

**CITY OF CEDARBURG
COMMON COUNCIL
June 30, 2008**

**CC20080630-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, June 30, 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, Police Captain Glenn Lindberg, Wastewater Superintendent Ron Clish, City Clerk Constance McHugh, Director of Parks and Recreation Mikko Hilvo, 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.

MAYOR'S APPOINTMENT TO SEWERAGE COMMISSION

Motion made by Council Member Reimer, seconded by Council Member Radtke, to confirm the Mayor's appointment of Jim Slavin to the Sewerage Commission, term to expire April 30, 2010. Motion carried without a negative vote.

City Clerk McHugh administered the oath of office to Mr. Slavin.

PUBLIC HEARING – CONSIDER ORDINANCE NO. 2008-09 AMENDING SECTION 13-1-103 OF ARTICLE E OF THE ZONING CODE PERTAINING TO AVERAGE STREET YARDS FOR NONCONFORMING STRUCTURES

Mayor Myers declared the public hearing on Ordinance 2008-09 to amend Section 13-1-103 of Article E of the Zoning Code pertaining to average street yards for nonconforming structures open at 7:03 p.m. City Clerk McHugh verified that proper legal notice had been given with publication in the *News Graphic* on June 12, 2008 and June 19, 2008.

Planner Censky said the purpose of the proposed ordinance is to allow for the averaging of the existing front yard setback with the required setback to provide consistency in applying the setback standard for additions to nonconforming homes as is allowed for new home construction abutting nonconforming homes. The required setback for new homes in any residential district is 25' and existing homes that encroach into that setback are considered nonconforming. Additions to

nonconforming structures are allowed, but the addition must meet the 25' setback requirement and that can be limiting for many older structures in the City. Planner Censky said that this change will benefit older homes in the City. He said the Plan Commission unanimously supported this change.

Council Member Jepson asked for an example of where the proposed ordinance could apply.

Planner Censky said that this change would apply in any residential district with older homes. Any home with the current 25' setback would benefit from this change.

There were no comments from the public.

Motion made by Council Member Kinzel, seconded by Council Member Jepson, to close the public hearing at 7:08 p.m. Motion carried without a negative vote.

Motion made by Council Member Kinzel, seconded by Council Member Glamm, to adopt Ordinance No. 2008-09 amending Section 13-1-103 of Article E of the Zoning Code pertaining to average street yards for nonconforming structures. Motion carried without a negative vote.

APPROVAL OF MINUTES

Motion made by Council Member Radtke, seconded by Council Member Maher, to approve the minutes of the June 9, 2008 meeting. Motion carried without a negative vote.

REPORTS OF BOARDS, COMMISSIONS, AND COMMITTEES - None

COMMENTS AND SUGGESTIONS FROM CITIZENS

Matthew Brockmeier, Executive Director of the Cedarburg Cultural Center, provided a letter requesting that the Mayor and Council consider not increasing the fees levied to Festivals of Cedarburg, Inc. or other organizations in connection to festival events held in the City. Mr. Brockmeier said that the Cultural Center relies on the income received from the Festivals and any lost income would be a hardship to the Cultural Center.

CONSIDER PARK RESERVATION FEES, RENTAL OF COMMUNITY CENTER FACILITIES FEES, AND FESTIVAL CELEBRATION PERMIT FEES FOR NON-PROFIT ORGANIZATIONS AND CONSIDER COSTS ASSOCIATED WITH EVENTS HELD BY NON-PROFIT ORGANIZATIONS

Pat Niles, President of Festivals of Cedarburg, Inc., said that he addressed the Council on May 12, 2008 regarding fees charges to the Festivals and was asked by the Council to come back in 60 days to continue the discussion.

Mr. Niles expressed his appreciation to the Department of Public Works, Fire Department, Police Department, Parks Department, and Emergency Government staff for assistance this weekend during the weather emergency that occurred during Strawberry Fest. He said the Festival was closed at 4:30 p.m. on Saturday because of bad weather.

Mr. Niles said that the biggest concern Council Members had at the May 12 meeting was the possibility of setting a precedent if the Council waived the fees for the Festivals of Cedarburg, Inc. Some Council Members were concerned if the fees were waived for the Festivals, they would have to be waived for other non-profit groups. He said that the Council already set a precedent on May 14, 2007 when a motion was approved to waive the park fees for Summer Sounds.

Mayor Myers said the City also waives park fees for the Festivals of Cedarburg, Inc. He said that a Festival Celebration Permit Fee is charged to the Festivals as part of the City Code in lieu of closing the streets for the festivals. Streets are not closed for Summer Sounds. Mayor Myers explained these are two completely different fees.

Mr. Niles said the Festivals has no problem paying fees for actual services provided; however, he does not want the non-profit organizations to become a profit center for the City. He said lawn fees and gym rental fees have increased 42%.

Council Member Jepson asked Mr. Niles if he is requesting that charges for Police services, charges for Public Works services, or permit fees be waived.

Mr. Niles said the Festivals pays approximately \$15,000 for Police services, \$300 for a Festival permit, lawn fees, and rental charges for use of the Community Gym. He said an agreement has been made to pay 25% of the Public Works fees as they relate to the festivals.

Mayor Myers pointed out that income received from the rental of spaces on City streets is not reflected on the Festivals income statement.

Mr. Niles said this income is distributed to non-profit groups in the City.

Mayor Myers said that about five years ago the Festivals of Cedarburg, Inc. came to the Council and said they were not making enough money. The Council agreed to shut down the main downtown area and give the Festivals an opportunity to generate money from vendors. The privilege of generating income through the use of City streets, sidewalks, and parks was given to the Festivals Committee. He said that it is not the City's fault if the Festivals gives this revenue to other groups.

Council Member Kinzel said he remembers the Festivals Committee coming before the Council asking for the streets to be closed. The Council considered the request and agreed. He said that the Council did not ask for the downtown area to be closed off; the request came from the Festivals.

Council Member Jepson said the City gave the Festivals the use of City property in order to rent spaces to vendors. He said that he contacted many people in his district, including former Council Members, and no one said they would like to have their tax dollars shifted to the Festivals of Cedarburg, Inc. He said that it is incumbent upon the Festivals to provide financial statements if they are giving money to other groups.

Mr. Niles said the Festivals keeps a few spaces to rent out to vendors and the rest goes to such groups as the Ozaukee Art Center, Cedarburg Garden Club, and the Cultural Center to be rented out by these groups. A \$500 administration charge is charged to these non-profit groups, who keep all the profits from the rental of the spaces. He said that the Festivals is not out to make money.

Mayor Myers questioned why the taxpayers of the City should subsidize the costs of the Festivals. He said that it seems the Festivals should pay their expenses first before giving away money to other groups.

Council Member Goyette said the Council was very specific at the last meeting regarding the financial information the Council would like to see. She said that the financial information that has been provided is lacking and incomplete. She agreed with the Mayor that the Festivals needs to pay its own expenses first and not look to the City to cover its costs.

Mr. Niles said the festivals are an investment in the downtown of the Cedarburg. He said that the City needs to keep businesses viable.

Mayor Myers said the City does support the festivals. Twice a year the downtown area is shutdown for events. He said the idea the City does not support the festivals is wrong, and he resents it. Mayor Myers said the City has bent over backwards for the festivals. He said the residents of the City do realize the festivals are important to the City and the Council recognizes this as well. However, this does not mean the City should pay when the City has allowed the Festivals the opportunity to generate income through the use of the streets.

Mr. Niles said the Festivals of Cedarburg, Inc. is thankful for the City's contributions; however, he asked that the City not increase fees so that the Festivals can keep its costs down. He said that the Festivals is not out to make a profit and that all the money made goes back into the community.

Council Member Jepson said he has heard from two members of the Festivals Committee that the City has inflated costs to make revenue. He asked Mr. Niles to explain this comment.

Mr. Niles said he has quote from Police Chief Frank of \$78 per hour to provide police services at German Fest. When he asked Director of Parks and Recreation Hilvo for a price, he was told it would cost \$55 per hour.

City Administrator/Treasurer Mertes said that the hourly rate for police services can range from \$44.48 to \$59.14, depending on the officer and whether it is time and one half or double time. She said that actual rates are charged, not inflated rates.

Mayor Myers said the City is not using this as a profit center. He said the City has given the Festivals every opportunity to make as much money as possible. All of the groups involved are viable and quality organizations; however, the City cannot just give tax dollars to them.

Council Member Goyette said that the 2008 is the first year the fees have been raised since 1996.

