

**CITY OF CEDARBURG
COMMON COUNCIL
July 14, 2008**

CC20080714-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 14, 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, Paul Radtke, Kip Kinzel, Amy Goyette

Excused - Council Members Noel Jepson and Michael Maher

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Deputy City Clerk Amy Kletzien, Fire Chief Rich Van Dinter, Library Director Mary Marquardt, Library Board President Sue Karlman, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' 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.

MAYOR'S APPOINTMENTS

Motion made by Council Member Kinzel, seconded by Council Member Glamm, to confirm the Mayor's appointment of Art Palleon to the Joint Library Board, term to expire June 30, 2011 and Mike Besaw to the Leisure Services Commission, term to expire April 30, 2010. Motion carried without a negative vote with Council Members Jepson and Maher excused.

Deputy City Clerk Kletzien administered the oath of office to Mr. Palleon and Mr. Besaw.

APPROVAL OF MINUTES

Motion made by Council Member Reimer, seconded by Council Member Radtke, to approve the minutes of the June 30, 2008 meeting. Motion carried without a negative vote with Council Members Jepson and Maher excused.

REPORTS OF BOARDS, COMMISSIONS, AND COMMITTEES - None

COMMENTS AND SUGGESTIONS FROM CITIZENS

Eric Stelter, N54 W5989 Portland Road, encouraged the Common Council to approve and accelerate the process of producing the Creek Walk. The project is a long time coming and competition is emerging in other communities. He stated that the ad hoc Downtown Master Plan

Committee believes the City needs to move ahead with some of their plans in order to have the stronghold of visitors and city center that already exists.

Janis Kinens, W61 N658 Mequon Avenue, encouraged and echoed Mr. Stelter's words. He stated that when he moved to Cedarburg 10 years ago there was a huge contrast between Cedarburg and Grafton. In a recent visit to Grafton, he was impressed with the recent development in downtown Grafton. Mr. Kinens stated he is disappointed that Cedarburg's Creek Walk has taken so long to develop. Advent Church has been one of the main proponents of this project and he asked the City to keep the project moving forward.

Tom Kubala, N67 W5475 Columbia Road, said he has been a traveler all over the world and it is a pleasure to always come back to Cedarburg. One of the things that make Cedarburg special is its walkability. He believes the community's walkability could be improved many fold by the inclusion of the Creek Walk which expands the environment and experience through which you can walk. It would be in the best interest of the City and its inhabitants to move the project forward at all speed.

Paul Rushing, W62 N799 Sheboygan Rd., asked for the support of the Common Council in the Creek Walk. He believes the project is coming to fruition and he wants to underscore the importance of the Creek Walk. The community supports this project and he asked the Council to do likewise.

Joe Covert, W63 N680, 684 and 686 Washington Avenue, stated he is 100% for the project even though some of his renters are opposed. He believes it will be a great addition to the City and the final completion of the project will attract visitors to Cedarburg.

Joe Kultgen of Kultgen Investments stated that he is in favor of the Creek Walk. If the project is done in sections, the City will be getting two handicapped areas in compliance during the first phase. He encouraged the Common Council to move forward with the Creek Walk.

Steve Banas, W58 N483 Hilbert Avenue, stated that he owns a property in the proposed Phase I of the project and he expressed his total support for the project. He encouraged the Common Council to move forward with the Creek Walk Project.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Glamm, seconded by Council Member Reimer, to adjourn into closed session at 7:15 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 and Prochnow (Blank) Landfill. Approval of closed session minutes of 6/30/08. The meeting will reconvene to open session. Motion carried without a negative vote with Council Members Jepson and Maher excused.

RECONVENE TO OPEN SESSION

The meeting reconvened to open session at 7:30 p.m.

DISCUSS STATUS OF NEGOTIATIONS WITH TOWN OF CEDARBURG

Mayor Myers stated that the City and Town of Cedarburg have had discussions regarding the future development of the 5 Corners area. Recently, the Town of Cedarburg announced their plans and wishes to develop a Sports Complex on the Prochnow Landfill. This area has been involved in a remediation process for many years and is controlled by four entities. The City and Town of Cedarburg began meeting together several months ago to address areas of concern. Over the course of very good constructive negotiations, the Town developed its own comprehensive plan which includes a Sports Complex. During negotiations, the City expressed their interest in giving up their portion and interest of the Prochnow Landfill to the Town of Cedarburg for development of the park in return for complete and unlimited indemnification.

Mayor Myers stated that the proposed Sports Complex is only one element of a comprehensive agreement with the Town of Cedarburg. Other elements of the agreement include:

- The City will grant the Town a border agreement around the 5 Corners area.
- The City has agreed to, in concept, offering a water supply to the Town area to ensure public safety from contaminated wells containing arsenic.
- In return, the Town will contribute \$2 million to a new public library.
- Shared services need to be included for the Community Pool, Fire Department, etc., to encompass a comprehensive agreement.

The Common Council is looking forward to working with the Town and to expedite a comprehensive detailed agreement as soon as possible so that the Town can move forward with their plans. The Common Council believes the Sports Complex will be a great addition to the Community, as all of the athletic fields are currently located in the City and there is no room for additional fields within the City, causing a need for additional fields in the Town.

Mayor Myers reiterated that the Common Council is on board towards completing a comprehensive agreement so that all parties can move forward. He understands that these terms are agreeable between the two communities and there is a tentative agreement which will enable the Town and City to move forward expeditiously.

City Attorney Vance stated that any agreement is tentative pending public approval.

CONSIDER BIDS FOR PHASE I OF THE CREEK WALK PROJECT

Director Wiza explained that staff solicited bids for construction of Phase I of the Creek Walk and received a total of four bids. He thought it was important to bring the prices forward to Council for review before continuing with the project. Initially the project was estimated to cost several hundred thousand dollars; as of last fall the estimate was \$300,000, and more recently the estimate is \$500,000.

Director Wiza explained that the lowest bid received for this project was approximately 50% of the other bids which were \$420,000, \$430,000 and \$435,000. It became apparent immediately that there were some serious errors and miscalculations in the lowest bid from Colt Construction. Since then, a certified letter was received asking to have their bid withdrawn.

Director Wiza stated he was not recommending that the Common Council award any bids at this point. He suggested the bid awarding take place at the July 28 Council meeting because the DNR is requiring the City to hold a Public Hearing. The Public Hearing was requested because they received an objection over the loss of trees and possibly some heron nesting places. The Public Hearing is scheduled for July 22. The City needs to know if the DNR is going to place any further restrictions on the project before continuing to award the bids. At present, only four of the five easements have been agreed upon. He stated that there are two pages of legal issues that need to be resolved with Advent Church prior to moving ahead on the Creek Walk.

In answer to Council Member Reimer's request, Director Wiza stated that a few items of disagreement are as follows:

- The City shall maintain the path free from snow and ice and if the City fails to perform its obligations, the church may prohibit the use of the easement until the obligations are performed. Basically, the church could do the work and bill the City.

Director Wiza stated that the City is recommending that the walkway not be maintained in the winter months. The practical issues are that three of the five properties involved push all of their snow toward the Creek Walk area. If we have another winter like last year, the City could not continually remove snow from the walk. The assumption he would like to work with is that the path would be a three season walkway.

In answer to Council Member Glamm's question, Director Wiza stated that clearing the Creek Walk would be a last priority during a heavy winter.

- The church shall have the right to approve or disapprove plans and specs and if the church does not approve the plans, the construction shall not proceed until after they are revised and approved by the church.
- Potential relocation, if the church ever acquires property to the north and adjacent to the church, may by notice to the City, require that part of the easement that runs along the northerly side of the church be relocated at the expense of the City.
- Potential termination of the northerly portion – if the walkway is extended by the City further to the north in the future, the City could be required to then vacate the portion that connected to Washington Ave.

Director Wiza stated that some of the stipulations get very complicated because the City is utilizing a \$100,000 DNR stewardship grant. This grant is the same grant that the City used to acquire Moldenhauer Park at the corner of Western Road and Wauwatosa Road. When the Department of Transportation tried to acquire additional right-of-way on this corner, the DNR stated it could not be touched because it was acquired with DNR stewardship money and it cannot be relocated easily. Director Wiza explained that by accepting the grant it may tie the City's hands in relation to the church's conditions.

City Attorney Vance stated that the easement forms need to be the same for each property along the Creek Walk. The City cannot treat the church any differently.

Director Wiza stated that the City needs to receive the easements free and clear.

City Attorney Vance stated that the Creek Walk would be treated the same as a public park or sidewalk.

In answer to Council Member Reimer's question, Director Wiza still suggested that the contract not be awarded this evening until some issue's can be ironed out.

In answer to Council Member Kinzel's question, Director Wiza stated that the City has at least 60 days before a bid needs to be awarded.

Director Wiza cautioned the Common Council that there will be some additional costs involved in the project above the low bid of \$420,000. Layout of the project will cost approximately \$13,000, underground electric service will be approximately \$7,500 and then Time Warner and AT&T have some facilities on Cedarburg Light & Water poles that will need to be modified and paid for by the City. Director Wiza estimated that the overall cost of the project could reach a \$460,000 range. He explained that a \$100,000 reimbursement grant is available along with some previous pledges that will need to be revisited because of the time lapse in starting the project.

In answer to Mayor Myers' question, Director Wiza stated that some park impact fees will be used for the project.

In answer to Mayor Myers' question, City Administrator/Treasurer Mertes stated that approximately \$90,000 in impact fees could be available after applying funds to other currently budgeted park projects.

Mayor Myers stated that approximately \$240,000 would be available from the City, plus the \$100,000 DNR grant, plus any contributions, which would considerably close the gap on the funding needed for the project.

City Administrator/Treasurer Mertes suggested that the pledges be revisited because they were made in 2006.

In answer to Council Member Goyette's question, Director Wiza confirmed that four of the five easements have been agreed upon to-date. The City retained a real estate acquisition firm that received commitments from four of the five property owners. Any special conditions have been built into the bid of the project. The status of the fifth easement is unclear at this point and it may require a meeting with the City, the real estate firm and the property owner to work out the details.

City Attorney Vance stated that the fifth easement must be the same as the other four because the City is using park impact fees.

In answer to Council Member Goyette's question, Director Wiza stated that the real estate firm has explained and worked with the church up to the two remaining pages of conditions which were

forwarded to the City for consideration. The City is not able to accept many of the conditions and they will need to be resolved before moving ahead with the Creek Walk.

Council Member Glamm asked if there were any remaining math errors in the bids.

Director Wiza stated there were a surprising number of math errors in all of the bids. The Engineering Department ran the bids through an Excel spreadsheet and the bid sheet is accurate at this point.

In answer to Council Member Goyette's question, Director Wiza stated that the bids will be good for 60 days in which the City has time to work out some of the details.

Mayor Myers stated the direction should be for Director Wiza and City Attorney Vance to get the needed easements. He wants the Creek Walk to go forward because he has always been a proponent of the project. It was the decision of the Common Council not to use eminent domain in the process and to work with the property owners. He encouraged the property owners to understand that the easements need to be unconditional. The Creek Walk will be an incredible asset to downtown Cedarburg if all of the property owners agree to cooperate. The project needs to be a team effort.

Council Member Kinzel and Mayor Myers agreed that the financing for the project should be looked at closely during this time period.

In answer to Council Member Goyette's question, Director Wiza stated that he hopes to receive a determination from the DNR prior to the July 28 Council meeting. The critical time nature will be expressed to the DNR because the project should be built in September, October and November.

Council Member Radtke stated that it is encouraging to see the property owners involved in the process and express their support during the Council meeting. The ad hoc Downtown Master Plan Committee believes the entire Creek Walk will be a tremendous asset to the City and he urges other property owners to see the value in this project for continued cooperation through its completion.

CONSIDER QUOTES FOR EMERGENCY ROOF REPAIRS AT FIRE STATION 3

Fire Chief Van Dinter distributed photographs to the Common Council of the needed repairs to the station to stop deterioration of the roof, exterior brick and interior walls, ceiling and to prolong the life of the roof.

Fire Chief Van Dinter stated that in late March or early April, he noticed that some bricks were falling off the west side of the building of Station 3. After inspecting this area, Building Inspector Baier determined that some major roof work needed to be done.

Fire Chief Van Dinter stated that this work has not been budgeted so he is before the Council tonight for some emergency funding.

In answer to Mayor Myers' question, City Administrator/Treasurer Mertes stated that the project can be funded through public safety or funds can be transferred at year end from Contingency Reserves.

In answer to Council Member Reimer's question, Director Wiza stated that Dehling-Voigt, Inc. has an excellent track record and will do a good job on the repairs.

Motion made by Council Member Glamm, seconded by Council Member Reimer, to award the bid to Dehling-Voigt, Inc. in the amount of \$10,820 for roof repairs to Station 3. Motion carried unanimously on a roll call vote with Council Members Jepson and Maher excused.

CONSIDER ORDINANCE NO. 2008-11 CREATING SECTION 2-7-1(d) OF THE MUNICIPAL CODE CREATING A SERVICE FEE PURSUANT TO WIS. STATS. 814.705

City Administrator/Treasurer Mertes stated that the Mid-Moraine Municipal Court recommended charging for this service because some municipalities do charge a warrant fee and are unable to collect the fee because it is not processed through the Municipal Court system. With this Ordinance, the fee will be collected and uniformly processed at the Court level. This would be a new fee for the City and would generate approximately \$3,000 per year.

In answer to Council Member Radtke's question, City Attorney Vance explained that a warrant is issued to a person when they do not pay a fine.

Motion made by Council Member Reimer, seconded by Council Member Kinzel, to adopt Ordinance No. 2008-11 creating Section 2-7-1(d) of the Municipal Code creating a service fee pursuant to Wis. Stats. 814.705. Motion carried without a negative vote with Council Members Jepson and Maher excused.

LICENSE APPLICATIONS

Motion made by Council Member Kinzel, seconded by Council Member Radtke, to authorize issuance of:

- a new Class "A" beer license and "Class A" liquor license to SuperSales USA, Inc., dba Citgo Super Sales-Cedarburg, Douglas Gall, agent, W62 N174 Washington Avenue
- renewal Operator's Licenses for the period ending June 30, 2009 to:

Mark D. Roberts	Jacqueline A. Jones
Paul D. Jones	Steven K. Stauske
Charles A. Kison	Dennis R. Kison
Caryl A. Giuliani	Lisa M. Kison
Robert J. Flom	Terry L. Kison
Pamela M. Leppla	Eric L. Hofhine
Bethany S. Dykstra	Kelly A. Schopp
Claudia A. Connor	Melissa Radtke
Michael Heebner	William Gertsch
Robert S. Batty	Ann E. Klug
Frederick A. Beyer III	Crystal M. Patrick

- new Operator's Licenses for the period ending June 30, 2009 to:

Todd W. Hopp	Christine M. Grimm
Eric R. Bahr	Joel D. Smith

Motion carried without a negative vote with Council Members Jepson and Maher excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes stated she would be attending her second year of the UW-Green Bay Administrator's Academy the last week in July. She will not be attending the Council Meeting on July 28.

Mayor Myers and Council Members Glamm and Kinzel are excused from the July 28 Common Council meeting.

COMMENTS AND SUGGESTIONS BY CITIZENS

Eric Stelter of Bella Lei Salon stated that a number of salons throughout the State offer their guests a glass of beer or wine during their visit. He stated that he would like to do the same and asked the Common Council for their guidance.

City Attorney Vance stated that the Common Council has no authority in this matter.

Mayor Myers advised him to talk to City Clerk McHugh and City Attorney Vance at another time.

Eric Stelter asked if he could get a Class C variance as suggested by the State.

REPORTS AND COMMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT

Mayor Myers stated that he will be appointing Bob Loomis to the ad hoc Revolving Loan Fund Committee.

ADJOURNMENT

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to adjourn the meeting at 8:10 p.m. Motion carried without a negative vote with Council Members Jepson and Maher excused.

Amy D. Kletzien, CMC
Deputy City Clerk