

**CITY OF CEDARBURG  
COMMON COUNCIL  
February 10, 2014**

**CC20140210-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, February 10, 2014 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 Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Patricia Thome, Mike O’Keefe

Excused - Council Member Chris Reimer

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Kaye Vance, Deputy City Clerk Amy Kletzien, Engineering and Public Works Director Tom Wiza, Economic Development Coordinator Sheffield, 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 27, 2013 meeting. Motion carried without a negative vote.

**COMMENTS & SUGGESTIONS FROM CITIZENS**

Lynne Buehler, W52 N844 Castle Ct., explained that she served on several City committees over a 20 year period. She addressed the Mayor, Common Council and the citizens of Cedarburg with her view on the pending proposal for the creation of TID #3. Ms. Buehler stated that the developer, Greg Zimmerschied, who also serves on the Plan Commission, brought forth a proposal to create a TID to develop blighted property that he owns on Washington Avenue and Mill Street. Mr. Zimmerschied was aware of the condition of the property and purchased it at a good price. Now he wants the City of Cedarburg and the taxpayers to help him monetarily, so he can develop his poor investment. The first ploy was to move a historic building that housed a bridal store from South Washington Avenue up to this blighted property to help preserve the stone house and the historic character of our main street. This plan went away when he allowed the stone house to be torn down. The second plan was to build two high quality buildings in five years, with the first to be built on Washington Avenue as requested by the Mayor and Common Council and was most beneficial to the City and the taxpayers. The third plan was that he might get two buildings done in five years, adding that he would build the first building on Hanover Avenue and make it an office

building with possibly three stories and maybe sell the lot on Washington Ave. Ms. Buehler stated that the Common Council is now actually considering this proposal and is in negotiations to come up with a financial agreement. She said that this Mayor and Common Council have not followed the required State of Wisconsin laws regarding the creation of a TID. The law states that the Plan Commission must initiate the process, develop the project plan, hold public meetings, and recommend boundaries. Then the Common Council will be able to review the plan. The project plan must include a number of required well defined items including a detailed list of estimated costs, a map showing the proposed improvements and uses, and indications as to how the creation of this district promotes orderly development in the municipality. It also requires a signed attorney's opinion, advising whether the project plan is complete and complies with the law. She stated that the Plan Commission has not held any public meetings and the Mayor is charging ahead at lightning speed to get this sweetheart deal done for Plan Commissioner Greg Zimmerschied. This is planned without the taxpayers knowing that they could be on the hook for up to \$250,000 for Mr. Zimmerschied to make from the agreement. There have also been a number of proposed changes made by Mr. Zimmerschied to the legal agreement that both the City Attorney and the City's Financial Advisor have strongly advised against. This is more shenanigans by the developer to line his pockets at the expense of the taxpayers of Cedarburg. The Common Council must follow State law and the citizens of Cedarburg are being denied once again their right to weigh in on an issue that affects their pocketbooks. It is time for the Council to slow down, follow the process, and get a full, accurate and truthful agreement in writing from the developer before considering this TID any further. In light of the speed, and lack of clear information that is forthcoming on this TID, perhaps an open records request should be initiated to decipher what is driving this very unusual TID proposal.

Sandy Beck, N67 N5409 Columbia Rd., urged the Common Council to keep people informed. In the interest of keeping constituents informed, so they can give their input, they should know that it is a possibility that the City/taxpayers may be taking an unusual step of helping a private developer secure financing for his project; therefore, putting the taxpayers at risk. If he cannot secure his own financing, this is proof that there may be a risk with this project. It is in the Council's best interest to make sure that the press knows about the project and everyone is able to have input.

