

**CITY OF CEDARBURG  
COMMON COUNCIL  
February 11, 2013**

**CC20130211-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, February 11, 2013 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel 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 Kip Kinzel, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Douglas Yip, Mike O’Keefe

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Public Works Superintendent Jeff Boerner, Fire Chief Rich VanDinter, Cedarburg Light & Water General Manager Dale Lythjohan, Emergency Management Director Kevin Runkel and Deputy Director Frank Even, Library Director Mary Marquardt and Library Board Members Sue Karlman, Steve Ruggieri, Liz Bryde, and Art Palleon, George Beyer from Beyer Construction, Ozaukee County Administrator Tom Meaux, County Board Member Kathy Geracie, 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 Filter, seconded by Council Member Radtke, to approve the minutes of the January 14, 2013 meeting. Motion carried without a negative vote.

**COMMENTS & SUGGESTIONS FROM CITIZENS** - None

**PUBLIC HEARING – CONSIDER ORDINANCE NO. 2013-02 AMENDING SECTION 13-1-71 OF THE ZONING CODE PERTAINING TO THE COMMUNITY EXHIBITION GROUNDS (CEG) ZONING DISTRICT**

Mayor Kinzel declared the public hearing open to consider Ordinance No. 2013-02 amending Section 13-1-71 of the Zoning Code pertaining to the Community Exhibition Grounds (CEG)

Zoning District at 7:03 p.m. Proper legal notice had been given with publication in the *News Graphic* on January 24 and January 31, 2013.

Planner Marchek explained that this item was initiated by Ozaukee County. The County has made a substantial public investment in new and upgraded facilities at the Fairgrounds for which they are seeking a return on investment. For this reason, the County has requested additional flexibility in the uses allowed at their property and they want to eliminate the requirement that a Conditional Use permit is required for “expansions, enlargements, or extensions of a permitted use.” Their request is based on the fact that since all “expansions, enlargements, or extensions of a permitted use” require Plan Commission review and approval, the Conditional Use process seems redundant.

The proposed Ordinance would limit Conditional Uses to outdoor archery ranges and outdoor concert events not part of permitted uses. One significant change would reduce a provision that requires all outdoor uses to be at least 50 feet away from a residential property line down to 5 feet.

Planner Marchek explained that the homes to the north and east are buffered. There will be a 6 foot fence along nine properties to the north. This change will mostly affect the west side, however, the curling building already shields part of the area and the parking, curb and gutter already defines this area.

In answer to Council Member O’Keefe’s question, County Supervisor Geracie explained that most of this area within 5 feet of the property line is already being used for soccer and horse events.

In answer to Council Member C. Reimer’s question, County Supervisor Geracie stated that there is 100 feet between the west property line and the houses.

In answer to Council Member O’Keefe’s concern regarding outside concerts, Planner Marchek explained that any events that are closely connected with the Curling Club will not need a Conditional Use. The County will be mindful when choosing events.

In answer to concerns from the Council regarding the Curling Club’s ability to have an outdoor concert, Mayor Kinzel stated that the club only occupies the building the last quarter and first quarter of the year and it is unlikely they will have an outdoor concert during this time period.

In answer to concerns from the Council regarding outdoor weddings and music, City Attorney Vance stated that an outdoor wedding would need a Conditional Use in this area.

In answer to Council Member R. Reimer’s question, Fire Chief Van Dinter stated that music will be incorporated into the 150<sup>th</sup> Anniversary of Fireman’s Park and this was addressed with the County and is a planned event.

In answer to Council Member R. Reimer's question, Planner Marchek stated that the articles associated with these provisions are not listed in the Ordinance because they are standard provisions in the Zoning Code.

In answer to Council Member Radtke's question, County Supervisor Geracie explained that the County is very sensitive to the neighbors' concerns and they have no intention of moving Summer Sounds to this area. Before any proposed changes, the neighbors would be informed. The provision for concerts was added mainly for events that involve a music promoter.

Mayor Kinzel stated that wedding music and receptions should take place indoors as written in the rules for using the facilities. Any outdoor concerts or outdoor archery ranges need to apply for a Conditional Use Permit.

Council Member O'Keefe stated that wedding music and a concert is amplified music and the neighbors will not want to hear this every weekend.

Council Member Maher requested that "music" be inserted before concerts in Ordinance No. 2013-02.

Council Member Yip stated that the City can redo the ordinance at any time if there are complaints or problems with the changes.

Bob Hoffmann, N97 W6231 Bristol Lane, stated that he has heard music coming from the cow barn as late as 11:00 p.m. and he does not care for the sound of the bass echoing in his home. He stated that he does not mind outdoor music during the fair; however, he does not like to hear it often during other times of the year. Mr. Hoffmann opined that a letter regarding this issue should have been mailed to all of the residents within a six to seven block radius of the Fairgrounds.

Motion made by Council Member Filter, seconded by Council Member Radtke, to close the public hearing at 7:34 p.m. Motion carried without a negative vote.

Motion made by Council Member Radtke, seconded by Council Member R. Reimer, to adopt Ordinance No. 2013-02 amending section 13-1-71 of the Zoning Code pertaining to the Community Exhibition Grounds (CEG) Zoning District with the addition of the word "music" before concert.

Council Member Filter stated that he was concerned about the change to 5 feet, however, only one resident made a comment this evening.

Motion carried without a negative vote.

**PUBLIC HEARING – CONSIDER ORDINANCE NO. 2013-03 CREATING SECTION 13-1-77 OF THE ZONING CODE, WHICH WILL BE THE PUBLIC LIBRARY DISTRICT (PLD) TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF A NEW PUBLIC LIBRARY**

Mayor Kinzel declared the public hearing open to consider Ordinance No. 2013-03 creating section 13-1-77 of the Zoning Code, which will be the Public Library District (PLD) to allow for the construction and operation of a new Public Library at 7:36 p.m. Proper legal notice had been given with publication in the *News Graphic* on January 24 and January 31, 2013.

Planner Marchek explained that the proposed Ordinance No. 2013-03 is unique and was written specifically for the new Library. The building will be urban in nature and this ordinance will address the requirements related to street setback, the rear (west) yard, the Floor Area Ratio, and most importantly, the requirement for off-street parking.

Planner Marchek stated that the proposed PLD Zoning District has a parking requirement of one space required per 300 square feet of “customer floor area.” This is based on a parking generation rate taken from “The Parking Handbook for Small Communities.” Applying this standard to the proposed new library would require about 50 parking spaces. The parking available within 300 feet shows 58 on-street spaces along Hanover Avenue and Turner Street, 18 spaces on the library site itself, and 32 spaces in two public parking lots along Hanover Avenue. The US Bank parking lots and the City Hall Complex parking lot was not included. This totals 108 parking spaces which should be sufficient for typical daily library use.

Director Marquardt evaluated parking and determined that the most intense use occurred during story time with 25 parked cars. The public assembly room in the new Library will have a 90 person capacity, which will be the peak parking requirements.

In answer to Council Member Radtke’s question, Planner Marchek explained that the typical setback is 25 – 30 feet; however, this is urban zoning at five feet from three lot lines. The building will look very dense on the property. The height of the building will be 45 feet and will only be used for this unique purpose.

In answer to Council Member Filter’s question, Planner Marchek recalled the height was measured at the average grade of the wall of the building.

Mayor Kinzel stated that this PLD Zoning District is strictly for the new Library building.

Motion made by Council Member Maher, seconded by Council Member C. Reimer, to close the public hearing at 7:50 p.m. Motion carried without a negative vote.

Motion made by Council Member Maher, seconded by Council Member C. Reimer, to adopt Ordinance No. 2013-03 creating Section 13-1-77 of the Zoning Code, which will be the Public Library District (PLD) to allow for the construction and operation of a new Public Library. Motion carried without a negative vote.

**NEW BUSINESS**

**CONSIDER REQUEST OF FINECO, LLC, DBA GRAPES & TASTES, DANIEL PALS, AGENT, TO AMEND THE PREMISE DESCRIPTION OF GRAPES & TASTES TO INCLUDE THE SPACE AT W63 N134 WASHINGTON AVENUE ON A TEMPORARY BASIS DUE TO RECENT FIRE DAMAGE AT THEIR CURRENT LOCATION**

Dan Pals of Grapes and Tastes addressed the Common Council to request an amendment to their premise description to include the space at W63 N134 Washington Avenue on a temporary basis due to recent fire damage at their current location. This is needed to maintain some type of business until their present location is available. This location is in the back of the same building and it will be simple for them to transfer phone lines and computers.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to allow the request of Fineco, LLC, dba Grapes & Tastes, Daniel Pals, Agent, to amend the premise description of Grapes & Tastes to include the space at W63 N134 Washington Avenue until July 1, 2013 due to recent fire damage at their current location. An amendment was made by Council Member Filter that the premise must be inspected before opening and was agreed upon by Council Members Radtke and C. Reimer. Motion carried as amended without a negative vote.

**UNFINISHED BUSINESS**

**CONSIDER ORDINANCE NO. 2013-04 AMENDING SEC. 5-5 OF THE CODE OF ORDINANCES PERTAINING TO EMERGENCY MANAGEMENT AND CREATING SEC. 5-1-9 PERTAINING TO AUXILIARY POLICE**

Motion made by Council Member R. Reimer, seconded by Council Member O'Keefe, to adopt Ordinance No. 2013-04 amending Section 5-5 of the Code of Ordinances pertaining to Emergency Management and creating Sec. 5-1-9 pertaining to Auxiliary Police.

Police Chief Frank stated that he has been working with City Attorney Vance to bring Sec. 5-5 of the Code of Ordinances up to current standards with the State Statutes. This ordinance makes practical sense.

Mayor Kinzel stated that this ordinance will define Emergency Management and Auxiliary Police as two separate entities. It does not change their rolls; it only redefines the two services.

Council Member R. Reimer stated that the purpose of this was in response to liability issues and State Statute references were added.

Motion carried without a negative vote.

**CONSIDER EMERGENCY MANAGEMENT RELOCATION OPTIONS, INCLUDING THE FORMER SUBSTATION ON WAUWATOSA ROAD NEXT TO THE POLICE DEPARTMENT AND THE WESTERN ROAD FACILITY**

City Administrator/Treasurer Mertes explained that the Wauwatosa Road option ended up being more expensive than initially thought, so no further action was taken on that site. With a reduction of vehicles and some remodeling, the current Western Road facility could accommodate the operations of the department.

Deputy Director Even stated that in response to the City's request to reduce their vehicles to four, Emergency Management wants to keep the Communication Truck in exchange for giving up the Tahoe. They will also keep two pickup trucks and the Escape. He said that these vehicles will fit very tight in the Western Avenue garage, without any room for equipment storage and an office. He also suggested keeping a 6 year-old generator valued at \$35,000 for the City to use in an emergency or to use as a backup on the outside of the Western Avenue building.

Council Member R. Reimer opined that work still needs to be done to be compliant with the Emergency Management Plan. He questioned whether the City still wants to have weather watches done.

Deputy Director Even opined that the City would be doing a disservice to the citizens by discontinuing weather watches.

Council Member R. Reimer questioned whether the City wants to spend money to maintain vehicles that we do not know we need.

Deputy Director Even explained that it does not cost the City much because they do most of their own maintenance. The department did all the work on the communications truck, which they use for traffic control and has 4 wheel-drive capabilities. It carries four people with seatbelts and there is room on the back for emergency personnel, if needed.

In answer to Council Member Radtke's question, Deputy Director Even stated that the building choice does not change if they keep the communications truck. However, they will not have office space and space for surplus uniforms and traffic supplies.

Director Runkel stated that the HVAC in the Western Avenue building needs to be updated. He estimated that a renovation to the interior and the addition of 700 sq. ft. to the building would cost approximately \$20,000 and would meet all of their needs.

Council Member C. Reimer suggested that the Common Council wait to spend any additional money until the Ordinance runs its course.

Mayor Kinzel stated that the Emergency Management Department needs to be out of the former Police Station by April 1.

Deputy Director Even stated that a certain number of vehicles are needed to do their job in assisting the City with runs, parades, festivals and special events. These vehicles need to be charged regularly because they are not run every day. The Emergency Management personnel have attended classes to be proficient in weather watches.

In answer to Council Member Radtke's question, Police Chief Frank stated that the Emergency Management vehicles could be kept outside; however, they would need to be started regularly. There are current police departments and government units that keep their cars and trucks outside.

In answer to Council Member Filter's question, Police Chief Frank stated that there would be space at the Police Department for lesser used equipment.

Mayor Kinzel confirmed that the building on Western Road would need bathroom updates, added storage and an office to serve the needs of the Emergency Management Department.

Deputy Director Even stated that it would cost \$24,000 - \$30,000 to add 12 feet on the back of the building.

In answer to Council Member Radtke's question, Police Chief Frank agreed that the Auxiliary Police will need the four vehicles plus they will be trained to use the police squad cars.

City Administrator/Treasurer Mertes stated that the City would have temporary storage space available for the Emergency Management equipment.

Council Member R. Reimer stated that the Council needs to define who the Director will be and what they will do.

Mayor Kinzel opined that they should be given the \$30,000 to renovate their new space.

Director Even stated that the Department would accept donations and do the work as economically as possible. He confirmed with Council Member Maher that \$30,000 would cover the expenses of the move to the new location.

Motion made by Council Member Maher, seconded by Council Member Radtke, to allocate an amount not to exceed \$30,000 to assist the Emergency Management and Auxiliary Police to relocate from the Hanover Avenue facility to the Western Road facility. Motion carried without a negative vote.

**CONSIDER EMERGENCY MANAGEMENT RELOCATION UNSPENT FUNDS/LIBRARY BUILDING PROJECT BUDGET**

Mayor Kinzel stated that \$220,000 remains in unspent funds that were earmarked for moving Emergency Management. He questioned whether the funds should be moved to use for furniture or if the savings should go back to the taxpayer.

In answer to Council Member C. Reimer's question, Library Board President Karlman explained that the architects estimated the original \$250,000 amount to relocate Emergency Management from a September 10 drawing to renovate the Western Road building.

Council Member R. Reimer stated the unspent funds should be spent on the Library; however, he still has concerns for the direction of Emergency Management and its growth.

Council Member Yip stated that the management of the Emergency Management Department will be changing and a Director needs to be appointed.

Mayor Kinzel stated that Emergency Management will not spend more than \$30,000.

Council Member C. Reimer opined that the unspent money should not be taken from the Library project.

Council Member Filter suggested that \$200,000 should go back into the Library and \$50,000 should be held for Emergency Management.

In answer to Council Member R. Reimer's question, President Karlman explained that the Library Board planned to spend \$6.2 million on the Library and do fundraising for the furniture. Recent developments indicate that the Friends of the Library will not be able to raise the amount needed for furniture. Beyer Construction is working very hard to stay within the \$6.2 million budget. They have made changes to the type of windows, amount of stone, etc. and it is important to know what funds are available. She opined that it may be easier to fundraise if the City would give them some funds towards the furniture. The numbers are important at this phase of the project.

In answer to Council Members O'Keefe and C. Reimer's questions, Director Marquardt stated that the Friends of the Library have \$225,000 in pledges. She has been getting inquiries on what is needed for the new Library. The Cedarburg Junior Woman's Club is the only organization that has been contacted for donations. She estimated that \$800,000 will be needed to furnish the new Library.

It was determined that the \$220,000 is still part of the \$6.2 million. Architect George Beyer indicated that they have trimmed the budget to \$6 million.

In answer to Council Member Yip's question in regard to the project running over budget, Council Member Maher stated that the Council will have to cross this bridge later if necessary. He stated that the \$6.2 million budget was for the construction, including furnishings and moving Emergency Government operations. He would like the \$220,000 to go back into the furnishings portion of the construction budget.

City Attorney Vance stated that the Common Council will only borrow \$6.2 million.

Council Member Maher stated that the Library Board made the decision to maximize the size of the site for the new library and to fundraise for \$792,000 for furnishings, etc.

Council Member Radtke stated that he does not want to see old furnishings in the new Library.

Council Member O'Keefe questioned whether it was too late to diminish the size of the footprint and expressed concern for not meeting the fundraising goal.

Library Board Member Ruggieri explained that the Friends of the Library have \$225,000 in the bank for furnishings. The Fundraising Committee would appreciate it if the City would add the \$220,000 of unspent money into the furniture budget. This would leave a balance of \$350,000 needed to complete the fundraising efforts.

Motion made by Council Member R. Reimer, seconded by Council Member Filter, to move the residual amount of \$220,000 allotted for the Emergency Management relocation into the funds available for the new Library. Motion carried without a negative vote.

**CONSIDER ORDINANCE NO. 2013-05 AMENDING THE CODE OF ORDINANCES PERTAINING TO THE REGULATION OF FIREARMS, WEAPONS AND EXPLOSIVES**

Motion made by Council Member R. Reimer, seconded by C. Reimer, to adopt Ordinance No. 2013-05 amending the Code of Ordinances pertaining to the Regulation of Firearms, Weapons, and Explosives.

Council Member O'Keefe stated that in reference to it being unlawful for any person to discharge or throw by any means a snowball does not apply to a friendly snowball fight. Police officers use discretion in this area. They are most concerned with snowballs that are made with the intent to cause harm.

Motion carried without a negative vote.

**NEW BUSINESS**

**CONSIDER ACCEPTANCE OF AGREEMENT WITH FOCUS ON ENERGY FOR A DESIGN ASSISTANCE PROGRAM FOR THE NEW LIBRARY**

City Administrator/Treasurer Mertes stated that in working with the Light & Water Utility and WPPI, the City is eligible for the Design Assistance Program through Focus on Energy. In order to participate in the program, the City must agree to their terms and conditions.

City Attorney Vance stated that she has reviewed the terms and conditions and as an attorney she needs to point out the faults in the agreement. She does not approve of Sections 4 and 6 according to form.

General Manager Lythjohan stated that Cedarburg Light & Water fully subscribes to this State-wide program. The Focus on Energy representatives will only make suggestions through the program and final acceptance is with the library building project team. Past experience has shown that qualifying rebates result in getting out more than they put into the program. Engberg

Anderson has worked with Focus on Energy on other projects and has not run into any issues with them.

City Attorney Vance stated that she will agree to the architects assuming liability.

Council Member Yip confirmed that the City does not have to accept the recommendations from Focus on Energy.

Motion made by Council Member Maher, seconded by Council Member C. Reimer, to accept the agreement with Focus on Energy for a Design Assistance Program for the new Library. Motion carried without a negative vote.

**CONSIDER PROPOSED SAFETY POLICY**

Motion made by Council Member Radtke, seconded by Council Member Maher, to accept the proposed Safety Policy. Motion carried without a negative vote.

**CONSIDER ORDINANCE NO. 2013-06 AMENDING SEC. 2-6-15 OF THE CODE OF ORDINANCES PERTAINING TO THE SUBMISSION OF APPLICATIONS, SEC. 2-16-43 PERTAINING TO SICK LEAVE, AND SEC. 2-6-90 PERTAINING TO RESIGNATIONS DUE TO RETIREMENT**

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to adopt Ordinance No. 2013-06 amending Sec. 2-6-15 of the Code of Ordinances pertaining to the submission of applications, Sec. 2-16-43 pertaining to sick leave, and Sec. 2-6-90 pertaining to resignations due to retirement. Motion carried without a negative vote.

**CONSIDER ORDINANCE NO. 2013-07 AMENDING SEC.5-4-5(c) OF THE CODE OF ORDINANCES TO INCREASE THE PERMIT FEE FOR DIRECT CONNECTION OF PRIVATE ALARM SYSTEMS**

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to adopt Ordinance No. 2013-9 amending Sec. 5-4-5(c) of the Code of Ordinances to increase the permit fee for direct connection of private alarm systems from \$140 to \$240/yr. Motion carried without a negative vote.

**CONSIDER POLICY CC-19 ESTABLISHING A MERIT PAY POLICY**

Motion made by Council Member Radtke, seconded by Council Member Yip, to adopt Policy CC-19 establishing a Merit Pay Policy. Motion carried without a negative vote.

**CONSIDER BONUS FOR THE CITY CLERK**

Motion made by Council Member Filter, seconded by Council Member Radtke, to award a \$1,000 bonus to City Clerk McHugh for her many additional work hours related to the elections and redistricting in 2012. Motion carried without a negative vote.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 1/11/13 THROUGH 2/1/13, ACH TRANSFERS FOR THE PERIOD 1/12/13 THROUGH 2/8/13, AND PAYROLL FOR THE PERIOD 1/6/13 THROUGH 2/2/13**

Motion made by Council Member C. Reimer, seconded by Council Member Yip, to approve the payment of bills for the period 1/11/13 through 2/1/13, ACH transfers for the period 1/12/13 through 2/8/13, and payroll for the period 1/6/13 through 2/2/13. Motion carried without a negative vote.

**CONSIDER LICENSE APPLICATIONS**

Motion made by Council Member O'Keefe, seconded by Council Member R. Reimer, to approve new Operator's License applications for the period ending June 30, 2013 for: Mark S. Adgate, Karen L. Figures, Stephen A. Millay, Aaron A. Staats and Michael R. Weber. Motion carried without a negative vote. The Council did not approve the license application of John D'Amico.

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to approve a renewal Operator's License application for the period ending June 30, 2013 for Deborah J. Downing. Motion carried without a negative vote.

Motion made by Council Member O'Keefe, seconded by Council Member Radtke, to authorize the issuance of a Festivals License to Festivals of Cedarburg, Inc. for Winter Festival to be held on February 16, 2013 from 8:00 a.m. to 9:00 p.m. and February 17, 2013 from 8:00 a.m. to 4:00 p.m. Motion carried without a negative vote.

**CITY ADMINISTRATOR/TREASURER'S REPORT**

City Administrator/Treasurer Mertes stated that Assistant Engineer Roger Ahles has resigned from his position and his last day will be March 8, 2013.

The Waste Management contract contained some false numbers and the revised numbers do not result in any savings. Engineering and Public Works Director Wiza was requesting a few changes.

**COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member O'Keefe stated that he was registered with the Willowbrooke Warriors for the Snow Battle on February 16, 2013.

**MAYOR'S REPORT** - None

**ADJOURNMENT – CLOSED SESSION**

Motion made by Council Member C. Reimer, seconded by Radtke, to adjourn to closed session at 9:21 p.m., pursuant to State Statutes 19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by

the body with respect to litigation in which it is or is likely to become involved and 19.85(1)(c) to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercise responsibility, more specifically, to discuss the Prochnow landfill and the compensation of the Assistant City Engineer. Approval of closed session minutes of January 14, 2013. The meeting did not reconvene to open session.

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member Radtke, to adjourn the meeting at 9:52 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk