

**CITY OF CEDARBURG  
COMMON COUNCIL  
July 29, 2013**

**CC20130729-1**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 29, 2013 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Kip Kinzel, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke (arrived 7:09 p.m.), Michael Maher, Mike O'Keefe

Excused - Council Member Doug Yip

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Building Inspector Mike Baier, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Kinzel's 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.

**APPROVAL OF MINUTES**

Motion made by Council Member Filter, seconded by Council Member C. Reimer, to approve the minutes of the July 8, 2013 meeting as presented. Motion carried with Council Member Yip excused and Council Member Radtke not in attendance.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

Council Member R. Reimer made a point of order that under the Council's rules individual Common Council Members may place items on the Council agenda. Following the guidelines in the rules, a Council Member did place an open session agenda item on this July 29<sup>th</sup> Council agenda; however the Mayor, who is now chairing the meeting, in violation of the Council's rules, intervened preventing that agenda item from rightfully being placed on this meeting's agenda.

It is now asked that the Chair rule that (1) the open session agenda item that the Council Member intended to be place on this July 29<sup>th</sup> Council agenda is so placed as an item of new business by subject name only, and (2) as that item was not part of the noticed agenda, discussion is postponed to be as a noticed agenda item for the next Common Council meeting, now scheduled for August 12, 2013.

Council Member R. Reimer said that he was the Council Member who asked that the item be placed on this agenda, and that item is the disposition of the current library building.

Mayor Kinzel said the item will be placed on the agenda of the August 12, 2013 meeting.

**LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE**

An updated Sources and Uses of Funds spreadsheet for the new library was distributed to the Council.

City Administrator/Treasurer Mertes said the footings for the new library will be completed on Friday.

There is no update from the Friends of the Library regarding fundraising, however a \$1,000 donation has been received by the City and the Friends' book sale made \$9,917.81.

Council Member C. Reimer said that it appears \$136,000 in funds must be raised in the next 12 months.

Council Member Maher said the Library Board is engaged in interviews for the Library Director position.

**CONSIDER BIDS FOR THE LINCOLN BUILDING ROOF REPLACEMENT**

Building Inspector Baier said two bids were received for the Lincoln building roof replacement. The bid from Paul Crandall & Associates was in the amount of \$140,434 and the bid from Alois Roofing & Sheet Metal was in the amount of \$102,600. The bids do not include the cost to replace any deteriorated roof sheathing, which will not be known until the project begins. He recommended the bid of Alois Roofing & Sheet Metal be accepted. \$150,000 has been budgeted for this project.

Council Member R. Reimer asked what the amount will be to replace any deteriorated roof sheathing.

Inspector Baier said the additional quote from Alois for replacement of any deteriorated roof sheathing is \$3.50 per linear foot. The amount to be replaced will not be known until the project is started. He said he does not expect the amount for sheathing replacement combined with the base bid to exceed the budgeted amount for the project.

Council Member Radtke arrived at this time (7:09 p.m.).

Motion made by Council Member R. Reimer, seconded by Council Member O'Keefe, to accept the base bid of Alois Roofing & Sheet Metal in an amount not to exceed \$102,600 for the Lincoln Building roof replacement and the additional bid for replacement of deteriorated roof sheathing in the amount of \$3.50 per lineal foot. Motion carried unanimously with Council Member Yip excused.

**CONSIDER QUOTATIONS FOR THE TELEPHONE SYSTEM REPLACEMENT**

City Administrator/Treasurer Mertes said that three quotes have been received for the telephone system replacement. The bid from Allied for an NEC system is \$39,875, the bid from Ontech for an Allworx system is \$46,880, and the bid from Shoretel for its system is \$61,481. She said staff received a demo from Shoretel last week and is comfortable with the system. She said the system is capable of integrating with the City's computer system. Ontech was the only company that proposed additional cabling, which is thought to be unnecessary. The Shoretel and Allied quotes include the library.

Council Member Radtke said that he cannot speak to the NEC or Allworx systems, but said his company has worked with Shoretel in the past and the phone system is a good one.

Council Member C. Reimer said the lowest quote is about \$9,000 less than the other two and asked why the Council should not accept the low quote.

City Administrator/Treasurer Mertes said that the reason for the recommendation for Shoretel is the capability and reliability of the system.

Council Member Radtke said that maintenance costs must also be looked at as well as updating functions.

Council Member C. Reimer asked if staff is sure the other two systems do not do what the Shoretel system does.

Mayor Kinzel said that more information is needed as to why the quote from Shoretel is higher than the other two quotes.

Council Member C. Reimer suggested that City Administrator/Treasurer Mertes see a demo of the NEC system, check the references of the companies, find out if the other systems can provide the same functions as the Shoretel system, and present a list of the advantages of the Shoretel system.

This matter will again be discussed at the August 12 meeting.

**CONSIDER APPLICATION FROM JW's 19<sup>TH</sup> TEE, LLC, JODI L. WISNEFSKE, AGENT, FOR A CLASS "B" BEER LICENSE FOR THE PAVILION/COLUMBIA ST. MARY'S CENTER, W67 N866/N890 WASHINGTON AVENUE**

Motion made by Council Member R. Reimer, seconded by Council Member C. Reimer, to approve the application of JW's 19<sup>th</sup> Tee, LLC, Jodi L. Wisnefske, agent, for a Class "B" beer license for the Pavilion/Columbia St. Mary's Center, W67 N866/N890 Washington Avenue. Motion carried unanimously with Council Member Yip excused.

**DISCUSS PROPOSED COLUMBARIUM AT ADVENT LUTHERAN CHURCH, W63 N642 WASHINGTON AVENUE**

Pastor Janis Kinens of Advent Lutheran Church addressed the Council regarding the proposed columbarium at Advent Lutheran Church. Mr. Kinens said the Memorial Prayer Garden Columbarium is a project that will have a very positive impact on the City and even beyond the borders of Cedarburg. He said two recent articles describing the rise in cremation over burial that appeared in the *Milwaukee Journal Sentinel*. A featured article in the June 24 edition of *Time Magazine* projected that by 2017 1 out of 2 Americans will choose cremation over burial. On November 22, 2011 the *News Graphic* published a story about the Church's plans with an open invitation to any and all residents of Cedarburg to come and learn about the proposed columbarium that is being offered for use not only by members of the church, but to the public when completed. Three such requests have been received from people who are not members of the congregation. At the present time there are a total of 26 people who have made commitments to participate in the columbarium. Of those, 20 have already paid in full for their niches, three have made deposits on them and three have asked to reserve a niche for them.

Pastor Kinens said that at 6:45 p.m. on June 3, 15 minutes before the Plan Commission was scheduled to meet, he and representatives of the church met with the City Planner, Council Member Paul Radtke and the City Attorney at their invitation. They were told at the meeting that the request for a Conditional Use for the property as a cemetery, the term they were told to use by the former City Planner when the plans were first submitted, was in violation of State Statutes that regulate cemeteries. Given the history of the last three years, having passed through Landmarks Commission twice and the Plan Commission once, they were shocked, to say the least. And now, after extensive research they have discovered that indeed this is true, and would like to thank the City for pointing out this to them, for if they had gone ahead with the plans for a Conditional Use as a cemetery they would have indeed be in violation of State Statutes. At the same time, through exhaustive research, they have discovered that there are two legal definitions for "final disposition" of a human being after death. One is burial in a cemetery, and the second definition of final disposition according to State employee Mick Daley, who oversees all questions regarding cemetery regulations for the State of Wisconsin, is cremation. Pastor Kinens said he has been told the very same thing by licensed funeral directors Scott Mueller, Craig Plopper, Mark and Joe Eernisee, and Mary Lou Charapata. In their words, "when cremation takes place final disposition is the act of cremation itself". This creates an important distinction between the phrases "human remains", the cemetery term, and "human cremains", the term used in the definition of a columbarium. That is why anyone can keep the ashes of a loved one in their home, scatter them in a garden or just about anyplace else as long as you check with local codes and customs as human ashes or cremains are not regulated unless they are to be placed in a cemetery. He spoke at length with the Rev. Jeff Suddendorf, Pastor of First Congregational Church in Port Washington, who likewise affirmed that his information was correct and explained that since 1999, when a planned building project turned their property into a designated green space, they have been scattering human ashes anywhere and everywhere on their property. In essence their entire property located in a densely populated Port Washington residential area became a memorial prayer garden. Next he contacted the Episcopal Diocese of Fond du Lac on whose website he found the phrase "The Department of Regulation, State of Wisconsin does not regulate columbaria. Only cemeteries and crematoria are regulated." This is exactly what Mick Daley, who oversees cemetery regulations for Wisconsin said to Pastor Kinens when he spoke with him via a phone call to his Madison office. He also spoke with Matthew P. Payne, Diocesan Archivist and historiographer for the Episcopal Church. Mr. Payne indicated that the diocese owns and operates a number of cemeteries and that he is quite familiar with the legal questions governing the difference between a cemetery and a columbarium, since

they also have 20 columbaria in the diocese. He further asked how many of those are in residential areas and on church property, and his answer was all of them. When he asked how close they are to the churches and the homes that surround them, Mr. Payne indicated that some are just 15-20 feet from the rectory, that is the pastor's residence, and people prefer it that way. Further research led him to speak with Mr. Paul Eickhof, founder and president of Eickhof Columbaria, the firm the church is working with for its Memorial Prayer Garden. He was surprised that anyone would confuse a standalone columbarium with a cemetery based on his many years of installing in his words "hundreds of them throughout the United States and in Wisconsin." He went on to explain what all of the aforementioned professionals within the funeral industry have said to him. Mr. Eickhof said he had never in all of his years constructing columbaria been asked to justify or regulate these structures as cemeteries. Pastor Kinens said he also researched another columbaria site called Architarium, a firm that specialized in prayer or memorial gardens. In their words, "regulations of memorial gardens is typically permissive provided that they: 1) are operated by a religious or non-profit organization and 2) exclusively allow cremated remains." He pointed out that this is the pivotal or key legal argument columbaria from cemetery, to wit; when human remains are cremated they become cremains and as such are not subject to the same regulations as human remains. The Wisconsin State Legislature defined columbarium but did not state that it is a cemetery. If the legislature intended to define a columbarium as a cemetery it would have done so when it wrote the original definition. In legal terms, Pastor Kinens believes this is called the "rule of statutory construction". Pastor Kinens said that is why he and church members are present tonight – to thank the City for pointing out that the Church cannot have a cemetery next to the church, and to ask for the Council's support in realizing a project they and everyone who has seen the plans believes will be an aesthetically pleasing and most welcome addition to the very heart of Cedarburg. He said the church would appreciate the opportunity to move forward with the columbarium phase of the Memorial Prayer Garden as passed by both the Landmarks and Plan Commission, both of whom approved the plans in their original form before this misunderstanding took place.

Ellen Haynes, W54 N114 McKinley Court, said Pastor Kinens has done much research on this subject. She said hopefully there will be a win-win situation from this dialog.

Mayor Kinzel thanked Pastor Kinens for his remarks. He said this matter is not scheduled for action tonight. There is an opinion from the City Attorney stating a columbarium is a cemetery under Wisconsin Statutes, and that no cemetery can be established within 250 feet of any habitable dwelling, publicly owned building or school. He said this matter will need further discussion.

Pastor Kinens asked if the church should resubmit its application to the Plan Commission and Landmarks Commission.

Attorney Vance said State employees do not give legal opinions because they are not attorneys. She said there is no case law regarding this subject. If there is a different legal opinion out there she suggested it be forwarded to her. Statutory construction defines burial as the inurnment of human remains. Columbarium means a building, structure, or part of a building or structure that is used or intended to be used for the inurnment of cremated remains. Human remains mean the body of a deceased individual that is in any stage of decomposition or has been cremated. Cremation involves the disposition of human remains. Burials are required to comply with the Statutes governing cemeteries.

Council Member Filter suggested the church be allowed to go through the process or the matter be brought to the Council directly.

Attorney Vance said Conditional Use Permits are under the purview of the Plan Commission, with appeals to the courts.

Council Member Radtke said that he chaired the Plan Commission meeting on June 3 and was actually embarrassed when the church was told of this a short time before the meeting when the project was approved in the past.

Pastor Kinens said Mick Daley at the State cannot give a legal opinion because one does not exist.

Council Member Radtke suggested columbaria be added as a Conditional Use in the Zoning Code. This is the first step in the process.

Attorney Vance said cemeteries are allowed as a Conditional Use in the Zoning Code. This project was originally approved as a cemetery. No cemetery can be established within 250 of any habitable dwelling, publicly owned building or school, unless the cemetery is establishing an extension on the property it has owned continually since June 18, 1929, according to State Statutes. There is an issue as to what is the disposition of human remains and an issue of whether the Plan Commission can act at all on this. She said she will further look into the information provided by Pastor Kinens.

Council Member C. Reimer said that it should be determined if a columbarium can be a permitted use and the Zoning Code changed. He suggested the church obtain a legal opinion from its attorney on this matter.

Mayor Kinzel said this matter will be discussed at the August 5 Plan Commission meeting.

Kathy Duret, 2300 Maple Road, Grafton, said she searched the Internet and found no Statutes for cremations, unlike burials which are governed by Statutes.

Council Member R. Reimer said cremated remains are addressed in State Statutes 440.80.

### **ANNUAL REVIEW AND CERTIFICATION OF ETHICS CODE**

The Mayor and Council Members affirmed they reviewed and understand the City's Code of Ethics.

### **CONSIDER THE PURCHASE OF ELECTRONIC DEVICES FOR THE MAYOR AND COMMON COUNCIL**

City Clerk McHugh asked the Mayor and Council if there is interest in going "paperless" for Council packets and purchasing electronic devices for viewing the packets. A quote has been received for the purchase of 10 iPads and covers in the amount of \$4,145.70 for the Mayor, Council Members, City Administrator, and Clerk's Office.

Council Member R. Reimer said that he is in favor of electronic packets but does not think the City should buy him or anyone else an iPad. He said that the packets can be transmitted in PDF format that may be viewed on any device or computer. He said he already has an iPad and does not want another one.

Council Member Radtke said he doesn't believe that any Council Member should have to pay for an electronic device or have to use his or her own device. He suggested that those who do not want an iPad have the ability to opt out and one not be purchased for them. These Council Members could use their own devices.

Council Member Maher said the Library Board has been receiving its packets electronically for two years and it has been very successful.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to eliminate paper packets in favor of using electronic packets to receive and view materials, and that the City purchase only the number of the iPads necessary as Council Members will be allowed to opt out and use their own device. Motion carried unanimously with Council Member Yip excused.

City Clerk McHugh requested the Mayor and Council Members contact her in the next few days informing her whether they would like the City to purchase an iPad for them or whether they are opting out to use their own device.

### **PAYMENT OF BILLS**

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to approve the payment of the bills for the period 7/3/13 through 7/22/13, ACH transfers for the period 6/28/13 through 7/27/13, and payroll for the period 6/23/13 through 7/20/13. Motion carried unanimously with Council Member Yip excused.

### **LICENSE APPLICATIONS**

Motion made by Council Member C. Reimer, seconded by Council Member O'Keefe, to authorize the issuance of new Operator's licenses for the period ending June 30, 2014 to: Sarah A. Herrick, Mark C. Kowalkowski, Samantha A. Lang, Zachary A. Lauterbach, Kindra R. Meier, Michael J. Morales, Chad Olson, and Anna E. Pfeiffer and to authorize the issuance of renewal Operator's licenses for the period ending June 30, 2014 to: Allison M. Thiermann and Trevor E. Timm. Motion carried unanimously with Council Member Yip excused.

### **CITY ADMINISTRATOR/TREASURER'S REPORT**

City Administrator/Treasurer Mertes said she and Chief Frank continue to work on the possible consolidated dispatch system. Ozaukee County has offered to contribute up to \$50,000 for the cost of a consultant.

Options are being considered for the overhead projector, which is still not working.

Design of the new City website is being worked on.

**MAYOR'S REPORT**

Mayor Kinzel issued a proclamation honoring Cedarburg High School baseball coach Jack Friess.

**ADJOURNMENT - CLOSED SESSION**

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to adjourn to closed session at 8:12 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, more specifically, to discuss the Mercury Marine Plant No. 2 site and the current library site. Approval of closed session minutes of April 8, 2013 and June 24, 2013. Motion carried unanimously with Council Member Yip excused.

**ADJOURNMENT**

Motion made by Council Member Radtke, seconded by Council Member Filter, to adjourn the meeting at 9:02 p.m. Motion carried unanimously with Council Member Yip excused. The Council did not reconvene to open session.

Constance K. McHugh, MMC/WCPC  
City Clerk