

**CITY OF CEDARBURG  
COMMON COUNCIL  
October 13, 2008**

**CC20081013-1**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, October 13, 2008 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Acting Mayor Steve Glamm 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 – Council Members Chris Reimer, Steve Glamm, Noel Jepson, Paul Radtke, Michael Maher, Kip Kinzel, Amy Goyette

                         Excused -        Mayor Gregory P. Myers

                         Also Present -    City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Assessor Cathy Timm, Deputy City Clerk Amy Kletzien, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Acting Mayor Glamm'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.

Council President Glamm stated that as Acting Mayor he is retaining his right to vote as Council Member of the 2<sup>nd</sup> Aldermanic District.

**APPROVAL OF MINUTES**

Motion made by Council Member Reimer, seconded by Council Member Radtke, to approve the minutes of the September 29, 2008 meeting. Motion carried without a negative vote.

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES**

Council Member Radtke announced that a bicycle shop is opening in the former Amish Furniture store. Economic Development Coordinator Linda Skalecki led this new downtown tenant through the process of opening this store in Cedarburg.

Council Member Maher reminded the Common Council of the Mayor's Enhancement Award Ceremony on Sunday, October 19, 2008 at 1:30 p.m. in the Council Chambers.

**COMMENTS & SUGGESTIONS FROM CITIZENS**

Jerry Boeselager, N98 W6657 Lexington Street, stated that he lives in the neighborhood that experienced the sewer backup. He submitted a claim for out of pocket expenses after being told by the City to do so. He was very disappointed by the handling of the matter by the Common Council because it was not noticed on an agenda. It is unfortunate that the matter was decided in closed session and he was not aware of the meeting, followed by a very cold letter denying his claim. He expressed dissatisfaction in the lack of representation by Council Member Goyette, who was very active in the beginning. Mr. Boeselager said this situation should be looked at simply, he was not responsible for the mishap but he will take some responsibility. The City is responsible for taking care of the sewers and they should take some responsibility, and then an unknown person is responsible. He suggested that the City take 1/3 responsibility. He has been paying taxes for 40 years and has never requested a dime. He never expected to get 100%; however, for the City to turn down the claim in such a way, as to not give the citizens an opportunity to speak is unfair and uncharacteristic of the City. Mr. Boeselager requested that the City reconsider at least a portion of the responsibility, placing it at least on three people (the property owner, City, and the unknown).

Jacob Dziejwa, speaking on behalf of Stan Dziejwa, N98 W6540 Aspen Street, thanked the Council for the opportunity to speak on the sewer backup issue in his neighborhood. He was selected as a key representative for the 20 families in the neighborhood who experienced a sewer back up in their homes. Many of the people affected had valid and reasonable hopes that the Council would not dismiss the loss that insurance carriers would not cover. All the people on Lexington Street were in agreement of submitting formal claims to the City for their losses as encouraged by the City. The denial letter from the City was shocking and disappointing and was not expected from City leaders. The City may have saved a few thousand dollars but the City will eventually lose the confidence of many people in their community. He stated that a policy decision can be very different from a legal decision and he questioned why the City leaders changed their position.

**COUNCIL COMMENT CONCERNING LEXINGTON STREET SEWER BACKUP CLAIMS AND LETTER OF DENIAL DATED SEPTEMBER 15, 2008**

As Council President and Acting Mayor, Steve Glamm spoke on behalf of Council Member Goyette stating that she made it clear from the beginning that she has a legal and ethical obligation not to be involved because of her employment status. Anyone running for this part-time job should never have to put themselves in a position to lose their livelihood. Council Member Goyette did not have any other choice based on the ethics of the legal profession.

Acting Mayor Glamm stated that the Council did meet in closed session as allowed by State Statutes when there is a possibility or potential for litigation. They met in closed session on the advice of the City's legal counsel to allow open discussion without concern for ramifications for any subsequent litigation that could arise from the discussion. The Council discussed the policy issues as well, and basically it comes down to precedent. Although the sewer is owned by the City, there is no liability and the policy issue is based on how the City could limit this decision to this specific situation or any other situation. Everything the Council does on one issue will be brought to bear on future issues. Whether the claims are from sewer backups, automobile accidents, or injuries from people falling and tripping on the sidewalk; if the Council decided to pay the sewer

backup claims in this instance (with no legal obligation), the City could not defend other claims that are made in the future. There are situations when things happen in the City to people, employees or vehicles that are not the City's fault. The policy consideration does go further, in that the City cannot budget for this type of consideration. The City pays insurance premiums to cover those things that the City has legal liability for. The City does not have an amount in the budget, nor would it be prudent on a policy level, to create such a fund because the amount would be unknown each year. It is not easy as a Council Member to give news to people that they do not want to hear. He stated at the last meeting addressing the sewer backups that there would be policy issues to consider in this situation and Council Member Goyette left the meeting when it was discussed. The remaining Council Members agreed that from a policy standpoint it would have a negative impact and start the City down a slippery slope where the City would not be able to deny a claim based on this precedent.

Council Member Radtke stated that at the first meeting regarding the sewer backups, some of the Council Members expressed a great deal of concern and wanted to find a way to make this happen. However, that was before the Council had all of the facts and had a chance to talk to legal counsel. The Council was not prepared for this situation and had never been involved in a similar claim. As a result, the Council wanted to do whatever they could to help. Even at the first meeting, there was no guarantee of what could be done. The attitudes of the Council did not shift; members just realized the path that needed to be followed.

Council Member Kinzel stated that allocating tax dollars would involve everyone in the City. The City has insurance for their liability and the sewer backup claims would have been paid if the City was liable. It was at the advice of the insurance company that the claims were denied. He opined that it is not appropriate to have city taxpayers pay for something that is not the City's fault. It is not the Council's money; it is the citizens' money.

Council Member Goyette took this opportunity to address the issue and to acknowledge the frustrations of those involved. She could not apologize for her actions because it weighed on her, but as pointed out by Council Member Glamm there is more at stake than hiding behind the law. She has a responsibility to her family to make sure she does not jeopardize her position. She has a responsibility to the City not to do anything that would jeopardize City funds. For that reason, she removed herself from the situation and explained to all of the residents what she needed to do. She understands the neighborhood's frustration and she hopes that moving forward, people will still come to her as their elected Council Member. This situation will not affect her desire to do the best she can for the people in her district.

**CONSIDER ORDINANCE NO. 2008-17 AMENDING SECTION 2-4-1 OF THE MUNICIPAL CODE RELATING TO THE EXTENSION OF DEADLINES FOR FILING APPEALS WITH BOARD OF REVIEW AND THE PRESENTATION OF EVIDENCE AT BOARD OF REVIEW HEARINGS**

City Assessor Timm stated that as of March 27, 2008 a municipality may enact an ordinance eliminating the opportunity for a taxpayer to use the procedure in Section 74.37 concerning claims for excessive assessment. This procedure has been favorable to property owners because the court conducts a trial without giving any consideration to the decision of the Board of Review or the

evidence presented to them. It is common in larger cities that the property owner will not present their full case to the Board of Review and then proceed right to Circuit Court. This procedure is lengthy and costly to the taxpayers.

In answer to Acting Mayor Glamm's question, Assessor Timm stated that this Ordinance will require property owners to present their full case to the Board of Review or they will not be able to proceed to Circuit Court.

In answer to Council Member Jepson's question, Assessor Timm stated that there is no downside to adopting Ordinance No. 2008-17.

In answer to Council Member Radtke's question, Assessor Timm stated that the citizens of Cedarburg are ethical when making presentations to the Board of Review.

Motion made by Council Member Jepson, seconded by Council Member Kinzel, to adopt Ordinance No. 2008-17 amending Section 2-4-1 of the Municipal Code relating to the extension of deadlines for filing appeals with Board of Review and the presentation of evidence at Board of Review hearings. Motion carried without a negative vote.

**CONSIDER ORDINANCE NO. 2008-18 AMENDING SECTION 3-1-13 OF THE MUNICIPAL CODE PERTAINING TO STATEMENTS OF REAL PROPERTY STATUS**

City Assessor Timm stated that Ordinance No. 2008-18 will require companies to submit a request in writing for contemplated assessment information on various properties. This will eliminate phone calls requesting contemplated assessments to by-pass the fee. This ordinance will recover the cost to the City for researching the information and create a record in writing of the request.

Motion made by Council Member Maher, seconded by Council Member Radtke, to adopt Ordinance No. 2008-18 amending Section 3-1-13 of the Municipal Code pertaining to Statements of Real Estate Status. Motion carried without a negative vote.

**CONSIDER AMENDING POLICY FC-8 RE: PROPERTY ASSESSMENTS**

City Assessor Timm stated the amendments to Policy FC-8 will bring it in line with the City's current assessment practices. Council approval will be needed if changes in the market indicate a revaluation should be completed less than or more than the years stated in the policy. Statistical data received from the State indicates that the City is doing well.

In answer to Acting Mayor Glamm's question, City Assessor Timm stated that a revaluation is required when the assessed values fall below 90 percent.

Motion made by Council Member Reimer, seconded by Council Member Goyette, to amend Policy FC-8 Re: Property Assessments. Motion carried without a negative vote.

**CONSIDER BIDS RECEIVED FOR GRANITE SIDEWALK PAVER MAINTENANCE**

Director Wiza stated that staff advertised for bids to reset portions of the granite sidewalk pavers located on Washington Avenue at specific downtown intersections. The pavers were installed in the 2000-2001 Streetscape Project and they require periodic maintenance to correct the effects of settlement and frost-heave over time. Only one bid was received for the work, but that bid is responsive and within budget. LaRosa Landscape Company submitted a bid in the amount of \$22,341.57. The company has put a lot of work into helping the City with the spec and they know what to do. There have been some complaints from people tripping and this creates a liability issue.

Acting Mayor Glamm stated that the City has been put on notice and the work should be done.

Director Wiza stated that it is very difficult to maintain the pavers with City crews, as the paver repair is very labor intensive. A polymerized sand will be used, which should prevent movement in the pavers and make them last longer.

In answer to Council Member Jepson's question, Director Wiza stated that LaRosa Landscape Company has done work for the City in the past and Public Works Superintendent Boerner would have a better knowledge of those projects. Director Wiza stated that he is confident that they will do a good job.

Motion made by Council Member Radtke, seconded by Council Member Maher, to approve the bid received for granite sidewalk paver maintenance from LaRosa Landscape Company in the amount of \$22,341.57. Motion carried unanimously on a roll call vote.

**CONSIDER AMENDING POLICY FC-7 RE: BUDGET TRANSFER POLICY**

City Administrator/Treasurer Mertes stated that Policy FC-7 has not been updated since 1992. The updates include a title change for the Administrator/Treasurer and removes the reference to the Finance Committee which is no longer in place.

Motion made by Council Member Reimer, seconded by Council Member Jepson, to amend Policy FC-7 Re: Budget Transfer Policy. Motion carried without a negative vote.

**LICENSE APPLICATIONS**

Motion made by Council Member Radtke, seconded by Council Member Reimer, to authorize issuance of a renewal Operator's License for the period ending June 30, 2008 to: Neishaun M. Butrick. Motion carried without a negative vote.

**CITY ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes reminded the Common Council of the Joint meeting with the Economic Development Board on Wednesday, October 15.

Economic Development Coordinator Linda Skalecki helped facilitate a film on Cedarburg to be featured on Discover Wisconsin in November 2009.

Park & Forestry Superintendent Westphal received a low bid from First Choice Tree Care in the amount of \$25,968, which includes two free seminars for Cedarburg residents and discounts for private care of trees to treat Emerald Ash Borer.

**COMMENTS & SUGGESTIONS BY CITIZENS** – None

**REPORTS & COMMENTS BY COUNCIL MEMBERS**

Council Member Jepson assured Council Member Goyette that she acted appropriately in the sewer backup situation.

In answer to Council Member Jepson's question, City Administrator/Treasurer Mertes stated that a layout plan will be submitted for the Farmer's Market as requested by Council for final approval.

Council Member Jepson requested that the 2009 placement of the Farmer's Market be discussed at the next Park & Forestry Board meeting.

**MAYOR'S REPORT** – None

**ADJOURNMENT**

Motion made by Council Member Radtke, seconded by Council Member Reimer, to adjourn the meeting at 7:38 p.m. Motion carried without a negative vote.

Amy D. Kletzien, CMC  
Deputy City Clerk