

**CITY OF CEDARBURG
COMMON COUNCIL
September 26, 2011**

CC20110926-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, September 26, 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 Chris Reimer, Ron Reimer, Paul Radtke, Michael Maher, Douglas Yip, Bob Loomis

Excused - Council Member Art Filter

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Library Director Mary Marquardt, City Clerk Constance McHugh, City Planner Marty Marchek, Economic Development Coordinator Mary Sheffield, Library Board Members Sue Karlman, Steve Ruggieri, Liz Bryde, Vonna Pitel, Art Palleon, Debra Goeks, Landmarks Commission Members Judy Jepson, Tomi Fay Forbes, and Tom Kubala, 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 C. Reimer, seconded by Council Member Radtke, to approve the minutes of the September 12, 2011 meeting. Motion carried unanimously with Council Member Filter excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Philia Hayes, N63 W5795 Columbia Road, said she spent time on the Council and various boards and commissions that are currently deliberating the library issue. She said she tried to determine how she would vote if she were still on these bodies and reached the conclusion that she is hugely in favor of a new library but hugely concerned about the City's valuable Historic District. She urged the Council not to vote in favor of moving the Weber Haus and to ask the Library Board to make Plan A for a new library on the Mill Street site work.

Sue Karlman, W59 N886 Sheboygan Road and Library Board President, said the Library Board had a long discussion at its meeting last week about Option A and Option B. The Board also discussed a drawing prepared by Planner Marchek. It became clear to the Library Board at that meeting that a better library could be provided for the community if it endorsed Option B again. The Library Board made a motion to reaffirm its support of Option B, the wider footprint, 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 is subject to review by the Library Board.

Ms. Karlman said that she respects the Landmarks Commission's decision not to recommend the Weber Haus be moved to accommodate a larger library. The Landmarks Commission has a responsibility to make the best decision for the Historic District. However, the Library Board must make the best decision for a new library.

Tom Kubala, N67 W5475 Columbia Road and Landmarks Commission Member, said there is a lot more flexibility on the proposed library site than on the Weber Haus site. He said once the Weber Haus is moved it is gone and out of the Historic District. Federal law states that properties listed on the National Register should be moved only when there is no feasible alternative for preservation. He said it seems like there are quite a few alternatives for the new library if the Weber Haus stays where it is.

Lynne Buehler, W52 N844 Castle Court, said she is addressing the Council first, as the sole vote on the Plan Commission against the rezoning of the property for the proposed new library on Washington Avenue in the Historic District and secondly, as a private citizen. She said the rezoning of the property at the corner of Washington Avenue and Mill Street from commercial to governmental and institutional takes a piece of property that is presently on the tax rolls, generating approximately \$1,600 in tax dollars just to the City and a total revenue of \$4,900 and makes it non-revenue generating. Additionally, if the City proceeds with its current plan of action to build the library in that location, the historic Weber Haus will need to be moved out of the Historic District to make way. Her vote on the Plan Commission was that fundamentally and fiscally, this is a bad idea and a precedent that should not occur. The Landmarks Commission also voted 5-1 against the proposed moving of the Weber Haus. Additionally, the State of Wisconsin has also weighed in negatively on this idea. To change zoning in a historic district to accommodate public and private interests and move a historic building on a present day whim goes against everything that a foresighted and very wise previous Mayor, Stephen Fischer, held dear. It is a slap in the face to those before us and those among us that fought off the developers and stood in the way of bulldozers to preserve the historic nature of Cedarburg. She said she is disappointed in those that seek to further this proposal and have private gains to be made at the expense of the City's heritage. Additionally, the choice of the architect by the fundraising group's demand and the right of the City to make any changes to the proposed library design should not be tolerated. She said if you give a gift, it is just that...a gift with no strings attached.

Ms. Buehler continued by saying that privately, and as a tax paying citizen, she has a hard time justifying the expense of approximately \$6 million of taxpayer dollars in a time of shrinking budgets and cost saving measures that reduce City services with neighboring communities on a number of issues. Streets are unable to be repaired in a timely manner, there are contaminated and condemned commercial sites, continued reductions to the budgets of Parks and Forestry, Public

Works, and other departments, including a suggestion that curbside brush pickup be eliminated. Banners for advertising have actually been sold to hang in City parks in an attempt to keep budgets in line. For those that say there was a referendum and the public voted for this library, these are different times than when the vote was taken almost 6 years ago. The referendum was not a binding referendum. She urged the Council to have the same referendum today, under the present state of the economy and then decide. Additionally, the Library has a projected budget loss of \$96,349 for the year 2012 and the library use has been projected to be stagnant or diminishing for upcoming years. The gleam of free dollars from clean up monies of a previous business in Cedarburg which would have helped to pay for the library has vanished, along with \$225,000 in tax dollars from the Town of Cedarburg revenue.

Ms. Buehler said technology has moved at lighting speed. The library is not the center of learning and information that it once was and the Internet, iPad, iPhone, and Kindles are what this and future generations will be using. Surrounding municipalities have facilities that are available to all residents of Ozaukee County for their library needs. The High School has a wonderful library and the City has a library right now in the perfect spot – downtown but just off the Historic District.

Ms. Buehler concluded by saying she appreciates the efforts of those that are fundraising and donating monies for so many things in Cedarburg, but this just happens to be one gift that should be returned. She urged the Council to be mindful of how the vote tonight will impact the future face of the historic downtown Cedarburg for generations to come. The Council is the gatekeeper of this unique City. She requested the Council reject the proposal for moving the Weber Haus and the building of the library on this prime location in the best interest of all constituents.

Sandy Beck, N67 W5409 Columbia Road, said she is speaking to the Council as the present guardians of downtown Cedarburg. The City now has a downtown that people drive miles to see. Previous Councils have sworn to protect and preserve the historic downtown. She asked the Council how these people would feel about moving one of these historic structures and whether this Council wants to set a precedent of moving historic buildings.

Ms. Beck said she is sorry to hear that the Council does not have the ability to select an architect or design in this process. She said the Council is elected to be guardians and must look at the proposed plan. She said this is a gift with too many strings attached.

Ms. Beck stated the City does need a new library, but it should not be located downtown. She urged the Council not to move the Weber Haus when others have fought to save historic buildings. She also urged the Council not to say “lets just get a library built” and give up authority to inspect the plan.

Ann Denk, W62 N598 Washington Avenue and owner of Wyndrose Jewelry, said she resides in the Historic District. She said the historic designation is something to be proud of and the Council should do everything in its power to preserve these buildings. She said moving the Weber Haus would undermine the intent of the Historic District. The library is an integral part of the community, but she is not convinced the library needs to be built at this location. Other ideas need to be explored. Ms. Denk said she is not in support of moving structures from the Historic District.

Ms. Denk said the Library Board did not originally want a two story building because of the increased operational cost; however, now a two story building is acceptable. She said this is the second year the library is running at a loss and questioned how this will be addressed. A new building will only add to the operational costs. She said it is advisable to have a new referendum.

Vonna Pitel, W69 N875 Evergreen Court, said this community critically needs a new library. She agreed technology is available, but the library is embracing it. She said she feels bad that the City does not have a new library after all these years. She and Director Marquardt visited five libraries in the Madison area recently and found these communities are very supportive of the libraries. She said the City desperately needs a new library and this has gone on too long.

Steve Ruggieri, W52 N621 Highland Drive, said a lot of great things have been said tonight. He said he is in agreement with the things Ms. Karlman and Ms. Pitel have said. He said when the City was first looking for the optimal site the architect said the former police station and library should be torn down and a new library built in its place. This concept was shot down. Now the City is looking at another site and the architect has said the wider footprint is a better option. He reminded the Council that 85% of the people that use the library are City residents. He questioned when these residents will have a say in a new library.

CONSIDER RESULTS FROM PHASE II ENVIRONMENTAL TESTING, GEOTECHNICAL EXPLORATION, AND THE CERTIFIED SURVEY MAP FOR THE PROPOSED LIBRARY SITE

Director Wiza said a preliminary Certified Survey Map (CSM) has been prepared for the proposed library site that combines the three lots on Washington Avenue/Mill Street into two lots. The CSM shows that there is 23,182 square feet available to work with and lot of 4,800 square feet where the Weber Haus could be moved to if decided. He said nothing in the CSM is of a major concern; however, there is an aerial communication line that runs through the lot that would need to be taken into consideration or relocated.

Council Member Maher said Planner Marchek's initial drawing sketched out a proposed library with a 10' setback. He inquired as to whether the plan could be drawn with a 0' setback and whether a 0' setback could be used where feasible and a 10' setback be used where feasible.

Planner Marchek said this could very easily be done. In 2008, the Council modified the Zoning Code pertaining to the Institutional and Public Service District. The Code now states that the required street yard setback may be reduced by action of the Council following review and recommendation by the Plan Commission. In terms of corner lots, the owner has the ability to select which is the rear yard and which is the side yard. If Institutional zoning is applied to this lot there would be a minimum side yard of 6' between the Fischer lot line or the Weber Haus.

Director Wiza said preliminary results have been received for the environmental and geotechnical testing on the proposed library site. The final results for the geotechnical work should be completed in about two weeks. The findings thus far indicate that borings B-1 and B-2 show some petroleum contamination. The other borings did not show contamination but that does not mean some will not show up when the lab testing is done.

In terms of Phase II environmental testing, Director Wiza said the preliminary results show that the bedrock is not a serious limitation and is deep enough for a basement for the Weber Haus if the decision is made to move the Weber Haus and include a basement. The bedrock is deeper as one moves east towards Washington Avenue. The biggest complication relates to the fill on-site. He said it may be necessary to go down as much as 11' to pour footings. The depth below the ground surface to native soil ranges from 2.4' to 11'. The groundwater table is anticipated at approximately 7' below the ground surface. This could create issues if excavation is required below the water table. A dewatering system may need to be incorporated in the design. Director Wiza said these concerns do not mean the site cannot be built upon, but rather there are additional considerations that must be taken into account which could lead to increased costs. He said this is not the first site in the City to have to deal with these issues. He suggested that the Council wait until final test results are received before any determinations are made.

Council Member Maher said it sounds like there are challenges in terms of this site, but construction of a new library at this site could be done.

Director Wiza responded yes.

Council Member Maher asked Director Wiza if he could provide a cost estimate of remediation based on the final results.

Director Wiza said these are very complicated issues that he does not deal with on a daily basis. He said any estimate he would provide would be very crude. It basically comes down to what the premium is for the foundation system that is to be implemented.

Council Member Maher said it is safe to say the Library Board would want to get as much basement space as possible. It seems these issues would be encountered regardless of which option is selected. He asked what the next step would be.

Mayor Myers said the Council needs to wait until the results of all testing are completed before obtaining the costs of remediation and making any decisions.

Director Wiza agreed that decisions should wait until the final results are completed, which will likely include some recommendations. Then the architect and construction management company can assist in determining costs. He said there are still a lot of unknowns at this point.

Motion made by Council Member R. Reimer, seconded by Council Member C. Reimer, to table this matter until the next meeting. Motion carried unanimously with Council Member Filter excused.

CONSIDER RECOMMENDATION FROM THE LANDMARKS COMMISSION NOT TO RELOCATE THE WEBER HAUS TO A 4,800 SQUARE FOOT PARCEL ON THE WESTERN MOST PART OF THE PROPOSED LIBRARY SITE AND CONSIDER RECOMMENDATION FROM THE LIBRARY BOARD TO RELOCATE THE WEBER HAUS

Council Member Yip said the Landmarks Commission did a great job in asking questions related to the proposal to relocate the Weber Haus and received good feedback. The Landmarks Commission

voted to recommend that the Weber Haus not be moved because it would impact the downtown Historic District. The Commission felt the Weber Haus should not be moved unless there are not other alternatives. It seems like there are other alternatives.

Council Member Radtke asked what the impacts are of moving the Weber Haus out of the Historic District.

Council Member Yip said the State Historical Society has indicated the Weber Haus should not be moved because it would constitute an adverse effect to both the Weber Haus and the Historic District.

Attorney Vance said the City went through a lot of hoops to obtain a Federal and State historic designation for Washington Avenue. One of the requirements of having a historic district is that there must be a Historical Preservation Committee or Landmarks Commission that has authority over the historic district and has certain powers. The State has made the conclusion that there would be an adverse impact if the Weber Haus were to be moved. She said this does not mean it is impossible. If the Weber Haus were to be moved the City must negotiate with the State as to what will be done and how this would occur.

Council Member C. Reimer asked if the City would lose the Washington Avenue historic designation if the Weber Haus is moved.

Attorney Vance said that she doesn't think this would happen, but it depends on what is negotiated with the State.

Council Member Maher said the Landmarks Commission minutes state that the Landmarks Commission is responsible for preserving integrity within the Historic District and does have the full authority governing movement of buildings out of the District. He said these are powerful words and asked what full authority means.

Mayor Meyers said the Landmarks Commission is created and governed by Federal and State law and is different from other citizen committees. The Commission is given authority over what goes on in the Historic District and has the power to recommend the Weber Haus not be moved. The Council will need to deal with the State if it decides the Weber Haus should be moved.

Attorney Vance said if the Council pursues moving the Weber Haus the State will be a partner at the table. All parties will need to determine how the move could be done in such a way that would minimally impact the Historic District.

Mayor Myers said he commends the Library Board and Landmarks Commission for taking their work very seriously. The Landmarks Commission discussed the proposal to move the Weber Haus and voted against it. He said he is not in favor of circumventing the recommendation of the Landmarks Commission, especially if there is another alternative. Mayor Myers said he is a steward of the community and will not do anything that jeopardizes the historic designation.

Council Member C. Reimer said he is not in favor of jeopardizing the historic designation, especially if there is another plan. He said he doesn't want to spend the money going against the

State and recommended the Council follow the recommendation of the Landmarks Commission. Council Members Loomis, R. Reimer, and Radtke said they agreed.

Council Member Yip said he was the lone vote against the decision of the Landmarks Commission not to relocate the Weber Haus; however, he supports the decision of the Landmarks Commission.

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to follow the guidance of the Landmarks Commission not to move the Weber Haus. Motion carried with Council Members C. Reimer, R. Reimer, Radtke, Yip, and Loomis voting aye, Council Member Maher voting nay, and Council Member Filter excused.

It was the consensus of the Council that the Donor Group be asked to resubmit their commitment letter based on this decision.

CONSIDER ORDINANCE NO. 2011-16 AMENDING SEC. 11-2-2 OF THE CODE OF ORDINANCES RELATING TO CONCEALED CARRY

Chief Frank said the State's recently enacted concealed carry law goes into effect in November. The question before the Council is whether or not people should be allowed to carry concealed weapons into public buildings.

Attorney Vance said the ordinance drafted prohibits concealed carry of firearms or weapons in public buildings.

Motion made by Council Member R. Reimer, seconded by Council Member Loomis, to adopt Ordinance No. 2011-16 prohibiting entry or presence in public buildings while carrying firearms or weapons. Motion carried with Council Members C. Reimer, R. Reimer, Maher, Yip, and Loomis voting aye, Council Member Radtke voting nay, and Council Member Filter excused.

CONSIDER ORDINANCE NO. 2011-17 AMENDING SEC. 2-6-84 OF THE CODE OF ORDINANCES PERTAINING TO GRIEVANCE PROCEDURES

Attorney Vance said an ordinance has been drafted establishing grievance procedures for employees. The ordinance is required by Act 10 of the Legislature.

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to adopt Ordinance 2011-17 establishing grievance procedures for employees. Motion carried unanimously with Council Member Filter excused.

PAYMENT OF BILLS

Motion made by Council Member C. Reimer, seconded by Council Member Yip, to approve the payment of the bills for the period 09/09/11 through 09/22/11, ACH transfers for the period 09/14/11 through 09/23/11, and payroll for the period 09/10/11 through 09/23/11. Motion carried unanimously with Council Member Filter excused.

LICENSE APPLICATIONS

The Council took no action on the application of Susan A. Lagrange for a new operator's license for the period ending June 30, 2012 based on the recommendation of Police Chief Frank.

CITY ADMINISTRATOR/TREASURER'S REPORT

City Administrator/Treasurer Mertes said a draft of the proposed 2012 budget was provided to Council Members. She will learn tomorrow what the increase in health insurance costs will be. The estimates for electricity and water will be revised as she was notified that costs changed from what was originally estimated.

Council Member R. Reimer said the Joint Initiatives Executive Committee met again last week and discussed yard waste collection and Parks and Recreation services. The Committee requested staff do more work and report back. On Wednesday the Committee will discuss joint library services.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Loomis suggested the status of the EPA cleanup of the Amcast site be placed on a future Council agenda.

MAYOR'S REPORT

Mayor Myers issued a proclamation for Friends of Libraries Week (October 16-22)

ADJOURNMENT

Motion made by Council Member Radtke, seconded by Council Member Yip, to adjourn the meeting at 8:47 p.m. Motion carried unanimously with Council Member C. Reimer excused.

Constance K. McHugh, MMC/WCPC
City Clerk