suggesting that an interest rate be applied to the payments.

Council Member Radtke said he understands Mr. Zimmerschied's point, but is not comfortable using this approach without talking to Mr. Taves or Ehlers. He again stated he would like to know if this common practice.

Council Member Filter said Ehler's is the City's financial advisor and the Council should listen to advice provided by the firm.

Council Member Thome said she understands where Mr. Zimmerschied is coming from, but the Council should take the advice and recommendation of Ehlers if this has already been addressed.

Council Member Maher said when he does not understand something, he looks to Wikipedia. He said the CPI-U covers for a substitution bias and takes into consideration the ups and downs in the market.

Mayor Kinzel said it does not appear there is any consensus on the Council for including an inflation factor in the agreement. He asked if the Council is interested in negotiating an annual interest rate of between 0% and 4%.

Council Member Radtke said he does not want to see the payments fluctuating dramatically over the life of the TID.

Mr. Zimmerschied said that with an annual interest rate of 4% during the life of the TID, the TID would be extended by four years, and the payments would be a wash. He said tax rates do not stay the same over time.

Council Member R. Reimer asked Attorney Vance if State Statutes say the base value stays the same over the life of the TID.

Attorney Vance verified that the base value never changes.

Mr. Zimmerschied said he cannot in good faith bet on the future and does not know for sure that inflation will not do what it did in the early 1980s. He said he needs the TID to buy down the costs of the project. He said the \$250,000 cannot be worn down to \$75,000 in today's dollars.

Council Member R. Reimer asked how the inflationary factor came about, as it has not been part of previous Council discussions.

City Administrator/Treasurer Mertes said the CPI was brought up by Mr. Zimmerschied during a meeting between Mr. Zimmerschied, Planner Marchek, Economic Development Coordinator Mary Sheffield, and herself. Originally when the caps were discussed the inflationary aspect was lost.

Mayor Kinzel said this was an issue that came up with Mr. Zimmerschied early on, but was overlooked by all parties in recent discussions.

Mr. Zimmerschied suggested that he be allowed to meet with City Administrator/Treasurer Mertes and possibly one other Council Member, if necessary, to discuss and revise the language in the financing and payout paragraphs that is agreeable to the City, and bring it back to the Council.

Council Member R. Reimer said because the inflationary aspect is new in scope to him and could possibly result in additional cost, there needs to be some refinement of the language. He needs some time to think about this.

It was the consensus of the Council that staff and Mr. Zimmerschied meet to develop language acceptable to all parties.

Attorney Vance proposed a change in language in Section IV. 8. as follows: “The Developer shall provide City a letter acceptable to the City Administrator on annual basis that identifies efforts undertaken in the previous year to maintain or improve the District, including capital project undertaken”. Mr. Zimmerschied agreed to this addition.

Attorney Vance said Mr. Zimmerschied is asking that the following paragraph (IV. 9) be added to the agreement: “The City will fully cooperate with the Developer in its effort to secure financing for Developer’s costs associated with the project described herein, including alternate funding sources. Alternative funding sources shall include, without limitation, industrial revenue bonds, community block grants, WEDC Community Development Investment Grants (CIP), WHEDA financing, and any and all available programs for which the Developer may qualify”. She said this statement is not something she would ever recommend in a developers agreement. It basically states the City will assist the Developer in raising money or secure financing. The City would be liable if the Developer defaults, and there would be additional costs to the City.

City Administrator/Treasurer Mertes said she spoke with Kathleen Cady Schilling at the County, who indicated there may be grants available that could assist with financing. She will be meeting with her on Wednesday. She said Mr. Taves said this language should be more specific, or should come out.

Attorney Vance said Mr. Taves indicated to her the language should not be in the Agreement.

Mayor Kinzel said financing may be available, but it should not create a liability to the City. He, along with Council Members Filter and R. Reimer stated the language should be removed. Mr. Zimmerschied agreed to the removal of the clause.

In terms of the Indemnifications section on page 6, Attorney Vance said Mr. Zimmerschied is requesting the City indemnify the Developer. She said the City never indemnifies a developer; rather the developer indemnifies the City. This is a standard condition of doing business with the City. Council Member R. Reimer agreed. Mr. Zimmerschied agreed that he will indemnify City and that the language in Section VI remain as is, and the language Mr. Zimmerschied suggested be struck on page 7 regarding notification to Developer regarding all claims received will remain as is.

Attorney Vance said Mr. Zimmerschied is proposing the following language be added in Section VII. E. “In the event litigation between the parties occurs to enforce any portion of this agreement, the prevailing party in such litigation shall be liable for the prevailing parties reasonable attorney’s fees and expenses” and the following language be removed: “Whenever any Event of Default occurs and the City commences any lawsuit, claim or action for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer shall pay the reasonable attorney’s fees, court costs and other such expenses incurred by the City”. She said the City does pay the attorney

costs for any developer. If there is a default, the developer must the attorney fees pay so there is no cost to the taxpayers. Mr. Zimmerschied said it would be acceptable to him to leave the language as is.

Attorney Vance said Mr. Zimmerschied is requesting the Conflicts of Interest section be removed from the agreement. She said that this is something that cannot be waived, and must remain in the agreement.

It was the consensus of the Council that City Administrator/Treasurer Mertes discuss with Mr. Taves at Ehlers and Mr. Zimmerschied alternatives and develop language acceptable to all parties in terms of financing. The agreement will then come back to the Council for approval.

CONSIDER APPROVAL OF AMENDMENT #2 TO THE PRAIRIE VIEW SUBDIVISION DEVELOPERS AGREEMENT

Motion made by Council Member R. Reimer, seconded by Council Member C. Reimer, to approve amendment #2 to the Prairie View Subdivision Developers Agreement. Motion carried unanimously.