### **UNFINISHED BUSINESS**

### **CONSIDER MODIFICATIONS TO THE TERMS OF THE TID #3 DEVELOPERS AGREEMENT THAT WERE APPROVED AT THE DECEMBER 9, 2013 MEETING**

City Administrator/Treasurer Mertes explained that at the last Common Council meeting, staff was directed to work with the developer on the wording of the financing section of the agreement. Todd Taves of Ehlers proposed two different paragraphs (alternative 1 and 2) that could be used. He also provided the cash projections for the developer's incentive using 0%-4% interest on the outstanding balance due to the developer.

Also for review is language from Greg Zimmerschied for the financing section of the agreement. He is in agreement with a set interest rate being used but also wants the CPI-U tracked over the life of the TID to make sure his incentive is paid out in the current value of the dollar.

Mr. Zimmerschied is also recommending another change in the timing on the calculation of the developer's incentive. Ehlers language states after completion of the project or five years,

whichever comes first; however, Mr. Zimmerschied would like the incentive calculated annually as the property is improved. Todd Taves of Ehlers does not see any particular advantage to making an earlier partial determination of the incentive amounts since no increment can be collected until 2016, and the projections don't make increment available to the developer until 2018 since the City intends to recoup its start-up costs first.

Also for review is the change in the number of days allowed for notices in sections VII. A. 1. and VIII.

Mr. Zimmerschied asked to focus on the language that he provided in terms of the financing, as this is what he will require to move forward. The major keystones of the agreement include: 5 years for the build out of the two buildings (on Washington Avenue and Hanover Avenue), the developer incentive to equal 25% of the increment provided, all payments will be made to the City first to recoup costs; after which, Mr. Zimmerschied will receive payment. If no development occurs, Mr. Zimmerschied will pay all City costs. The only sticking point left to discuss is how to protect the stream of payments (25% developer's incentive) against the potential impact of inflation. He distributed a consumer price index history from the Bureau of Labor Statistics from 1975 – 2013. The total inflation for that period in the Milwaukee-Racine area was 151.8% with an average inflation rate of 4.10%. Mr. Zimmerschied stated that he would like to use 4% to protect his payments against the potential impact of inflation. Paragraph A and B of his financing proposal address this concept. The reason for this is because of the high cost to build in downtown Cedarburg and to make the project economically viable. He wants the \$250,000 developer's incentive to be in today's dollars. He does not want more than that, so paragraph C explains that the CPI-U will be tracked over the life of the TID. If the actual CPI-U is less than 4%, then at some point in time a discussion will be held indicating that the percentage is lower and that will be the percentage that will be used. The maximum will be 4% and if it turns out to be less on average, over the life of the TID, then that number will be used.

In answer to Council Member Filter's question, City Attorney Vance confirmed that alternate 1 is the same as the proposal and was recommended by Ehlers. She said that the equalized value takes the property value into consideration.

Mr. Zimmerschied had a discussion with Ehlers and was told that normally a percentage rate is applied to an agreement of some number that is agreed upon by the Common Council. They do not recommend that a factor not be included. They may not recommend that using the actual CPI-U is good; however, he is proposing that a factor be used.

City Administrator/Treasurer Mertes stated that interest was not discussed or suggested by Ehlers; however, when speaking to them they said that it could be done. Mr. Taves recommends that interest does not start until after the build out is done and to use the equalized value for those years and then begin adding interest. Interest would not be added beginning day one.

Mayor Kinzel stated that it was up to the Common Council as to whether or not they want the TID paid off in 15 years or extend it further in the interest of having something built on the property.

Council Member Radtke stated that he spoke to Ehler's and was told that it is not unusual to pay interest when the money comes from tax increment vs. the City borrowing the money for the

development. It depends on who is taking the risk. He added that Ehlers is not in favor of using CPI-U because of the unknowns.

Mayor Kinzel agreed that the CPI-U adds an unknown factor. If a certain percentage is used throughout the project, the City will know when the project will be paid off.

Council Member O'Keefe stated that he had the same conversation with Ehlers. He was also told that the CPI-U is unusual and that it was up to the Council whether or not to pay interest. In regard to compound interest, the interest is factored into the remaining balance and that does not become a snowball effect. In regard to the CPI-U, he went out 12 years and the average is 2.3%.

In answer to Council Member R. Reimer's question, City Administrator/Treasurer Mertes stated that if \$1 million is built the first year then the developer's incentive is \$250,000. If the City cannot pay the \$250,000 in that year because the tax increment has not started coming in yet because the City's expenses are being paid, then it would be 4% of \$250,000. This could be added each year and could double in 10 years. However, as long as payments were made the balance will decline.

City Administrator/Treasurer Mertes stated that the first year for any increment to be paid is estimated to be 2018.

In answer to Council Member R. Reimer's question, City Administrator/Treasurer Mertes stated that if 0% is offered then the incentive will be paid off in 16 years and if 4% is offered it will be paid off in 20 years.

Council Member R. Reimer confirmed with City Administrator/Treasurer Mertes that if the City offers 4% interest on \$250,000, the actual amount paid to the developer will be \$342,986. He stated that this is a different set of wheels than what was initially proposed.

Mr. Zimmerschied addressed Council Member R. Reimer's concern by explaining that even if inflation brings his payment to \$342,000, the purchasing power of those dollars is only equal to \$250,000 of today's dollars. Paragraph C was added for this reason, if the country goes through inflation free living for the lifetime of the TID and CPI-U is 0 making the dollars constant throughout the TID, he does not want to be paid 4%, he will want the factor of 0 to be used. All he needs is the \$250,000 in constant dollars. This is only added to make the project economically viable. He only wants to be paid what inflation ends up being. He is asking that whatever number is agreed upon, that should there be an inflationary period where the actual CPI-U is over 2% above the number agreed upon for more than two years during the life of TID #3, the City agrees to re-evaluate the total developer cash grant payments. If the inflation is less, the City will not have to pay him the additional money.

In answer to Council Member Radtke's question, Mr. Zimmerschied stated that this would be just another column on the spreadsheet to track inflation and to review it if it goes up 2% above the agreed upon interest payment. He never will want more than what inflation is.

Council Member Thome questioned paying 4% because if you go back 27 years (the possible life of the TID) it only averaged 2.7%. She questioned whether a lower percentage would be a more accurate representation.

Mayor Kinzel stated that the interest rate still needs to be determined, if the Council chooses to add the expense to the TID.

Mr. Zimmerschied explained that he selected 4% because he is an engineer by training and you always go for the most data that you can get. He is trying to protect himself. With paragraph C in place, where the actual CPI-U is tracked, he will give up the excess amount if it turns out to be less than 4%. His focus is to have the developer's incentive as close to 2015 dollars as possible.

Plan Commissioner Brook Brown, N25 W5060 Hamilton Rd., asked who will pay the interest on the City's investment made to-date. This money will not be paid back for two or three years. The City is taking a risk and this is part of the project. He is also opposed to the Cash Grant Developer's Agreement, which is subsidizing a developer to do a project on a piece of property. The current proposal to build on Mr. Zimmerschied's property will be at the taxpayers' expense of 25%.

Council Member R. Reimer stated that taxpayer money will be used; however, if you compare building to not building there is no difference on the tax revenue kept between the two. Under the TID, the City still gets the money they are currently receiving. While the developer is paying tax increment money to the City, and the City keeps their portion for their costs and disperses the rest back, nothing has changed. So it is not an incentive taking from the coffers, it is reducing the revenue coming in until the end of the TID.

Council Member Radtke stated that the City will be getting the same amount of money whether there is a building there or not. Once the buildings are done, Mr. Zimmerschied will get 25% and the City will get 75%.

In answer to Brook Brown's question, Mayor Kinzel explained that in the end the City will get a development that will add to the tax roll.

Mr. Brown questioned how the City knows the value of this property because it has not been on the market. There are people who are interested in purchasing property in Cedarburg. Why is the City concerned about doing something on this property and paying the developer \$250,000 and 4% interest.