Mr. Niles said that if the fees are not waived he will have to increase the fees charged to the non-profit groups. A larger administration fee will need to be charged to cover the Festival's expenses.

Council Member Reimer suggested that perhaps some of the vendor booths be reallocated back to the Festivals Committee.

Council Member Radtke said an increase in gym rental fees was necessary because there are long term costs for the building and lawn area. As an elected official he is accountable to the taxpayers. He said that he is not willing to transfer taxpayer's money to non-profit groups.

Council Member Jepson said the financial statements provided by the Festivals are a wreck. He asked if there is a reason why the Council cannot see statements for the rental of the booths.

Mr. Niles said if the Council is firm on the fees, he will have to renegotiate his fees with non-profit groups.

Mr. Brockmeier said the Cultural Center is not looking for subsidies from the City or for anything that costs the taxpayers money. He said the Cultural Center solicits organizations to participate in the festivals and attempts to come with a roster of arts and crafts vendor. He said that the Cultural Center will shoulder its fair share if there are costs incurred by the City. He asked that the fees charged represent the true cost of the services provided. He said that the Cultural Center wants to continue to participate and make the festivals a success, and in turn, benefit financially from the income provided to the Cultural Center. Mr. Brockmeier stated that financial statements for non-profit organizations are available on-line.

Ann Connelly, representing the Cedarburg Garden Club, said her group is not looking for taxpayer dollars and asked that the Council look at the amount of increase in fees. She said all money raised goes back into the community.

Council Member Kinzel said fees are set by the Council to cover costs, not to make money. If the City loses revenue, the taxpayers will have to be pay more in terms of taxes.

Council Member Goyette said there has been a request that the Festivals pay only 25% of the Public Works costs associated with the Wine and Harvest Festival. Taxpayers will have to pay for the remaining costs.

Director Wiza said to the clarify Council Member Goyette's comment, at present Public Works fees are not recovered. Public Works costs for services related to the festivals were approximately \$13,000 in 2007; \$2,900 was recovered for the Bike Classic. He said that the City has been paying for these costs completely out-of-pocket and the Public Works Department is concerned that the costs associated with the festivals are ever increasing. The Festivals of Cedarburg, Inc. has agreed to pay 25% of the Public Works fees as they relate to festivals beginning with the 2008 Wine and Harvest Festival. Director Wiza said the Police Department does recover all its costs.

Council Member Glamm said he understands the importance of the festivals to the downtown area and would like to do what he can to assist with making the festivals a success. He explained that gym rental fees are used to recover the costs to the City. He said that Council Member Goyette makes a good point that fees have not been raised since 1996. Council Member said that the City is subsidizing the Festivals of Cedarburg, Inc. He said Council Members cannot turn to their constituents and ask them to contribute more. He said that other non-profit groups such as the Special Olympics and the Woman's Club are charged for using the gym. He questioned how the Council can charge one group while not charging another group. He said that this is a matter of fairness. If the Council eliminates all fees and costs, they must go on the tax roll.

Council Member Glamm said he wants to underscore that all Council Members support the festivals and all non-profit groups, but the City has expenses also. During one budget year the Council tried to find \$6,000 for defibrillators and took money from many line items. The Council tries hard to find money for essential services. Council Member Glamm said that rental fees are big money and important to the City. He said that without these fees the Council would have to forgo something else.

Council Member Reimer said that the Council has given the Festivals the opportunity to generate revenue. He said the Festivals Committee has chosen not to pay its expenses before it gave away its money.

Council Member Maher said all Council Members have an obligation to control taxes. Costs would be passed on to the taxpayers if the fees were waived.

Mayor Myers said that he supports the festivals 100%. He said that he thought when the Council closed the downtown area it would solve the problems for the Festivals of Cedarburg, Inc. He said that he understands the importance of the festivals, but the City has an obligation to the taxpayers and can only go so far.

Mayor Myers said that has appointed Council Member Goyette as the liaison to the Festivals Committee.

AUTHORIZE ISSUANCE OF FESTIVAL CELEBRATION PERMIT TO FESTIVALS OF CEDARBURG, INC. FOR THE CEDARBURG BIKE CLASSIC ON JULY 22, 2008; AND CONSIDER REQUEST FROM FESTIVALS OF CEDARBURG, INC. TO WAIVE THE FESTIVAL CELEBRATION PERMIT FEE FOR THE EVENT

Motion made by Council Member Radtke, seconded by Council Member Kinzel, to authorize issuance of the Festival License to Festivals of Cedarburg, Inc. for the Cedarburg Cycling Classic on July 22, 2008 from 9:00 a.m. to 8:30 p.m. and to waive the Festival Celebration Permit for the event. The motion carried without a negative vote.

DISCUSS STATUS OF CREEK WALK EASEMENTS AND REQUIRED DNR PERMITS

Director Wiza said the City retained G.J. Miesbauer and Associates to negotiate the acquisition of the creek walk easements for Phase I of the project. He said that all owners in the first phase are in favor of the project, but all issues relating to the easements have not been resolved. Some property owners have placed conditions on the easements such as fences or retaining walls; however, the Advent Church has drafted its own document and has included several liability waivers. Only one owner has signed the easement with no conditions. He said some of the conditions can be met as part of the project but others cannot.

Attorney Vance said the City cannot enter into different easements with different property owners. She said attorneys for the Church have drafted a legal document that the City will probably not be able to agree to. She said the City must be fair and equitable to all property owners.

Director Wiza said the Church is requesting winter maintenance of the walk way. It is his intention that the path not be maintained in the winter.

Council Member Radtke asked Director Wiza to explain which of the conditions can be met or what types of things the City can do for the property owners.

Director Wiza said that one property owner wants a railing on the steps, which is part of the project. Another owner would like to see a retaining wall, which would be an advantage to both the City and the property owner. One owner asked for a privacy fence to prevent people from cutting through, and this is probably a reasonable request.

Attorney Vance said the form of the easements must be consistent. She said the City cannot benefit just one property owner.

Council Member Goyette questioned if the City would get to the point of obtaining the easements.

Director Wiza said that he is not sure he can answer this question tonight.

Director Wiza said another issue with the project has been the DNR permitting process. He said that the permitting process has been very difficult and involved. The DNR has received a neighbor across the creek objecting to the project. Because of this the DNR will be holding a public hearing on the project. Director Wiza said that he does not know if the DNR will issue a permit for the project.

Director Wiza said that he recently received a cost estimate of the project from Crispell-Synder, Inc. The current cost estimate is \$565,000. The original cost estimate was \$350,000. The City will receive a grant of \$100,000. To get better idea of the costs Director Wiza said that he is bidding the project at this time and hopes to bring the bids to the Council in July. He also hopes to have a cost estimate for the relocation of utilities at that time. Director Wiza reminded the Council that these costs are for Phase I of the project only. Phase II is estimated to cost \$1 million. Director Wiza said that he is not looking for any action from the Council at this meeting but wanted to update the Council on the status of the easements and the updated project costs.

Council Member Radtke said that he hopes the City receives favorable bids and hopes the City can find a way to complete the project.

Council Member Glamm said that these property owners were the most agreeable to the project from the start. It was suggested that the project be done in phases and it was hoped that those owners who were the most resistant would come around. He said that if the City is having problems getting easements from these property owners it will be difficult to persuade other property owners to grant easements.

Council Member Jepson questioned why the City would want to go forward with this project.

Mayor Myers said that when this project was proposed a few years ago the costs were not what they are today. The Council thought it was a very doable project two years ago. The Council also thought the creek walk would create additional interest in the downtown and improve the quality of life in Cedarburg.

Council Member Reimer said that the creek walk would help the downtown and make Cedarburg a more attractive place to visit.

Council Member Maher asked what other communities with similar walks do in terms of winter maintenance.

Director Wiza said that it is hard to compare this walk with other walks because this one will have steps. He said that some owners want to be able to put snow on the walk during the winter but the Church is requesting that the City maintain the walk during winter months. He said that he does not recommend maintaining the walk during winter months because it would put people close to thin ice.

The Council thanked Director Wiza for his update.

CONSIDER REQUEST TO FILL THE VACANT WASTEWATER TREATMENT PLANT OPERATOR POSITIONS

Wastewater Superintendent Clish said that he has two operator positions open at the Wastewater Treatment Plant that he would like to fill because of the work that needs to be done.

On motion of Council Member Glamm, seconded by Council Member Jepson, the Council approved the request of Wastewater Superintendent Clish to fill the two vacant Wastewater Treatment Operator positions. Motion carried without a negative vote.

CONSIDER AUTHORIZING CITY ADMINISTRATOR/TREASURER MERTES AS THE CERTIFYING OFFICER FOR ALL FEDERAL AND STATE GRANTS AND RELATED DOCUMENTS

Motion made by Council Member Glamm, seconded by Council Member Reimer, to authorize City Administrator/Treasurer Mertes as the certifying officer for all federal and state grants and related documents. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2008-10 CREATING A MUNICIPAL BOARD OF ABSENTEE BALLOT CANVASSERS AND PROVIDING FOR THE CANVASSING OF ALL ABSENTEE BALLOTS AT A PLACE OTHER THAN THE POLLING LOCATION

Motion made by Council Member Glamm, seconded by Council Member Jepson, to adopt Ordinance No. 2008-10 creating a Municipal Board of Absentee Ballot Canvassers and providing for the canvassing of all absentee ballots at a place other than the polling location. Motion carried without a negative vote.

DISCUSS AND APPROVE PRELIMINARY BUDGET PARAMETERS, INCLUDING OPERATING EXPENDITURES AND/OR TAX LEVY, GROWTH TARGETS FOR DEVELOPMENT OF THE PROPOSED 2009 BUDGET

City Administrator/Treasurer Mertes said that typically the Council establishes budget parameters every year. The goal for the past several years has been no increase in the assessed tax rate.

It was the consensus of the Council to set the budget parameters to be a zero percent increase in the assessed tax rate as a target, the same goal as the last several years.

PRESENT STRATEGIC WORK PLAN

City Administrator/Treasurer Mertes said that no action is required on the Strategic Work Plan at this time. She suggested that Council Members review the work plan and provide comments or suggestions to her by July 25. She said that the plan will be distributed with the budget on September 25 and will be addressed during the department presentations on October 20.

LICENSE APPLICATIONS

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to authorize the issuance of a "Class B Liquor" and Class "B" Beer premise license to Jose Herrera, Jalisco Restaurant, W63 N146 Washington Avenue, for the period ending June 30, 2009, to authorize the issuance of renewal Operator's Licenses for the period ending June 30, 2009 to:

Richard J. Kastelic	Monica Hoffman
Elizabeth M. Ryan	John E. Zarling
Kris K. Klug	Marie Caputa
Heidi E. Regnitz	Florence J. Meisnest
Roy C. Oberheu	James A. Lee
Michelle L. Taylor	Matthew Stein
John B. Mollan	Kyle S. Halleman
Bonnie C. Prahl	James M. Salp
Gerald E. Walker	James C. Hoberg
Bradley F. Diamond	Darcie R. Stib
Todd R. Schneeberger	Paul W. Coert
Christopher A. Massie	Kenneth P. Albinger
Brett T. Schemenauer	Nicole A. Schemenauer
Elaine R. Schieble	Leroy C. Haeuser
Sally A. Anderson	

and to authorize the issuance of new Operator's Licenses for the period ending June 30, 2009 to:

Deborah R. Segebrecht	Tiffany A. Leicht
Tim J. Olson	Katherine K. Herkert
Peter G. Zaferos	Christopher G. Farver

Motion carried without a negative vote.

CITY ADMINISTRATOR'S REPORT - None

COMMENTS AND SUGGESTIONS BY CITIZENS - None

REPORTS AND COMMENTS BY COUNCIL MEMBERS

Council President Glamm said that Council packets will no longer be delivered by the Police Department. Council Members will be responsible for picking up their packets in the Clerk's Office.

MAYOR'S REPORT

Mayor Myers said that he appointed Council Member Goyette as liaison to the Festivals Committee, Council Member Glamm to the Design Review Board, and Council Member Jepson to the Joint Library Board.

ADJOURNMENT- CLOSED SESSION

Motion made by Council Member Radtke, seconded by Council Member Maher, to adjourn into closed session at 9:02 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 concerning the Town of Cedarburg, the 2008 Street & Utility Project contract, and the Walnut Street property. Approval of closed session minutes of June 9, 2008. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Reimer, seconded by Council Member Glamm, to adjourn the meeting at 9:46 p.m. Motion carried without a negative vote. Meeting did not reconvene into open session.

Constance K. McHugh, CMC
City Clerk