

**CITY OF CEDARBURG
COMMON COUNCIL
March 8, 2010**

**CC20100308-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 8, 2010 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:00 p.m. The meeting began with a moment of silence followed by the Pledge of Allegiance.

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

Excused - Council Member Ron Reimer

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Light & Water General Manager Dale Lythjohan, Deputy City Clerk Amy Kletzien, 5th District Candidate James McCoy, Town Management Assistant for Parks and Planning Eric Ryer, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' request, Deputy City Clerk Kletzien verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings Law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

PUBLIC HEARING – CONSIDER RESOLUTION NO. 2010-04: A FINAL RESOLUTION LEVYING SPECIAL ASSESSMENTS UNDER SECTIONS 66.0701 AND 66.0703 OF THE WISCONSIN STATUTES FOR IMPROVEMENTS ASSOCIATED WITH THE WASHINGTON AVENUE RECONSTRUCTION AND RESOLUTION NO. 2010-05: A FINAL RESOLUTION AUTHORIZING PUBLIC IMPROVEMENTS AND PLACING SPECIAL CHARGES ON THE ASSESSMENT REPORT FOR THE TOWN OF CEDARBURG PROPERTIES BENEFITING FROM A WASHINGTON AVENUE RECONSTRUCTION

Mayor Myers declared the public hearing open at 7:02 p.m. on proposed Resolution No. 2010-04: A final resolution levying special assessments under Sections 66.0701 and 66.0703 of the Wisconsin Statutes for improvements associated with the Washington Avenue reconstruction and Resolution No. 2010-05: A final resolution authorizing public improvements and placing special charges on the assessment report for the Town of Cedarburg properties benefiting from a Washington Avenue reconstruction. Deputy City Clerk Kletzien verified that proper legal notice had been given with publication in the *News Graphic* on February 23, 2010.

Director Wiza stated that the final special assessment report for Washington Avenue has been completed using the engineer's estimate for curb and gutter cost. The required report was sent to all residents involved in the project. He went through the following schedules involved in the project:

- Schedule A is the complete set of final plans and specifications covering the installation of new curb and gutter for the Washington Avenue project. The full schedule could not be mailed; however, copies are available in the Engineering and Clerk's Departments.
- Schedule B is an estimate of entire cost of the proposed improvements at \$1.4 million.
- Schedule C is a breakdown of each parcel showing the frontage, cost of curb and gutter at \$14/ft. and the Engineering Administration & Inspection costs at 15%. Director Wiza explained that once the resolutions are passed, the fees will be capped at the estimated amount and will be lowered if the numbers come in lower than expected.
- Schedule D is verification that the property against which the assessments are proposed is benefited.

Director Wiza stated that Resolution No. 2010-05 is for the Town of Cedarburg properties stating the charges will be held until the properties are annexed and will be due in full within 30 days of acceptance of an annexation petition. The amount of the special charge shall be adjusted for inflation using the ENR Construction Cost Index.

Resolution No. 2010-04 explains the terms of the special assessments to the City of Cedarburg property owners. The property owner may pay in installments or in full when the balance is due. The interest rate is determined by the state borrowing rate plus 1%.

In answer to Council Member Maher's question, Director Wiza stated that the property owner can pay the full amount off in less than five years if they choose.

Council Member Filter opined that it was excessive to charge 4.5% on the unpaid balance.

Director Wiza stated that the interest rate is set according to the City Policy; however, the Common Council has the ability to change the interest rate.

City Administrator/Treasurer Mertes stated that the City's current 5 year rate is 3.5% on loans from the State Fund.

In answer to Council Member C. Reimer's question, Director Wiza stated if the project costs less than it was estimated, the property owners obligation will be adjusted.

Mayor Myers opened the public hearing to questions from the public.

Lois Jeremiah, W69 N998 Washington Avenue, stated that most of her questions were answered in regard to the interest charges if not paid in full up front. Her other question was whether or not the charges could increase if the project costs more.

Mayor Myers explained that the charges are capped and she will not be charged more than the estimated amount for the curb and gutter work in front of her property.

Peter Wegner, W71 N1046 Washington Avenue, expressed concern for water draining down his driveway once the curb is added.

Director Wiza stated that the two properties north of Susan Lane will not have catch basins; however, the curb will be pitched so that it drains properly. He stated that the curb could be cut to relieve the water if needed.

In answer to Lois Jeremiah's question, Director Wiza stated that the new curb will be lowered to match the elevation of the shoulder and her driveway will be raised slightly (approximately 3") to taper off and match with a return at the curb, which will eliminate water drainage onto her driveway.

In answer to Peter Wegner's question, City Administrator/Treasurer Mertes stated that his property will not be assessed higher due to the road improvements.

In answer to Lois Jeremiah's question, Director Wiza stated that the tentative time schedule for the project is as follows:

- the project will be advertised for bid on March 9 and March 16
- the Common Council will tentatively award the bid on March 29
- work will begin mid-April and will be done in two phases
- the first phase (Bridge Rd. to Evergreen Blvd.) will be done by July 3
- the second phase will begin July 6 and be completed by Labor Day.

There will be a minimal impact on the homeowners and access will be available to homes most of the time. The inspectors will work with the property owners during the project and contractors will be required to put a gravel ramp to each house each day.

Director Wiza stated that a barricade will be posted near Five Corners indicating that Washington Avenue is closed ahead; however, it will be open to businesses and homes. Dr. Johnson may want to tell his patients to access his business via Evergreen Blvd.

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to close the public hearing. Motion carried without a negative vote with Council Member R. Reimer excused.

In answer to Council Member Radtke's question, Director Wiza confirmed that there will not be sidewalk and explained that the driveway approaches will be ramped up approximately three inches to meet the gutter before sloping down.

Council Member Radtke stated that it should be stressed to the contractor that the first phase of the project needs to be completed by July 3rd, with a penalty if not done in time.

In answer to Council Member C. Reimer's question, Director Wiza stated that the driveway approaches will be approximately 3½" thick and will stand up to the life cycle of the project.

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to adopt Resolution No. 2010-04: A final resolution levying special assessments under Sections 66.0701 and 66.0703 of the Wisconsin statutes for improvements associated with the Washington Avenue

reconstruction. Motion carried with Council Members C. Reimer, Filter, Radtke, Maher and Kinzel in favor, Council Member Loomis opposed, and Council Member R. Reimer excused.

Motion made by Council Member Loomis, seconded by Council Member C. Reimer, to adopt Resolution No. 2010-05: A final resolution authorizing public improvements and placing special charges on the assessment report for the Town of Cedarburg properties benefiting from the Washington Avenue reconstruction. Motion carried unanimously with Council Member R. Reimer excused.

APPROVAL OF MINUTES

Motion made by Council Member C. Reimer, seconded by Council Member Filter, to approve the minutes of the February 8, 2010 meeting. Motion carried without a negative vote with Council Member R. Reimer excused.

COMMENTS & SUGGESTIONS FROM CITIZENS - None

CONSIDER REQUEST FROM GENERATIONS CONSIGNMENT INTERIORS, LLC FOR A RESTRUCTURING OF ITS REVOLVING LOAN FUND (RLF) LOAN

Council Member Loomis stated that the ad hoc Revolving Loan Fund Committee recommended the restructuring of the existing Revolving Loan Fund loan for Generations Consignment Interiors, LLC by approving the release of the mortgage on the Koch property and personal guarantees of Koch and Siefert and accepting the mortgage on the Meil property, with the stipulation the \$10,000 buyout payment be used to pay down outstanding debt at the higher interest rate.

Motion made by Council Member Kinzel, seconded by Council Member Loomis, to accept the request from Generations Consignment Interiors, LLC for a restructuring of its revolving loan fund (RLF) loan.

Council Member C. Reimer verified that the City has first position on the business assets and the current inventory value is \$10,000.

Council Member Kinzel explained that the \$10,000 buyout will be used to pay down outstanding debt at a higher interest rate.

Council Member Loomis stated that the RLF loan has a 4% interest rate.

Motion carried without a negative vote with Council Member R. Reimer excused.

CONSIDER ORDINANCE NO. 2010-05 AMENDING SEC. 6-2-3 OF THE CODE OF ORDINANCES PERTAINING TO EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAY AND GROUNDS; AND SEC. 6-2-4 OF THE CODE OF ORDINANCES PERTAINING TO REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS

Director Wiza stated that staff is recommending that the length of time for which a permit to excavate in a public street is valid, be extended from the current 30 days to 90 days. It is also being

proposed that the time of year during which permits may be issued be adjusted from November 15 and May 1 to November 30 and April 1, except in emergencies. Contractors generally like to work up to Thanksgiving. These changes would make the ordinance more consistently enforceable without creating a hardship for contractors and utilities. He stated that City Forester Westphal wants to add a sentence incorporating the City Street Tree Protection Policy, which is attached.

In answer to Council Member Radtke's question, Director Wiza stated that a condition can be put on the permits pertaining to frost conditions. Usually by April 1, there is a foot or less of frost.

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to adopt Ordinance No. 2010-05 amending Sec. 6-2-3 of the Code of Ordinances pertaining to excavations of streets, alleys, public way and grounds; and Sec. 6-2-4 of the Code of Ordinances pertaining to regulations governing excavations and openings. Motion carried without a negative vote with Council Member R. Reimer excused.

REVIEW FINAL PLANS FOR THE NORTH WASHINGTON AVENUE RECONSTRUCTION PROJECT

Director Wiza distributed the completed project plans and specifications for the reconstruction of Washington Avenue from Bridge Road to approximately 200 feet north of Poplar Avenue for the Common Council to review. The proposed improvements include complete replacement of the existing pavement and base course with 6" of new asphalt on a 12" crushed stone base. The majority of the existing concrete curb will remain; however, approximately 2,000 feet of curb and gutter must be replaced because it is overlaid with asphalt. As a result, a number of driveway approaches will need to be replaced as well.

New curb and gutter will be installed on the east side of Washington Avenue north of Cambridge Avenue and a significant amount of new storm sewer will be added where none previously existed. Drainage problems at the Vollmer property and neighboring parcels will be addressed.

Director Wiza stated that additionally, the storm sewer running from Washington Avenue at Fair Street through Fireman's Park will be replaced. This line conveys a sizable portion of the runoff from Washington Avenue and it is in poor condition. New storm sewer north of Cambridge Avenue will connect to an existing storm line.

In answer to Council Member Loomis' question, Director Wiza stated that the storm sewer work would not affect the proposed County building.

Director Wiza stated that the contract will possibly be awarded at the March 29 Common Council meeting.

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to approve the final plans for the north Washington Avenue reconstruction and to proceed as scheduled.

In answer to Council Member Radtke's question, Director Wiza stated there will not be any changes to the Sheboygan Road and Washington Avenue intersection except for drainage issues.

Council Member C. Reimer inquired if the traffic on Harrison Avenue and Bridge Street will increase.

Director Wiza stated that there will be increased traffic on Evergreen Blvd., which will most likely result in additional traffic on the surrounding streets; however, it should balance out. There will be a barricade diverting traffic onto Highway 181 southbound and citizens will probably use Evergreen Blvd. as an alternate route within the City.

Motion carried without a negative vote with Council Member R. Reimer excused.

DISCUSS POSSIBLE DATE(S) FOR MEDIATION WITH THE TOWN OF CEDARBURG

Mayor Myers stated that mediation will need to be held in the evening because he will not use his personal vacation time for this process.

Council Member Radtke stated that evenings would make it possible for the public to attend, which is preferable to the Common Council.

City Administrator/Treasurer Mertes stated that the mediator is available every weekday evening in May except for May 27. The Judge prefers to do mediation on Monday through Wednesday evenings.

After some discussion, it was the consensus of the Common Council that Tuesdays and/or Wednesdays in May would be best for mediation (May 11, 12, 18 and 19), excluding the first week in May because two Council Members will be out of town.

CONSIDER RESOLUTION NO. 2010-06 APPROPRIATING FUNDS FOR THE LIBRARY

City Administrator/Treasurer Mertes stated that the Library Board was given the final decision to use fund balance to balance the budget or to cut additional expenses. The Library Board approved appropriation changes within the accounts and the use of an additional \$7,562 of unreserved fund balance.

Motion made by Council Member Filter, seconded by Council Member Maher, to adopt Resolution No. 2010-06 appropriating funds for the Library. Motion carried without a negative vote with Council Member R. Reimer excused.

CONSIDER THE CLEAN UP COSTS OF THE PROPERTY AT N73 W6957 WALNUT STREET AND THE CITY'S POTENTIAL FOR TEMPORARY FINANCIAL OBLIGATIONS REGARDING THE COSTS OF ABATEMENT OF THE HUMAN HEALTH HAZARD

City Attorney Vance stated that the clean up costs of the Walnut Street property is the owner's responsibility; however, the City needs to make a guarantee to the contractor. Discussion was held to this effect in August 2009 but the motion only authorized payment for deposit. This discussion is clarification of the project and procedures and to answer any questions.

In answer to Council Member Loomis' question, City Attorney Vance stated that if the clean up costs go on the tax roll for non-payment by the owner, the City will get reimbursed eventually with interest.

In answer to Council Member C. Reimer's question, City Attorney Vance stated that the City will get reimbursed if the property goes into foreclosure.

Council Member Radtke asked what the next step will be if the property is not maintained properly.

City Attorney Vance stated that due process is involved. The female landowner was ordered to pay for the clean up costs when they are due as a condition of her probation.

In answer to Council Member C. Reimer's question, the landowner has enough assets to pay for the clean up costs.

Mayor Myers stated the female landowner will violate her probation if the contractor is not paid for the clean up and she will spend time in jail.

Motion made by Council Member Loomis, seconded by Council Member C. Reimer, to approve the payment of the clean up costs of the property at N73 W6957 Walnut Street and the City's potential for temporary financial obligations regarding the costs of abatement of the human health hazard. Motion carried unanimously on a roll call vote with Council Member R. Reimer excused.

LICENSE APPLICATIONS

Motion made by Council Member Kinzel, seconded by Council Member Radtke, to authorize issuance of a new Operator's License for the period ending June 30, 2010 to Susan Katherine A. de Shazer. Motion carried without a negative vote with Council Member R. Reimer excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes announced that Secretary I Pam Holloway has accepted the part-time Secretary II position at the Police Department.

COMMENTS & SUGGESTIONS BY CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT

Mayor Myers issued a proclamation proclaiming April 30, 2010 as Arbor Day in the City of Cedarburg.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Radtke, seconded by Council Member Loomis, to adjourn to closed session at 7:55 p.m. pursuant to Wisconsin State Statutes 19.85(1)(e) to deliberate and

conduct specified public business, due to competitive or bargaining reasons that require a closed session, specifically to discuss issues related to the Prochnow property. Approval of closed session minutes of 2/8/10. Meeting did not reconvene to open session.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Kinzel, to adjourn the meeting at 8:12 p.m. Motion carried without a negative vote with Council Member R. Reimer excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk