

**CITY OF CEDARBURG
COMMON COUNCIL
December 12, 2011**

**CC20111212-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 12, 2011 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers 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 Gregory P. Myers, Council Members Ron Reimer, Art Filter, Paul Radtke, Michael Maher, Douglas Yip, Bob Loomis

Excused - Council Member C. Reimer

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Clerk Constance McHugh, Deputy City Clerk Amy Kletzien, City Assessor Cathy Timm, Accountant II/Accounts Receivable Kathy Huebl, Public Works Superintendent Jeff Boerner, Parks & Forestry Superintendent Kevin Westphal, Light & Water General Manager Dale Lythjohan, Wastewater Superintendent Ron Clish, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' 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 Loomis, seconded by Council Member Yip, to approve the minutes of the December 5, 2011 meeting as amended by Council Member R. Reimer to include a 7th paragraph on page 3: Council Member R. Reimer asked for and received verification that to get under the 3% limit targeted by Council Member Loomis, only the employee furlough time was increased and the employee bonus was decreased; all other items discussed remain unchanged in amount but paid for from other fund balances. Motion carried without a negative vote with Council Member Radtke abstaining and Council Member C. Reimer excused.

PUBLIC HEARING – CONSIDER PETITION FOR A CONDITIONAL USE PERMIT TO OPERATE A DOG GROOMING BUSINESS AT W62 N263 WASHINGTON AVENUE

Mayor Myers declared the public hearing open to consider the petition for a Conditional Use Permit to operate a dog grooming business at W62 N263 Washington Avenue at 7:03 p.m. Proper legal notice had been given with publication in the *News Graphic* on November 22 and 29, 2011.

Director Wiza explained that Lee Owen wishes to lease the Cape Cod building along Washington Avenue in front of Owen's Office Supply to a dog groomer, who would also sell related items. The B-2 Community Business District does not list "dog grooming" as a permitted use. However, Section 13-1-54(d)(2) of the Zoning Code allows as a Conditional Use: "Animal hospitals, pet daycare facilities and kennels, provided all principal structures and uses are not less than one hundred (100) feet from a residential use if kennels are provided." The Plan Commission made the finding that "dog grooming" is similar in character to the conditional use of a pet daycare facility at their November 7 meeting. Lee Owen is requesting that the Common Council approve a Conditional Use Permit to allow dog grooming at W62 N263 Washington Ave.

In answer to Council Member Yip's question, Director Wiza stated that there are no special waste disposal requirements because the animals will only be there for a short time, which is different than kennels.

There was no public comment.

Motion made by Council Member Filter, seconded by Council Member Radtke, to close the Public Hearing at 7:07 p.m. Motion carried without a negative vote with Council Member C. Reimer excused.

Motion made by Council Member Radtke, seconded by Council Member Filter, to approve the petition for a Conditional Use permit to operate a dog grooming business at W62 N263 Washington Avenue.

In answer to Council Member Yip's question, City Attorney Vance stated that if it appears that the owners are not meeting the conditions of the permit, it can be reviewed by the Plan Commission with the Common Council making a final decision.

Motion carried without a negative vote with Council Member C. Reimer excused.

UPDATE ON PROCHNOW LANDFILL

City Attorney Vance stated that the DNR has accepted the proposal from Environ to monitor 27 wells annually. The Town approved the documents last week and Environ should begin their work after January 1, 2012. The allocation agreement includes the responsible parties (except for Emerson) and the communications plan requires simultaneous communication with all representatives in regards to the work and results of the tests. General Manager Lythjohan has attended all of the meetings with City Attorney Vance and all of the representatives.

General Manager Lythjohan stated that the testing plan includes a thorough testing of all the wells on the site. This will be done for several quarters and then they will revisit the results to determine if they can scale back somewhat.

In answer to Council Member R. Reimer's question as to whether or not the testing will encompass high water consumption periods, City Attorney Vance stated that 16 wells will be tested quarterly and 27 wells will be tested annually over a two-year period.

General Manager Lythjohan stated that the Well #4 aeration system has been running for approximately three months and has been fully operational for two months (6 – 8 hours per day). It has been pumping a little more often to have the aquifer more normal before the testing starts.