Mr. Brown did not believe that Mr. Zimmerschied's property meets the definition of blight as stated in the Wisconsin State Statutes. There are many other people trying to salvage businesses in Cedarburg and they are not being subsidized. There are other local programs through the City that Mr. Zimmerschied could apply for and receive \$150,000 at low interest. The Council should not feel that they need to continue with the project just because the City has invested money to this point. This is not dollar to dollar good sense for the City. Something else will go on that particular spot in time. Mr. Brown stated that the City should not in any way be involved in further financing this project. If the Council decides to move forward, they should not be involved in further financing this project by backing up any loans.

Mayor Kinzel explained that TID #1 and #2 were paid in advance and you cannot pay interest in that case.

Keith Kaiman, N36 W5558 Hamilton Rd., questioned why the improvement is valued at \$1 million and the base value is \$50,000. What does the City envision to be the minimum amount of the base value.

Mayor Kinzel stated that the base value is whatever the current value of the property is and being taxed for at this time. This was done for ease of example.

In answer to Mr. Kaiman's question, Mr. Zimmerschied stated that he was paying over to \$2,000 in taxes on each of the two parcels.

Mr. Kaiman stated that MLS records show the total land assessment is \$141,800 and the net tax being paid is \$2,761.70 for each parcel. Therefore, the base value, at a minimum, would be \$283,600 and during the time of development the taxes will still be paid. He asked if this property will be reassessed in the case of a revaluation in the City.

City Administrator/Treasurer Mertes stated that the TIDs base equalized value does not change over the life of the TID. The base value of the two parcels on January 1, 2015, will be the base value of the property and will remain at this number for the entire life of the TID. The increment that is created is based on the equalized value set by the State on an annual basis.

In answer to Council Member O'Keefe's question, City Attorney Vance stated that the property value is frozen as of January 1, 2015 for the life of the TID.

City Attorney Vance stated that the City has to have a Developer's Agreement for the TID because it is a cash grant and it protects the City.

Mayor Kinzel stated that there is a perception that the TID will be approved at this meeting and that is false. Acceptance of the Developer's Agreement will just allow the process to move ahead to the next step towards approving the TID.

Mr. Kaiman asked if this was a good or bad policy because a new precedent of providing a developer incentive to develop at not 100% cost of the development is being established. He mentioned other businesses that have worked hard to build and establish themselves in Cedarburg where the City has not created TID Districts or offered the developer this kind of incentive. He also asked how blight will be established. The rear parcel has no contamination and the front parcel has had some form of remediation done to it in the past. The only type of contamination that may be there is some form of non-compacted soil, which may cost \$50,000 to correct. He questioned the use of blight on this property and compared other businesses that have been built on similar properties without the help of a TID. He stated that creating blight for this property may be difficult outside of the Council Chambers. He questioned what would happen if someone outside of this room does not like the action that is being taken and sues the City. Mr. Kaiman stated that the City may be facing a lawsuit by creating this fiction of blight.

City Attorney Vance stated that blight was based on the tests that were done for the possible library and the need for remediation mainly on Washington Avenue. The "but for" needs to come from the Common Council; however, Ehlers is basing blight on public health and the need for remediation for the front portion of the lot.

In answer to Council Member Filter's question, Mayor Kinzel explained that "but for" a TID the developer cannot make the numbers work on the property with the incredibly high standards in Cedarburg, rightfully so, in the downtown historic district. The Common Council needs to make a determination whether or not the developer is correct and whether or not the Council is willing to risk the property sitting empty.

In answer to Council Member R. Reimer's question, City Attorney Vance explained that the Common Council is deciding tonight whether or not to agree with the developer's terms for the creation of the TID so that it can proceed forward. There will not be a TID until the project plan is approved.

Ruth Cook, W64 N649 Hanover Avenue, came to this meeting for clarification on the TID. She asked the Council how the TID district will benefit her or the residents of Cedarburg.

Mayor Kinzel stated that it will create a development on the property that will eventually go to the tax base when the TID is paid off. Without the TID it will sit vacant and the City is trying to create an increment. The City is taking empty lots, in a very vibrant downtown, and trying to improve them.

In answer to Ms. Cook's question, Mayor Kinzel explained that the taxes from the increment will pay the developer's 25% and once that is paid then it will go to the tax rolls. The construction should be finished in five years.

Council Member O'Keefe stated that one aspect which is being overlooked is that the City will have some control over what will be built on the lots. There will be two buildings that need to be completed within five years and they need to total \$950,000 at minimum. This will prevent the possibility of a smaller or insufficient project on the property.

Council Member Filter stated that he was in favor of alternative one and the recommendation of Ehlers.

City Attorney Vance stated that the \$950,000 minimum has been dropped at the developer's request.

Mr. Zimmerschied stated that the minimum development was dropped by mistake and should go back into the Developer's Agreement.

Chris Smith, N88 W5411 Regency Ln., as a member of the Economic Development Board, stated that the elected officials need to ask questions: Do you believe the TID is necessary to create the development and the increment that is not going to happen if the TID is not there? There are many success stories in Cedarburg but there are also a number of undeveloped properties that are creating nothing. The Council should be deciding if the terms are in the best interest to everyone involved. There needs to be concessions on both sides to do the project properly.

DJ Burns, N105 W7585 Chatham Street, explained that the taxes Mr. Zimmerschied would pay on the existing parcels will continue to be paid throughout the life of the TID. The Council is now trying to decide what happens with the increment and the taxes that arise out of the increment; how they will be disbursed. Some reconciliation has taken place and the City will be made whole first.

He confirmed with City Administrator/Treasurer Mertes that the City will only need to report once per year to the Wisconsin Department of Revenue and the City will receive approximately \$3,000 for administrative costs.

Council Member R. Reimer stated that the City's costs will be netted out each time they receive an annual payment.

In answer to Mr. Burns' question, City Attorney Vance read State Statutes 66.1333 and stated that Ehlers is emphasizing the detriment to public health section. She also confirmed that the DNR did a closure letter stating that there are some contaminated soils based on the fill in the front of the property.

Director Wiza stated that there is some residual contamination in the soil and groundwater. The flexible closure means that the remaining contamination would be eliminated by natural attenuation or some period of time.

City Attorney Vance stated that a flexible closure is the best you can have on a property like this.

Mr. Burns stated that the State paid a fair amount of money to a prior owner to assist with the remediation of this parcel. It is not completely remediated, as mentioned.

In answer to Council Member R. Reimer's question, Mr. Burns stated that there are groundwater issues, as well as vapor issues.

Mr. Burns works for an environmental consulting firm and he would say that this property easily meets the statutory definition of blight. He also stated that it is the State Legislature that provides a TID as an economic development tool and to address blight and eliminate public health risk. Mr. Burns stated that Mr. Zimmerschied's project would do this, just as the library was touted as possibly capping the site and addressing the lingering soil and groundwater concerns. This development will also serve to help and benefit the public. As a direct benefit to the public, the site will be capped off so the direct contact risk that is present there for children right now, as well as risks to the groundwater will be remediated with a project like this one. As a resident and member of the Economic Development Board, he strongly supports the creation of a TID, especially for sites like this. As a taxpayer and the 20 year history of non-development on this site, he would like to see these projects go forth. The academic studies on sites like this are sometimes called a brownfield site or blighted site. It has been found; as the site is redeveloped it has a rising effect on all of the property values. He does not see how the City can go wrong encouraging this type of re-development. He asked the Council to support this project.

Mr. Kaiman asked the Council to consider the unintended consequence. Blight will be determined, not in this room, if push comes to shove, it would be determined in court of equity outside this room. He is not sure that this is a risk the City is willing to take.

Mr. Burns stated that his experience in working with the 72 counties throughout Wisconsin that the determination of blight or underutilization typically comes through the work of a Common Council, as well as an advisor such as Ehlers. In addition, in many cases there is an outside external legal review of the determination. Where the City is saying there is exposure, in his experience, he has not heard of any case where someone acted upon a finding of no just cause for blight.

Economic Development Coordinator Sheffield attended a presentation by Ehlers at a Mid-Moraine Municipal Association meeting and Ehlers defined blight as any parcel that is left undeveloped for a number of years.

City Attorney Vance stated that the definition Coordinator Sheffield described cannot be used in this instance. This is a cash grant TID and the definition that she read earlier applies to this TID. The Council can determine that this property is blighted.

Coordinator Sheffield also read the following information from the Ehlers presentation on TID utilization: 1,823 districts have been created since 1976, 702 districts have dissolved, 1,146 active TIDs currently are in existence and 414 communities in Wisconsin have used Tax Incremental Financing out of 593 cities and villages.

Chris Smith has learned from Ehlers that there has been a number of single developer TIDs established for this use, so the City is not setting a precedent. It may be new to Cedarburg and it might be different than TID #1 but the City is not in uncharted waters.

Liz Brown, N25 W5060 Hamilton Rd., stated that she owns a business downtown with Brook. In 1983 they bought a condemned building in downtown Cedarburg which is now the Stagecoach Inn. At the time it was the Brothers 2 tavern and had five pages of condemn notices on it. There was a threat that it was going to be torn down because it had to be brought to its original use to save the building. They were unable to get a loan or help to save the building, so they sold their house to buy the building. For five years they lived in a duplex on the other side of the parking lot and for five years they worked on the building with their own money. It was a high risk at the time, however, they both felt very strongly that Cedarburg was worth investing in and took a risk. They never thought to ask the City or anyone other than the bank for a loan. Having the business for 30 years, and being involved in many downtown committees, she considers it a privilege to own a business in Cedarburg and to participate in the historic district and the economic development of the downtown. They have had ups and downs over the 30 years, but she believes Cedarburg is a very strong investment. Ms. Brown has concerns that the Council would consider paying a developer to develop a property downtown. She is aware of the problems associated with the property but she believes that there are people that would develop the property without City aid. She finds it incredible that the City would give anybody money to develop in Cedarburg, considering how strong the downtown is. Life is a risk and if you don't take a risk you don't get a good outcome.

In answer to Mayor Kinzel's question, City Attorney Vance stated that based on the discussion so far the \$950,000 minimum along with two buildings will be added back into the agreement, the equalized value and interest rates will be added when they are determined, and there were dates that were changed from 90 days to 30 days.

Mr. Zimmerschied was not concerned with these items because none of this will matter if there is not an agreement on the percentage.

City Attorney Vance continued by saying that the interest and the CPI are on the table.

Council Member Thome was in favor of 2.7% interest based on 27 years or the life of the TID.

In answer to Council Member Filter's question, City Administrator/Treasurer Mertes stated that the options include 25% with or without an interest rate of 0 – 4%.

In answer to Council Member Filter's question, City Attorney Vance stated that Ehlers does not make a specific recommendation; however, each interest percentage will add one additional year to the TID.

Council Member Radtke stated that he would like to spur development, possibly for the Amcast and Weil Pump buildings.

Council Member Thome stated that it had been discussed at past economic meetings, as to what opportunities were available to allow further development in the community to build the tax base and take some of the burden off the homeowner.

In answer to Council Member R. Reimer's question, Mr. Zimmerschied stated that the property has been undeveloped since 1991.

In answer to Council Member R. Reimer's question, Mr. Zimmerschied stated that he is not willing to take the risk if the Council offers 0% interest.

Chris Smith stated that he works for Baird and they are underwriting and issuing bond offerings for municipal development. It might be good practice to look at what they are forecasting when looking at 20 year bonds and their interest rate projections. He recommended that both parties look at other consulting firms. If he was looking to do municipal financing, he would do the same thing.

Mr. Kaiman recommended that the TID be a referendum question to determine what the people say.

DJ Burns asked why Ehlers stopped at 4% during their run-out calculations. He is aware of some pay as you go TIFs. In TID #1 and #2 the City bonded for that money. In this case, the developer is using his money or money that he is able to borrow. He is aware of several developer financed TIFs where the community and the Jt. Review Board have paid back his investment plus 9% interest, which extend out 16 – 27 years. The City should be exploring all possible ways to make this development happen. Most developments that are occurring around the country are public/private partnerships. If Mr. Zimmerschied is successful in getting the TID, he still needs to go through Plan Commission and other boards and commissions which add costs to the development process. The Economic Development Board is looking for ways to increase the tax base for the citizens and increase the potential for jobs in the community (construction related or long-term) that flow along with this development. The research is vast that every time a small pocket of redevelopment takes place, it lifts everything else around it and it cannot be underestimated. He asked if the Council will support the TID with the tools that the State Legislature and Dept. of Revenue have provided to them as a municipal body.

City Administrator/Treasurer Mertes highlighted a report from Ehlers showing recent borrowings in Wisconsin, which shows the borrowing rates at 2.19% – 3.78%, based on their rating.

Mr. Burns said that the reason bodies such as the Common Council allow for a higher interest rate recapture is because Mr. Zimmerschied cannot possibly borrow at the low levels that the municipality can.

Council Members O'Keefe, Filter and Radtke were in favor of offering 3% interest to Mr. Zimmerschied.

Mr. Zimmerschied stated that tax rates will increase over the life of the TID and he asked for wording to be included that if inflation does exceed the 3% by some margin over a period of years that a future Council will review the payment.

City Attorney Vance stated that Ehlers does not want this added and there needs to be a final development agreement for the taxpayers to know what is happening going forward. Sometime in the future, Mr. Zimmerschied can always come back to the Council and ask for a review.

Mr. Burns thought it reasonable to add a triggering event clause. Such as, in the event that the inflation has increased, according to the Milwaukee-Racine CPI-U, and exceeds the 3% interest payment by 2% that the Common Council will review.

Mr. Zimmerschied stated that he also wants to add language that if inflation is less than 3%, he does not want any more than the inflation amount. He is asking for a constant dollar amount and nothing more. However, if after tracking the CPI-U, the average is 2% over the life of the TID, he does not want that extra 1%. On the flipside if during the same period of time, over the life of the TID, the actual CPI-U exceeds the 3% by 2% for two years in a row that a future Common Council will review financing.

City Attorney Vance stated that she wants to work with Ehlers on the wording for the agreement.

The Council considered specific interest rates and triggering points for review in the future.

Chris Smith stated that the State of Wisconsin Pension System goes with a 5 year smoothing period. They come up with an annuity payout rate and they apply a 5 year smoothing period. Teachers and State employees have for the last three years taken a pay cut under these parameters. Both parties are at risk under this plan and some variation of this could be applied to the TID.

Mayor Kinzel stated that this would leave some unknowns in the agreement.

Mr. Zimmerschied suggested the following language: During the life of the TID, the CPI-U for the Milwaukee-Racine, WI metropolitan area will also be tracked and used as a factor on the Developer Cash Grant balance. Towards the end of TID #3 and as the Developer Cash Grant balance is paid down, if the payments due to the Developer using the actual average increase in the CPI-U over the life of TID #3 would total less than those calculated using the factor of 1.04, the Developer agrees to have the total Developer Cash Grant payments capped at the amount calculated using the actual average CPI-U. Likewise, should there be an inflationary period where the actual CPI-U is over 6% for more than two years during the life of TID #3; the City agrees to re-evaluate the total Developer Cash Grant payments.

Motion made by Council Member Radtke, to approve the developer's agreement with Ehlers alternate 1 language and adding language similar to the recommended language in paragraph C from Mr. Zimmerschied stating that if the CPI-U is 5% or greater for a period of two consecutive years or more, the Developer has the option to ask the Common Council to review his incentive. If towards the end of the life of the TID the CPI-U average is lower than 3%, the City has the right to

adjust the incentive to the average rate of CPI-U. The agreement will include 30 days notice in Section VII and the language to require a minimum increment of \$950,000 to be added back into the agreement. Also, no payments will be made to the Developer Cash Grant balance until both buildings are built within five years. Built, for the purpose of this condition and this condition only, means that construction is to the point where the buildings' exteriors are substantially completed and the buildings are ready to be leased.

Motion seconded by Council Member Thome and carried without a negative vote.

In answer to City Attorney Vance's question, Mr. Zimmerschied stated that he agrees to all of the keystones of the agreement; however, he reserves the right to have his attorney review the document.

**NEW BUSINESS**

**CONSIDER RESOLUTION NO. 2014-03 ACCEPTING JURISDICTION OF COUNTY HWY I FROM THE NORTH LINE OF THE WILLOWBROOKE NUMBER 5 SUBDIVISION TO THE NORTH LINE OF THE FAIRFIELD MANOR SUBDIVISION PHASE 2**

Director Wiza explained that the City is not getting transportation aids for 800 feet to the north limits of Fairfield Manor Subdivision Phase 2 that the City maintains. He is asking that the limits of jurisdiction be moved to reflect this area that the City maintains. The Public Works and Sewerage Commission recommended this jurisdictional highway transfer at their November 7, 2013 meeting. This was forwarded to the Ozaukee County Public Works Committee who also recommended approval of the jurisdictional transfer at their November 21, 2013 meeting.

Motion made by Council Member Radtke, seconded by Council Member Filter, to adopt Resolution No. 2014-03 accepting jurisdiction of County Hwy. I from the north line of the Willowbrooke Number 5 Subdivision to the north line of the Fairfield Manor Subdivision Phase 2. Motion carried without a negative vote.

**CONSIDER MAYOR KINZEL'S APPOINTMENT OF COUNCIL MEMBER THOME TO THE PERSONNEL COMMITTEE AND LANDMARKS COMMISSION**

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to approve Mayor Kinzel's appoint of Council Member Thome to the Personnel Committee and Landmarks Commission. Motion carried without a negative vote.

**CONSIDER THE APPOINTMENT OF NICOLE A. SCHEMENAUER AS AGENT FOR THOMAS RESTAURANTS, LLC, DBA TOMASO'S AT W63 N688 WASHINGTON AVENUE**

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to approve the appointment of Nicole A. Schemenauer as agent for Thomas Restaurants, LLC, DBA Tomaso's at W63 N688 Washington Avenue. Motion carried without a negative vote.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 1/24/14 THROUGH 1/31/14, ACH TRANSFERS FOR THE PERIOD 1/25/14 THROUGH 2/7/14, AND PAYROLL FOR THE PERIOD 1/19/14 THROUGH 2/1/14**

Motion made by Council Member Filter, seconded by Council Member Radtke, to approve the payment of bills for the period 1/24/14 through 1/31/14, ACH transfers for the period 1/25/14 through 2/7/14, and payroll for the period 1/19/14 through 2/1/14. Motion carried without a negative vote.

**CONSIDER LICENSE APPLICATIONS**

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to approve new Operator's License applications for the period ending June 30, 2014 for: Angela M. Hoffmann, Ashley P. Nielsen, Teresita I. Jimenez and Jeffrey A. Wills. Motion carried without a negative vote.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to approve a renewal Operator's License application for the period ending June 30, 2014 for Erin A. Riley. Motion carried without a negative vote.

**LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE**

A second Sneak-a-Peak event will be held on February 15 from 10 a.m. – 2 p.m.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** - None

**COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS** - None

**MAYOR'S REPORT** - None

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to adjourn the meeting at 9:33 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk