

**CITY OF CEDARBURG  
COMMON COUNCIL  
August 29, 2011**

**CC20110829-1**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, August 29, 2011 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 P. Myers, Council Members Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Douglas Yip, Bob Loomis

Excused - Council Member Chris Reimer

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Library Director Mary Marquardt, Planner Marty Marchek, Light & Water General Manager Dale Lythjohan, City Clerk Constance McHugh, Library Board Members Sue Karlman, Steve Ruggieri, Liz Bryde, Vonna Pitel, Debra Goeks, 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.

**APPROVAL OF MINUTES**

Motion made by Council Member R. Reimer, seconded by Council Member Filter, to approve the minutes of the August 8, 2011 meeting. Motion carried unanimously with Council Member C. Reimer excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

Joe Messinger, W51 N1013 Keup Road, said he is a library user and is in support of a new library on the Mill Street site. He said this is a good proposal and solution for a new library.

John Birkholz, N55 W6079 Portland Road, said in September or October of 2005 he addressed the Council as chair of the Building Committee for the new library. At the time the Committee was told the Library had to be on a particular site, although it was since moved to another location, then moved to yet another location. He said the Council is at a fork in the road and it is time to make a decision.

Mr. Birkholz said he spends time in a resort community in northern Wisconsin that had a referendum to build a new library three years ago. In June he was able to walk into this library. He said the Town Board of this community saw the new library as an opportunity for economic development. Mr. Birkholz said he sees the proposed library as a tool for economic development in Cedarburg as well. He said the proposed 1,500 square feet of retail space will enhance the library as an economic development tool. He suggested calling the retail space a cybercafé. He said the anticipated problems are not insurmountable. Mr. Birkholz said he hopes the Council will support the items listed on the agenda and take positive action to move the new library along. He would like to see the library completed.

Steve Shapson, 11611 N. Grace Court, Mequon, said that people have been inquiring about the rebuilding of the band shell at Cedar Creek Park. He asked the Council how this can be pursued.

Mayor Myers said it would be a good idea to discuss this idea at a future Council meeting.

Philia Hayes, N63 W5795 Columbia Road, said she is an adamant supporter of the library. She reminded the Council that in April of 2006, 66.3 % of those people voting in the City voted in favor of a new library. She understands the decision for a new library may not be unanimous; however, she said the Council should reach a consensus. If not, the community will go into the future with the same indecision that has existed since April of 2006.

Paul Hayes, N63 W5795 Columbia Road, said that he has a book at home that is two years short of 400 years old. He said he has heard that books are becoming obsolete because of books being digitized on computers. He said this transition will be slower than anyone expects. He said a new library will contain books and have new technology. He encouraged the Council to build a new library as soon as possible.

Steve Ruggieri, W52 N621 Highland Drive, said the Library Board made a motion to reaffirm support of a library building project on the Mill Street site that will maximize the square footage available depending on the project parameters; provided that the position and size of any retail space within the footprint of the site is designed through a collaborative effort between architects Engberg Anderson and Don Stauss, and that it be subject to review by the Library Board. The motion carried without a negative vote. The Library Board also made a motion to recommend to the Common Council that an ad hoc Library Project Team be formed, to include 10 members as follows: Library Director Mary Marquardt, Director of Engineering and Public Works Tom Wiza, Mayor Myers, two Library Board Members, two Council Members, one representative from Engberg Anderson, one representative from Don Stauss, and one representative from Beyer Construction. This motion carried without a negative vote. Finally, the Library Board made a motion to recommend that the Common Council select Beyer Construction's proposal of July 20, 2011 as project construction manager based on previous involvement with this project. This motion carried without a negative vote.

Jill Hepburn, W62 N736 Riveredge Drive, said that she would like to see a new library in Cedarburg. She said she used the library when her son was young and she still uses it today on a regular basis. She said a new library would be a commitment to knowledge.

**REVIEW AND DISCUSS LIBRARY LETTER OF COMMITMENT/DETERMINE THE LIBRARY PROJECT ORGANIZATION AND RESPONSIBILITIES TO INCLUDE THE ROLE OF THE LIBRARY BOARD, THE USE OF CONSTRUCTION MANAGEMENT, AND PRE-CONSTRUCTION FEE/AUTHORIZE PRELIMINARY WORK RELATED TO THE NEW LIBRARY: PHASE 2 ENVIRONMENTAL TESTING, GEOTECHNICAL EXPLORATION, AND SURVEY COSTS TO PREPARE THE CERTIFIED SURVEY MAP (CSM) (Three agenda items were combined for discussion purposes)**

Mayor Myers said a letter of commitment has been received from the donor group that is signed and has more specificity than the previous letter.

Council Member Filter asked if the proposed retail space or cybercafé would be in perpetuity. He said he does not want to see the City locked into an empty space.

Council Member Yip said the letter indicates that Architect Don Stauss is to have exclusive responsibility for the exterior design of the building and that there are to be no major modifications to the Stauss exterior concept design. He questioned whether the proposed library will go through the normal approval process, which could result in recommendations for changes. He said this proposal should go to the Landmarks Commission and the process should not be circumvented.

Council Member Maher said that the donor group responded yes in response to City Administrator/Treasurer Mertes' letter of August 18, 2011 asking if the donor group agrees that the normal internal and external City process regarding construction and site and architectural approval be followed.

Council Member Yip said the Landmarks Commission discussed Plan A and Plan B for a new library, but he now understands Plan A is off the table.

Council Member Maher said Plan B was the option that was favored by the Library Board and the Council in June.

Council Member Yip said that his research indicates that newer libraries are connected to malls or strip malls and that retail space inside libraries is normally run by the "Friends of the Library" group and is connected with the library and not a separate entity. Council Member Yip said he would like to see a new library built, but he doesn't know how the retail space will work out. He said the City of Milwaukee is taking bids for a new east side library but is discouraging retail space and encouraging condo development on the upper floors.

Council Member Radtke said that he would like to see the costs for both Plan A and Plan B. He said he requested this at an earlier meeting. He also said the Landmarks Commission should have the ability to review this because it is possible the Weber Haus may be relocated from the Historic District to an area outside the Historic District.

Council Member Yip said the Landmarks Commission did have a preliminary discussion about the new library but had a lot of questions. He said the Commission was split on whether the Weber Haus should be moved. He said the next meeting will be the third Thursday of September and this could be placed on the agenda. As an alternate, a special meeting could be scheduled.

Mayor Myers encouraged that this matter be placed on the next Landmarks Commission agenda.

Planner Marchek said he has answers to most questions raised by the Landmarks Commission. He said the plan was to wait until there is a firm decision on whether the Weber Haus is to be moved. He said the Landmarks Commission will need to review the relocation and approve a new building because it will be located in the Historic District. He said there is an intricate process to follow. He said this could be similar to the process used when the Police Station was built. He said there was an ad hoc committee formed that dealt with the design of the Police Station.

Council Member Maher said the Council needs to take action. He said proceeding with Phase II environmental testing and the geotechnical exploration will provide everyone with a lot of answers.

Mayor Myers said that he is supportive of moving forward with the project and agreed that Phase II should be done. He said there needs to be a commitment on Plan B, then the Council can move forward with Phase II and an ad hoc building committee can be appointed. He said the Council also needs to be on board with the letter of commitment.

Council Member Loomis said the referendum in 2006 read as follows: "Do you support building a new joint library with the Town of Cedarburg? The total cost estimate is \$8.91 million less private donations. The City's share would be 67% and would be paid off over 20-25 years". This advisory referendum passed by 66%. The total cost for Cedarburg was anticipated to be roughly \$6 million. He asked how confident everyone is that the \$6 million amount will not be exceeded with Plan B.

Mayor Myers said this cannot be determined until the Council moves forward. He said it is not fair or realistic to put a \$6 million ceiling on this project as the referendum was six years ago.

Council Member R. Reimer asked how Council Members can respond to constituents who are concerned the project will exceed \$6 million.

Mayor Myers said the referendum in 2006 was advisory only, that debt service will cover the cost to pay for the new library, and based on today's economy construction costs are down.

Council Member Loomis said the Council should go forward with Plan B if it is thought the project can be completed with the \$6 million contribution from the taxpayers. He said the Council needs to make sure there are no environmental problems associated with the site. He agreed with Mr. Messinger and Mr. Birkholz that economic development will be helped by building the new library. He said he is in favor of retail space in the library and said that it will add to the atmosphere of the library. He suggested the profits from the retail space be dedicated to the library operations, regardless of who runs the space. Council Member Loomis said that he is in favor of accepting all conditions of the letter of commitment if the numbers work out.

Council Member Yip said that his research shows that retail space that has succeeded was in libraries greater than 50,000 square feet.

Motion made by Council Member Filter, seconded by Council Member Maher, to authorize Phase 2 environmental testing for both properties on Mill Street, the geotechnical exploration for both properties, and the preparation of the Certified Survey Map (CSM).

Director Wiza said the Phase I environmental assessment report was completed today and recommended a Phase II assessment as a follow up. Three underground tanks were found to have been removed from the site along with the contaminated soil. There may be some residual contaminated soil that may have to be excavated and disposed of at a landfill. The estimated cost of this is \$6,000. Director Wiza said that there was no evidence of PCBs or solvents. The contamination is mainly gas and waste oil. The groundwater in the neighborhood has residual contamination; however, this is from various sites in the area. The site has received flexible closure from the DNR, which means the DNR is satisfied that the residual petroleum will breakdown and diffuse. Phase II would pinpoint further contamination. Director Wiza said there is nothing in the Phase I report that indicated the site would not be suitable to put a building on.

Council Member Maher said \$6,000 seems like a small amount to get rid of the contamination.

Council Member R. Reimer said he would vote in favor of the motion having heard the summary of the Phase I testing.

Council Member Radtke said that he is a supporter of the library and the donor group's donation is very generous; however, he said the Council would not be doing due diligence if it did not get answers to all the questions. He said this involves \$6 million in taxpayer money. He said the proposed library needs to go through the proper process and needs to be done right. He again stated he would like to see plans and cost estimates for both Plans A and B. He said questions about who will operate the retail space need to be answered.

Mayor Myers said that the ad hoc building or project team committee that he appoints should answer these questions and more. He said that he is in favor of Plan B, which is a slightly larger library.

The motion to authorize Phase 2 environmental testing for both properties on Mill Street, the geotechnical exploration for both properties, and the preparation of the Certified Survey Map (CSM) carried unanimously on a roll call vote with Council Member C. Reimer excused.

Mayor Myers said he will begin reviewing the composition of the ad hoc Library Project Team shortly and make appointments in the near future. He suggested the Council take action on the construction management proposal.

Council Member Maher said Beyer Construction has estimated the total cost for all preconstruction phase services to be a fixed fee of \$12,800. He said the Library Board is comfortable with Beyer Construction and made a motion to recommend that the Council select Beyer Construction's proposal of July 20, 2011 as Project Construction Manager based on previous involvement with this project.

Council Member Filter questioned whether this should be approved prior to the completion of the Phase II environmental assessment.

Library Board President Sue Karlman suggested that Beyer Construction be involved in this process right away. She said this firm will monitor on-going costs and keep the project on track. She said

this firm has done considerable work already without any payment. She said the company needs to be involved from day 1 and this is not something that should be put off.

Council Member Radtke said it is not known at this time how Phase II will turn out.

George Beyer of Beyer Construction said it is prudent to do Phase II. The costs for pre-construction management will be the same regardless of whether Plan A or Plan B is selected. The pre-construction fee will be credited to the construction phase when the library project proceeds to the construction phase.

Council Member Maher made a motion to accept the July 20, 2011 proposal of Beyer Construction in the amount of \$12,800 for pre-construction management, contingent upon the results of the Phase II assessment. The motion was seconded by Council Member Filter.

Council Member Yip asked if the fee would be the same if for some reason the Council decides to use the Mercury Marine site for the new library. Mr. Beyer answered that the fee would be the same.

The motion to use Beyer Construction for pre-construction management carried unanimously on a roll call vote with Council Member C. Reimer excused.

Mayor Myers encouraged Beyer Construction, Engberg Anderson, and Don Stauss to forward the names of individuals willing to serve on the ad hoc Library Project Team to him as soon as possible.

Council Member R. Reimer said he would like to see a consensus that the Council is supportive of Plan B and that the numbers presented in the Council packet (opinion of probable cost, summary of the sources and uses of funds, and the status of the source of funds) are sound. He said he wants to make sure the Council is not doing anything to impede the process.

Mayor Myers said that what the Council has done tonight in terms of motions made and actions taken shows there is general buy in of the project and the Council is on board in terms of accepting the terms of the letter of commitment.

Greg Zimmerschied of Cedarburg Land and Cattle, Inc. said he would like the Council to make a motion regarding the letter of commitment.

Mayor Myers said the Council is not noticed to take action on the letter of commitment this evening. He again stated that tonight's actions show the Council's commitment to the project.

Council Member R. Reimer said that he assumes when there will be an agenda item when the results of the Phase II environmental assessment are completed. Mayor Myers said that this is correct and that an agreement with the donor group could be drafted at that time.

**CONSIDER EXTENSION OF CASH FARM LEASE WITH BOB RODEN FOR 2012**

Motion made by Council Member Filter, seconded by Council Member Loomis, to approve the extension of the cash farm lease with Bob Roden for 2012. Motion carried unanimously with Council Member C. Reimer excused. The rental rate increases from \$35 per acre to \$40 per acre.

**CONSIDER CONTRACT AMENDMENT WITH GRAEF FOR ADDITIONAL ENGINEERING SERVICES ASSOCIATED WITH THE WOOLEN MILLS DAM AS REQUIRED BY THE DNR**

Motion made by Council Member R. Reimer, seconded by Council Member Filter, to amend the existing engineering services contract with Graef on a time and material basis for an amount not to exceed \$7,700 for additional engineering services associated with the Woolen Mills Dam as required by the DNR.

Director Wiza said the City is under contract with Graef to complete a series of DNR mandated inspections and technical reports on the Woolen Mills and Columbia Mills dams. The DNR has now advised that the City will need to complete an elevation survey of all downtown buildings that fall in the hydraulic shadow of the Woolen Mills Dam. This information will be used to determine the hazard rating of the dam.

Motion carried unanimously on a roll call vote with Council Member C. Reimer excused.

**CONSIDER APPLICATION FROM SAL'S PIZZERIA CEDARBURG, INC. BLAKE ELMAZI, AGENT, FOR A CLASS "B" BEER AND "CLASS C" WINE LICENSE FOR SAL'S PIZZA, W63 N635 WASHINGTON AVENUE**

Motion made by Council Member Radtke, seconded by Council Member Maher, to approve the issuance of a Class "B" beer and "Class C" wine license to Sal's Pizzeria Cedarburg, Inc., Blake Elmazi, agent, d/b/a Sal's Pizza, W63 N635 Washington Avenue. Motion carried unanimously with Council Member C. Reimer excused.

**CONSIDER ORDINANCE NO. 2011-11 AMENDING SEC. 2-6-2 OF THE MUNICIPAL CODE RELATING TO THE DEFINITION OF PART-TIME AND TEMPORARY AND SEASONAL EMPLOYEES**

Motion made by Council Member Loomis, seconded by Council Member Radtke, to adopt Ordinance No. 2011-11 amending Sec. 2-6-2 of the Municipal Code relating to the definition of part-time and temporary and seasonal employees. Motion carried unanimously with Council Member C. Reimer excused.

**CONSIDER ORDINANCE NO. 2011-12 AMENDING SEC. 2-6-42 OF THE MUNICIPAL CODE PERTAINING TO RETIREMENT BENEFITS AND THE WISCONSIN RETIREMENT SYSTEM**

Motion made by Council Member Loomis, seconded by Council Member Filter, to adopt Ordinance No. 2011-12 amending Sec. 2-6-42 of the Municipal Code pertaining to retirement benefits and the

Wisconsin Retirement System (WRS). Motion carried unanimously with Council Member C. Reimer excused.

**CONSIDER ESTABLISHING A DATE AND TIME FOR TRICK OR TREAT**

Motion made by Council Member Radtke, seconded by Council Member Maher, to set Saturday, October 29, 2011 from 5:00 p.m. until 8:00 p.m. as Trick or Treat in the City.

Council Member R. Reimer said he received a few calls about possibly ending the hours at 7:00 p.m. to get kids off the street.

Council Member Radtke said that with hours from 5:00 p.m. to 8:00 p.m. some of the time will be lightness and some of the time will be darkness.

Council Member Maher said that a resident in his district said that in recent years trick or treat hours were the same hours as the Pumpkin Walk. This means residents cannot participate in both. He said he is in favor of the motion because the Pumpkin Walk is scheduled for October 31.

Motion made by Council Member R. Reimer, seconded by Council Member Filter to call the question. Motion carried unanimously with Council member C. Reimer excused.

Motion to set October 29, 2011 from 5:00 p.m. until 8:00 p.m. as Trick or Treat carried with Council Members R. Reimer, Radtke, Maher, Yip, and Loomis voting in favor, Council Member Filter opposed and Council Member C. Reimer excused.

**PAYMENT OF BILLS**

Motion made by Council Member Loomis, seconded by Council Member Yip, to approve the payment of the bills for the period 8/4/11 through 8/22/11, ACH transfers for the period 8/2/11 through 8/31/11, and payroll for the period 8/11/11 through 8/26/11. Motion carried unanimously with Council Member C. Reimer excused.

Council Member Maher complimented staff on the great job they are doing to make the presentation of the bills more understandable.

**LICENSE APPLICATIONS**

Motion made by Council Member Loomis, seconded by Council Member R. Reimer, to approve the issuance of new Operator's license applications for the period ending June 30, 2012 to: Andrew M. Aldred, Chad M. Bowen, Morgan L. Geronime, MaryLee Katzka, Josh P. McCutcheon, David J. Polacek, Christopher J. Refinski, and Chris R. Velnetske with the exception of Jeremy B. Jaeger as recommended by Chief Frank and to authorize the issuance of renewal Operator's license applications for the period ending June 30, 2012 to Elizabeth M. Bursten and Mark S. McGaver. Motion carried unanimously with Council Member C. Reimer excused.

**CITY ADMINISTRATOR/TREASURER'S REPORT**

City Administrator/Treasurer Mertes said there was an accident at the corner of Washington Avenue and Bridge Road last Thursday evening. The traffic light will be out of service for about a week due to the damage.

**ADJOURNMENT – CLOSED SESSION**

Motion made by Council Member Radtke, seconded by Council Member Yip, to adjourn to closed session at 8:30 p.m. pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted with respect to litigation in which it is or is likely to become involved and 19.85(1)(e) to deliberate or negotiate the investing of public funds or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, more specifically, to discuss JETZCO litigation, the Prochnow Landfill, negotiations with the Town of Cedarburg, and negotiations/litigation re: Carlson/Ice Center Utilities. Approval of closed session minutes of July 11, 2011. Motion carried unanimously with Council Member C. Reimer excused.

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member Yip, to adjourn the meeting at 9:15 p.m. Motion carried unanimously with Council Member C. Reimer excused.

Constance K. McHugh, MMC/WCPC  
City Clerk