

**CITY OF CEDARBURG
COMMON COUNCIL
December 13, 2010**

**CC20101213-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 13, 2010 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Council President Kinzel called the meeting to order at 7:02 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 (Arrived at 7:05 p.m.), Council Members Chris Reimer, Ron Reimer, Paul Radtke, Michael Maher, Kip Kinzel, 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, Light & Water General Manager Dale Lythjohan, Parks, Forestry and Recreation Director Mikko Hilvo, Library Director Mary Marquardt, Library Board Chairperson Sue Karlman, Library Board Member Steve Ruggieri, Deputy City Clerk Amy Kletzien, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Council President 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 C. Reimer, seconded by Council Member Maher, to approve the minutes of the November 29, 2010 meeting. Motion carried without a negative vote with Council Member Filter excused.

Mayor Myers arrived at 7:05 p.m.

PROCLAMATION

Mayor Myers issued a Proclamation expressing gratitude to the estate of Dr. Ivan and Gloria Laubenheimer for their recent donations.

COMMENTS & SUGGESTIONS FROM CITIZENS – None

CONSIDER MAYOR MYERS' APPOINTMENT TO THE LIGHT AND WATER COMMISSION

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to appoint David Pagel to the Light & Water Commission. Motion carried without a negative vote with Council Member Filter excused.

CONSIDER ORDINANCE NO. 2010-23 AMENDING SEC. 3-6-3 TO 3-6-9 OF THE MUNICIPAL CODE ADJUSTING THE IMPACT FEES FOR SWIMMING POOL FACILITIES, RESERVE CAPACITY AT THE WASTEWATER TREATMENT PLANT, BIOSOLIDS, MANAGEMENT FACILITY, LIBRARY FACILITY, POLICE DEPARTMENT FACILITY, PARK FACILITIES, AND WATER SUPPLY FACILITIES; AND ORDINANCE NO. 2010-14 AMENDING SEC. 9-2-6(c) UPDATING AND ADJUSTING THE SANITARY SEWER CONNECTION FEE BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES

Council Member R. Reimer questioned why a single-family residential dwelling unit is subsidizing two- to four-family residential dwelling units by paying 70% more in Impact Fees for the swimming pool facilities, as an example.

City Attorney Vance stated that the Impact Fees are based on State Statute. To change the Impact Fees in substance there needs to be a Needs Assessment and Public Hearing, which was done in 2001. She stated that the City should have another Needs Assessment done.

Council Member Loomis stated that next year it will be 10 years since the Impact Fees were set-up and they are probably out-of-date. As he recalled, detailed cost accounting is done using demographics to establish the ratio.

Director Wiza stated that Virchow Krause was involved in the process and they look at population and information from SEWRPC. The report is on file and it was determined that the average is 2.9 persons per residential home, 2.0 for a duplex, and 1.7 for a multi-family unit. The typical population in a single-family home is greater than a multi-tenant unit.

Mayor Myers stated that the Impact Fees should be reviewed and asked Director Wiza to get a cost estimate from Virchow Krause to update the Needs Assessment for the Impact Fees.

Council Member R. Reimer stated that the Needs Assessment needs to look further and realize the impact of extended family and grandchildren.

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to adopt Ordinance No. 2010-23 amending Sec. 3-6-3 to 3-6-9 of the Municipal Code adjusting the Impact Fees for Swimming Pool Facilities, reserve capacity at the Wastewater Treatment Plant, Biosolids, Management Facility, Library Facility, Police Department Facility, Park Facilities, and Water Supply Facilities; and Ordinance No. 2010-24 amending Sec. 9-2-6(c) updating and adjusting the

Sanitary Sewer Connection Fee based on the Construction Cost Index published in the Engineering News Record and calculated based on the annual increase in the CCI Indices.

Council Member R. Reimer stated that per residential unit is noted in all sections except for Section 3-6-7 Police Department Facility and needs to be added to this section where applicable on page 3 for consistency. Also Section 3-6-9 Water Supply Facilities needs to have the spelled out dollar amounts removed after the figures because they are not spelled out in any other section.

Motion to approve the Ordinance as amended carried without a negative vote with Council Member Filter excused.

CONSIDER ORDINANCE NO. 2010-25 ANNEXING THE PROPERTY AT 7411 WESTERN AVENUE TO THE CITY OF CEDARBURG

Motion made by Council Member R. Reimer, seconded by Council Member Kinzel, to adopt Ordinance No. 2010-25 annexing the property at 7411 Western Avenue to the City of Cedarburg. Motion carried without a negative vote with Council Member Filter excused.

CONSIDER CERTIFIED SURVEY MAP (CSM) DEDICATING 40' OF RIGHT-OF-WAY AT 7411 WESTERN AVENUE

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to approve Certified Survey Map (CSM) dedicating 40' of right-of-way at 7411 Western Avenue. Motion carried without a negative vote with Council Member Filter excused.

CONSIDER PROPOSED COMPREHENSIVE PARK AND OPEN SPACE PLAN FOR THE CITY OF CEDARBURG AND RESOLUTION NO. 2010-21 ADOPTING THE PLAN

Motion made by Council Member R. Reimer, seconded by Council Member Radtke, to approve the Comprehensive Park and Open Space Plan for the City of Cedarburg and Resolution No. 2010-21 adopting the Plan.

Director Hilvo stated that this is a five-year plan. He reviewed the following with the Common Council:

- Page 5 discusses developing a major projects program which would study the feasibility of the following projects:
 - Outdoor Sports Complex
 - Year-round shelter
 - New Playground at Cedar Creek Park
 - Indoor Soccer and soft/hard ball practice facility
 - Indoor recreation/aquatic center.
- Establish a “Friends of Cedarburg Parks” organization.
Consider selling City Entrance Park (City Attorney Vance stated that the City Entrance Park could not be sold if it is deed restricted or an official City Park).
Study the removal or relocation of Skate Board Park.

- Page 6 discusses the following Planning Process of the Comprehensive Park & Open Space Plan.
 - Staff and consultants toured the parks and reviewed their condition.
 - A “hopes and concerns” meeting was held with the Parks, Recreation and Forestry Board.
 - A stakeholder meeting was held to solicit input from user groups.
 - A citizen opinion survey was conducted.
 - Based on the above, a list of major projects was developed by staff and the consultant.
 - The Parks, Recreation & Forestry Board met again to review the above and to prioritize the major projects.
 - Draft Report.
 - Public Hearing.
- Page 45 discusses the City of Cedarburg Park Land Needs.
 - The 2010 acreage deficiency is 40.2 acres.
 - The 2015 acreage deficiency is estimated to be 61.8 acres. If the school land is added, then the deficiency would be 38.8 acres. The result is that the City needs to acquire some additional open space.
- Page 51 displays the Recreation Facility Analysis. The current minimum needs are one tennis court, baseball diamond, and football and soccer fields.
- Page 53 explains that the Parks Department conducted a survey of public opinion.
 - The most valuable parts of the parks is playgrounds for kids, baseball fields, green space and well maintained parks in that order. Music in the park was very important.
 - The most visited park is Cedar Creek Park.
 - Specific problems with the parks are expanding playground equipment, geese droppings, need for new bathroom facility at Cedar Creek Park.
 - The overall impression of the parks is good for ball diamonds, trash collection, overall grounds keeping, park shelter maintenance, swimming pool, and landscaping. Some of the fair rated items such as the nature trails will require the removal of buckthorn and invasive species that will be addressed to make them usable for the community.
 - Items that the Community would be in favor of developing are ball diamonds, football fields, and soccer fields.
 - The Community was in favor of having an enclosed heated City shelter in the future along with an outdoor sports complex, indoor aquatic center, and indoor soccer fields.
 - The trail system is currently meeting the needs of the community but does need some expansion.
 - Mini-parks are discouraged and should be reviewed carefully and larger neighborhood parks should be considered.
- Page 68 takes a look at Park Development Cost by Residential Type and it recommends that park impact fees should be \$2,000 for a single home in 2015.
- Page 78 lists several recommendations:
 - Expansion of the Trail System
 - Stop development of Mini-parks

- Concentrate on Park Security and Safety involving visibility, proximity, lighting, screening, materials and surveillance.

In answer to Council Member R. Reimer's question, Director Hilvo stated that the Impact Fees that were adopted this evening do fall short of \$2,000 per single family development because that is the goal for 2015.

In answer to Council Member C. Reimer's question, Director Hilvo stated that the only way to keep geese out of the parks is to hire a company who specializes in this service and it is quite costly.

Council Member Maher stated that there is an error on page 24, third paragraph, which states that the Interurban Trail System is a multi-purpose trail system that will eventually link the City of Cedarburg with other communities in the region. This has already been accomplished.

Council Member R. Reimer confirmed that the approval of this Park and Open Space Plan does not automatically approve any of the mentioned projects.

Motion carried without a negative vote with Council Member Filter excused

CONSIDER PARK DESIGN AT THE TOPVIEW TRAIL SUBDIVISION

Director Mikko stated that the one acre park planned for Topview Trails Subdivision is estimated to cost \$50,000-\$55,000. This includes a poured-in-place surface, which will save the City in maintenance costs into the future.

In answer to Council Member Loomis' question, Director Hilvo stated that the park will be located along Bridge Road on the west side of the subdivision.

The recommended play equipment as presented is appropriate for 2-12 year olds.

Council Member C. Reimer suggested that a swing set is appropriate for all ages and should be added to the park.

In answer to Council Member C. Reimer's question, Director Hilvo stated that a swing set would cost approximately \$1,500 - \$2,500 for a four bay set with two regular seats and two bucket seats.

In answer to Council Member Kinzel's question, Director Hilvo stated that a swing set will require a 16' safety area around the swings and will increase the size of the poured-in-place surface.

Director Hilvo stated that the addition of a swing set and the additional poured-in-place area will add \$5,000-\$6,000 to the project.

In answer to Council Member Radtke's question, Director Hilvo stated that the poured-in-place surface will last approximately ten years.

Council Member C. Reimer opined that it is reasonable to spend 50% of the Impact Fees or \$60,000 on the park for Topview Trails to include the recommended play set, swing set, and poured-in-place surface. This is also important because of the traffic on Wauwatosa Road and the added danger of children crossing the street to go to another park.

Council Member Loomis agreed. He confirmed with City Administrator/Treasurer Mertes that the 5-year Capital Plan Budget will need to be adjusted because this park will be built sooner than it was planned.

Motion made by Council Member C. Reimer, seconded by Council Member Loomis, to approve the presented play structure at the Topview Trail Subdivision with the addition of a swing set with four bays and a poured-in-place foundation for a cost not to exceed \$60,000. Motion carried without a negative vote with Council Member Filter excused.

CONSIDER CONSTRUCTION PLAN FOR A TREATMENT FACILITY AT WELL #4

Cedarburg Light & Water General Manager Lythjohan presented the plans and elevation of the water treatment addition at Well #4. The Treatment Facility will remove vinyl chloride contamination in the drinking water. One of the key provisions is putting the entire facility inside a building. The importance is to be a good neighbor to the neighborhood. The tower based system would have required a tower of over 40 feet in height, and would have been taller than the existing reservoir. The building was also the least cost option. The addition will be sited on the north side of the existing building, and will have an exterior appearance to match (as well as practical), the existing brick exterior. If the Common Council approves this project, the Commission will be looking to award the successful bidder at their Commission meeting on Monday, December 20. The goal is to begin construction in January and to finish the project by June 15.

In answer to Council Member C. Reimer's question, General Manager Lythjohan stated that the aeration structure is capable of removing significantly higher levels of chemicals than are present and it will be built to handle well into the future.

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to approve the construction plan for a Treatment Facility at Well #4.

In answer to Council Member Maher's question, General Manager Lythjohan stated that it would be difficult to repurpose the building once water is clean. Other aeration facilities for Wells #3 and #5 were installed in 1991 and they are still being used for groundwater remediation in the area.

Council Member C. Reimer questioned whether the water from Well #4 could be pumped to Lincoln Blvd.

General Manager Lythjohan stated that a dedicated water main would need to be built at \$100 per ft. The proposed building is the least cost option.

Mayor Myers stated that it may take a long time to clean up the area surrounding the well.

General Manager Lythjohan stated that a well has over a 100-year life. He doesn't think the facility will be there that long.

Council Member Kinzel stated that it will protect the water supply from other contaminants as well.

In answer to Council Member Radtke's question, General Manager Lythjohan confirmed that any detectible chemical from the landfill will be stripped from the water in levels five times of what was found at the landfill. This system will take care of any contaminant that can be stripped with air.

Motion carried without a negative vote with Council Member Filter excused.

CONSIDER TOWN OF CEDARBURG'S PROPOSAL TO PROCEED WITH MEDIATION IN CLOSED SESSIONS OF EACH MUNICIPALITY WITH THE MEDIATOR MOVING BACK AND FORTH BETWEEN THEM

Council Member Loomis stated that it is known that the Town of Cedarburg does not like to share information with the public. The City tries to be as open as possible with reasoning and discussions with the Town. He opined that the City should express favor in the Town continuing with mediation; however, the City is not willing to do our end of the shuttle diplomacy in closed session. The Town may conduct their portion of the mediation in closed session but the City will conduct their portion in open session. This will be consistent with the City's past practice.

Council Member Radtke stated that there is no reason for mediation to be in closed session. He does not mind Council Member Loomis' recommendation; however, he sees no reason for it. He expressed concern for the judge not sharing everything the Town communicates in closed session because it is closed and he may not be willing to do that.

City Attorney Vance stated that she has done mediation and you only share the information if they give permission to share. At some point in the process either side may go into a closed session for occasional, exceptional reasons to discuss an offer.

Council Member Radtke stated that a very broad picture is being discussed and it should be open to the public at this point.

Council Member R. Reimer agreed that the mediation should be conducted in open session on both sides.

Council Member Kinzel stated that he does not want the City to be perceived as the bad guys because we won't agree to their discussions in closed session. He supported Council Member Loomis' suggestion to allow the Town to have their portion of the mediation in closed session.

Council Member Radtke opined that the City will not be perceived that way for wanting all the discussion in open session.

Mayor Myers asked if there was a reason to mediate at this point.

Council Member C. Reimer said the Council agreed to mediate after hearing from the DNR.

Council Member Loomis stated that the City should hear from the DNR within a couple of weeks.

City Attorney Vance stated that what was agreed on in mediation last time did not come to fruition. The City and Town can always mediate; however, she opined that the Prochnow Landfill discussion will be a long-term process. To-date, the DNR has not reviewed the documents. Possibly in a month or so, the next step will be presented.

Council Member Radtke stated that the Town has said no to the Senior Center, sharing Parks & Recreation activities, and all of the City's ideas. The Town only wants to talk about their concerns.

Mayor Myers opined that the Town only wants a boundary agreement. They do not want to be held accountable for what they say in open session; thereby, wanting to hold their portion in closed session.

Council Member Kinzel would like to hear the Town say that they want to take away the people's right to annex into the City. Anything the Town proposes will be heard in open session because the City will be open.

Council Member Loomis stated that the Town has demonstrated bad faith; however, it does not serve the City's interest not to mediate. It would be a benefit to have some of the mediation in open session.

Council Member R. Reimer stated that it is wrong to shuttle back and forth between parties in closed session. Normal mediation is not conducted in this manner. Only adversarial relationships where you don't care about the result of the negotiations are done in closed session. Time needs to be spent together in open session discussing why we can't work together as an overall community as in the past. The mediation should benefit the parties in establishing a relationship between the Town Board and the Common Council.

Council Member Radtke stated that it is his goal to bring the communities together.

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to reject the Town's proposal, that we proceed with mediation where both bodies are in closed session for each municipality and we shuttle back and forth, on the basis that the Common Council will not conduct business in closed session as the City of Cedarburg.

Council Member R. Reimer asked to add that he does not agree with the shuttle method.

Mayor Myers suggested issuing a press release on Tuesday.

City Attorney Vance stated that the City does not have to make a negative motion.

In answer to Council Member Loomis' question in regard to shuttling the mediation, City Attorney Vance stated that this is an acceptable form of mediation in personal injury cases, for instance. She

stated that the last mediation session gave the impression that there was going to be progress between the City and Town of Cedarburg and the face-to-face meeting was working. At times, she has separated two parties during mediation; however, the ultimate goal is to have them meet together at the end to move forward.

In answer to Mayor Myers' question, Council Member Loomis stated that the City would benefit with continued mediation and discussing shared services.

Mayor Myers stated that the City is saying no to their desired method of mediation.

Motion made by Council Member R. Reimer, seconded by Council Member C. Reimer, to call the question. Motion carried without a negative vote with Council Member Filter excused.

The motion to reject the Town's proposal, that we proceed with mediation where both bodies are in closed session for each municipality and we shuttle back and forth, on the basis that the Common Council will not conduct business in closed session as the City of Cedarburg. Motion carried without a negative vote with Council Member Filter excused.

Council Member Radtke stated that the Town and City mediation should be held in open session. He is not willing to let the Town go into closed session while the City stays in open session. There is too much manipulation that can happen even though there is a mediator. The Town and City deserve to have the mediation in open session.

Mayor Myers questioned what there is to mediate because nothing was followed through on from the last session.

Council Member Kinzel stated that the mediator will probably ask the Town why the progress that was made at the last meeting fell through and the Town should answer this question.

Council Member C. Reimer suggested sending a letter to the Town stating that mediation should wait until we hear from the DNR and mediation should continue in open session.

Council Member Loomis opined that there is no difference between the Town conducting their mediation in closed session and being able to caucus. He would like to continue mediation with the presumption that it is held in open session with the Town's option at certain points to caucus.

Council Member C. Reimer stated that they were able to caucus at the last mediation.

Council Member Loomis suggested telling the Town that the City is agreeable to continuing the mediations under the originally agreed upon parameters.

In answer to Council Member Loomis' question, City Administrator/Treasurer Mertes stated that the Town was going to submit three dates for mediation and they were not given to-date.

City Attorney Vance stated that discussion on the Prochnow Landfill is on hold, bringing up the question of what should be mediated at the next session.

Council Member Kinzel stated that many constituents would want the City Council to meet with the Town regardless of the discussion.

Council Member Loomis suggested giving the Town three dates to continue mediation.
Council Member Maher stated that he felt strongly about continuing mediation.

After discussion by the Common Council, City Attorney Vance will tell the Town that the City would like to meet in January under the parameters which the mediation was set up initially with the possibility of caucusing.

Council Member Loomis opined that the City is being flexible and it is in the best interest of the City to continue with the process and to meet in January.

LICENSE APPLICATIONS

Motion made by Council Member C. Reimer, seconded by Council Member Kinzel, to approve the application of Don Benito, LLC, Michael Ortiz, agent, for a Class "B" beer and "Class C" wine license at Don Benito, W61 N497 Washington Avenue. Motion carried without a negative vote with Council Member Filter excused.

Michael Ortiz asked if a friend with a Class B Liquor license in the City of Cedarburg could relinquish the license and have it be given to his business.

City Attorney Vance stated that a license goes with the person, so he would need to apply for it and the Council would determine, theoretically, that it be granted based on the waiting list or where it would best be used in the City. It is up to the Common Council. The person relinquishing the license could not designate who the license goes to.

Motion made by Council Member R. Loomis, seconded by Council Member C. Reimer, to approve a new Operator's License application for the period ending June 30, 2011 for Polly E. Raymond. Motion carried without a negative vote with Council Member Filter excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertens stated that the Employee Luncheon will be held on Wednesday, December 15.

Council Member Maher suggested that the City start discussions on the dams based on some of the recent correspondence with the DNR.

Director Wiza stated that he would be willing to update the Common Council at a future meeting.

COMMENTS & SUGGESTIONS BY CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT - None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member C. Reimer, seconded by Council Member Radtke, to adjourn to closed session at 8:40 p.m. pursuant to Wis. Stat. 19.85(1)(e) to deliberate or negotiate the investing of public funds or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, more specifically to discuss the agreements with Mercury Marine and negotiations related to the Plant No. 2 site and Library building and 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 regarding a variance issue. Approval of closed session minutes of 11/29/10. Motion carried without a negative vote with Council Member Filter excused.

RECONVENE TO OPEN SESSION

The meeting did not reconvene to open session.

ADJOURNMENT

Motion made by Council Member Kinzel, seconded by Council Member Maher, to adjourn the meeting at 9:45 p.m. Motion carried without a negative vote with Council Member Filter excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk