

**CITY OF CEDARBURG  
COMMON COUNCIL  
September 10, 2012**

**CC20120910-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, August 13, 2012 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel 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 Kip Kinzel, Council Members Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Douglas Yip, Mike O’Keefe

Excused - Council Member Chris Reimer

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Deputy City Clerk Amy Kletzien, Police Chief Tom Frank, Wastewater Superintendent Ron Clish, Library Board Members Sue Karlman, Art Palleon, Liz Bryde, and Steve Ruggieri, Emergency Government Director Kevin Runkel and Deputy Director Frank Even, Ryan Raskin of Beyer Construction Management Group, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Kinzel’s 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.

**APPROVAL OF MINUTES**

Motion made by Council Member R. Reimer, seconded by Council Member Maher, to approve the minutes of the August 13, 2012 meeting. Council Member Filter questioned the comment on page 4 stating that “Collins is excited about the project but has not made a commitment.” It was determined that the comment was correct. Motion carried with Council Members R. Reimer, Maher, Yip and O’Keefe in favor, Council Member Filter opposed, Council Member Radtke abstaining, and Council Member C. Reimer excused.

**CONSIDER AGREEMENT RELATED TO THE USE AND MAINTENANCE OF THE SEWER CAMERA SHARED BY THE CITY OF CEDARBURG, VILLAGE OF GRAFTON AND CITY OF PORT WASHINGTON**

Motion made by Council Member Filter, seconded by Council Member O’Keefe, to approve the agreement related to the use and maintenance of the sewer camera shared by the City of Cedarburg, Village of Grafton and City of Port Washington. Motion carried without a negative vote with Council Member C. Reimer excused.

**UPDATE ON THE SOUTH SECTION OF THE CREEK WALK, FROM COLUMBIA ROAD TO CEDAR CREEK PARK**

Director Wiza stated that Council Member Filter requested an update on the status of the south section of the Creek Walk from Columbia Road to Cedar Creek Park.

Director Wiza stated that the City has a good set of plans and specifications that were developed by Architect Rich Hepner with input from City staff as well as the Creek Walk Committee for the project. Staff has had to develop the bid documents and specifications internally, which has been very time consuming. The City has obtained the required easement from the Landmarks Preservation Society, and an extension of the DNR Stewardship Grant through June 30, 2013.

Director Wiza expressed concern for statements that were made at the last Council meeting that were not accurate. He stated that the City has not received approval from the DNR for this section of the Creek Walk. Final preparations are being made to bid the project out, but this is somewhat risky without the DNR permit in hand.

Currently Graef is helping the City with a survey that was required by the DNR at the end of July for a Dam Modification Report. This may have an impact on the plans for a deck over the tailrace.

Director Wiza stated that the DNR also wants to issue a second permit for stabilization of the bank and this is in limbo right now.

Architect Rushing is calling the DNR on a regular basis on these issues.

Director Wiza expressed concern for bidding the project now and then having the DNR make changes to the project. He also understands that the Landmarks Commission wants to review the final plans because they thought the plans they viewed were only conceptual. Any changes to the current plan would complicate the project and may need to go to the Plan Commission also for review.

City Attorney Vance stated that the Plan Commission would need to review the project if a Certificate of Appropriateness is needed due to any change in the appearance of the building. In this case, the Code states that the project must go to both commissions.

Mayor Kinzel agreed that the project will need to go before the Plan Commission if any modifications are made.

Director Wiza also expressed concerns about the trees. According to Architect Rushing, all of the trees in the area will remain in place. Director Wiza opined that some of the trees will need to be removed and the property owner was in agreement.

Council Member Radtke suggested that City Forrester Westphal look at the trees and provide an opinion.

Director Wiza stated that the window of opportunity to work on the project may get narrower if the DNR issues periods of time when the area cannot be disturbed due to fish spawning, etc.

Council Member Radtke opined that DNR approval should be granted before bidding the project.

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to suspend all further staff time on the project until the City receives DNR approval on the Creek Walk Project.

Council Member Maher asked that the Landmarks Commission review be included in the motion.

Council Member Filter stated that he wants to stop spending the taxpayers' money unnecessarily.

Council Member Radtke stated that he would like Director Wiza to move forward on items that will not change and that he should be able to decide what to spend time on.

Director Wiza stated that he will make calls to the DNR and talk to Graef. The Landmarks Commission will be allowed to make a recommendation also.

In answer to Council Member Yip's question, Director Wiza stated that the DNR may have a problem with the hydraulics or the effects of a 100-year flood. The DNR may require further analysis prior to making a determination, which may affect the Landmarks Commission review.

The motion failed with Council Member Filter voting in favor, Council Members R. Reimer, Filter, Maher, Yip and O'Keefe opposed, and Council Member C. Reimer excused.

Motion made by Council Member Radtke, seconded by Council Member Yip, to direct City staff to work on only parts of the Creek Walk that are required for DNR approval or moving the project forward based on Director Wiza's discretion and to allow review of the new plans by the Landmarks Commission. Motion carried with Council Members R. Reimer, Radtke, Maher, Yip and O'Keefe in favor, Council Member Filter opposed and Council Member C. Reimer excused.

### **CONSIDER EMERGENCY MANAGEMENT RELOCATION OPTIONS**

City Administrator/Treasurer Mertes stated that Emergency Management Deputy Director Even submitted drawings for additions to the garage on Western Avenue for relocation of their services. She stated the proposed renovations will take up most of the allotted \$250,000 for their relocation without any interior work. She opined that there is a difference in opinion between the needs and wants of the Department.

Deputy Director Even stated that Emergency Management is not looking for more in the relocation than they have right now. He stated that the Department will need to have storage for their equipment.

In answer to Council Member Filter's questions, Deputy Director Even stated that they need antennas for their radios and radar. He opined that they would be unable to use the Police Department antennas because it would require underground wiring and there is the possibility that their equipment could fail.

In answer to Council Member Filter's question, Police Chief Frank stated that there is a fair amount of redundancy between Emergency Management, Cedarburg Police Department, and County-wide services. In terms of dispatch, the Cedarburg, Mequon and Grafton Police Departments along with the Justice Center all have the same capabilities.

Council Member Filter confirmed that the County has a mobile command truck.

Chief Frank stated that the Emergency Management frequencies may not be available on their system; however, there are other frequencies that they can go through.

Deputy Director Even stated that they have been asked to use a private frequency.

In answer to Council Member O'Keefe's question, Deputy Director Even stated that the Emergency Management Department has seven vehicles (four are kept on Western Avenue and three are kept on Hanover Avenue).

Mayor Kinzel stated that the City needs to look at eliminating redundancy and decide what is not needed.

In answer to Council Member R. Reimer's question, Deputy Director Even stated that they have two rolls, that of Emergency Government and Auxiliary Police.

In answer to Council Member Filter's question, Director Wiza stated that there is the possibility of storing the Emergency Management vehicles on the DPW site in the future, if it is expanded.

Council Member Radtke suggested to City Administrator/Treasurer Mertes that the Common Council tour the Emergency Management facility to understand their services.

Council Member Filter stated that he does not want to lose volunteers because they are invaluable as reserve Police Officers for events throughout the City.

Deputy Director Even stated that Emergency Management conducts weather watches on their own frequency and they work with other communities.

In answer to Council Member O'Keefe's questions, Chief Frank stated that the Emergency Management frequency could be added to Cedarburg Police Department system. In comparison to other communities, the Cedarburg Emergency Management has substantially more resources.

Mayor Kinzel stated that he wants to determine what the City has available for Emergency Management's use.

Deputy Director Even stated that a meeting area is important for communication prior to dispatch.

Council Member Radtke stated that Emergency Management is made up of great volunteers and he does not want to lose our own Emergency services; however, he wants to understand where there is redundancy in services.

Council Member Maher asked that Ryan Raskin from Beyer Construction Management Group be involved in the discussions for relocating Emergency Management.

In answer to Council Member R. Reimer's question, City Administrator/Treasurer Mertes stated that the Town contributes \$1,500 to Emergency Management and the City's budget is \$40,000 which includes utilities for the Hanover location.

Council Member R. Reimer questioned what the National and Federal standards were for Emergency Governments.

City Administrator/Treasurer Mertes stated that an explanation of Emergency Management's duties and responsibilities are detailed in the 2012 budget.

Mayor Kinzel stated that Emergency Management does a lot for the City and he will not lose site of this. The City will help them move and they will not be displaced. He suggested that the Common Council meet at the Emergency Management site on Hanover Avenue for a tour one hour prior to the September 24 Council meeting.

**CONSIDER AWARD OF A PROFESSIONAL SERVICES CONTRACT TO PREPARE A FEMA FLOODPLAIN LETTER OF MAP AMENDMENT APPLICATION FOR THE CURRENT AND FUTURE LIBRARY SITES ON HANOVER AVENUE**

Director Wiza stated that each of the proposed library sites on Hanover Avenue is shown to be in the floodplain per the FEMA floodplain maps. However, when Graef recently completed DNR mandated survey work in conjunction with the dams, the survey revealed apparent errors in the floodplain mapping which could affect the elevation at which the new library would have to be built (approximately 1.1 feet above the existing Library).

Upon request, Graef prepared a proposal to complete an application for a FEMA Map Amendment for an overall cost of \$8,300. The proposal is broken down into seven separate tasks and can be stopped along the way if the DNR refuses the amendment before reaching the end of the process. While changing the FEMA floodplain maps is a difficult task, it may be worth a try before the new library building elevation is finalized.

Council Member Maher expressed concern for the timing and possible delays in the Library building project. He does not want history to repeat itself by having this application be detrimental to the project.

In answer to Library Board Member Palleon's question, Mayor Kinzel stated that it would be beneficial to remove the floodplain from the current library for future marketing.

Director Wiza stated that if the City decides to proceed with this application it will not hold up the Library building project; however, if FEMA makes a determination in time it will benefit the project.

The current letter map amendment will only apply to the Library building and the Emergency Management building. The City saw problems with the map in 2005 and sent letters and appealed the map, with no success.

Mayor Kinzel stated that a positive change in the floodplain map could benefit any future renovations to the new Library.

In answer to Council Member Maher's question, Mayor Kinzel stated that the \$8300 could come from the Environmental Budget. This would be an investment to increase the value of the current Library building in the future.

City Administrator/Treasurer Mertes stated that the City should know after spending an initial \$2,700 whether or not FEMA will consider the change to the floodplain map and then the City will not spend the full \$8,300.

Director Wiza stated that is an unconventional approach to indicate to FEMA that the mapping is wrong. He told the Council that FEMA can be difficult to work with. He also agreed with Council Member Maher that this action should not interfere with the new Library building project.

Motion made by Council Member Filter, seconded by Council Member Radtke, to award a professional services contract to prepare a FEMA Floodplain Letter of Map Amendment application for the current and future library sites on Hanover Avenue in an amount not to exceed \$8,300 without any affect on the current Library building project. Motion carried with Council Members R. Reimer, Filter, Radtke, Maher and O'Keefe in favor, Council Member Yip opposed, and Council Member C. Reimer excused.

**CONSIDER EXPANDING THE SCOPE OF DESIGN SERVICES WITH GRAEF FOR THE COLUMBIA MILLS DAM REPAIRS, TO INCLUDE THE ADDITION OF A PROTECTIVE RAILING SYSTEM**

Director Wiza stated that Graef is currently preparing plans for various DNR mandated repairs to the Woolen Mills and Columbia Mill Dams. During this process it was noted that the concrete walls abutting the dam are virtually unprotected and could become an attractive hazard especially during high flows. Harris Bank maintains a three foot high wire mesh fence with cedar posts just back from the walls, but even this fence does not extend the entire length.

Motion made by Council Member Filter, seconded by Council Member Radtke, to approve expanding the scope of the design services with Graef for the Columbia Mills Dam repairs, to include the addition of a protective railing system in an amount not to exceed \$2,600. Motion carried without a negative vote with Council Member C. Reimer excused.

**CONSIDER NEW CLASS "B" BEER AND "CLASS B" LIQUOR LICENSE FOR NEW FORTUNE RESTAURANT, INC., ALBERT YEE, AGENT, d/b/a KALUA SMOKE HUT AND LAVA LOUNGE, W62 N547 WASHINGTON AVENUE**

Motion made by Council Member Radtke, seconded by Council Member O'Keefe, to approve a new Class "B" Beer and "Class B" Liquor license for New Fortune Restaurant, Inc., Albert Yee, Agent, d/b/a Kalua Smoke Hut and Lava Lounge, W62 N547 Washington Avenue. Motion carried without a negative vote with Council Member C. Reimer excused.

Mr. Yee stated that the Kalua Smoke Hut and Lava Lounge will offer table side cooking and will open mid to late October.

**CONSIDER PILOT AGREEMENT WITH FISCHER TERRACE/FUTURE WISCONSIN HOUSING FUND**

City Attorney Vance stated that Future Wisconsin Housing Fund, Inc. contacted the City on July 11, 2012 stating that they are currently exempt from real estate taxes and that their board has authorized them to enter into a PILOT (Payment in Lieu of Taxes) agreement in the amount of \$14,000 annually to the City effective January 1, 2012. The Agreement covers the Fischer Terrace Apartments located at N47 W6277 Western Road. They are not required to pay property taxes because, as a 70.11(4) the development is exempt under State law. She opined that the City cannot lose anything. The agreement will allow the City to terminate the arrangement at any time.

Motion made by Council Member R. Reimer, seconded by Council Member Filter, to enter into the PILOT Agreement with Fischer Terrace/Future Wisconsin Housing Fund. Motion carried without a negative vote with Council Member C. Reimer excused.

**CONSIDER RESOLUTION NO. 2012-18 REGARDING IMPROVEMENTS TO HWY 60**

Motion made by Council Member R. Reimer, seconded by Council Member O'Keefe, to adopt Resolution No. 2012-18 regarding improvements to Hwy. 60. Motion carried without a negative vote with Council Member C. Reimer excused.

**CONSIDER ORDINANCE NO. 2012-15 AMENDING SEC. 2-4-13(a) OF THE CODE OF ORDINANCES ELIMINATING ALTERNATES ON THE PLAN COMMISSION**

Mayor Kinzel stated that he originally thought that alternates would be needed on the Plan Commission; however, in hindsight he realizes that it would be difficult to keep an alternate member abreast of all the issues and the direction of the Plan Commission.

The Plan Commission requested that the Mayor's ability to appoint alternate(s) to the Plan Commission be eliminated at their August 6 meeting.

The consideration of Ordinance No. 2012-15 and Ordinance No. 2012-16 were discussed interchangeably.

Motion made by Council Member R. Reimer, seconded by Council Member Radtke, to reject Ordinance No. 2012-15 and leave the option of alternates on the Plan Commission at the Mayor's discretion on a three-year appointment. Motion carried without a negative vote with Council Member C. Reimer excused.

**CONSIDER ORDINANCE NO. 2012-16 AMENDING SEC. 2-4-5(d) OF THE CODE OF ORDINANCES PERTAINING TO ACTIONS OF THE PLAN COMMISSION**

City Attorney Vance stated that Ordinance No. 2012-16 reinstates the language requiring a unanimous vote by a quorum of four members of the Plan Commission to approve an agenda item. The Commissioners believe that if only the quorum of four members were present that all four members must be unanimous in their decision. Any action should represent at least the majority of all members of the Plan Commission. The Commission must have four members present to conduct business.

In answer to Council Member Maher's question, City Attorney Vance stated that the number of members on a Plan Commission is not dictated by a handbook. The League of Municipalities recommends that a Plan Commission consist of seven members serving three-year terms that are staggered.

In answer to Council Member Radtke's question, City Attorney Vance stated that it has always been a requirement for an item to have four votes in favor to pass. It has always been this way and no one meant to change it initially.

Council Member Radtke stated that the same items will come before the Common Council and they could pass with three Council Members voting in favor.

In answer to Council Member Maher's question, City Attorney Vance stated that there is not a history of projects that have gone before a four person quorum that have failed.

Council Members Radtke and Maher stated that this item affects their decision on eliminating alternates.

This discussion led back to considering the appointment of alternates on the Plan Commission.

Council Member Maher stated that a project could be negatively affected if a business needs to come back to another meeting for lack of a full Commission to consider the item. The City is trying to prevent this from happening.

Council Member Radtke opined that three affirmative votes should be sufficient if only four members were present.

In answer to Council Member Radtke's questions, City Attorney Vance stated that certain Boards, Commissions and Committees have their own rules.

In answer to Council Member Yip's question, Mayor Kinzel stated that new Commission Members can read old minutes to learn the history of the group. Alternates could serve as succession planning for the Commission.

City Attorney Vance stated that by Statutes the Plan Commission Members have to serve three years and it is unclear, however, she believed that this would also apply to an alternate to gain knowledge they should serve three years.

In answer to Council Member O'Keefe's questions, Mayor Kinzel stated that the Plan Commission has never had alternate members. The alternates that are appointed to other Boards, Commissions and Committees are listed on the agenda with the other members with an alternate notation behind their name and are not chosen as 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> alternates.

Motion made by Council Member R. Reimer, seconded by Council Member Filter, to accept Ordinance No. 2012-16 amending Sec. 2-4-5(d) of the Code of Ordinances pertaining to actions of the Plan Commission.

Council Members Radtke and Maher stated that they are opposed

The motion failed with Council Members R. Reimer, Filter and Yip in favor, Council Members Radtke, Maher and O'Keefe opposed, and Council Member C. Reimer excused.

Motion made by Council Member Radtke, seconded by Council Member Maher, that during a four/five attendance of the Commission, it would require a majority of the members of the Plan Commission to approve or deny an item.

It was the consensus of the Common Council to table this item until the next Common Council meeting.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 8/9/12 THROUGH 8/30/12, ACH TRANSFERS FOR THE PERIOD 8/2/12 THROUGH 9/7/12, AND PAYROLL FOR THE PERIOD 8/5/12 THROUGH 9/1/12**

Motion made by Council Member Filter, seconded by Council Member Yip, to approve payment of bills for the period 8/9/12 through 8/30/12, ACH transfers for the period 8/2/12 through 9/7/12, and payroll for the period 8/5/12 through 9/1/12. Motion carried without a negative vote with Council Member C. Reimer excused.

**CONSIDER LICENSE APPLICATIONS**

Motion made by Council Member R. Reimer, seconded by Council Member O'Keefe, to approve new Operator's License applications for the period ending June 30, 2013 for Nicholas L. Behling, Bryan J. Dorsey, Monica J. Dorsey, Cassandra Flores, Eric J. Halleman, Troy A. Koput, Adam W. Krings, and Barseana N. Simond. Motion carried without a negative vote with Council Member C. Reimer excused. (The application for Keith A. Lyon was not included in the motion for approval based on the recommendation of Police Chief Frank.)

Motion made by Council Member O'Keefe, seconded by Council Member Maher, to approve renewal Operator's License applications for the period ending June 30, 2013 for Joshua P. McCutcheon, Gloria R. Mitchelson, and Michelle L. Welch. Motion carried without a negative vote with Council Member C. Reimer excused.

**CITY ADMINISTRATOR/TREASURER'S REPORT**

City Administrator/Treasurer Mertes stated that Senior Center Director LaFontaine received an award for Outstanding Service & Performance from the State Association of Senior Centers.

**COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member R. Reimer asked for an update on the Revolving Loan Fund meeting at the next Common Council meeting.

Council Member R. Reimer stated that he has been working with Building Inspector Baier on Ordinances and opined that the Code is a problem. He understands that the City will be budgeting for recodification of the Code in 2013.

**ADJOURNMENT**

Motion made by Council Member Maher, seconded by Council Member O'Keefe, to adjourn the meeting at 9:03 p.m. Motion carried without a negative vote with Council Member C. Reimer excused.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk