

**CITY OF CEDARBURG  
COMMON COUNCIL  
December 9, 2013**

**CC20131209-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 9, 2013 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel 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 Kip Kinzel, Council Members Chris Reimer, Ron Reimer, Art Filter, Paul Radtke, Doug Yip, Mike O’Keefe

Excused - Council Member Mike Maher

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Kaye Vance, Director of Engineering and Public Works Tom Wiza (left at 7:30 p.m.), Deputy City Clerk Amy Kletzien, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor 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 Radtke, to approve the November 25, 2013 Common Council minutes. Motion carried without a negative vote with Council Member Maher excused.

**COMMENTS & SUGGESTIONS FROM CITIZENS** - None

**PUBLIC HEARING/PRESENTATIONS**

**PUBLIC HEARING – CONSIDER ORDINANCE NO. 2013-32 AMENDING SEC. 13-1-56(d) OF THE ZONING CODE TO ADD “KENNELS (COMMERCIAL)” AS A CONDITIONAL USE IN THE B-4 OFFICE AND SERVICE DISTRICT**

Mayor Kinzel declared the public hearing open to consider Ordinance No. 2013-32 amending Sec. 13-1-56(d) of the Zoning Code to add “Kennels (Commercial)” as a Conditional Use in the B-4 Office and Service District at 7:04 p.m. Proper legal notice had been given with publication in the *News Graphic* on November 14 and 21, 2013.

Cathy and Keith Reid, N66 W6364 Cleveland St., owners of Flying Fur stated that the growth of their business requires them to seek a larger facility for their operation. They are considering relocating their business to a property that is zoned B-4 Office and Service District, and the Zoning

District does not allow any pet-related operations. They are requesting that the B-4 Zoning District be amended to include “Kennels (Commercial)” as a Conditional Use so they may be able to apply for a Conditional Use permit for a building on Lincoln Blvd. They want to have a small daycare and eight overnight kennels. The owner of the property supports any changes required to allow the pet grooming as a Conditional Use in the B-4 Zoning District.

Council Member Radtke stated that earlier this year, Section 13-1-240(b)(158) defining “Kennels (Commercial)” was adopted after considerable discussion by both the Plan Commission and Common Council. The conditional use permit process will specify the nature of their business.

Council Member R. Reimer confirmed that the definition of kennel as defined in the Code does not give the owners the right to all of the uses.

Keith Reid stated that they will have a small operation with four kenneling rooms.

Council Member C. Reimer stated that the veterinarian on Pioneer Road already has a kennel, which sets a precedent.

Mayor Kinzel said that this is not a question of whether or not the Council wants to allow kenneling in this specific area.

In answer to Council Member Yip’s question, Keith Reid stated that they would take a maximum of eight dogs overnight.

There were no questions or comments from the public.

Motion made by Council Member Radtke, seconded by Council Member C. Reimer, to close the public hearing at 7:11 p.m. Motion carried without a negative vote with Council Member Maher excused.

Motion made by Council Member R. Reimer, seconded by Council Member Radtke, to adopt Ordinance No. 2013-32 amending Section 13-1-56(d) of the Zoning Code to add “Kennels (Commercial)” as a conditional use in the B-4 Office and Service District. Motion carried without a negative vote with Council Member Maher excused.

### **PRESENTATION/DEMONSTRATION OF THE CITY’S NEW WEBSITE**

City Administrator/Treasurer Mertes stated that the City’s former website was developed in the 90’s and the City does not have any support for the site because the developer went out of business.

The new website was presented by Patrick Strickler of the Blue Waters Group and Jenny Bublitz of Bublitz Creative.

Patrick Strickler explained that the objectives were to meet the needs of residents, stimulate business interest, and to provide information to visitors. The strategies used to leverage Cedarburg’s quality of life were to add to the residents’ pride, serve visitor’s needs, and provide businesses with useful information. The process encompassed establishing goals, objectives and strategies; analyzing the current site; reviewing the competitive environment; determining the City’s

needs, seeking public input; developing a new site schematic; adding a local designer and copy writer; and developing, testing and launching. The website went live on December 9, 2013.

Jenny Bublitz of Bublitz Creative presented the actual website to the Council. She explained that the structure is easy with an open look and feel. The dominant color is green to provide an open positive look. The top of the website features a utility menu for Residents, Visitors, and Businesses for quick access. The landing zones are comprised of City Government; Public Safety; Parks, Recreation & Forestry; Online Services; and News Media. The homepage features 10 images of Cedarburg that can be changed. Located below the pictures are larger icons for Residents, Visitors and Businesses to use to find the information they need. Breadcrumb navigation provides easy access to previously viewed pages, a related pages menu, and a search mechanism. Some of the text was authored and edited by Peg Edquist.

Patrick Strickler stated that the new website is an intuitive design and it can be changed or refined along the way.

Council Member C. Reimer stated that it would be beneficial to have a focus on the recycling calendar on the refuse and recycling page rather than the refuse calendar because residents forget more often which week is for recycling.

In answer to Council Member R. Reimer's question, City Administrator/Treasurer Mertes stated that City Clerk McHugh, Recreation Supervisor Bultman, Parks, Recreation and Forestry Director Hilvo, Administrative Assistant Amy Fischer from the Police Department and herself have been trained to update the website. Council Member R. Reimer stated that it is important to have an approval process to control future changes to the website.

Council Member C. Reimer suggested that a draft of any changes should be approved by City Administrator/Treasurer Mertes prior to publishing.

Ms. Bublitz then highlighted the rotating banner of community links along with news headlines, a calendar of events, and contact and search icons on the home page. She stated that the website is formatted to be responsive to different devices. It will size according to a PC, phone, tablet, etc.

Council Member Radtke stated that he liked the new updated website and he appreciated all of the time and effort put into the new site. The Council thanked Ms. Bublitz for a job well done.

Pat Strickler publicly thanked Greg Zimmerschied for leading him to this project.

## **NEW BUSINESS**

**CONSIDER ORDINANCE NO. 2013-33 AMENDING SEC. 3-6-3 TO 3-6-7 OF THE MUNICIPAL CODE ADJUSTING THE IMPACT FEES FOR LIBRARY FACILITIES, POLICE DEPARTMENT FACILITIES, WATER SUPPLY FACILITIES, PARK FACILITIES, AND WASTEWATER TREATMENT PLANT; ORDINANCE NO. 2013-34 AMENDING SEC. 9-2-6(c) ADJUSTING THE SANITARY SEWER CONNECTION FEE; AND ORDINANCE NO. 2013-35 AMENDING SEC.14-1-84 ADJUSTING THE FEES IN LIEU OF PARKLAND BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN**

**THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES**

City Administrator/Treasurer Mertes explained that Ordinance No. 2013-33 adjusts impact fees, Ordinance No. 2013-34 adjusts the sewer connection fee, and Ordinance No. 2013-35 updates fees in lieu of parkland. These ordinances are updated in December of each year based on the annual increase in the Construction Cost Indices. This year's percentage increase is 2.72%.

Motion made by Council Member R. Reimer, seconded by Council Member C. Reimer, to adopt Ordinance No. 2013-33 amending Sec. 3-6-3 to 3-6-7 of the Municipal Code adjusting the impact fees for library facilities, police department facilities, water supply facilities, park facilities, and wastewater treatment plant; Ordinance No. 2013-34 amending Sec. 9-2-6(c) adjusting the sanitary sewer connection fee; and Ordinance No. 2013-35 amending Sec. 14-1-84 adjusting the fees in lieu of parkland based on the construction cost index published in the Engineering News record and calculated based on the annual increase in the CCI Indices. Motion carried without a negative vote with Council Member Maher excused.

**CONSIDER ORDINANCE NO. 2013-36 ESTABLISHING 2014 PAY RANGES FOR NON-REPRESENTED EMPLOYEES**

City Administrator/Treasurer Mertes explained that this ordinance adjusts the pay ranges for non-represented employees by 2%. This is the increase in wages that was included in the 2014 budget.

Council Member Radtke expressed concern for raising the lower end of the pay ranges every year.

Motion made by Council Member Yip, seconded by Council Member O'Keefe, to adopt Ordinance No. 2013-36 establishing 2014 pay ranges for non-represented employees. Motion carried without a negative vote with Council Member Maher excused.

**CONSIDER APPOINTMENT OF ELECTION OFFICIALS FOR THE PERIOD 1/1/14 THROUGH 12/31/15**

Motion made by Council Member C. Reimer, seconded by Council Member O'Keefe, to approve the appointment of Election Officials for the period 1/1/14 through 12/31/15. Motion carried without a negative vote with Council Member Maher excused.

**CONSIDER PROPOSED DEVELOPER'S AGREEMENT REGARDING TID#3**

City Attorney Vance stated that the Council received the draft Developer's Agreement, which includes the terms agreed upon by the Common Council including a \$250,000 cap and a five year deadline to complete construction.

In answer to Council Member Filter's question, City Attorney Vance stated that it is unclear whether a three story structure will be allowed because it needs to go through the review process.

Greg Zimmerschied stated that the Code previously approved 36 feet; however, recent changes amended it to allow three stories up to 36 feet.

In answer to Council Member Filter's question, City Attorney Vance stated that the description of the project will be included into the Developer's Agreement after it is reviewed by the Plan Commission.

Council Member Radtke confirmed his understanding of the process with City Attorney Vance. When the Developer's Agreement is approved, the developer will have five years to create two buildings that have a tax increment of \$950,000. Once this happens, the additional taxes from the increment go to pay the developer up to \$250,000.

City Attorney Vance confirmed his understanding and added that the City has to be paid first. The increment could come in before the two buildings are done and as the property increases in value.

In answer to Council Member Filter's question, City Attorney Vance stated that the City needs to agree to any building going beyond five years.

Council Member R. Reimer stated that the developer will know in the first year or two whether or not the buildings will be completed in five years and discussion should start at that point for an extension.

City Attorney Vance stated that a conceptual plan needs to be presented to the Plan Commission before the Developer's Agreement is finalized and it usually consists of more than a two paragraph description. She stated that the plan will need to come back to the Common Council after the Plan Commission does its review. The agreement needs to be final before it goes to the Joint Review Board.

Greg Zimmerschied understands that once the Developer's Agreement is signed, he is agreeing to backstop the City. If the worst case happens, and there is another recession and nothing happens within five years and if the Common Council decides after five years that they will not extend the TIF, he has agreed to pay the fees that the City incurred including fees to Ehlers and an appropriate amount of staff time (approximately \$23,000). The City will not lose any money.

At this point, Mr. Zimmerschied does not plan to develop any concept drawings for the Plan Commission or Common Council before the TID is approved because it is another added expense without knowing if there is going to be TID money available; he does not want to go down that path. His commitment to the City is quality and adding to the vitality of Cedarburg. He wants something to happen on the lot that has been vacant for at least 22 years. He is giving his financial commitment that in the worst case the City will not lose any money and both parties will have invested their time and it is also a learning experience for future TID's.

Mr. Zimmerschied asked to address some issues in the draft Developer's Agreement before the Common Council.

Council Member C. Reimer recused himself from this discussion and left the meeting at 8:05 p.m.

Council Member R. Reimer confirmed with City Attorney Vance that Mr. Zimmerschied's two paragraph description of his development is sufficient at this point for negotiating a Developer's Agreement.

Council Member Radtke cannot accuse the City of not doing their due diligence on new construction in the historic district. He is confident that with the review of the Landmarks Commission, Plan Commission and Common Council that the building designs will be reviewed thoroughly to meet the needs of the City.

City Attorney Vance noted Ehler's comments from an email to her were that if the development project has been formally submitted for City approvals that makes it easier. If not, the City and proposed developer should still try to provide as much information as is available to the Joint Review Board to provide a characterization of the expected development and need for public investment.

Council Member Filter asked if the project could be delayed due to a lack of a timely approval by the Landmarks Commission.

Mr. Zimmerschied stated that he is confident that the building designs that are brought forth to the Landmarks Commission will be approved. He understands that the Landmarks Commission will make a recommendation to the Plan Commission and the Plan Commission makes a recommendation to the Common Council. The Common Council will always have the final say on the design.

City Attorney Vance stated that the Landmarks Commission by Statute is almost elevated equally to the Common Council for approval on the front building on Washington Avenue. She reviewed the proposed timetable for the creation of TID #3, stating that the Plan Commission is scheduled to hold a public hearing on the Project Plan and approval of the TID boundary.

In answer to Council Member R. Reimer's question, City Attorney Vance stated that the Developer's Agreement that is decided on at this meeting will go to the Joint Review Board on February 3. The Plan Commission will hold a public hearing that evening on the Project Plan, which was developed by Ehlers. It will not be the actual design plan.

Mayor Kinzel stated that he can call a special meeting of the Plan Commission, if needed.

In answer to Council Member Filter's question, Mayor Kinzel stated that the design itself will be reviewed in spring. The question today is whether the Council agrees to entering into TID #3.

Council Member Radtke stated that the Common Council can approve the Developer's Agreement and TID #3; however, if the design is not approved the project could stop. There are no guarantees.

Council Member R. Reimer asked if the Common Council was in agreement that the Developer's Agreement will go to the Plan Commission for them to consider it as part of their composition of the project plan?

City Administrator/Treasurer Mertes stated that it will because it is part of the project plan.

Council Member R. Reimer stated that State law is not specific about the Developer's Agreement; however, the law talks extensively about the Plan Commission and what they have to do and when.

Mr. Zimmerschied began discussing his concerns about the Developer's Agreement with the Common Council.

Section 1, Item C. (The Developer understands that if TID #3 is not created, Developer shall reimburse the City for consultant costs related to the City's attempt to create the District.) He stated that he has never agreed to this item. He agreed if the City creates the District and he does not perform, then he will reimburse the City.

Council Member Radtke thought this was discussed and it makes sense.

City Attorney Vance stated that this item was meant to cover the City if the developer decides not to go through with the TID.

Mayor Kinzel stated that once TID #3 is created, the developer will have to reimburse the City if nothing is built.

Mr. Zimmerschied stated that if the TID #3 is not created or approved, he will not pay anything. If it is created and he fails to perform, then he will reimburse the City.

Mayor Kinzel stated that once the TID is underway, the City will be paid first.

City Attorney Vance added that: The developer shall reimburse "under any circumstances" the City for consultant costs related to the City's attempt to create the District.

Mr. Zimmerschied stated that his attorney has the right to review the language of the Developer's Agreement after any changes are made this evening. He said that he would be in favor of any reasonable fees and expenses. His intent is to repay Ehlers and appropriate City staff time if he fails to perform.

In answer to Council Member Filter's question, City Administrator/Treasurer Mertes stated that she is keeping track of City staff time on the project.

Mayor Kinzel stated that he would like the Council and Mr. Zimmerschied to agree on any discrepancies this evening.

It was the consensus of City Attorney Vance and the Common Council to remove the word not after TID #3 in Section I, item C.

City Attorney Vance stated that Mr. Zimmerschied is reserving the right to talk to his counsel.

In answer to Council Member O'Keefe's question, City Administrator/Treasurer Mertes stated that the TID is created on January 1, 2014. However, this process has to be completed before September 1, 2014.

In answer to Mr. Zimmerschied's question, City Administrator/Treasurer Mertes stated that the Joint Review Board will consider the approval in March and then it is retroactive to January 1, 2014.

Council Member Yip confirmed with City Attorney Vance that the basics can be reviewed this evening.

City Attorney Vance asked Mr. Zimmerschied if in the event the Joint Review Board does not approve the Developer's Agreement, if he feels that he is responsible for reasonable costs incurred.

Mr. Zimmerschied replied "no."

Mayor Kinzel said that the City is taking this risk. If the Joint Review Board does not approve the project, then the City will not be reimbursed.

Mr. Zimmerschied continued a review of his concerns and stated that he is open to any questions from the Council and he will answer in an open honest manner.

The biggest stumbling block for Mr. Zimmerschied is the fact that he would not be paid in the event that building one is successful and provides \$500,000 of increment. According to the terms at 25% he is entitled to a \$125,000 developer's incentive. He expressed concern for the possibility of another recession after the completion of the first building and building two does not get built. He does not understand why the punitive language states that if he does not do both buildings, if he does not improve the property in five years by \$950,000, he does not receive any incentive money. He opined that this is unfair. The 25% developer's incentive included in the TID is a big carrot for him to do something. Why would he not try his best over the next five years to make both buildings happen? He knows at the end of 5 years, depending on the Common Council at that time, that the carrot will be gone. He makes the same pledge tonight that if the TID goes through, he will do his best to make sure that both buildings are built of a quality nature on both the parcels within the five years. So why does the punitive language exist; he invests in the first building and is successful and for whatever reason the second building is not built; he receives no incentive? His costs did not go down, costs continue and that is why he is doing this. The rents are expensive downtown and they do not support the high cost of building, and he would like the Council to reconsider this.

Council Member Filter stated that he would like the Washington Avenue building done first.

Mayor Kinzel stated that the Washington Avenue building is most important to the City.

Council Member Yip stated that he understood the reason the Developer wanted the TID is the difficulty to build in the downtown historic district.

Mr. Zimmerschied stated that he does not have any control over these factors. He questioned why a restaurant has not come to him over the ten years that he has owned the property. He cannot control the rent required for a building in downtown. He cannot control the final tenant's interest in Cedarburg and that is why he and the City are in this together. It is something that no one can control and the reason for TIDs, which makes the project economically viable. He presently has a tenant lined up for the office building on Hanover Avenue. That building will go first because it is ready. He is trying to locate quality tenants for the space. The goal is to build a space that is not currently available in downtown Cedarburg. There are many beautiful historic buildings with limitations such as smaller rooms that are chopped up in size. He wants to build a building that will be attractive to hopefully a nice family restaurant or another Penzy's, etc. He wants something that

will add to the vitality in downtown. For whatever reason, downtown Cedarburg is not attractive to those tenants.

City Attorney Vance stated that there is flexible language in the agreement that does not hold the City to that kind of remedy. The City wants the property developed in five years. It also states that the City shall give the developer written notice of time to cure the delay and an agreement can be made that he is reasonably progressing towards the project. The other out is listed as options of the City, and the City ends the TID and all obligations to pay the cash grant to the developer going forward. The City shall give the developer 30 days written notice and time to cure such failure. No such notice is required if notice has previously been given by the City. If such failure is not a monetary default and cannot be cured within such 30 day period and if the Developer commences to cure such failure within the 30 day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed at the earliest reasonable date, then the failure will no longer be deemed as an Event of Default. It is a series of flexible options.

Mr. Zimmerschied confirmed with City Attorney Vance, that if he builds the first building with a \$500,000 increment, that the \$125,000 developers incentive would be due on that. However, if the second building cannot be built in five years, and the Common Council decides not to extend the TID, the agreement will allow him to be paid for the first building.

Council Member Radtke asked Mr. Zimmerschied if he is saying that the worst case scenario may be that he cannot build the second building, he wants to build it but it may take longer or he might be in the situation where he cannot build it at all.

Mr. Zimmerschied did not believe that would be the case. It is a matter of finding the anchor tenant. He is considering putting a citizen's group together. The City has always been good at raising money to save old buildings; maybe there is group that would be interested in a family restaurant to add to the dynamic of downtown Cedarburg. He is looking outside the box because he knows what he has been faced with over the last 10 years. He will work aggressively to complete the project; however, he cannot control a possible downturn where loans are hard to come by. He does not understand the punitive language stating that he would need to come before the Common Council to plead his case to get paid. He has increment and the City is better off than before. The project may not be where the City wants it to be, but he still added \$500,000 increment which will pay the City back their \$25,000.

Council Member Filter stated that he has always been under the assumption that two building would be built within five years. He would like to get the Washington Avenue lot built instead of having a farmer's market on the lot.

City Attorney Vance stated that the original plan to move the stone building was a big initiative, if you go back and review why this project started.

Council Member Radtke stated that he has been very supportive of the project; however, not having a building on Washington Avenue concerns him.

Mr. Zimmerschied explained his perspective by saying that if he does not build on Washington Avenue (the incentive is there and he will try his hardest because there is a 25% carrot hanging in front of him that will go away) he believes in economic incentives and he will be incented to do all

he can to make sure both buildings happen in five years. His goal is to do both buildings. Much like Attorney Vance protects the City's interests, he has to protect his interests. He has learned from the building on Washington Avenue and Western Road over the last ten years that so many things are out of his control. He cannot control how people view the south end of Washington Avenue, business cycles, cost of construction, and building smaller buildings with high dollars per square foot. His point is that he will be incented to do everything he can because once the window closes that 25% goes away and will make it more difficult to do build there. If the worst case happens, why penalize him? Why not pay him for what he has already done?

Council Member O'Keefe thought that the whole purpose of the TID was because the cost to build a building downtown was high. He thought the Hanover building was more beneficial to Mr. Zimmerschied and the Washington Avenue building would be more beneficial to the City.

Mr. Zimmerschied stated that the cost of building both buildings is the same except for the cost of remediation, excavation of soils, and extra footings on the Washington Avenue building. The historic aspect can add some costs but the Hanover building is also going to be a high cost per square foot building. Some costs that are being discussed are related to the fact that he is building on a small footprint, building codes continue to get more complex, more stairwells, there is a limited footprint to work with, and exits. All of these factors make the usable square footage go down. It is his intention to build both in a high quality manor. A TID is required for both parcels.

Mayor Kinzel understood that he will be held to a higher standard on the Washington Avenue building vs. the Hanover Avenue building by the Landmarks Commission; however, it is still one property. He questioned if the same high standard would be held on the Hanover Avenue building. It is to the City's benefit to have high quality buildings on both parcels.

Council Member Filter stated that he has received phone calls and he has told constituents that there will be a building on Washington Avenue. He understands that it will cost money with sprinkler systems and additional requirements. The plan from the beginning was very aggressive with two buildings in five years, now he is hearing that there may be conditions that prohibit this from happening.

Council Member Yip stated that his concern is that people will look at this project and say that he has his one building done and the TID is just for him on one property without the other building on Washington Avenue. The perception will be that Greg Zimmerschied got a "sweet deal." He is hearing this from constituents' phone calls.

In answer to Mr. Zimmerschied's question, Council Member Yip explained that the perception is that he is getting money from the City for his project. People may not understand the project, but their perception is that he is getting reimbursed through the City to build on that property.

Mr. Zimmerschied stated that is a true statement because he is getting a developer's incentive from the City through a mechanism that has been in place since 1976 to help projects like this. It is not necessarily a "sweet deal."

Council Member Yip stated that people are concerned that the back building will be built and nothing will be built on Washington Avenue. Their perception is that two buildings will be on the property.

Mr. Zimmerschied does not understand how the back building is a “sweet deal” for him. The investment and cost of both buildings will be almost the same. He stated that they are discussing a point that he does not think will happen and a worst case scenario. He is not asking for 10 years, he is asking for the agreed upon five years. If he needed to put a probability on the project, there is a 96% chance that both buildings will be built in the five years. However, who could predict the 2008 recession. If this happens again, a restaurant would pay an out clause rather than move ahead with the project. He does not want to be penalized in the event the worst case scenario happens.

Council Member Radtke agreed that perception is reality. He would almost prefer two separate TIDs because people will not understand.

Mr. Zimmerschied stated that possibly the project should be explained better. He believes that the average constituent will understand if a second building is not built in the event of another recession.

Council Member Radtke stated that the language should be in the agreement and the City is reasonable. If the economy fails, it can be discussed at that point. Without that language in the agreement the City will not have any protection.

Mayor Kinzel stated that the Council wants to make sure that there is a building on Washington Avenue, as much as possible. He agrees that one building on Hanover will pay off and it is an economic development tool that the City is choosing to use. This project is showing other developers that the City is willing to do these types of projects. He does not want people to perceive that the City is tough to deal with economically. The City has been working very hard to improve its reputation for future economic development. Each party is talking about worst case scenarios and if the worst happens, the City will still have \$500,000 of increment on the Hanover site and the City will be paid back for all of its costs.

Council Member Radtke wants his constituents to know up-front that there may not be a building on Washington Avenue. He understands that a bad economy cannot be benchmarked; however, this project concerns him.

Mayor Kinzel stated that the lot has been empty for ten years and the incentive is there for Mr. Zimmerschied to complete the project.

In answer to Council Member O’Keefe’s question, City Attorney Vance stated that the City would need to talk to Ehler’s to find out if it is possible to create two TIDs.

Mr. Zimmerschied thought that it was positive news that the City will definitely have a building on Hanover Avenue and he does not understand some of the perceptions. If the City keeps the current language in the agreement he will have a talk with himself that it will happen with a 96% probability and take a chance on the 4% probability that it will not.

Mayor Kinzel stated that the City would most likely have to do a complete re-analysis on the project if it were split into two different TIDs.

Council Member Radtke stated that he understood the risks that Mr. Zimmerschied is facing.

Mr. Zimmerschied thought if the overall percentage of the TID stays the same; it would pay out in the same number of years.

Council Member Yip stated that Ehler's projection used \$950,000 of increment and if only one building is done that number would change.

Mr. Zimmerschied stated that he does not understand why there is a cap of \$250,000 on the incentive. There is an empirical cap on the project and possibly there could be a \$1 million in each building or \$2 million of increment on both. This is probably the maximum that he could provide given zoning and other restrictions. Twenty-five percent of \$2 million would be \$500,000. Mr. Zimmerschied stated that the cost of these buildings on a per-square-foot basis is so high that they are not economically viable with current Cedarburg market rents. If it is capped at \$250,000 with an overall increment of \$1 million, the City wants to maximize their tax revenue because there are not many parcels left. The \$250,000 acts as a disincentive to him. If the Hanover building is assessed at \$500,000, it may not be worth it for him to spend more on the Washington Avenue building because he would not be getting any more help with additional square footage or assessable value. It would be better for both parties to try to maximize what can be built on the two parcels.

Mayor Kinzel agreed that Mr. Zimmerschied will not have an incentive to go beyond the basics of the agreement.

Council Member Radtke stated that the timeline is tough, especially if the project is expanded.

Mr. Zimmerschied stated as long as the increment goes up and the developer's percentage is the same, it should pay off about the same time.

Council Member R. Reimer said the current language was used to protect the City from the project becoming open ended. The City needs to make a choice between time and money.

City Administrator/Treasurer Mertes stated that the maximum life of the TID is 27 years. This was based on the value of the increment on the January 1 following the year the project is complete. If he completes the project in 2018 then the value on January 1, 2019 will be paid in an increment of 25% of the project.

Council Member O'Keefe confirmed with City Administrator/Treasurer Mertes that the final number is unknown; however, it will be based on the property value upon completion.

In answer to Council Member Radtke's question, City Administrator/Treasurer Mertes stated that it would stay stagnant at the point of completion.

Council Member R. Reimer confirmed with City Administrator/Treasurer Mertes that Mr. Zimmerschied has to complete two buildings with \$950,000 of increment.

City Attorney Vance stated that there are not many cash grants for a single lot around the State.

Council Member Radtke can agree to lift the incentive cap on the project as long as Ehlers can confirm that the numbers will still work out at the same time.

Mr. Zimmerschied brought attention to the Financing Overview section of the draft Developer's Agreement and stated that it is a very general statement. He is not sure that it is stated correctly because the wording is: The payment amount is calculated at 25% of the equalized increment valuation - (This will only be calculated once). The rest of the sentence reads: less any prior year payment – (does not seem correct).

City Administrator/Treasurer Mertes explained that if the first building is finished in the first year and the City would start paying Mr. Zimmerschied that it needs to be recognized that the City already made a payment to him.

Council Member Yip confirmed that this will be reviewed by Ehlers and it will be worded in such a way that anyone will be able to understand it.

City Attorney Vance confirmed with the Council that the \$250,000 amount should be removed.

Council Member R. Reimer explained that five years is the maximum amount of time that he has to spend a minimum of \$950,000. If within five years he spends \$2 million, he asked how long and how much the City will pay.

Mayor Kinzel stated that the City still agrees to the 25%, but he questioned for how long.

City Administrator/Treasurer Mertes stated that it would be approximately 18 years.

Mayor Kinzel stated that this needs to be reviewed by Ehlers to make sure that the numbers and time period still work.

In answer to Council Member R. Reimer's question, City Administrator/Treasurer Mertes stated that 27 years or the day after the last expense occurred explains "until TID #3 reaches its maximum allowable life as specified in the Tax Increment law."

City Administrator/Treasurer Mertes stated that the 27 year clause could be helpful if there is a problem with the economy, otherwise it is expected to be paid in approximately 18 years as estimated by Ehlers.

Mayor Kinzel stated that the 27 years is a State law and it is protection for the City. The State allows this time period before the City has to pay the full amount in one lump sum. The distressed TIDs in the news refer to this.

City Administrator/Treasurer Mertes stated that the State may also allow the base values to be adjusted, so a municipality would not be in the hole to begin with on distressed TIDs.

In regard to the City's draft Developer's Agreement, City Administrator/Treasurer Mertes stated that the cash flow explanation will be in the agreement to show that it will work in a lower amount of years per their projection. It was based on last year's tax rate and extended for 27 years, which made the projection very conservative.

Council Member Yip asked if the payment to Mr. Zimmerschied will be capped at \$250,000?

City Attorney Vance understood that the Council wanted to take the cap out of the agreement.

Mayor Kinzel questioned why the City would cap the amount at \$250,000 if he wants to build \$2 million worth of increment. Why should he not get the 25%?

In answer to Council Member Yip's question, City Attorney Vance stated that it would be a pay-as-you-go cash grant. The City will pay so much money for so much increment.

Council Member R. Reimer asked that the City Cash Grant section be more specific.

City Administrator/Treasurer Mertes suggested the following wording: "The City shall pay a Cash Grant to the Developer which payments shall not exceed 25% of the increment created upon completion of the project." Because the City will be taking the final value of the project (2018 for example), and paying Mr. Zimmerschied on January 1, 2019 whatever the value is – his payment will not be more than 25% of that total until it is paid up. The amount of his incentive on a \$2 million project would be \$500,000.

Council Member O'Keefe stated that it was to the City's advantage to give him the incentive to build it as large as he wants to.

Greg Zimmerschied questioned the Conditions to Payment of the draft Developer's Agreement.

City Administrator/Treasurer Mertes explained that if the increment that comes in is not enough to pay the City's cost then he would not get paid.

City Attorney Vance stated that the payment amount will be limited at 25% of the increment of any given year.

Council Member Yip left the meeting from 9:12 p.m. – 9:15 p.m.

Mr. Zimmerschied questioned Section V. Termination – the last paragraph stating: "The City has the right to terminate this agreement upon the sale of the property to a third party."

City Attorney Vance stated that the City will have that right but it does not mean the City will do it.

Mr. Zimmerschied stated that he cannot live with this sentence. He explained that current businessmen may want to lease for a while; however, they would want to own the building eventually. If someone would approach him to buy the building, he would write the contract with the individual so they would have to fulfill the same obligations that he was going to fulfill.

City Attorney Vance stated that there is a covenant that runs with the land also for the successor owners of the property or a portion of. This is an additional protection that the City has the right to do, but does not have to do it. What if the property is sold to someone the City does not approve?

Mr. Zimmerschied understands protecting the City; however, when it becomes punitive and limits his options, he cannot agree.

Mayor Kinzel was in favor of striking this item.

City Administrator/Treasurer Mertes suggested adding that the agreement will be terminated if he sells the property before construction is complete on both lots.

Mr. Zimmerschied said even that is too limiting. This is going to be a very expensive project and someone may be interested in owning a piece, as the project moves forward. It does not jeopardize the quality of the buildings of the TID moving forward. It just limits his options to fulfill the agreement.

In answer to Council Member Yip's question, Mr. Zimmerschied explained that a smart businessman would rather own their building vs. leasing it. As long as he follows through and provides increment and a quality building it should not matter who owns the building. He understands protecting the City; however, he asked for this to be removed because it is more of a show stopper than the incentive discussion.

City Attorney Vance explained that the entire basis for the agreement is the "but-for" incentive based solely on the fact that the front portion is blighted. That is why the City can do a TID, because of the public purpose of the remediation of that blighted land. The Council needs to go back to the reason as to why this is being done. If the developer can turn around and sell it, then clearly the "but-for" reason does not stand anymore.

Greg Zimmerschied disagreed because the future owner, knowing that a TID is in play, is going to factor in the purchase price based on the TID. He understands that people may think this is a sweetheart deal waiting to be made and the City will have egg on their face and he does not see any of these deals in Cedarburg.

In answer to Council Member R. Reimer's question, City Attorney Vance stated that all agreements like this have sale clauses regarding ownership in them and it always refers to the developer. Most TID agreements like this are for large commercial developments, for instance, business parks.

Council Member R. Reimer stated that the recital on page one states that the developer is the owner. When the developer is no longer the owner does that change the conditions?

City Attorney Vance stated that contracts have certain elements that are required. This is a contract between the City and Mr. Zimmerschied's company and that is what the City is entering into if all parties sign the agreement. Not some future person. This is the reason for the recitals to say that you have a right to enter into a contract on behalf of the LLC. This is contractual 101.

In answer to Mayor Kinzel's question, City Attorney Vance stated that the point of the sale gives the City an extra right if something happens that they do not agree with, allowing the right to terminate it. Many things can happen. The wording is typical of all agreements that the City has entered into.

Council Member Yip stated that according to the agreement, Mr. Zimmerschied needs to tell the City if he is selling and the City needs to approve it.

City Attorney Vance said that there is additional wording to terminate the TID if desired, as additional protection to the City.

In answer to Mayor Kinzel's question, City Attorney Vance stated that the agreement contains wording to protect her ethical duty to do what is best for the City.

Mr. Zimmerschied stated that at the time of any sale, part of the contract will be whether or not to keep the TID or assign it to a new owner. The value and future payments are all considerations. He could sell the parcel to someone else but the TID payments could still come to him until he is paid out, or he could assign them to another party. He suggested wording that is used in many leases' "which shall not be unreasonably withheld."

City Attorney Vance stated that it is hard to define the word unreasonably.

Council Member R. Reimer stated that the owner has certain rights and the developer has certain rights. This contract says that it is one and the same. If you split them apart, as owner he can say, "Dear Developer, I know this is the third year and you are not finished, but you are not allowed to trespass on my property anymore."

In answer to Council Member Yip's question, City Attorney Vance stated that this language is in every TID Developer's Agreement. It is in there because no one knows what is going to happen down the road.

In answer to Council Member Filter's question, City Attorney Vance's recommendation is hinged on Mr. Zimmerschied's next request. If the Council decides to take wording out she would not agree with, such as, if he sells the land he wants to add the phrase "such approval would not be unreasonably withheld," regarding the assignments. She would need to look at case law as to what "unreasonably withheld" means.

Mr. Zimmerschied agreed to not ask for the assignment language change if the City takes out "The City has the right to terminate this agreement upon the sale of the property to a third party." He stated that his attorney does have to review any changes to the developer's agreement.

The Common Council asked City Attorney Vance for a recap of the changes.

- In regard to the material aspects of the agreement, the Council will take out the \$250,000 cap, instead the 25% will remain on the increment based on the fifth year. Mr. Zimmerschied is still very strong on intentions that there will be two buildings including one on Washington Avenue. She suggested that a "whereas" be added because that was a big part of the TID agreement as stated in his letter and proposal.

Mr. Zimmerschied agreed to "whereas the developer intends to develop both parcels."

City Attorney Vance continued with the changes:

- The developer agrees to keep the five year language and the protection for the City that are already in the Development Agreement. – major item.
- The developer agrees to the \$950,000 minimum and he does not want a \$250,000 cap.
- The City will pay 25% of the increment, whatever that is as of five years.

- The word not will be removed from the first line of Section I, Item C.
- City Administrator/Treasurer Mertes and City Attorney Vance will clarify any prior year payment language.
- The Council has directed that the Agreement eliminate the sentence that the City has the right to terminate this agreement upon the sale of the property to a third party.

In answer to Mayor Kinzel's question, Mr. Zimmerschied stated that his major concerns have been addressed with the exception of something not happening in five years and the City not paying him anything. If that 4% chance happens, he will be at the mercy of the Common Council at that time.

Mayor Kinzel asked if the Common Council had any further questions or concerns. He also directed this question to Mr. Zimmerschied.

Council Member Yip stated that he wants to see the final analysis done by Ehlers.

**CONSIDER PAYMENT OF BILLS FOR THE PERIOD 11/8/13 THROUGH 11/14/13, ACH TRANSFERS FOR THE PERIOD 11/20/13 THROUGH 12/3/13, AND PAYROLL FOR THE PERIOD 11/10/13 THROUGH 11/23/13**

Motion made by Council Member Radtke, seconded by Council Member Yip, to approve payment of bills for the period 11/8/13 through 11/14/13, ACH transfers for the period 11/20/13 through 12/3/13, and payroll for the period 11/10/13 through 11/23/13. Motion carried without a negative vote with Council Members C. Reimer and Maher excused.

**CONSIDER LICENSE APPLICATIONS**

Motion made by Council Member Radtke, seconded by Council Member Yip, to approve new Operator's License applications for the period ending June 30, 2014 for Morgan A. Deakin, Gordon M. Goggin, and Shaw H. Ruppel. Motion carried without a negative vote with Council Members C. Reimer and Maher excused.

**LIBRARY FUNDRAISING UPDATE AND LIBRARY BUILDING UPDATE** - None

**CITY ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes stated that the Make Your Mark event has been moved to January 4, 2014.

Washington Avenue in front of the Stilthouse Gastropub will need to be opened to upgrade the water service to the building.

**COMMENTS AND SUGGESTIONS FROM CITIZENS** - None

**COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS**

Council Member Filter requested that a trash receptacle be placed between Subway and the Cultural Center in Spring 2014.

Council Member Yip advised the Mayor and Common Council Members that this would be his last meeting as a Council Member. He accepted a new job in Mississippi and will be moving there in January 2014.

**MAYOR'S REPORT** - None

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member Radtke, to adjourn the meeting at 9:47 p.m. Motion carried without a negative vote with Council Members C. Reimer and Maher excused.

Amy D. Kletzien, MMC/WCPC  
Deputy City Clerk