

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

**CC20140310-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, March 10, 2014 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Acting Mayor C. Reimer 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 – Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Patricia Thome, Mike O’Keefe

Excused - Mayor Kip Kinzel

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Kaye Vance, Deputy City Clerk Amy Kletzien, Engineering and Public Works Director Tom Wiza, Parks, Recreation & Forestry Director Mikko Hilvo, Parks & Forestry Superintendent Kevin Westphal, Police Chief Thomas Frank, Police & Fire Commission Member John Hammen, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Acting Mayor C. Reimer’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.

Council President Chris Reimer stated that as Acting Mayor he will retain his right to vote as Council Member of the 1st Aldermanic District.

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member O’Keefe, to approve the minutes of the February 24, 2014 meeting. Motion carried without a negative vote.

COMMENTS & SUGGESTIONS FROM CITIZENS

Cathy Radmann, 1569 Fielding Road, stated that she and her husband are the proud owners of the Castle of the Cedars on Sheboygan Road, which is a fully furnished home for rent. They have lived in Cedarburg for over 25 years and are active members of the community. Ms. Radmann stated that her neighbor has expressed concern about party houses and transients and she is here tonight to clarify the types of guests they have had in their rental home. These people experience the community because they have heard how wonderful, pleasant and neighborly Cedarburg is. They have had guests in and out of their home since August 2012 and they have not received one complaint from anyone, nor has any neighbor approached them personally with any guest complaints. The majority of vacation home renters are looking for a quiet neighborhood setting to

spend their time off. Not a crowded, centrally located hotel. She asked if the following scenarios were scary, suspicious or threatening at all.

Their typical guests have been sisters and moms spending a weekend together to shop and spend valuable time together; retired couples on extended vacations, celebrating their anniversary; and couples trying to escape the rat race of city living to relax.

More so, they are providing a service to the community because fellow citizens of Cedarburg have had their own family and friends stay in their home and in their own neighborhood when visiting for weddings, graduations, holidays and special occasions.

New residents to Cedarburg, wanting to buy a home in Cedarburg and cannot find one yet, have stayed in their home while searching for their new home and to experience the community. Existing residents of Cedarburg, who sold their home and need a place to stay in the meantime, are these people not welcome in their neighborhood? They have had an inquiry from a family of their immediate neighbors to stay there during their upcoming graduation party. Are they not welcome either?

Ms. Radmann stated that there were comments made by a particular neighbor that they do not like strangers close by their house. She questioned whether they know each person who walks past their home from hundreds of cars that park along Sheboygan Road on weekends, during Festivals, special events, and just visiting Cedarburg. The majority of these people are transients and not residents.

Ms. Radmann questioned whether they would spend over \$300,000 on home and yard improvements as a personal investment and furnish it with family heirlooms, to let it get trashed by careless renters. She did not think so.

The Radmann's have been the topic of many City closed session meetings, hearings, briefs, emails and private conversations for the past two years and yet no one within the City has been able to answer their questions; therefore, the courts had to. Before they had their first rental guests, they approached the City with their intentions for the abandoned, foreclosed home that they refurbished to bring property value back to this area. They were told by the City that they were maintaining a hands-off approach to the situation. It has been nothing but a hands-on approach for the past two years.

Ms. Radmann stated that the City has been very forceful in their continuous fight against them. A recent public records request exposed many emails between this particular neighbor and the Mayor that gave the impression of a City that is funding this neighbor's private lawsuit. This has been in the courts for the past two years and Judge Malloy has made his decision three times, stating that the ordinance does not hold up and they are able to continue renting their home. This has taken up many resources, the most valuable being time and stress on her family. It has also taken up the time and resources of this City the past two years and the City has spent well over an additional \$20,000 since December 2012 of taxpayers' money that the taxpayers don't even know about. This amount is just over one year's worth of attorney fees with more mounting above and beyond the high expense of the monthly contracted fee the City Attorney already receives. Yet, there are many homes for rent throughout Cedarburg. The ordinance does not state that you cannot rent your home, does not stipulate any length of rental; it does not address rental at all. She stated that she cannot go

into the full dissertation of the past two years; however, it is all on record if someone is interested in the specifics. Ms. Radmann stated that the law is the law. With this in mind, are the taxpayers of Cedarburg aware that the City is continuing in their battle against them? Continuing to spend tax dollars on a case they have lost three times? The City is appealing Honorable Judge Malloy's decision. This again will cost thousands of our tax dollars and more legal fees from their son's college fund. To argue over what, she asked. The City knows that they need to rewrite the ordinance so that other vacation rentals cannot pop up. Therefore, they are starting with the proposed ordinance changes this evening. The current City ordinance is not sufficient enough to prohibit such rentals. Yet, they want to continue the spending of all our dollars. Ms. Radmann stated that they have purposely not gone to the media because they did not want to damage the City of Cedarburg's fine reputation, sense of community, and welcoming arms they know make up our community. She still believes in our community of people, businesses and supporters. Ms. Radmann asked the City of Cedarburg to please stop, and ask if this is truly the decision of the City government as a whole; or is it the desire of just one unwelcoming neighbor.

Joe Fisher, W61N798 Sheboygan Road, stated that he is the neighbor next to the tourist rooming house. They purchased their home seven years ago and it has been a stressful situation for his family also. When they purchased their home they did not look at City ordinances or zoning to define what a neighborhood was because they knew they were in a 100% residential neighborhood. They also invested a great sum of money in their home as well because they believed in their neighborhood and knew their neighbors. The question has always been, is this an appropriate location for this type of business. Unbeknownst to them, they now have a full operating hotel type business next door. Whenever he asks someone a very simple question about the home next door, (which is rent the home online, people show up, get the keys; nobody is staying with them on the property, etc.) He asks them quite simply to put themselves in his shoes to roll in on a Friday evening, after a long week of work, coming home and not knowing who will be staying in the house every weekend. He does not feel this is an appropriate use in a residential neighborhood. The Council has an opportunity, as a community, to put to rest any loopholes in the City's ordinance. He encouraged the Common Council to do so. Other communities have had to battle the same situation with these types of businesses popping up. The City has an opportunity as a community to say that tourist rooming houses are not appropriate in a residential neighborhood; however, they can be considered a Conditional Use in the Business District. He is in favor of this.

PROCLAMATION HONORING VIVIAN SCHERF-LAABS

Motion made by Council Member Filter, seconded by Council Member O'Keefe to approve the Proclamation honoring Vivian Scherf-Laabs for her induction into the Packers Fan Hall of Fame. Motion carried without a negative vote.

Acting Mayor C. Reimer presented the Proclamation to Vivian Scherf-Laabs.

PUBLIC HEARING – CONSIDER ORDINANCE NO. 2014-04 AMENDING SEC. 13-1-240 OF THE ZONING CODE, WHICH IS THE DEFINITIONS SECTION; AND ACTION THEREON

Acting Mayor C. Reimer declared the public hearing open to consider Ordinance No. 2014-04 amending Sec. 13-1-240 of the Zoning Code, which is the definitions section, at 7:16 p.m. Proper legal notice had been given.

City Attorney Vance stated that the Plan Commission voted to recommend the Common Council adopt the Ordinance as presented to clarify the definitions in Section 13-1-240(b) to include tourist rooming houses with hotels, motels and other similar uses. These changes include references to the State Statutes and regulation on which the proposed changes are based.

In answer to Council Member Filter's question, Council Member Radtke stated that the Plan Commission unanimously voted in favor of recommending the adoption of Ordinance No. 2014-04.

There was no public comment.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to close the public hearing at 7:20 p.m. Motion carried without a negative vote.

In answer to Council Member R. Reimer's questions, City Attorney Vance stated that the proposed ordinance matches the State Statutes and clarifies how to treat tourist rooming houses. All along the City has been treating the tourist rooming house as a business and not a residential use.

In answer to Council Member O'Keefe's question, City Attorney Vance stated that she is not aware of any lawsuits pertaining specifically to the definition in State Statutes. The statutes include tourist rooming houses with hotels, motels and lodges, as a similar business that cater to transients and tourists. It is fairly solid in defining tourist rooming houses as a business and not a residence.

In answer to Council Member R. Reimer's question, Council Member Radtke stated that the Plan Commission did not have any prolonged or negative discussion on the proposed ordinance.

Motion made by Council Member R. Reimer, seconded by Council Member Radtke, to adopt Ordinance No. 2014-04 amending Sec. 13-1-240 of the Zoning Code, which is the definitions section. Motion carried without a negative vote.

PUBLIC HEARING – CONSIDER ORDINANCE NO. 2014-05 AMENDING SEC. 13-1-55 OF THE ZONING CODE TO PERMIT TOURIST ROOMING HOUSES AS A CONDITIONAL USE IN THE B-3 CENTRAL BUSINESS DISTRICT; AND ACTION THEREON

Acting Mayor C. Reimer declared the public hearing open to consider Ordinance No. 2014-05 amending Sec. 13-1-55 of the Zoning Code to permit tourist rooming houses as a Conditional Use in the B-3 Central Business District, at 7:23 p.m. Proper legal notice had been given.

City Attorney Vance explained that the Ordinance would permit tourist rooming houses in the B-3 Central Business District as a Conditional Use.

Council Member Radtke stated that the Plan Commission chose to permit tourist rooming houses in the B-3 Central Business District as a Conditional Use.

In answer to Council Member R. Reimer's question, City Attorney Vance explained that if someone wishes to establish a tourist rooming house, they would need to appear before the Plan Commission and explain how they will operate. At that time, it would be up to the Plan Commission to grant a Conditional Use or not. If the business lives up to the conditions it may continue.

In answer to Council Member C. Reimer's question, City Attorney Vance explained that an unhappy citizen may bring their concerns to the Plan Commission.

There was no public comment.

Motion made by Council Member Radtke, seconded by Council Member Thome, to close the public hearing at 7:25 p.m. Motion carried without a negative vote.

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to adopt Ordinance No. 2014-05 amending Sec. 13-1-55 of the Zoning Code to permit tourist rooming houses as a Conditional Use in the B-3 Central Business District. Motion carried without a negative vote.

NEW BUSINESS

CONSIDER ORDINANCE NO. 2014-06 AMENDING SEC. 8-1-5 AND SEC. 8-1-7 OF MUNICIPAL CODE PERTAINING TO THE DESTRUCTION OF NOXIOUS WEEDS AND THE REGULATION OF LENGTH OF LAWN AND GRASSES; AND ACTION THEREON

Superintendent Westphal stated that Council Member R. Reimer requested that staff review the current Noxious Weed Ordinance and, more specifically, to make a determination as to whether Common Milkweed (*Asclepias syriaca*) should be removed from the list of noxious weeds. After reviewing the noxious weed list, he found that Common Milkweed is a plant whose benefits to wildlife outweigh human health concerns. Milkweed can cause mild skin irritation in some people and may be toxic if taken internally; however, it is the sole food source of the Monarch butterfly and is described in a USDA Plant Guide as "a wonderful horticultural plant for landscaping to attract butterflies (particularly monarchs), whose numbers are declining."

Superintendent Westphal also reviewed the remaining plants on the list and recommends the omission of Kentucky Blue Grass (*Poa pratensis*) as it is a common component of local grass seed mixtures. The remaining plants listed have legitimate reasons to be considered "noxious"; such as non-native and invasive, allergenic, or harmful. He also discovered that the State of Wisconsin Noxious Weed list is considered by state horticulturists to be inadequate and in need of revision. For example, the current Wisconsin list consists of five (5) plants while the Minnesota list has 26 plants listed.

Motion made by Council Member Filter, seconded by Council Member R. Reimer, to adopt Ordinance No. 2014-06 amending Sec. 8-1-5 and Sec. 8-1-7 of the Municipal Code pertaining to the destruction of noxious weeds and the regulation of length of lawn and grasses. Motion carried without a negative vote.

CONSIDER MAYOR KINZEL'S APPOINTMENT OF PETER WELCH TO THE ECONOMIC DEVELOPMENT BOARD; AND ACTION THEREON

Motion made by Council Member Radtke, seconded by Council Member Maher, to approve Mayor Kinzel's appointment of Peter Welch to the Economic Development Board. Motion carried without a negative vote. Term expires 4/30/15.

Deputy City Clerk Kletzien administered the oath of office to Mr. Welch.

CONSIDER FILLING THE CITY ATTORNEY POSITION; AND ACTION THEREON

Council Member R. Reimer asked for some revisions to the draft RFP for filling the City Attorney position that was distributed for discussion.

The Common Council decided on the following changes to the Request for City Attorney Services:

- To tailor the RFP to an attorney and not a law firm.
- In the *Introduction* add: At all times, the Wisconsin Supreme Court Rules and Operating Procedures Chapter 20 and the Rules of Professional conduct for Attorneys shall apply to any service provided.
- In the *Scope of Representation* remove: ~~The Council may employ and compensate special counsel to assist in or take charge of any matter in which the City is interested.~~ Also, remove part of the next sentence: The City Attorney shall perform such other duties as provided by State law and as designated by the Common Council ~~and City Administrator.~~ And add the following sentence: The City Attorney shall provide judgment and advice to City officers, employees and officials regarding conduct compliance with Wisconsin Open Meeting Laws and Conflict of Interest issues.
- In the *Requested Information* paragraph add: Negotiation experience especially with labor unions and other municipalities.
- In the *City/City Attorney Relationship* paragraph add: The Council may employ and compensate special counsel to assist in or take charge of any matter in which the City is interested.

In answer to Council Member Radtke's question, City Administrator/Treasurer Mertes stated that CVMIC and another attorney looked at the draft RFP.

In answer to Council Member Filter's question, City Administrator/Treasurer Mertes stated that, depending on the number of replies, she is hoping to narrow the decision to two or three attorney's for the Council to choose from.

Council Member Filter expressed concern for conflicts of interest with Attorney's and/or their clients and the City of Cedarburg.

Motion made by Council Member Radtke, seconded by Council Member Thome, to approve the language for the draft Request for Proposal for a City Attorney including Council Member R. Reimer's changes and a review by the City Attorney and to return to the Common Council if there are any additional changes. Council Member Radtke offered an amendment to the motion, to strike #13 - *Assignment* on page 7 and renumber the remaining items and was seconded by Council Member Thome. Motion as amended carried without a negative vote.

OATH OF OFFICE: PATROL OFFICER NATHAN J. BUTZLER

Police Chief Frank introduced Patrol Officer Nathan J. Butzler to the Common Council as the newest member of the Cedarburg Police Department.

Deputy City Clerk Kletzien administered the oath of office to Patrol Officer Butzler.

CONSIDER PAYMENT OF BILLS FOR THE PERIOD 2/21/14 THOROUGH 2/28/14, ACH TRANSFERS FOR THE PERIOD 2/22/14 THROUGH 3/6/14, AND PAYROLL FOR THE PERIOD 2/16/14 THROUGH 3/1/14; AND ACTION THEREON

Motion made by Council Member Filter, seconded by Council Member Radtke, to approve the payment of bills for the period 2/21/14 through 2/28/14, ACH transfers for the period 2/22/14 through 3/6/14, and payroll for the period 2/16/14 through 3/1/14. Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS

Motion made by Council Member R. Reimer, seconded by Council Member Radtke, to approve new Operator's License applications for the period ending June 30, 2014 for Bradley A. Driss, Amber B. Evans, Mario A. Garcia Ortega, Julia A. Zens and a renewal Operator's License application for the period ending June 30, 2014 for Colleen A. Sekas. Motion carried without a negative vote.

LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE - None

ADMINISTRATOR'S REPORT - None

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT - None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Maher, seconded by Council Member R. Reimer, to adjourn to closed session at 8:00 p.m. pursuant to State Statutes 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 the City is or is likely to become involved, more specifically, to discuss the status of the window replacements at N58 W6194 Columbia Road. Approval of closed session minutes of February 24, 2014. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Radtke, seconded by Council Member Filter, to adjourn the meeting at 8:15 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk