

**CITY OF CEDARBURG
COMMON COUNCIL
June 28, 2010**

CC20100628-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, June 28, 2010 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council – Mayor Gregory Myers, Council Members Chris Reimer, Ron Reimer, Paul Radtke, Michael Maher, Bob Loomis

Excused - Council Members Art Filter and Kip Kinzel

Also Present - City Attorney Kaye Vance, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, City Planner Jon Censky, City Clerk Constance McHugh, Accountant II Kathy Huebl, Tom Wieland, auditor with Reilly, Penner and Benton, 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.

PUBLIC HEARING: CONSIDER ORDINANCE 2010-10 AMENDING SECTION 13-1-75(e) OF THE ZONING CODE TO REDUCE THE LOT SIZE AND WIDTH REQUIREMENTS IN THE A-1 AGRICULTURAL DISTRICT

Mayor Myers declared the public hearing on Ordinance 2010-10 amending Section 13-1-75(e) of the Zoning Code to reduce the lot size and width requirements in the A-1 Agricultural District open at 7:02 p.m. City Clerk McHugh verified that proper legal notice had been given with publication in the *News Graphic* on June 10, 2010 and June 17, 2010.

Planner Censky said this text amendment allows the City to apply the A-1 Agricultural District zoning to the recently annexed Halloran property. This guarantees Mr. Halloran the right to farm in the City. It also results in standards consistent with urban mini-farm type operations that could be expected in the City. It does not conflict with the goals and objectives of the Smart Growth Comprehensive Land Use Plan – 2025. As recommended by the Plan Commission, the minimum lot size and width requirements in the A-1 District are proposed to be adjusted downward from the 35 acre size and the 660 foot width minimums to 10 acres and 300 foot width minimums.

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to close the public hearing at 7:06 p.m. Motion carried unanimously with Council Members Filter and Kinzel excused.

Motion made by Council Member Loomis, seconded by Council Member C. Reimer, to adopt Ordinance 2010-10 amending Section 13-1-75(e) of the Zoning Code to reduce the lot size and width requirements in the A-1 Agricultural District from thirty-five (35) acres to ten (10) acres in size and from six hundred and sixty (660) feet to three hundred (300) feet in width. Motion carried unanimously with Council Members Filter and Kinzel excused.

PRESENTATION – 2009 AUDIT REPORT

Tom Wieland of Reilly, Penner and Benton, presented the results of the 2009 City audit.

Mr. Wieland said the City received a clean opinion, there were no problems encountered during the audit, and his firm had the full cooperation of staff.

Mr. Wieland summarized the audit. He said that 73% of General Fund revenues come from property taxes and 14% come from Intergovernmental Revenue. In terms of General Fund expenditures, 45% goes towards the Protection of Persons and Property, 27% towards Public Works, and 14% towards General Government.

The reserved General Fund fund balance has ranged from \$780,895 to \$912,636 over the last five years. The reserved fund balance was \$780,895 in 2009. The unreserved-undesignated fund balance has ranged from \$1,388,833 to \$1,701,281 over the last five years. The unreserved-undesignated fund balance was \$1,281,239 in 2009.

Taxes and Intergovernmental revenue during the period 2005-2009 have ranged from \$8.7 million to \$9.2 million. Mr. Wieland said the only ways to increase revenues are to cut costs or raise taxes. General Fund expenses have been fairly consistent over the last five years ranging from \$8.3 million to \$9.2 million. During the past five years, the tax levy has increased from \$6.8 million to \$7.4 million.

Mr. Wieland said a slight error was discovered after the draft audit was issued resulting in an increase of \$12,000 in the General Fund fund balance, which will be reflected in the final document.

There was a \$107,000 decrease in operating revenues for the General Fund, compared to a \$33,000 decrease the year before. The transfers and proceeds from sales decreased \$212,000, compared to an \$82,000 decrease the year before.

Mr. Wieland said that 98.9% of revenue was achieved in 2009 and 98.6% of expenditures were achieved in 2009.

There was no borrowing in 2009. The City has \$6.7 million in total debt, which is considerably less than the \$53.5 million that the City is allowed to borrow under the State limit. His firm

recommends a municipality borrow only up to 75% of its capacity. In the City's case this would be \$40,152,435.

Council Member C. Reimer asked Mr. Wieland if anything was discovered during the audit that could impact the City's bond rating.

Mr. Wieland said the City has a very strong bond rating and nothing that would negatively impact this was discovered during the audit.

Mr. Wieland said this is the second year the City has estimated its Other Post Employment Benefit (OPEB). It has been determined that the City has \$1.2 million in legacy costs, which are promises for health insurance subsidies.

Council Member Loomis asked if this liability could be reduced or eliminated by charging retirees a higher health insurance rate or by not covering them under the City's health insurance plan.

Mr. Wieland said that these are both ways to reduce or eliminate the liability to the City.

Mr. Wieland discussed the Management Letter. He said that a few deficiencies in internal control were found that have resulted mainly from the consolidation of staff. They include payroll procedures that allow the payroll officer to input time-card hours into the accounting system and then reconcile his or her own work, the payroll officer having access to pay rates in the accounting system as well as the ability to process payroll, the accounts payable clerk having the ability to enter payments into the accounting system as well as printing the checks, and the Treasurer processing transactions without secondary approval.

Council Member R. Reimer asked who should be doing these things as positions are combined or eliminated and how other entities handle these duties.

Mr. Wieland suggested that someone with knowledge of the operations of the City look at the financial statements to see if anything looks out of the ordinary and suggested that no checks made out to the Treasurer are signed by the Treasurer. He also suggested that someone other than a staff member of the Treasurer's Office or someone the Treasurer doesn't report to receive the bank statements and credit card statements unopened.

Council Member Loomis said he feels strongly that the Council should take a look at these deficiencies. He said this could be done by the Mayor setting up an Audit Committee or by a committee of Council Members that sign off on transactions.

It was the consensus of the Council that the Personnel Committee address the deficiencies in internal control at length and make the necessary recommendations to the Common Council.

Mr. Wieland said two new GASB standards will impact the City in the near future. One is GASB #51, which applies to intangible assets. This will require the City to record intangible assets and amortize them over their useful lives. Intangible assets include easements, water rights, and internally generated computer software. GASB #54 relates to fund balance reporting and fund type

definitions. This statement establishes fund balance classifications that comprise a hierarchy based primarily on the extent to which a government is bound to observe constraints imposed upon the use of the resources reported in governmental funds.

Mr. Wieland concluded by saying that his firm encountered no problems during the audit and was given all the information requested.

Mayor Myers thanked Mr. Wieland for his presentation.

APPROVAL OF MINUTES

Council Member Radtke suggested the last sentence in the third paragraph under “Comments and Announcements by Council Members” on page 12 of the June 14, 2010 minutes be changed to read: “Council Member Radtke said other community organizations have expressed the fact that they will work on making funds available to the City for this position, not just the Chamber.”

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to approve the minutes of the June 14, 2010 meeting with Council Member Radtke’s suggested change. Motion carried unanimously with Council Members Filter and Kinzel excused.

CONSIDER AWARD OF CONTRACT FOR PROJECT 2010-02: SANITARY SEWER AND WATER MAIN IMPROVEMENTS IN WESTERN ROAD, BRIDGE ROAD, AND MADISON AVENUE

Director Wiza said four bids were received for the sanitary sewer and water main improvements in Western Road, Bridge Road, and Madison Avenue, with the low bid from Dorner, Inc., in the amount of \$381,123. The funding for this project involves a significant developer contribution of an estimated \$191,495.87 from Towne Realty. Cedarburg Light and Water’s share is \$93,798.65, and the Sewer Utility’s share is \$95,828.48. The City may recover much of the sewer and water cost for Western Road, if and when Town properties annex.

Motion made by Council Member Loomis, seconded by Council Member C. Reimer, to award the contract for Project No. 2010-02: Sanitary sewer and water main improvements in Western Road, Bridge Road, and Madison Avenue to Dorner, Inc., based on their bid of \$381,123. Motion carried unanimously on a roll call vote with Council Members Filter and Kinzel excused.

CONSIDER ORDINANCE 2010-11 AMENDING SECTION 8-1-8 OF THE MUNICIPAL CODE PERTAINING TO THE REGULATION OF SMOKING

Attorney Vance said that as of July 5, 2010 all public places in Wisconsin will become smoke-free pursuant to State Statutes. The City currently has a no smoking ordinance that needs to be revised to be consistent with the new law. The City is permitted to regulate smoking outside as long as the person in charge of any restaurant, tavern, private club or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employees or persons associated with the restaurant, tavern, private club or retail establishment may smoke. Reasonable distance is not defined by Statutes and

the City is not allowed to define it. The existing City ordinance already regulates smoking outside schools, including on sidewalks. Attorney Vance said the Council needs to decide what to regulate, if anything, on outside property.

Council Member R. Reimer asked if a retail owner can designate an area for smoking on public property or if it has to be on private property.

Attorney Vance said the new law simply states that an owner may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employees or persons associated with the restaurant, tavern, private club or retail establishment may smoke.

Mayor Myers said that the intent of the State law is to regulate indoor smoking. He questioned whether the Council should be concerned with smoking outside.

Attorney Vance said the law gives municipalities the choice to regulate smoking on outside property to a certain extent. Regardless of whether smoking is prohibited on certain outside properties, she said the existing ordinance must be changed because it is not consistent with the new law, it needs to allow for smoking that is a reasonable distance from an establishment, and it needs to address smoking on school property. Chief Frank suggested that the Police Department not be involved in enforcing signage so a provision was added that the Department of Engineering and Public Works also have the power and duty to enforce the smoking ban.

Chief Frank said that smoking on outside school areas is governed by School policy. He said that smoking is allowed on the driveway of schools.

Attorney Vance stated the City's ordinance must be consistent with the School policy.

Council Member C. Reimer said that the only place for people to smoke near the entrances to establishments on Washington Avenue is on the sidewalks. He asked if this will be allowed.

Attorney Vance said people must be allowed to smoke within a reasonable distance to an establishment. She said it is likely that any regulations regarding smoking outside will be challenged.

Council Member Maher said that he is concerned with smoking in beer gardens and outside dining areas. He said that smoking could occur in the outside dining areas of establishments.

Council Member C. Reimer said that he understands Council Member Maher's point; however, it is really up to the owner to determine if smoking should be allowed in the outside dining area.

Council Member Maher said if restrictions placed on smoking in beer gardens may be challenged, they perhaps should not be in the ordinance at this time.

It was the consensus of the Council to remove from the draft ordinance repealing Section 8-1-8 of the City Code the restrictions that the designation of the outdoor area for smoking must be separate

from the outdoor alcohol beverage area licensed by the City and that there must be a reasonable separation barrier between the outdoor alcohol beverage licensed area and any exterior smoking area.

It was also the consensus of the Council to leave the provision in the ordinance prohibiting smoking in park shelters, athletic fields, bleachers and dugouts, restrooms, and playground and swing set areas but to remove the prohibitions on smoking at the City Hall complex and common areas, City cemeteries, the Wastewater Treatment Plant remote receiving site and the lift stations from the ordinance.

Motion made by Council Member Loomis, and seconded by Council Member C. Reimer, to adopt Ordinance 2010-11 regarding the regulation of smoking with the above mentioned changes being made, a provision included that smoking is prohibited on outside areas at schools consistent with School policy, and the provision included that Department of Engineering and Public Works also has the power and duty to enforce the smoking ban, primarily when it comes to signage. Motion carried unanimously with Council Members Filter and Kinzel excused.

CONSIDER RESOLUTION 2010-15 AGREEING TO REMOVE THE EASEMENT RESTRICTION FOR A WASTE RECEIVING STATION ON THE DEED OF THE OZAUKEE YOUTH HOCKEY ASSOCIATION, INC. PROPERTY ON PIONEER ROAD

Motion made by Council Member C. Reimer, seconded by Council Member Maher, to adopt Resolution 2010-15 agreeing to remove the easement restriction for a waste receiving station on the deed of the Ozaukee Youth Association, Inc. property on Pioneer Road. Motion carried unanimously with Council Members Filter and Kinzel excused.

CONSIDER ISSUANCE OF TRANSIENT ENTERTAINMENT LICENSE TO RAINBOW VALLEY RIDES, INC. FOR THE OZAUKEE COUNTY FAIR

Motion made by Council Member Loomis, seconded by Council Member C. Reimer, to issue a Transient Entertainment License to Rainbow Valley Rides, Inc. for the Ozaukee County Fair on July 28, (4:00 p.m. to 11:00 p.m.), July 29, July 30, and July 31 (10:00 a.m. to 11:00 p.m.), and August 1, 2010 (10:00 a.m. to 7:00 p.m.), and to waive the requirement for a clean up bond as requested by the Agricultural Society, subject to review and approval of the employees by the Police Chief. Motion carried unanimously with Council Members Filter and Kinzel excused.

LICENSE APPLICATIONS

Motion made by Council Member R. Reimer, seconded by Council Member Loomis, to authorize issuance of a cigarette license for the period ending June 30, 2011 to Wisconsin CVS Pharmacy, LLC, dba CVS/Pharmacy #8775, W63 N152 Washington Avenue and to authorize issuance of the following renewal Operator's Licenses for the period ending June 30, 2011 to:

Melissa Mann
Richard L. Carlson
Tammy M. Potter

Bethany S. Dykstra
Frieda C. Carlson
Julie Engbring

Jacob Lautenbach
Shar M. Pokora
Kyle Ciske
John A. Lutz
Crystal Klas
Jeanne Venturini
Darcie Stib
Joel D. Telschow
Adam Heitzkey
Deborah J. Downing
Joseph M. Buth

William A. Sumner
Patrick D. Yunke
Daniel W. Kropidlowski
Sara Hanschke
William Poull
Matthew Stein
Stephan Venturini
Claudia A. Connor
Diane M. Schneeberger
Monica Hoffman
Joseph P. Willbrandt

and to authorize issuance of the following new Operator's Licenses for the period ending June 30, 2011 to:

Margo M. Miller
Christian T. Leonard
Kelly J. Brush
Nicholas J. Moran

Constance L. Brush
Christine M. Jackson
Terri J. Heidtke

Motion carried unanimously with Council Members Filter and Kinzel excused.

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to approve the appointment of Dione C. Jeffrey as agent for CVS/Pharmacy at W63 N152 Washington Avenue. Motion carried unanimously with Council Members Filter and Kinzel excused.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to authorize issuance of a Festival Celebration Permit to Festivals of Cedarburg, Inc. for Wine and Harvest Festival to be held on September 18, 2010 from 10:00 a.m. to 6:00 p.m. and on September 19, 2010 from 10:00 a.m. to 5:00 p.m. Motion carried unanimously with Council Members Filter and Kinzel excused.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Loomis said the Council received an email from Kay Castner requesting that City Forester Kevin Westphal and Parks, Recreation, and Forestry Director Mikko Hilvo be commended for their work on a memorial project for their son. Council Member Loomis would like the record to show that he is very pleased with the actions of these two employees.

The Mayor and Council Members present said they too are very pleased with the actions of these two employees.

Council Member Loomis suggested that the July 12, 2010 Council agenda include a closed session and open session discussion on the Town of Cedarburg's proposal dated June 25, 2010.

It was the consensus of the Council that discussion of this proposal would take place in open session as agreed upon in the past.

MAYOR'S REPORT

Mayor Myers said that on Saturday, July 3, Rappold Park will be dedicated in honor of Ed Rappold. He encouraged all Council Members to attend this dedication.

Mayor Myers said that Mr. Rappold will be riding in the 4th of July parade with him and he has designated Mr. Rappold as honorary Mayor on July 4th.

Mayor Myers reminded everyone that the 4th of July parade will begin at 11:00 a.m.

ADJOURNMENT

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to adjourn the meeting at 8:08 p.m. Motion carried unanimously with Council Member Filters and Kinzel excused.

Constance K. McHugh, MMC/WCPC
City Clerk