City Attorney Vance stated that the DNR reminded all of the parties that they are responsible for the Blank (property) part of the landfill located west and north of Hwy 60.

In answer to Council Member R. Reimer's question, City Attorney Vance stated that the Blank property is part of the Prochnow description, in terms of the DNR definition of the Prochnow Landfill.

Council Member R. Reimer inquired on the percentages listed on the payment agreement for Environ and how they were established.

City Attorney Vance stated that it is determined by the amount of responsibility that the EPA allocated in terms of the type of items that were disposed at the site. Mercury Marine and Emerson had the most toxic material and municipal waste is not as toxic. All parties have agreed to the percentages.

In answer to Council Member Radtke's question, City Attorney Vance stated that all parties can sue Emerson if they decline to participate in the consulting agreement.

In answer to Council Member Maher's question, City Attorney Vance stated that the remedy will begin after the results of the testing are available. All results will be sent to the DNR initially for their approval. The EPA has no involvement in Prochnow, at this point.

UPDATE ON THE AMCAST SITE

City Attorney Vance stated that the letter the City sent to the EPA was forwarded directly to Amcast with no response. As of December 7, the owners (the group remaining as Amcast) have access to the property and they are considering demolishing the building. They need to submit the plans to the EPA to get their approval.

In answer to Council Member Maher's question, City Attorney Vance stated that she has not received the names of the representatives of the Amcast group; therefore, she does not have any contact information. She sent an email to the EPA stating that the City hopes that the Amcast debtor follows through. The EPA is working on the draft report of the testing results and they should be available shortly.

Council Member Radtke stated that the Amcast office building is damaged and may need to be demolished also.

In answer to Council Member R. Reimer's question, City Attorney Vance stated that there are no immediate plans to demolish the office and it may be worth mentioning.

In answer to Council Member Radtke's questions, Parks & Forestry Superintendent Westphal stated that the City has been mowing the lawn and cleaning the sidewalks on the Amcast property.

CONSIDER RESOLUTION NO. 2011-10 AUTHORIZING THE SUPERINTENDENT OF PARKS & FORESTRY/CITY FORESTER TO ACT ON BEHALF OF THE CITY TO APPLY FOR URBAN FORESTRY ASSISTANCE GRANTS

Motion made by Council Member Filter, seconded by Council Member Loomis, to adopt Resolution No. 2011-10 authorizing the Superintendent of Parks & Forestry/City Forester to act on behalf of the City to apply for urban forestry assistance grants. Motion carried without a negative vote with Council Member C. Reimer excused.

CONSIDER AGREEMENT WITH CITY ATTORNEY

Motion made by Council Member Loomis to approve the agreement with the City Attorney. He stated that the City is getting exemplary service and a good financial deal when looking at the comparables. Motion was seconded by Council Member R. Reimer.

In answer to Council Member Yip's question, City Attorney Vance answered that the retainer fee listed for the City of Mequon is a monthly retainer.

Council Member Radtke stated that constituents have asked him why the City does not RFP this position.

Mayor Myer's stated that the City has gathered comparatives and the current City Attorney is a good value.

Council Member R. Reimer stated that due to the shift in the Council body it is important to have continuity.

Mayor Myer's stated the last time the City decided to bring in a new attorney, the hourly rate was low but the billed hours were extremely high.

Council Member Loomis stated that there is an enormous learning curve in the City Attorney position.

Council Member Radtke stated that he understood and her knowledge is valuable. However, the next few agenda items discussing furlough days and reducing employee bonuses cause some concern. He stated that the Council should do their due diligence to make certain they are exploring all options.

City Administrative/Treasurer Mertes stated that the City does send out RFPs for the auditing firm and it is not necessary to take the lowest price.

City Attorney Vance stated that a City Officer is different.

Council Member Radtke stated that this is no different than his profession and there is value in experience and knowledge transfer; however, at some point it is important to check.

City Attorney Vance stated that her costs are going down.

Council Member Filter asked if anyone has inquired on the City Attorney position.

City Administrator/Treasurer Mertes stated that she received an inquiry for the City Attorney position and she told them that the City is not sending out RFPs; however, the firm forwarded a proposal anyway.

In answer to Council Member Radtke's question, City Administrator/Treasurer Mertes stated that the hourly rate is the same at \$140/hour and a list of additional charges is included. The Attorney works with another municipality and provided a profile for the firm with other areas of expertise. Paralegal work is less at \$115/hour.

Council Member Yip stated that he is new and asked if the Common Council has been satisfied with City Attorney Vance's work. Is there any type of measurement that provides feedback to the attorney on her performance? He stated that the contract ends at the end of December and RFPs should have been sent earlier. The monetary aspect is very competitive and he is satisfied with the City Attorney's work.

Mayor Myers' stated that the City is involved in many legal issues and continuity is needed to see them through. He is opposed to bringing in another attorney at this time.

Council Member Radtke stated that the City Attorney contract should be looked at occasionally.

Council Member Loomis opined that City Attorney Vance is doing an exemplary job. Legal expenses have been minimized because of the advice she has given while he has been a Council Member.

Motion carried on a roll call vote with Council Members R. Reimer, Filter, Maher, Yip and Loomis voting aye, Council Member Radtke voting nay, and Council Member C. Reimer excused.

CONSIDER PAYMENT OF BILLS FOR THE PERIOD 11/23/11 THROUGH 11/30/11, ACH TRANSFERS FOR THE PERIOD 11/23/11 THROUGH 12/12/11, AND PAYROLL FOR THE PERIOD 11/13/11 THROUGH 11/26/11

Motion made by Council Member Filter, seconded by Council Member Yip, to authorize payment of bills for the period 11/23/11 through 11/30/11, ACH transfers for the period 11/23/11 through 12/12/11, and payroll for the period 11/13/11 through 11/26/11. Motion carried without a negative vote with Council Member C. Reimer excused.

LICENSE APPLICATIONS

Motion made by Council Member Loomis, seconded by Council Member Yip, to approve the appointment of Ryan L. Olsen as agent for Bonus, Inc., dba Olsen's Piggly Wiggly at W61 N286 Washington Avenue. Motion carried without a negative vote with Council Member C. Reimer excused.

CONSIDER RESOLUTION 2011-11 AMENDING THE 2012 BUDGET FOR EMPLOYEE BONUSSES

Council Member Loomis asked for this item to be on the agenda. After the last Common Council meeting he was very satisfied that the Council was able to limit the tax increase to slightly under 3%. Subsequent to the meeting, he thought that the City is not serving some of their best employees well.

His rationale is that the City is paying the WRS contribution (5.9%) in full for union employees through 2012. The Light & Water Commission recognized that in 2013, all employees will be paying 5.9% of their salary for the WRS contribution. The utility made the decision to transition the contribution by paying 50% in 2012. He was in agreement and all employees at the Utility are non-union.

The employees that are getting the short end of the stick are the City's best employees at City Hall. The Council made an action at the last Council meeting to pay 13% (\$11,000) of their WRS contribution for 2012 compared to 50% at Light & Water and 100% for union employees, as part of their contracts. This is sending the wrong message to some of the best employees saying that they are not getting the same treatment. He stated that it is appropriate to compensate the top performers equivalent to what Light & Water is doing at 50% of the WRS contribution as a bonus rather than the 13% as approved. This comes out to \$29,000. He has not agreed to take funds out of the general fund for operational expenses in the past; however, this is not an ongoing operational expense. He brought attention to a table that shows the budgeted payroll costs vs. the actual since 2005. Almost every year, except for 2009, there has been a significant difference because of terminations and retirements, creating this gap. The average difference per year is approximately \$77,000. In the case that there are no terminations or retirements this year, a one time expense of \$29,000 coming from the General Fund fund balance, the City will still be comfortably above the 2 – 3 month policy for the fund balance. It is good to have the higher fund balance to help with the bond rating when borrowing money.

Motion made by Council Member Loomis, to adopt Resolution No. 2011-11 amending the 2012 budget for employee bonuses with an amended amount of \$29,000 for the fund balance and performance bonuses. Motion seconded by Council Member Radtke.

In answer to Mayor Myers' question, Council Member Loomis stated that the \$29,000 is in addition to the \$11,000 already budgeted to fully fund the 50% of the employees WRS contribution as an employee bonus.

Mayor Myers stated that the Common Council went through the budget and there was an opportunity to make this proposal. He disagreed that this is only a one-time fund balance expense. He questioned whether the Common Council will still believe it is inequitable when the Police Department won't have to pay.

Council Member Yip stated that the Common Council discussed monitoring the available funds during the year and possibly making a larger contribution if funds were available.

Motion carried on a roll call vote with Council Members R. Reimer, Filter, Radtke, Maher and Loomis voting aye, Council Member Yip voting nay, and Council Member C. Reimer excused.

CONSIDER ELIMINATING AND/OR INCREASING EMPLOYEE FURLOUGH DAYS FOR 2012

Council Member Radtke was not present at the last Council meeting due to illness when the decision was made to institute furlough days. He stated that he is personally not in favor of furlough days and they ran their course.

Motion made by Council Member Radtke to eliminate employee furlough days for 2012.

Mayor Myers questioned the point of order whether Council Member Radtke could make this motion. He opined that it was a re-consideration to some extent.

City Attorney Vance stated that it is not a re-consideration and this action can be done at any point in time. It is a new motion.

Mayor Myers requested that the motion include how the furlough days will be funded.

Council Member Radtke recommended using the fund balance or reducing the amount for legal fees.

In answer to Council Member Radtke's question, City Attorney Vance stated that the legal fees have been reduced because mediation has stalled. Her fees are tied to the amount of litigation and issues in the City. The City budgeted the same amount for legal fees for 2012 as last year.

The motion was seconded by Council Member Maher. No vote was taken on this motion.

In answer to Council Member R. Reimer's question, City Administrator Treasurer stated that she planned to have the employees plan their days off with their supervisors, similar to a vacation day and each department will determine how they will be taken.

Council Member Filter stated that everyone loses when a Council Member is not present; however, furlough days were discussed at length and the Council reached a compromise of 1.5 days.

Mayor Myers reiterated that the Federal government has instituted a pay freeze for three years and even with the 1.5 furlough days, the City employees will still get on average a 2% pay increase. The furlough days would reduce the pay increase from 2.5% to 1.9%.

Council Member Loomis stated that he was not in favor of changing the furlough days. He recognizes that 1.9% is still better than many employers are doing. He is also in favor of furlough days because it is applied to all employees and creates a certain fairness.

Council Member Radtke said the Council should keep in mind that the Village of Grafton has a grievance filed against them for furlough days.

Mayor Myers stated that the City of Milwaukee had a court case filed against them and lost.

City Attorney Vance stated that 1.5 furlough days is within the legal limits.

City Administrator/Treasurer Mertes asked if the Council would consider holding off instituting furlough days until after April or May to see how the actual budget numbers are compared to the proposed budget.

Council Member Filter stated that City Administrator/Treasurer Mertes could hold off administering the furlough days at her discretion as long as it falls into the budget.

City Administrator/Treasurer Mertes will discuss the furlough days with the Common Council in April or May 2012.

Council Member R. Reimer asked if the Council could table this motion to a date certain.

Mayor Myers stated the motion is to eliminate furlough days.

City Attorney Vance stated that a motion could be made to postpone a decision to a date certain.

Motion made by R. Reimer, to postpone the consideration to eliminate employee furlough days until the June 2012 Council meeting. Motion was seconded by Council Member Loomis and carried with Council Members Yip, Loomis, and R. Reimer voting aye, Council Members Maher, Filter and Radtke voting nay and Council Member C. Reimer excused. Mayor Myers broke the tie by voting aye.

CONSIDER SENDING DIRECTIVE TO THE LIGHT & WATER COMMISSION REGARDING EMPLOYEE BONUSES

Mayor Myers stated that this is on the agenda to address an equity concern. If this is not approved, he suggests that there be more coordination in the future with the Light & Water Commission in regard to salaries, payroll, and how the employees are treated. Even though they under PSC rules and operate separately, they are all City employees.

There was no further discussion.

CITY ADMINISTRATOR/TREASURER'S REPORT - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Filter thanked Superintendent Boerner for doing a good job on leaf pickup this fall.

MAYOR'S REPORT

Mayor Myers asked the Common Council to patronize the businesses in the City during the Holidays and all year long.

ADJOURNMENT

Motion made by Council Member Filter, seconded by Council Member Yip, to adjourn the meeting at 7:53 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk