

**CITY OF CEDARBURG
COMMON COUNCIL
November 26 2012**

CC20121126-1

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, November 26, 2012 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel called the meeting to order at 7:30 p.m.

ROLL CALL: Present - Common Council: Mayor Kip Kinzel, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Doug Yip, Mike O'Keefe

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, Wastewater Superintendent Ron Clish, Public Works Superintendent Jeff Boerner, Landmarks Committee Chairperson Judy Jepson, 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 C. Reimer, seconded by Council Member O'Keefe, to approve the minutes of the October 29, 2012 and November 12, 2012 meetings as presented. Motion carried unanimously.

CONSIDER ORDINANCE NO. 2012-20 ANNEXING THE PROPERTY AT 607 WAUWATOSA ROAD TO THE CITY OF CEDARBURG

Director Wiza said representatives of Redeemer Church have petitioned to annex the church, parsonage, and vacant land at 607 Wauwatosa Road. Sanitary sewer is available and in-place, however, the church will be responsible for extending the 8" watermain from its present termination at Lasata to the church south property line. The full cost of this will be paid by the church. The church has requested the option to pay for this in five annual installments with interest. In addition, the church must dedicate a 50' public street right-of-way for Wauwatosa Road. Impact fees in the amount of \$10,951 are due and payable upon annexation. The Plan Commission and staff recommend approval of the annexation.

Council Member Filter asked if it is possible to develop part of this parcel.

Director Wiza said that it may be possible for a developer to develop part of the parcel.

Council Member Radtke asked representatives of Redeemer Church why they want to annex to the City.

David Farrington, representing Redeemer Church, said it is to the benefit of the church to annex now since Highway 181 is to be reconstructed in the future. More costs would be incurred by the church if it waited until after the reconstruction to annex to the City.

Motion made by Council Member C. Reimer, seconded by Council Member Filter, to approve Ordinance No. 2012-20 annexing the property at 607 Wauwatosa Road to the City. Motion carried unanimously.

CONSIDER AGREEMENT WITH OZAUKEE CENTER BUILDING, LLC, REGARDING THE WINDOWS AT THE PROPERTY AT N58 W6194 COLUMBIA ROAD

Attorney Vance said a Certificate of Appropriateness is required for businesses in the Historic District that propose renovations. In the case of the building at N58 W6194 Columbia Road, the Landmarks Commission recommended approval of a Certificate of Appropriateness, which was approved by the Plan Commission. The Certificate specifically stated that the windows needed to be painted wood windows, not aluminum clad. The Building Inspector discovered that the windows installed were aluminum clad and were not in compliance with the Certificate of Appropriateness and the Code. Enforcement actions were then started.

Mayor Kinzel said that the contractor informed the owner of the building, Mal Hepburn, that the windows were beyond repair and ordered the replacements in aluminum clad, even though the Landmarks Commission and Plan Commission required that the windows be wood. Mr. Hepburn is now looking for an occupancy permit so the bank that will be located in the building can open on schedule.

Attorney Vance explained that after the windows were installed Mr. Hepburn appeared before the Landmarks Commission. The Commission decided not to enforce the Code for one year – something they cannot do. Because of the complexity of this issue, Attorney Vance said an agreement has been drafted that will give occupancy to the owner and will at the same time preserve the City's right to enforce the Code. The agreement calls for a review of materials required in windows and window replacements in the Historic District that is to be completed in 90 days.

Mayor Kinzel said that this agreement is a courtesy to the building owner since the Landmarks Commission will be reviewing the existing ordinance. The agreement states that the owner agrees to comply with the Code and the Certificate of Appropriateness that is the result of the review and actions by the City.

Council Member Yip said that the owner of the building is a business man who approves the bills of his contractor. The Landmarks Commission and Plan Commission clearly gave authorization for wood windows. Now the owner is asking the Council to approve his mistake.

Council Member C. Reimer said other businesses in the Historic District have been required to follow the Code.

Council Member Radtke asked why the Landmarks Commission decided to not enforce the Code for one year and review the current Code.

Judy Jepson, chair of the Landmarks Commission, said she cannot speak for the Commission and that she voted against doing this because she wanted to see if the standards or requirements at the state and national levels have changed.

Council Member C. Reimer said the agreement amounts to giving the owner a 90 day courtesy and perhaps setting a precedent. In the end, the Council will either tell the owner the windows are acceptable or that they will have to be replaced. He questioned how much time the owner would be given if it is decided that the windows need to be replaced.

Council Member Radtke said the agreement seems fairly reasonable. If it is determined the windows will not be allowed they will have to be replaced.

Attorney Vance stated if the windows are ultimately not allowed, staff will go back to enforcing the Code.

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to approve the agreement between the City of Cedarburg and Ozaukee Center Building, LLC, and that an update on this matter be placed on the Council agenda in 90 days for discussion. With Council Members C. Reimer, Radtke, Maher, Yip and O'Keefe voting aye, Council Member R. Reimer voting nay, and Council Member Filter voting present, the motion carried.

CONSIDER ORDINANCE NO. 2012-21 LEVYING PROPERTY TAXES ON THE GENERAL, DEBT SERVICE, SPECIAL REVENUE, AND CAPITAL IMPROVEMENT FUNDS FOR FISCAL YEAR 2013; ORDINANCE NO. 2012-22 APPROPRIATING THE NECESSARY FUNDS FOR THE OPERATION OF THE GOVERNMENT AND ADMINISTRATION OF THE CITY OF CEDARBURG FOR FISCAL YEAR 2013; ORDINANCE NO. 2012-23 APPROPRIATING THE NECESSARY FUNDS FOR THE 2013 CAPITAL IMPROVEMENT BUDGET; ORDINANCE NO. 2012-24 ESTABLISHING THE USER CHARGE SCHEDULE AND APPROPRIATING THE NECESSARY FUNDS FOR THE SEWERAGE FUND FOR THE OPERATION OF THE WASTEWATER TREATMENT PLANT FOR FISCAL YEAR 2013; AND ORDINANCE 2012-25 APPROPRIATING THE NECESSARY FUNDS FOR THE OPERATION OF THE SPECIAL REVENUE FUNDS AND ADOPTING THE INDICATED BUDGETS FOR FISCAL YEAR 2013

City Administrator/Treasurer Mertes said that Ordinance No. 2012-21 and Ordinance No. 2012-22 were revised to reflect a levy reduction of \$46,000 because Waste Management has agreed to extend the garbage collection contract which will result in a \$56,000 savings. The assessed tax rate will decrease from \$6.87/\$1,000 to \$6.83/\$1,000. The budget also includes \$1,000 in funding for the Civic Band.

Motion made by Council Member C. Reimer to adopt the following ordinances related to the 2013 budget:

- Ordinance No. 2012-21 levying property taxes on the General, Debt Service, Special Revenue, and Capital Improvement Funds for fiscal year 2013;
- Ordinance No. 2012-22 appropriating the necessary funds for the operation of the Government and Administration of the City of Cedarburg for fiscal year 2013;
- Ordinance No. 2012-23 appropriating the necessary funds for the 2013 Capital Improvement budget;
- Ordinance No. 2012-24 establishing the user charge schedule and appropriating the necessary funds for the Sewerage Fund for the operation of the Wastewater Treatment Plant for fiscal year 2013; and
- Ordinance No. 2012-25 appropriating the necessary funds for the operation of the Special Revenue Funds and adopting the indicated budgets for fiscal year 2013.

The motion died due to a lack of a second. Council Member Filter requested that the ordinances be considered one at a time.

Motion made by Council Member Yip, seconded by Council Member Maher, to adopt revised Ordinance No. 2012-21 levying property taxes on the General, Debt Service, Special Revenue, and Capital Improvement Funds for fiscal year 2013. Motion carried with Council Members C. Reimer, R. Reimer, Radtke, Maher, Yip and O'Keefe voting aye and Council Member Filter voting nay.

Motion made by Council Member C. Reimer, seconded by Council Member Maher, to adopt revised Ordinance No. 2012-22 appropriating the necessary funds for the operation of the Government and Administration of the City of Cedarburg for fiscal year 2013. Motion carried with Council Members C. Reimer, R. Reimer, Radtke, Maher, Yip and O'Keefe voting aye and Council Member Filter voting nay.

Motion made by Council Member C. Reimer, seconded by Council Member Filter, to adopt Ordinance 2012-23 appropriating the necessary funds for the 2013 Capital Improvement budget. Motion carried unanimously.

Motion made by Council Member C. Reimer, seconded by Council Member Maher, to adopt Ordinance No. 2012-24 establishing the user charge schedule and appropriating the necessary funds for the Sewerage Fund for the operation of the Wastewater Treatment Plant for fiscal year 2013. Motion carried unanimously.

Motion made by Council Member C. Reimer, seconded by Council Member O'Keefe, to adopt Ordinance No. 2012-25 appropriating the necessary funds for the operation of the Special Revenue Funds and adopting the indicated budgets for fiscal year 2013. Motion carried unanimously.

CONSIDER ORDINANCE NO. 2012-26 AMENDING SEC. 2-6-73 OF THE MUNICIPAL CODE REGARDING ELECTRONIC COMMUNICATIONS AND CONSIDER ORDINANCE NO. 2012-27 CREATING SEC. 2-6-55 OF THE MUNICIPAL CODE PERTAINING TO AN EMPLOYEE ASSISTANCE PROGRAM (EAP)

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to adopt Ordinance No. 2012-26 amending Sec. 2-6-73 of the Municipal Code regarding electronic communications and Ordinance No. 2012-27 creating Sec. 2-6-55 of the Municipal Code pertaining to an Employee Assistance Program (EAP). Motion carried unanimously.

CONSIDER PROFESSIONAL SERVICES CONTRACT FOR CITY PLANNING SERVICES

Motion made by Council Member Filter, seconded by Council Member Maher, to approve a Professional Services Contract with Planner Marty Marchek. Motion carried unanimously. The contract expires December 31, 2013.

Council Member Yip requested that a discussion of soliciting RFPs for this position be placed on the August Council agenda.

CONSIDER NEW CLASS "B" BEER AND "CLASS B" LIQUOR LICENSE FOR WORLD ON A PLATE, INC., ALBERT YEE, AGENT, D/B/A KALUA HAWAIIAN BARBEQUE AND SEAFOOD, W62 N547 WASHINGTON AVENUE

City Clerk McHugh stated that licenses were granted to this business on September 10, 2012 but prior to issuing the licenses it was discovered the corporation had changed. Licenses need to be issued to the correct entity.

Motion made by Council Member Radtke, seconded by Council Member Yip, to approve a Class "B" Beer and "Class B" liquor licenses for World on a Plate, Inc., Albert Yee, agent, d/b/a Kalua Hawaiian Barbeque and Seafood, W62 N547 Washington Avenue. Motion carried unanimously.

CONSIDER RESOLUTION NO. 2012-20 RE: PRESERVATION OF TAX EXEMPT FINANCING

Motion made by Council Member Filter, seconded by Council Member Radtke, to adopt Resolution No. 2012-20 opposing any efforts by Congress and the President to eliminate or limit the federal tax exemption on interest earned from municipal bonds. Motion carried unanimously.

PAYMENT OF BILLS

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to approve the payment of the bills for the period 11/08/12, ACH transfers for the period 11/07/12 through 11/19/12, and payroll for the period 10/28/12 through 11/10/12. Motion carried unanimously.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said the Gas Company will be digging up Washington Avenue south of Bridge Street to repair a gas line. Council Member C. Reimer requested that staff look at street parking during this work to ensure safety.

City Administrator/Treasurer Mertes said that a candidate has been offered the Recreation Supervisor position contingent upon a background check and drug testing.

She said Time-Warner has completed its upgrade of Internet service.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member R. Reimer asked about the status of the purchase of tablets for Council Members. City Clerk McHugh distributed figures on the potential cost savings of using tablets versus printing out Council packets. The logistics of using the tablets will be on a future Council agenda for discussion.

Council Member Filter asked if the money from the Forestry Grant has been received yet. City Administrator/Treasurer Mertes said that she would look into this and let Council Member Filter know.

Council Member R. Reimer said that work continues on necessary updates to Sec. 11-2-1 of the Code pertaining to firearms and weapons and Sec. 5-5 of the Code pertaining to Emergency Government.

Council Member C. Reimer said that earlier in the meeting Attorney Vance made a comment about an exception being made regarding approval of the windows at the Cultural Center. He asked what was meant by this.

Mayor Kinzel said the Cultural Center installed vinyl windows, although the building is a non-contributing building in the Historic District.

Council Member Maher said part of the Landmarks Commission's review of the Code will include contributing versus non-contributing buildings in the Historic District.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member C. Reimer, seconded by Council Member O'Keefe, to adjourn to closed session at 8:30 p.m. pursuant to State Statutes 19.85(1)(g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, 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, and 19.85(1)(f) to consider social or personal histories of specific person, if discussed in public would likely to have a substantial adverse effect upon the reputation of any person referred to in such histories, more specifically, to discuss the Prochnow Landfill, the Michelle Nyss vehicle damage claim against the

City for an accident that occurred on October 22, 2012 involving the City street sweeper, and Emergency Government Hanover site negotiations. Approval of closed session minutes of November 12, 2012.

RECONVENE TO OPEN SESSION

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to reconvene to open session at 10:20 p.m. Motion carried unanimously.

SETTLEMENT OF MICHELLE NYSS VEHICLE DAMAGE CLAIM

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to approve a settlement in the amount of \$5,759.42 for the Michelle Nyss vehicle damage claim against the City for an accident that occurred on October 22, 2012 involving the City street sweeper, subject to a waiver and release of future claims and a signed title. Should Ms. Nyss decide to keep the car to repair, the settlement amount would be decreased by \$1,366. Motion carried unanimously.

ADJOURNMENT

Motion made by Council Member Maher, seconded by Council Member Yip, to adjourn the meeting at 10:22 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk