

**CITY OF CEDARBURG
COMMON COUNCIL
April 28, 2008**

CC20080428-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, April 28, 2008 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, Steven Glamm, Noel Jepson, Paul Radtke, Michael Maher, Kip Kinzel, Amy Goyette

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Planner Jon Censky, Wastewater Superintendent Ron Clish, City Clerk Constance McHugh, Fire Chief Rich Van Dinter, 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.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Jepson, seconded by Council Member Reimer, to adjourn into closed session at 7:02 p.m. pursuant to Wisconsin 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 body with respect to litigation in which it is or is likely to become involved and 19.85(1)(e) to deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, specifically sewer back up matters. Motion carried with Council Member Goyette abstaining.

RECONVENE INTO OPEN SESSION

The meeting reconvened into open session at 7:35 p.m.

CONSIDER SEWER BACK UP MATTERS

Council Member Goyette requested the record show that she will abstain from participating in discussions regarding this matter because her company represents a homeowner in the affected neighborhood.

Director Wiza gave a brief overview of the sewer backups on Lexington Street on April 10, 2008. He said that at 10:20 p.m. on April 10 he received a call from Mayor Myers stating he had received calls that sewer backups were in progress on Lexington Street in the vicinity of Susan Court.

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Director Wiza said he phoned the on-call Wastewater Operator, who was already at the Wastewater Plant getting the sewer jetter. Employees were busy pulling sanitary manhole covers on Lexington Street looking for possible blockages; however, all that was found was one surcharged manhole after another. No blockages were found. Employees began searching for a large source of stormwater that was entering the sanitary sewer system and found a manhole in the field near Susan Court which had the entire cast iron frame and cover pushed 8" to 12" off center. This allowed storm runoff from the partially flooded field to enter the sanitary sewer at a rapid rate totally overwhelming the 8" diameter sanitary sewer line which was not designed to handle the large amount of water. The frame and cover were put back into place; however, the manhole was still leaking because of mortar that had broken up. The manhole has since been raised with concrete rings and dirt has been pushed up around it as a precautionary measure.

Council Member Reimer asked when the manhole was installed.

Director Wiza said he believes the manhole was installed in the 1970s when the Willowbrook Subdivision was built.

Council Member Reimer said it is his understanding that the City periodically checks manholes. He asked when the last time this manhole was checked.

Director Wiza said the City has 52 miles of sanitary sewer lines. He said that 1/3 of the sewers are inspected and cleaned each year. This particular manhole was inspected and cleaned in April of 2006.

Council Member Radtke asked if the backups would have occurred had it not been for the frame and cover being knocked off.

Director Wiza said the frame is 350 pounds and the lid is solid; therefore, not likely to float off during heavy rains. He said the manhole has been in this location since the 1970s and there has never been a problem. In his opinion this situation would not have occurred had the frame and cover not been moved off the manhole.

Council Member Reimer asked if there are other ways to construct manholes.

Director Wiza said if this area was new construction and in a floodway, the manhole would need to have a cover that is bolted on. However, this area is not in the floodway and construction standards were different when this manhole was constructed.

Council Member Kinzel said he believes this situation comes down to the frame and cover having been moved off the manhole, causing the large amount of water to enter the sanitary sewer system.

Council Member Reimer asked if the navigable ditch or trench on Susan Court contributed to the sewer backups.

Director Wiza said the field at the north end of Susan Court sometimes floods during heavy rains; but heavy rains would not lift the frame and cover off the manhole. He said the real issue is that the frame and cover were shifted off the manhole. He said the City used to do more to maintain the ditch; however, because approximately five years ago the DNR has designated the ditch as a

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navigable stream, the City is very limited in what it can do. Director Wiza said this is further complicated by the fact that the City does not own the ditch. A permit from the DNR to cut or trim the woody vegetation would be necessary as well as the permission of the owner. In his opinion the vegetation and debris in the ditch did not cause the problem.

Council Member Maher asked if a three year rotation for inspecting and cleaning sewers is typical.

Director Wiza said a three-year program is the accepted standard through CVMIC, the City's insurance carrier.

Council Member Jepson asked if the structure was defective in any way.

Director Wiza said the manhole frame and cover were not defective, but simply shifted off center. He said there are many similar castings in the City.

Scott Kennison, N98 N995 Susan Court, asked Director Wiza to comment on the failure of the manhole or the shifting of the cover.

Director Wiza said he speculates that kids could not push or move the frame and cover off because of the weight. He said the most likely scenario is that some type of large truck with rubber tires pushed it off.

Council Member Reimer asked how high off the ground the manhole is.

Director Wiza said the casting is 9" off the ground. It could have been pushed or moved if a truck backed into it. The driver of the truck may not have known that he or she hit it.

Gerard Baumgartner, W66 N996 Susan Court, said he lives about 300' from the manhole and has lived in his house for 22 years. He said the street has flooded during the course of the years but he has never experienced any water in his basement. He said work has been done in the field since last fall by an independent contractor and this may have been why the sanitary sewer system was breached. He said that the question is why the system was breached. He said there are several homeowners with damage to their basements.

Council Member Glamm asked Mr. Baumgartner what the cost of his damage is and if he has insurance.

Mr. Baumgartner responded by saying that with 4" of water in his basement he estimates he will have \$5,000 to \$10,000 in damages, in addition to the items of a personal nature that were disposed of. He said he has insurance with a cap of \$5,000.

James Martin, W66 N995 Susan Court, thanked the Mayor and Council Members who took a look at the situation. He said 21 homes sustained damage because of a breach of the City-owned sewer system. He said he had 9" of water in his basement. All 21 homeowners experienced some loss of personal items and/or experienced a monetary loss. Mr. Martin said if he was responsible for something like this he would make the 21 homeowners whole and hopes the City would do the same thing. He said this can be done without the City acknowledging any liability or setting any precedents.

Council Member Glamm asked Mr. Martin the cost of his damages. He said in order to get a handle on the magnitude of the damage, the Council needs to know what the total cost of the damages are.

Mr. Martin said that the cost of damage is over \$10,000. He does have insurance, but it has a cap of \$10,000. He said that his hot water heater needed to be replaced and his furnace serviced and cleaned.

Council Member Reimer asked Mr. Martin to expand on how the Council could make the homeowners whole without accepting liability.

Mr. Martin said this could be done by making some payment to compensate the 21 homeowners.

Council Member Radtke asked Director Wiza if the City uses the field off Susan Court.

Director Wiza said he doesn't know of any occasion when the City crews would use the field. He said that it is not necessary to use the field to access the manhole.

Andy Quackenboss, N99 W6660 Lexington Street, said that his losses were in excess of \$5,000. He is insured up to \$5,000. He said that this is a high risk area with the standing water and the off-road manhole. He questioned whether one inspection every 750 days is really adequate, given that this is a high risk area.

Mr. Quackenboss said he has heard comments that a large piece of machinery moved the cover. He said that he looked at the area the next day and didn't see any metal-on-metal type hit. He said this leads him to believe that because of weak mortar, standing water, normal wear and tear, the weather, and the fact that the manhole is off-road, the frame and cover gave way and slipped off. He said that he would like to see a copy of the City's policy regarding inspecting manholes and any inspection logs that may be available to learn more about the history of this particular manhole.

Director Wiza said that there is an inspection log, which could be provided to Mr. Quackenboss. He said even if the mortar has deteriorated there is the issue that something had to move the frame and cover off center.

Stan Dziewa, N98 W6540 Aspen Street, showed the Council photos taken 12 hours after the breach of the sanitary sewer system. He said he disagrees with Director Wiza and feels that deteriorating mortar could cause the frame and cover to slide off. His damage was approximately \$5,000 for cleanup costs.

Mr. Martin asked Director Wiza if it is reasonable to think that the mortar deterioration occurred since the last inspection.

Director Wiza said that if the mortar deteriorated that badly and a truck with rubber tires hit it, it would have shattered the mortar. He said that if, during the inspection, a problem with the mortar was found it would have been fixed.

Jerry Boeselager, N98 W6657 Lexington Street, said the manhole was below the top of the ground and sitting in a hole with water cascading over it, filling the manhole with water. He said the

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manholes on Wauwatosa Road are raised 3.5' above ground. He said he was at the manhole when the City crews arrived. The ditch on Susan Lane was ripped apart and water was cascading over Susan Lane and into the field. He said he doesn't know if this force shattered the mortar and caused the frame and cover to shift. He estimates his damage to be in the \$8,000 to \$9,000 range, with \$3,500 being the cost for cleanup. His insurance has a cap of \$5,000.

Mr. Dziewa asked if there is a difference between preventative maintenance and cleaning, and inspecting every three years.

Director Wiza said that situations that are brought to the attention of City crews are corrected; otherwise, it is hard to know what to look for.

Mr. Martin said the issue here is that a City-owned manhole was breached. If this happened on his property, he would be responsible. He said the Council needs to look at the claims as they come in and honor its responsibility to pay for the claims.

Council Member Radtke said he realizes the sewer backups impacted a lot of people, but it is hard for the Council to know what it can or cannot do. He said the Council needs to know what it is up against before the Council determines if it can or cannot help the homeowners.

Larry Zingsheim, N98 W6685 Lexington Street, said that his damages are in the \$10,000 range, with \$4,700 being the cost for cleanup. His insurance has a \$5,000 cap. He has lived at this address for 35 years and during these 35 years there has been a lot of water down Susan Lane, but there has never been a problem like this. He said this is clearly an issue of the sanitary sewer system failing. He said he would like to be reimbursed for the things he needs to replace.

Jim Redman, N99 W6530 Aspen Court, said that he had several inches of water in his basement. His cleanup costs were \$2,072. He did not have insurance for sewer backups. He said during the course of his 36 years at this address there have been many more severe storms but never any problems. He said the City is responsible for the manholes in the City and for the efficient operation of the sewers. He said the Council should provide financial reimbursement, at a minimum, to cover the out-of-pocket expenses of the property owners.

Barb Calbow, N99 W6536 Lexington Street, said she is concerned her claim will raise her insurance rates or possibly cause her insurance company to drop her insurance. She said the sewer backups were not the fault of the property owners. She said her policy had coverage of \$5,000, but damages were above that amount. She said she would like to recover the \$5,000 to pay the insurance company back.

Mr. Baumgartner said State Farm Insurance did a detailed analysis of the damage to his home, which he would be willing to share with the Council. His claim is in excess of \$8,000. He said the costs are significant even for those that do not have a finished basement.

Mr. Dziewa said he just finished his basement. He has no insurance. The cost of his damages is between \$15,000 and \$20,000.

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Jeff Vahsholtz, N100 W6725 Susan Court, said he has no insurance for sewer backups. He said his loss is between \$8,000 and \$10,000; although, he and his son and his son's friends did a lot of the cleanup. He said he can't even put a price tag on this.

Dan Calbow, N99 W6536 Lexington Street, said he and his wife both took off a day of work to deal with this situation. He said he has lived in this area for 28 years and many children have played in this field during this time. He said everyone is lucky the cover and frame weren't moved in such a way that a child could have fallen into the manhole. He said the manhole should be checked more than every three years.

Council Member Radtke said that at the last meeting it was refreshing to hear the homeowners acknowledge the good things that happened because of this, including the City's fast response.

Mr. Kennison said none of the good things were made public. He said that there was a problem and the City acted to correct it. He said that there is still an issue as to whether the City is liable.

Mayor Myers acknowledged that indeed this was a problem and a lot of people were harmed by this event. He said the Council has to decide what kind of action it should take. He asked for the opinions of the other Council Members.

Council Member Glamm said he hears the pain that the property owners have been through and knows they have suffered a loss. He said that he is respectful of the fact that the group of homeowners was complimentary of the City's response to the problem. Council Member Glamm said he has heard that residents should be made whole; however, as stewards of the City's money, it would be a breach of the Council's duty to do so without an idea of the total amount of damages. He said he doesn't agree that the Council needs to pay because there was a breach of the sewer system. He said the City inspects 1/3 of the sewer system each year. There has never been a problem with this manhole nor has the City been notified of any problem with it. He said it is just speculation as to how the structure was moved. Council Member Glamm said the City should not be held 100% liable every time something happens. He said the Council does not know who is at fault here. He said this does not mean he is not sympathetic to the homeowners. He said he needs to know that the City did something wrong, and he is not persuaded this is the case. He said he would be willing to look into making low cost loans available to residents.

Chris Mitkey, N97 W6424 Lexington Street, said this is a high traffic area. She said it would be prudent to check on this manhole on a more frequent basis and suggested that vehicles that use the field be required to check in with the City. She said the manhole is on City property; therefore, the City is responsible.

City Attorney Vance said the City is not liable unless the City caused the problem or should have known about it. The City's insurance carrier has opined that the City is not liable unless the City caused the problem or was not taking reasonable care. If the City has a reasonable inspection program, no one told the City about the problem, and the City did not do something to cause the problem, the City is not liable. She said it is a policy decision the Council would make in terms of covering the damages of the homeowners.

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Council Member Kinzel said before he can make an intelligent decision he needs to know the parameters, such as how much the total losses are and how the City would pay for them. He said from what he has heard he doesn't think the City is liable or did anything wrong.

Mark Mentzer, N98 W6508 Lexington Street, said he didn't expect the Council to say that homeowners should send in their bills and the City would pay for them. He said the City should investigate what happened to determine if it is liable, and if not, who is.

Mayor Myers said if the City is not liable, the Council can still make a policy decision to compensate the homeowners.

Council Member Reimer said the City has investigated this matter and determined it is not liable. Short of someone admitting guilt, the City will never know exactly what happened. He said he would like to know the magnitude of the whole problem from a financial standpoint.

Patty Vahsholtz, N100 W6725 Susan Court, asked Director Wiza if there is newer technology in terms of building manholes and asked if the newer manholes on Wauwatosa Road are on the same three-year inspection cycle.

Director Wiza said the manholes on Wauwatosa Road are on the same inspection cycle. He said manholes are built as high as possible during new construction. Many older manholes in the City were built from clay. It would not be reasonable to replace all of them.

Kathleen Mentzer, N98 W6508 Lexington Street, asked the Council where the homeowners go from here and whether they should file formal claims.

Council Member Radtke said that Council needs to get an idea of all the costs involved and whether homeowners were insured.

Attorney Vance said claim forms are available at City Hall.

Council Member Glamm suggested that to get a better idea of the monetary damage, the 21 homeowners should get together and list what they believe a fair amount of compensation is. He said this will give the Council something to look at from a policy standpoint.

Mr. Martin said no one is accusing the City of being liable. He said the word he used is "responsible" and he probably means "obligated."

Council Member Jepson said this is a complex matter. It is unclear who is responsible, but it is fairly clear legally that the City is not. He said the fact that the Council continues to discuss this matter means its members care about the residents. He said he doesn't believe this is an issue that will be closed tonight. He needs to have a better understanding and is not in a position to make a decision tonight. He said he is certain any decisions made won't be legal decisions but policy decisions.

Mayor Myers said he agrees this matter will not be settled tonight. He said he felt it was important for the Council to hear from the affected residents and for the residents to inform the Council of their situation.

Ms. Mitkey asked if it is reasonable for the Council to send out a letter to the affected residents asking for the information it needs. She said that not everyone is at this meeting or understands what information the Council is looking for.

Attorney Vance said the Council should not solicit claims. She said it is sufficient to say that claim forms are available.

Council Member Kinzel said everyone needs to understand that any money that may be used to pay claims would be coming from everyone's pocket. He said the Council quibbles about \$1,000 items at budget time.

Mr. Boeselager asked if the information should be provided to the Council by a certain date.

Council Member Jepson said it is incumbent upon the residents to complete the necessary forms when bills are received.

Mr. Dziewa said he appreciates the response that the residents have received from the Council. He said he will use the formal process for a notice of claim. He asked who would represent the homeowners since Council Member Goyette has recused herself.

Mayor Myers said residents can call him or any other Council Member with any issues or concerns they may have.

Council Member Goyette said Council Members have an obligation to be responsive to all residents.

MAYOR MYERS' APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

A motion was made by Council Member Jepson, seconded by Council Member Kinzel, to confirm the following Mayoral appointments:

Board of Appeals- 3 year term

Vera Brissman, Chair	(04/30/11)
Thomas Mesalk – 1 st Alt.	(04/30/11)
Kirsten Ruzic Wild – 2 nd Alt.	(04/30/10)

Design Review Board- 2 year term

Victor DiCristo	(04/30/10)
Patrick Doughman	(04/30/10)
Norma Klimpke	(04/30/10)

Economic Development Board – 3 year term

Robert Poggenburg	(04/30/11)
Christopher Smith	(04/30/11)

Leisure Services Commission – 2 year term

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Nina Walker (04/30/10)
Raymond Ronchetti (04/30/10)

Park and Forestry Board – 2 year term

Lynne Buehler (04/30/10)
Connie Dahlman (04/30/10)

Plan Commission – 3 year term

Brook Brown (04/30/11)

Public Art Committee – 2 year term

Mark Hergarten (04/30/10)
Charles Radtke (04/30/10)
Karen Reimer (04/30/10)

Public Works Commission – 2 year term

Bill Oakes (04/30/10)
Sandra Beck (04/30/10)

Board of Review – 5 year term

Jim Myers (04/30/13)

Sewerage Commission- 2 year term

Robert Dries (04/30/10)
Mark Schoenberger (04/30/10)

Motion carried without a negative vote.

MAYOR MYERS' COUNCIL MEMBER APPOINTMENTS

Mayor Myers presented his Council Member appointments as follows:

Council Member Chris Reimer (1st District)

Light & Water Commission
Ad hoc City/Fire Department Committee
Ad hoc Debt/Investment Advisory Committee
Ad hoc Athletic Field Committee

Council Member Steven Glamm (2nd District)

Joint Library Board
Personnel Committee

Council Member Noel Jepson (3rd District)

Design Review Committee
Personnel Committee
Public Works Commission
Ad hoc Mayor's Enhancement Award Committee

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Council Member Paul Radtke (4th District)

Economic Development Board
Landmarks Commission
Ad hoc City/Fire Department Committee
Ad hoc County Fair Committee
Ad hoc Revolving Loan Fund Committee
Ad hoc Downtown Master Plan Committee

Council Member Michael Maher (5th District)

Sewerage Commission
Ad hoc City/Fire Department Committee
Ad hoc City/School Committee
Ad hoc Debt/Investment Advisory Committee

Council Member Kip Kinzel (6th District)

Leisure Services Commission
Public Art Committee
Ad hoc County Fair Committee
Ad hoc Debt/Investment Advisory Committee
Ad hoc Revolving Loan Fund Committee
Mid-Moraine (Alternate)

Council Member Amy Goyette (7th District)

Park & Forestry Board
Personnel Committee
Ad hoc City/School Committee
Ad hoc County Fair Committee
Mid-Moraine Legislative Committee

2007 FIRE DEPARTMENT REPORT

Fire Chief Van Dinter presented the 2007 Fire Department Report.

The Cedarburg Fire Department continues to be a customer-service driven, improvement focused organization which continues to provide outstanding fire and Emergency Medical Services to the City and Town, all with professional and dedicated volunteers.

Chief Van Dinter said that the call volume dropped 9% or by 70 calls from 2006. There were a total of 818 calls in 2007. A majority of fire calls were minor or investigative in nature. Fire losses were very low at only \$72,654 in structure loss.

Eleven new members were recruited in 2007. Maintaining low response times during the day is a challenge. The Department has 81 active members. Four members passed away in 2007.

The Department stays on top of apparatus by replacing pieces of equipment when necessary. All capital equipment is purchased from fund raising and ambulance fees.

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Chief Van Dinter said the Department prides itself on training. The Department logged 7,122 hours of training in 2007. The Department has an active Explorer program, a Fire Prevention Bureau which continues to promote fire safety, promotes the "Change Your Clock, Change Your Battery" program, and participates in annual safety events.

The City and Town contribute approximately \$234,000 to the Fire Department. The Department also receives 2% fire insurance dues. The total operating budget for the Department is \$276,000. Chief Van Dinter said the Fire Department is a good steward of the taxpayer's money and is one of the gems of the community.

Chief Van Dinter concluded by saying the goals of the Department are safety, leadership, recruitment, training, and technology. He said the Cedarburg Fire Department is second to none. The Department consists of a great group of men and women who do an outstanding job serving the City and the Town.

Council Member Jepson said he had some experience with the Fire Department last year and stated that the Department is truly wonderful. He said the success of the Department is a reflection of great leadership.

Council Member Radtke said he is amazed at how much money the Department raises through fund raising. He asked if this is unique to this community.

Chief Van Dinter said the Department's fund raising is very unique to Cedarburg. Most communities do not have the same fund raising abilities. One example of this is the ability to rent out Firemen's Park.

Council Member Glamm inquired about the status and difficulties with daytime staffing.

Chief Van Dinter said that 10 years ago staffing the Department during the day was a critical problem. He said it not so much of a problem today; however, the Department must make sure it is not cutting itself short during the day.

Council Member Glamm said everyone is grateful for the work of the Department. He said that it is important for new Council Members to understand the value of the volunteer fire department. He said that there would be a big increase in taxes if the City had to hire personnel and purchase equipment. Council Member Glamm said that the Department brings a lot of value to the City.

Council Member Kinzel said there is a lot to be said about the leadership of the Department.

Mayor Myers said no one should forget how dangerous fire fighting is. He said these volunteers risk their lives for the community and are not compensated. They do it because of a sense of community. He asked Chief Van Dinter to express the Council's gratitude to the members of the Department.

John Pretty, W57 N709 Hawthorne, asked why Firemen's Park has never been updated with the money the Fire Department has generated.

Mayor Myers said the money the Department raises goes into equipment and to protect the community.

Chief Van Dinter said that if it comes down to spending money to save lives versus spending money to make something look pretty, his priority is and always will be to save lives.

APPROVAL OF MINUTES

Motion made by Council Member Reimer, seconded by Council Member Radtke, to approve the minutes of the April 15, 2008 regular meeting and the April 15, 2008 organizational meeting. Motion carried without a negative vote.

REPORTS OF BOARDS, COMMISSIONS, AND COMMITTEES - None

COMMENTS AND SUGGESTIONS FROM CITIZENS

Mike LaLonde, W50 N668 Creekview Court, presented to the Council an analysis from his company, LaLonde Contractors, and the Wisconsin Concrete Pavement Association regarding the use of concrete for the 2008 Street and Utility Project.

Mayor Myers said that this is not a topic on the agenda for discussion. Attorney Vance said if the City decides to change its policy regarding the materials used to pave streets it should be put on a meeting agenda.

Mayor Myers suggested that this matter be placed on the agenda of a Public Works meeting.

CONSIDER BIDS FOR THE 2008 STREET & UTILITY PROJECT

Director Wiza said bids were received for the 2008 Street & Utility Project. The low bidder was LaLonde Contractors in the amount of \$1,411,993.50. The project was bid as an asphalt paving project, not concrete.

Mr. LaLonde said that change orders or deletions to contracts are not uncommon and this could be done to this contract so that concrete could be used.

Mayor Myers suggested Mr. LaLonde make a presentation to the Public Works Commission. He said the Council will consider the bids as presented.

Director Wiza said staff is recommending the Council award the project as bid. He said that he doesn't have the authority to change the policy regarding paving materials during the bidding process. He said there may have been others who would have bid the project using concrete if the project was specified this way.

Attorney Vance said changing from asphalt to concrete would be a material change and is not consistent with the specifications.

Mr. LaLonde said he is looking for a forum to discuss the costs of concrete paving.

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Mayor Myers said this project will not be done using concrete. It was bid using asphalt. He said the Council may consider this in the future.

Motion made by Council Member Jepson, seconded by Council Member Kinzel, to award the contract for the 2008 Street and Utility Project to LaLonde Contractors, Inc. in the amount of \$1,411,993.50. Motion carried without a negative vote.

CONSIDER ACCEPTANCE OF WALKWAY AND UTILITY EASEMENT FROM WE ENERGIES FOR THE KEUP TRAIL SUBDIVISION

Director Wiza said that the Keup Trail Subdivision is bisected by a strip of Interurban Trail lands, which are owned by WE Energies. The storm sewer, water main, and access path all must cross the Interurban Trail to tie in with Phase 2 of the Subdivision. In order to construct the utility and pathway crossing, an easement must be granted from WE Energies.

Motion made by Council Member Reimer, seconded by Council Member Glamm, to accept the easement from WE Energies subject to a review by the City Attorney. Motion carried without a negative vote.

CONSIDER ORDINANCE 2008-07 AMENDING THE OUTDOOR ALCOHOL BEVERAGE LICENSE CODE

Planner Censky said that the City Clerk's office is in receipt of two requests to serve food and alcohol beverages outside two downtown restaurants. The requests are for sites that are either within 100 feet of a structure used for residential purposes or the outdoor seating area is more than 50% of the gross floor area of the adjoining licensed premises. He said these restrictions are very restrictive for the City's downtown retail area where outdoor activity is expected and encouraged. To provide more flexibility in the decision making process, a proposed ordinance amendment is before the Council to change those restrictions from restraints to guidelines that will be taken into consideration and implemented when and where appropriate.

Council Member Radtke said that outdoor seating is a big thing downtown.

Planner Censky agreed. He said that many downtown establishments are close to buildings with residential uses, thereby, prohibited from obtaining such a license.

Motion made by Council Member Kinzel, seconded by Council Member Radtke, to adopt Ordinance 2008-07 amending the Outdoor Alcohol Beverage License Code. Motion carried without a negative vote.

CONSIDER APPLICATION FOR AN OUTDOOR ALCOHOL BEVERAGE LICENSE FOR THE ANVIL PUB AND GRILLE, N70 W6340 BRIDGE ROAD

Planner Censky said the Anvil Pub and Grille is proposing to use the existing outdoor seating area along the east side of the restaurant adjacent to the mill race of Cedar Creek as an extension of their dining area. Because the restaurant will be serving alcohol outside, an Outdoor Alcohol Beverage License must be obtained.

The Landmarks Committee and Plan Commission reviewed this request and has recommended approval subject to submittal of the necessary documentation to confirm that the installation of the gate will not reduce the conveyance area causing an increase in the regional flood elevation by 0.01 foot or more and that the gate remain passable from the outside seating area at all times.

Motion made by Council Member Reimer, seconded by Council Member Kinzel, to approve the request of the Anvil Pub & Grille, N70 W6340 Bridge Road, for an Outdoor Alcohol Beverage License, subject to submittal of the necessary documentation to confirm that the installation of the gate will not reduce the conveyance area causing an increase in the regional food elevation by 0.01 foot or more and the gate remaining passable from the outside seating area at all times. Motion carried without a negative vote.

CONSIDER AMENDMENT OF THE AUGUST WEBER HAUS PREMISE DESCRIPTION DURING FESTIVALS FOR THE CLASS “B” BEER AND “CLASS C” WINE LICENSE ISSUED TO STEVEN W. BANAS, W63 N678 WASHINGTON AVENUE

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to approve an amendment of the August Weber Haus premise description during festivals for the Class “B” beer and “Class C” wine license issued to Steven W. Banas, W63 N678 Washington Avenue. The amended premise description will allow the owner to serve beer and wine outside the August Weber Haus during festivals. Motion carried without a negative vote.

CONSIDER TERM LIMITS FOR MAYOR AND COUNCIL MEMBERS

Council Member Jepson said that the Council considered changing term limits at its meeting on January 14, 2008. He said that it was appropriate that the ordinance was not changed at that time; however, this is an unsettled matter that should be discussed.

Council Member Jepson said he favors the elimination of term limits for several reasons. He said it is a matter of principle – a legislative body should not take away anyone’s right to vote for who they want. Term limits prevent someone from being on the ballot. He said the history behind term limits included concerns about the misuse of power after lengthy terms. He said that this does not have any application at the local level. He said there are ample examples of the fact that there are natural terms limits – they are called elections.

Council Member Jepson made a motion to repeal that portion of the City Code that put limits on the number of terms that can be served by the Mayor and Council Members. The motion was seconded by Council Member Glamm.

Council Member Glamm said he has the same feelings as Council Member Jepson. He said that there are a different set of circumstances at the local level. He said many weeks go by with citizen appointments on agendas that never get filled. Because the current ordinance was done after a referendum, he would like to introduce the idea of putting this matter to another referendum. He said that he thinks the results would be that the voters of Cedarburg favor term limits without any real understanding of what the community is facing.

April 28, 2008

Attorney Vance said that if a Charter Ordinance is adopted repealing term limits a citizen can petition for a referendum within 60 days. The petition would need to be signed by electors of the City equal to and not less than 7% of the votes cast for Governor in the last election.

Council Member Maher said he did some research on this matter and took calls from his constituents. He said right now the system works. For example, Council Member Goyette succeeded in running as a write-in candidate when no one else came forward to run. He said he was told that residents will get a petition together for a referendum if necessary. He said that the Council should abide by results of the advisory referendum. If the Council feels strongly about repealing term limits, another referendum should be held.

Council Member Kinzel said he agrees with Council Member Jepson and is not in favor of term limits; however, he would like to see this issue put before the electors.

Council Member Reimer said that he doesn't agree with term limits either; however, residents felt strongly about the issue in 1994, and he is not comfortable repealing the ordinance without another referendum.

Mayor Myers said that he wishes more people would run for local office. He said he believes the term limit ordinance should never have been enacted. He said term limits may be good for professional politicians, but no one at this level is making a good living from being in office. He said term limits are not good public policy at the local level because if people don't like what elected officials are doing, they will let them know.

Richard Dieffenbach, W67 N586 Evergreen Blvd., said he was on the Council when term limits were adopted. He said that there is a need for new blood and new people on the Council.

Council Member Goyette said there are two different issues here. She said the issues are whether or not someone gets involved and whether or not someone is entitled to an opinion. She said that it is the Council's responsibility to garner support. Support exists for term limits. She said the Council should not unilaterally make this decision for the residents.

Council Member Jepson pointed out that citizens have the right to petition for recall elections and petition for direct legislation. Term limits started out as a petition for direct legislation. He said this matter was decided after an advisory referendum and he has no problem holding another referendum. He said that it may make sense to defer taking action on this matter until some reasonable time in the future.

Motion made by Council Member Jepson, seconded by Council Member Glamm, to postpone a decision on this matter until some reasonable time in the future. Motion carried without a negative vote.

CONSIDER CLAIM AGAINST CITY FROM SHARON NIEMAN-KOEBERT

Motion made by Council Member Glamm, seconded by Council Member Goyette, to deny the claim of Sharon Nieman-Koebert. Motion carried without a negative vote.

CONSIDER COUNCIL MEETING DATE TO CANCEL IN SUMMER

Motion made by Council Member Jepson, seconded by Council Member Reimer, to cancel the August 11, 2008 Common Council meeting. Motion carried without a negative vote.

RESOLUTION 2008-15 DESIGNATING AND AUTHORIZING SIGNATURES FOR THE CITY OF CEDARBURG CHECKING AND SAVINGS ACCOUNTS FOR THE ENSUING YEAR

Motion made by Council Member Kinzel, seconded by Council Member Reimer, to adopt Resolution 2008-15 designating and authorizing signatures for the City of Cedarburg checking and savings accounts for the ensuing year. Motion carried without a negative vote.

LICENSE APPLICATIONS

Motion made by Council Member Glamm, seconded by Council Member Jepson, to authorize the issuance of a "Class B Liquor" and Class "B" Beer License to Pollo Loco, LLC, Jose Manuel Esparza, Agent, W61 N514 Washington Avenue. Motion carried without a negative vote.

Motion made by Council Member Kinzel, seconded by Council Member Reimer, to authorize the issuance of a 6-month "Class B" Beer License to Michael G. Jackson for the Cedar Creek Park Concession Stand, N52 W5925 Portland Road. Motion carried without a negative vote.

Motion made by Council Member Reimer, seconded by Council Member Maher, to authorize the issuance of a Festival License to Festivals of Cedarburg, Inc. for Strawberry Festival to be held on June 28, 2008 from 10:00 a.m. until 6:00 p.m. and June 29, 2008 from 10:00 a.m. until 5:00 p.m. Motion carried without a negative vote.

Motion made by Council Member Reimer, seconded by Council Member Radtke, to authorize the issuance of new Operators' Licenses for the period ending June 30, 2008 to Chad M. Bowen and Crystal M. Pattrick. Motion carried without a negative vote.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said interviews have been setup over the course of the next several days for the Deputy Treasurer/Payroll Officer position.

COMMENTS AND SUGGESTIONS BY CITIZENS - None

REPORTS AND COMMENTS BY COUNCIL MEMBERS

Council Member Radtke said Linda Skalecki has accepted the part-time Economic Development Coordinator contract position.

MAYOR'S REPORT

The following proclamations were issued by Mayor Myers:

- Municipal Clerk's Week – May 4-10, 2008
- Poppy Day – May 9, 2008
- May as Older Americans Month

ADJOURNMENT- CLOSED SESSION

Motion made by Council Member Reimer, seconded by Council Member Kinzel, to adjourn into closed session at 10:06 p.m. pursuant to Wisconsin 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 body with respect to litigation in which it is or is likely to become involved and 19.85(1)(e) to deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session concerning the Town of Cedarburg. Approval of closed session minutes of 3/31/08 and 4/15/08. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Radtke, seconded by Council Member Reimer, to adjourn the meeting at 10:12 p.m. Motion carried without a negative vote. Meeting did not reconvene into open session.

Constance K. McHugh, CMC
City Clerk