

**CITY OF CEDARBURG
COMMON COUNCIL
March 29, 2010**

CC20100329-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 29, 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 Myers, Council Members Chris Reimer, Art Filter, Paul Radtke, Michael Maher, Kip Kinzel

Excused - Council Members Ron Reimer and Bob Loomis

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Fire Chief Rich Van Dinter, City Clerk Constance McHugh, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' 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 C. Reimer, seconded by Council Member Kinzel, to approve the minutes of the March 8, 2010 meeting. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

CONSIDER AWARD OF THE NORTH WASHINGTON AVENUE RECONSTRUCTION CONTRACT NO. 2010-01

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to award the north Washington Avenue Reconstruction contract No. 2010-01 to Buteyn Peterson Construction in the amount of \$1,214,046.91. Motion carried unanimously on a roll call vote with Council Members R. Reimer and Loomis excused.

CONSIDER AWARD OF THE 2010 ANNUAL SIDEWALK REPLACEMENT CONTRACT

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to award the 2010 sidewalk contract to Venske Concrete and Construction in the amount of \$19,282. Motion carried unanimously on a roll call vote with Council Members R. Reimer and Loomis excused.

CONSIDER AWARD OF CONTRACT FOR THE PUBLIC WORKS GARAGE ROOF REPLACEMENT

Motion made by Council Member Filter, seconded by Council Member Kinzel, to award the contract for the Public Works garage roof replacement to Dehling Voigt in the amount of \$47,040.

Council Member C. Reimer asked what the life of the roof will be.

Director Wiza stated the roof will come with a 25 year warranty. He said it is important to note that the final cost may be higher if the corrugated steel roof decking is found to be structurally unsound. The estimated price on deck replacement is \$350/100 square foot, which could amount to another \$20,000. He said he is not expecting this to be the case.

Motion carried unanimously on a roll call vote with Council Members R. Reimer and Loomis excused.

CONSIDER ACCEPTANCE OF STORM SEWER EASEMENTS ASSOCIATED WITH THE NORTH WASHINGTON AVENUE RECONSTRUCTION PROJECT

Director Wiza said drainage easements are required to complete the storm sewer for the Washington Avenue project. One is required for a front yard field inlet located in a low point behind the sidewalk, and a long strip is required through Firemen's Park to relay the existing storm sewer line. The owners of W70 N1001 Washington Avenue as well as the Fire Department have agreed to the easements and have signed off on them.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to accept the storm sewer easements associated with the north Washington Avenue project. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

CONSIDER ACQUISITION OF APPROXIMATELY 478 SQUARE FEET OF ROAD RIGHT-OF-WAY AT W71 N1046 WASHINGTON AVENUE

Director Wiza said the existing concrete sidewalk on the east side of Washington Avenue south of Berkshire Street terminates just north of W71 N1046 Washington Avenue. The City maintains this section of sidewalk due to the double frontage lots, and it is advantageous to access the south end of the sidewalk for snow removal via the drive approach at W71 N1046 Washington Avenue. There is a utility box which makes the present walkway alignment awkward for the snow blower, and he is proposing to acquire a 47' by 10' strip of road right-of-way from the owner at W71 N1046 Washington Avenue to allow for the sidewalk to be straightened up to the driveway approach. The owner is willing to convey the necessary right-of-way for the average square foot assessed value of the overall land. This comes to \$959.02, which would be deducted as damages from the owner's curb and gutter assessment.

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to acquire approximately 478 square feet of road right-of-way at W71 N1046 Washington Avenue. Motion carried unanimously on a roll call vote with Council Members R. Reimer and Loomis excused.

CONSIDER ORDINANCE NO. 2010-06 AMENDING SECTIONS 10-1-15 AND 10-1-16 OF THE MUNICIPAL CODE TO REPLACE EXISTING YIELD SIGNS WITH STOP SIGNS ON CEDAR POINTE AVENUE AT WILSON STREET AND ON FOX POINTE AVENUE AT WILSON STREET

Motion made by Council Member Kinzel, seconded by Council Member Radtke, to adopt Ordinance 2010-06 amending sections 10-1-15 and 10-1-16 of the Municipal Code to replace existing yield signs with stop signs on Cedar Pointe Avenue at Wilson Street and on Fox Pointe Avenue at Wilson Street.

Council Member C. Reimer asked Chief Frank about the merits of a stop sign on Wilson Avenue and whether it is necessary to have stop signs at both intersections.

Chief Frank said it makes sense to be consistent and place stop signs at both intersections. There have been a number of accidents at both intersections and he guesses the reason is because drivers look over the tops of vehicles because of the slope of the road.

Director Wiza said because the intersections are similar, they should be treated the same.

Council Member Filter said he recalls when this issue came up several years ago, Chief Frank was against putting stop signs up at these intersections.

Chief Frank said yield signs usually do well in subdivisions, but for whatever reason they are not working at these intersections. Drivers are not slowing down to get a clear view down Wilson Street.

Council Member Radtke said stop signs make sense in this circumstance.

Mayor Myers agreed and said there is not good visibility.

Motion carried unanimously with Council Members R. Reimer and Loomis excused.

CONSIDER AMENDING FINAL ASSESSMENTS FOR THE NORTH WASHINGTON AVENUE CURB AND GUTTER INSTALLATION TO REFLECT ACTUAL BID PRICES

Director Wiza said the Washington Avenue curb and gutter assessments and special charges were based on an estimated cost of \$14 per foot of frontage plus 15% engineering and administration costs. The actual bid price for new curb and gutter came in at \$9 per foot. The appropriate adjustments have been made to Schedule "C" of the Special Assessment report. An additional adjustment of \$959.02 for the acquisition of the 478 square feet of road right-of-way at W71 N1046 Washington Avenue is reflected in the revised report.

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to amend the final assessments for the north Washington Avenue curb and gutter installation to reflect actual bid prices and to amend Schedule "C" of Resolutions 2010-04 and 2010-05 as adopted on March 8, 2010. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

UPDATE ON MEDIATION STATUS, DATES AND RELATED ISSUES

Attorney Vance said the Town of Cedarburg has offered the dates of May 6 and May 26 as possible dates for mediation.

Council Member Maher said there was something in a recent *News Graphic* article that caught him by surprise. The paper stated that once the two bodies meet, the mediator will take about 30 minutes to talk about the process to the officials, after which the two groups will go into separate rooms. The mediator will shift between the rooms, talking with the members in meetings that will be closed to the public. He suggested the Council ask the mediator if all discussions could be in open session.

Mayor Myers said he will demand that all discussions be in open session. He said he will not participate in mediation if there are any closed sessions.

Attorney Vance said she had a discussion with the mediator and the Town's attorney. She said mediation will be in open session and she suggested that City officials do the talking. She said the mediator may eventually wish to break off into separate rooms, but this could be done in open session. The Council can express how it wants the process to work. Attorney Vance said she expects the first meeting will be to clarify the issues publicly. If the Town Board wants to reserve the right to submit issues privately to the mediator they can do this; but in her opinion, all issues are a matter of public policy.

Council Member C. Reimer said mediation should stop at the time the Town goes into closed session. He said that he does not want the Council to violate any open meeting laws.

Mayor Myers said if the Town adjourns to closed session at any point, mediation will have ended in his opinion.

Council Member Kinzel warned against just walking away. He said if the Town Board goes into closed session it is their issue.

Mayor Myers said he is not willing to keep anything secret during this process.

It was the consensus of the Council that the first mediation session take place on Wednesday, May 26, 2010 at Cedarburg High School in the Large Group Instruction (LGI) room, with the time being either 6:00 p.m. or 7:00 p.m.

CONSIDER REQUEST OF RICHARD LANSER OF SELECT DISPLAY TO AMEND THE PREMISE DESCRIPTION OF THE HUB AT W63 N631 WASHINGTON AVENUE TO SELL/SERVE BEER AND WINE OUTSIDE DURING STRAWBERRY AND WINE & HARVEST FESTIVALS

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to approve the request of Richard Lanser of Select Display to amend the premise description of The Hub at W63 N631 Washington Avenue to sell/serve beer and wine outside during Strawberry and Wine & Harvest Festivals.

Pat Niles, President of the Festivals Committee, said he has a signed contract with the Lansers that, as a condition of the festival permit, there will be no sale of beer or wine in space rented in the street.

Mayor Myers said the owner of The Hub pays property taxes to the City and can sell and serve beer and wine at the establishment 365 days of the year; therefore, he should be allowed to do so during festivals. He said the festivals were created to support local businesses and the Festivals Committee should not tell the Lansers or other business owners they can't do business.

Mr. Niles said there has been an increase in alcohol use over the last three years. He said the festivals are family-oriented arts and craft shows.

Mayor Myers said the original intent of the festivals was to bring people to Cedarburg so businesses could succeed. He said the downtown businesses are trying to make a living.

Mr. Niles said if this business is allowed to sell alcohol, it will open up a can of worms and other businesses will ask to do the same. He said this will significantly change the festivals.

B.J. Homayouni of the Festivals Committee said the Committee does not want businesses to sell alcohol on the street.

Council Member C. Reimer said he has a problem telling a business owner who pays taxes and can sell alcohol the rest of the year that they cannot do so during festival, especially since a person can walk inside the business and make a purchase.

Council Member Filter asked if businesses rent the space in the street.

Mr. Niles said the Festivals Committee gets a permit from the City and rents out spaces in the street to vendors and businesses. Permits will not be issued if renters do not follow the rules.

Mayor Myers said it is time for the Council to review the ordinance pertaining to festival permits. He said the Festivals Committee seems to have lost sight of what the festivals were created for and why the Council agreed to close the streets.

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to call the question. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

The motion to amend the premise description of The Hub to sell and serve beer and wine outside during festivals carried with Council Members C. Reimer, Radtke, Maher, and Kinzel voting aye, Council Member Filter present, and Council Members R. Reimer and Loomis excused.

Mayor Myers requested that the ordinance regarding festival permits be reviewed.

LICENSE APPLICATIONS

Motion made by Council Member Filter, seconded by Council Member Radtke, to authorize issuance of new Operator's Licenses for the period ending June 30, 2010 to Scott L. Powers,

Modesta Baez, Sherry S. Menacher, Don S. Bartolone, and Maria T. Carrillos. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

Motion made by Council Member Kinzel, seconded by Council Member C. Reimer, to authorize issuance of Class "B" beer and "Class C" wine licenses to The Lazy Susan, Inc., Sherry S. Menacher, agent, for The Lazy Susan Restaurant to be located at W61 N497 Washington Avenue. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

Council Member Kinzel asked when another "Class B" liquor license will be available.

Attorney Vance said population figures after the census may allow for another license, otherwise the State legislature may be willing to grant an exception to the City's quota.

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to authorize cancellation of the following Operators' Licenses for the period ending June 30, 2010 for failure to pickup: Adam A. King, Robert J. Gaulin, Paul W. Coert, Courtney M. Wendorf, Amber N. Gengozian, Merton E. Asp, Susan R. Schneider, and Steven L. McCollough. Motion carried unanimously with Council Members R. Reimer and Loomis excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said the last day for Pam Holloway, Secretary I in the Clerk's Office, will be April 8. She has accepted a position with the Police Department.

Chief Frank has received notice that a patrol officer will be retiring in June.

Economic Development Coordinator Linda Skalecki has resigned. She will continue to work until her contract expires at the end of April.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Filter said he has talked to a few people who would like to see the yard waste drop-off site open on Thursdays or another day during the week because they cannot get there on Saturday.

Council Member Maher said he and Council Member Filter will be participating in a candidate forum sponsored by the League of Women Voters on March 30.

Council Member C. Reimer said he received comments about how good the trees on Hickory Street look.

Council Member C. Reimer said closed session minutes are left in packets on the table outside the Clerk's Office for pickup. He asked the Council to think about where closed session materials should be left.

It was the consensus of the Council that closed session minutes be provided at the meetings for review and not included in packets.

MAYOR'S REPORT

Mayor Myers again stated he would like to see the ordinance governing festivals permits revisited. Mayor Myers issued the following proclamations:

- National Telecommunicator's Week – April 11-17
- National Library Week – April 11-17
- National Volunteer Week – April 18-24
- National Police Week – May 9-15

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to adjourn to closed session at 8:00 p.m. pursuant to Wisconsin State Statutes 19.85(1)(e) to deliberate or conduct specified public business, due to competitive or bargaining reasons that require a closed session, specifically to discuss issues related to the Prochnow property and 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the Council with respect to litigation in which it is involved, specifically the pending Town of Cedarburg 2007 lawsuit (JETZCO). Motion carried unanimously with Council Members R. Reimer and Loomis excused. Approval of closed session minutes of March 8, 2010.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to adjourn at 8:30 p.m. Motion carried unanimously with Council Members R. Reimer and Loomis excused. Meeting did not reconvene to open session.

Constance K. McHugh, MMC/WCPC
City Clerk