CONSIDER ACCEPTANCE OF A DRAINAGE EASEMENT FOR PRAIRIE VIEW SUBDIVISION

Motion made by Council Member Filter, seconded by Council Member R. Reimer, to accept the drainage easement from Towne Realty for the Prairie View Subdivision. Motion carried unanimously.

CONSIDER THE REQUEST TO FILL THE WASTEWATER TREATMENT PLANT SUPERINTENDENT POSITION

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to approve the request to fill the Wastewater Treatment Plant Superintendent position. Motion carried unanimously.

Ron Clish, the current Superintendent, will be retiring on April 11, 2014.

CONSIDER SELECTION OF A PLANNER

City Administrator/Treasurer Mertes said proposals received for the contract Planner position were reviewed by herself, Director Wiza, and Planner Marchek. A spreadsheet was prepared ranking the applicants using the following criteria: years of experience, historic district experience, availability for office hours at City Hall, estimated cost for approximately two days of work at City Hall, and potential travel time costs. The Personnel Committee recommended that Jon Censky and Brian Pionke be considered for the position. Staff's recommendation is to retain the services of Jon Censky.

Council Member Radtke said Mr. Censky's proposal has the lowest cost, does not charge for travel time, and he has the most experience. He said he cannot see a reason why his proposal would not be accepted.

Motion made by Council Member Radtke, seconded by Council Member Thome, to accept the proposal of Jon Censky for contract planning services. Motion carried unanimously.
City Administrator/Treasurer Mertes said she would prepare a Professional Services Contract to retain Mr. Censky's services through December 31, 2014. The contract would be renewed on an annual basis.

CONSIDER BONUSES FOR THE DPW/BUILDING INSPECTION SECRETARY AND THE DEPUTY TREASURER/PAYROLL OFFICER

Motion made by Council Member Filter, seconded by Council Member Radtke, to accept the recommendation of the Personnel Committee to award a \$500 one-time bonus for DPW/Building Inspection Secretary Judy Guse and a \$500 one-time bonus for Deputy Treasurer/Payroll Officer Kelly Livingston for exceptional service in 2013. Motion carried unanimously.

Council Member Filter said he saw Ms. Guse and her husband personally deliver recycling carts to residents in December. He said this was above and beyond the call of duty.

CONSIDER THE APPOINTMENT OF KIM MARIE STEPHENS AS AGENT FOR WALGREEN CO., DBA WALGREENS #13620, AT W62 N190 WASHINGTON AVENUE

Motion made by Council Member C. Reimer, seconded by Council Member O'Keefe, to approve the appointment of Kim Marie Stevens as agent for Walgreen Co, dba Walgreens #13620, W62 N190 Washington Avenue. Motion carried unanimously.

PAYMENT OF BILLS

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to approve payment of bills for the period 01/10/14 through 01/17/14, ACH transfers for the period 01/11/14 through 01/24/14, and payroll for the period 01/05/14 through 01/18/14. Motion carried unanimously.

LICENSE APPLICATIONS

Motion made by Council Member O'Keefe, seconded by Council Member C. Reimer, to authorize the issuance of new Operator's licenses for the period ending June 30, 2014 to: Vanessa K. Altenbach, Christine M. Christon, Andrea L. Johannsen, Jane B. Lukens, and Scott R. Thomas. Motion carried unanimously.

Motion made by Council Member O'Keefe, seconded by Council Member C. Reimer, to authorize the issuance of a renewal Operator's license for the period ending June 30, 2014 to Joshua P. McCutcheon. Motion carried unanimously.

Motion made by Council Member O'Keefe, seconded by Council Member C. Reimer, to authorize issuance of a Festivals license to Festivals of Cedarburg, Inc., for Winter Festival to be held on February 15, 2014 from 8:30 a.m. to 10:00 p.m. and February 16, 2014 from 8:30 a.m. to 4:00 p.m. Motion carried unanimously.

LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE

City Administrator/Treasurer Mertes said the Library Sources and Uses of Funds spreadsheet has been updated to separate the Friends of the Library fund raising donations and progress. This portion will be updated when bids are received for furniture, fixtures, and equipment.

Council Member Maher said 36 chairs from the current library will be refurbished for use in the new library. The chairs to be refurbished are 40 years old and in great condition.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said the county-wide Dispatch Committee has been meeting. The subcommittees collected data and prepared reports on specific areas relating to a possible county-wide dispatch system. The Committee recommended Ozaukee County hire a consultant to review the data collected and bring back recommendations to the municipal governing bodies.

COMMENTS AND SUGGESTIONS BY COUNCIL MEMBERS

Council Member Filter said Light and Water employees and City staff have done an excellent job over the past several weeks and have put in many extra hours dealing with water main breaks, snow and ice removal, and other weather related problems. He said these employees deserve a big thank you. The Council agreed.

Council Member O'Keefe said the Festivals Committee is raising the street merchant space rental fee during Festivals from \$100 to \$125 and raising the fee for merchants who sell alcohol from \$100 to \$500.

Council Member Thome thanked the Council for the appointment process that was used to fill the 6th Aldermanic District vacancy.

MAYOR'S REPORT

Mayor Kinzel said he met with representatives of Mercury Marine regarding the cleanup of Cedar Creek, which is expected to begin in 2015. Mercury Marine expects to find out in February what work is to be done per the EPA. Mayor Kinzel said there may be an opportunity to work with the Great Lakes Legacy program to do a better job with the cleanup and improve the waterway. Citizens will be invited to a public meeting to start the process.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member R. Reimer, to adjourn the meeting at 9:22 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk