

**CITY OF CEDARBURG
COMMON COUNCIL
December 8, 2014**

**CC20141208-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, December 8, 2014, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Kinzel called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Kip Kinzel, Council Members John Czarnecki, Ron Reimer, Art Filter, Paul Radtke, Mitch Regenfuss, Patricia Thome, Mike O'Keefe

Also Present - City Administrator/Treasurer Christy Mertes, Deputy Clerk Amy Kletzien, Director of Engineer and Public Works Tom Wiza, Director of Parks, Recreation and Forestry Mikko Hilvo, City Attorney Michael Herbrand, 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 O'Keefe, seconded by Council Member Czarnecki, to approve the minutes of the November 24, 2014 meeting as presented. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Steve Brill, W69 N419 Fox Pointe Avenue, stated that he appeared before the Common Council thirteen years ago with petitions signed by hundreds of community members regarding closing Washington Avenue for Festivals. He brought this up because it took approximately three to four years for the City, community and businesses to embrace the idea.

Mr. Brill asked the Council Members to consider in their evaluations of the two Cedar Creek dams to include dialog to eliminate both structures. The Wisconsin DNR has created a plan to eliminate or reduce the structures impeding the natural flow of navigable water ways. The City should be embracing the removal of the dams as the best interest for the community and the environment. He understands it would be hard to envision Cedar Creek without two man made waterfalls that have a very powerful connection to the community. The City would still have a beautiful water way going through Cedarburg, just one that is more natural. He asked them to envision a natural holding area above Bridge Street, engineered natural waterfalls created with natural stones and materials. Additional holding areas and waterfalls would continue the entire length of the creek as the

elevation changes to just below Columbia Rd. Again, the City would be creating natural walking paths accessible to all, not with limited accessibility as in the current plan for the river walks that are in place. The City would have better fish habitat along with possible tubing, kayaking and canoeing (creating many recreation opportunities). Examples of this are: Breckenridge, CO has a holding area and Boulder, CO has a creek that has tubing and fishing. Milwaukee has natural walking paths along the Milwaukee River were dams were removed near Capital Drive and the North Avenue bridges. In Wausau, WI, their parks division created Whitewater Park, which is an amazing all natural facility. He stated the next hundred years is in the hands of the City. There is no need for these man-made structures and he asked the Council to please return Cedar Creek to a natural flowing water way.

Paul Rushing, W62 N799 Sheboygan Road, spoke as a private citizen and as a member of Advent Lutheran Church, making no claim to representing neither the Church Council nor the congregation.

Mr. Rushing stated the following:

“It is with humility and sincerity that I thank you for issuing a stop work order. This was needed to enable Advent Lutheran Church to focus even further and to redouble efforts to seek a win-win remedy to this unfortunate situation.

There are so many other churches in Wisconsin that have constructed columbaria without repercussion. So far, only Cedarburg seems to have barred the building of a columbarium. In Mequon, you can visit an outdoor columbarium nestled in a residential neighborhood at Crossroads Presbyterian, and at Christ Church, also in Mequon, there is an indoor columbarium.

St. John’s Lutheran Church in Brookfield, located in a residential neighborhood, now has an outdoor columbarium. And in Minneapolis there is now a columbarium located in the downtown central business district just off the sidewalk. One is planned for Manhattan in New York City.

Indeed, in dozens of cities throughout Wisconsin, Episcopal, Lutheran and Catholic churches have established columbaria inside their church or outside on church grounds. There is growing and active support for this new interpretation of the traditional and historic church mission particularly now that traditional cemeteries are full or nearly full.

Advent Church is committed to building the columbarium that the Cedarburg Plan Commission approved on August 2, 2010, albeit in a much smaller version.

You see, the Church relied heavily on the City’s approval. Advent members, your constituents a great number of them, undertook a major campaign to raise funds to construct the prayer garden columbarium and to dedicate niches to members based on the approval. Two of our members whose husbands have died – Sherry Jones and Eva Partridge – still want their loved ones to rest in Advent’s columbarium; and there are others.

I sincerely apologize for the need for the stop work order. I certainly did not seek to discomfort City leaders or staff in any way. I pray there are no hard feelings and I ask you to support ongoing efforts to find a way to allow a columbarium to be built at Advent knowing that it is no less right and appropriate today than it was on the day the City of Cedarburg first approved it.”

UNFINISHED BUSINESS

CONSIDER ORDINANCE NO. 2014-25 CREATING A PUBLIC ART COMMISSION; AND ACTION THEREON

City Attorney Herbrand stated that he worked with Director Hilvo and they have defined what comprises the membership, purpose and authorities now set forth in paragraph three for the committee to serve as an advisory commission answering to the Common Council. Any arts requests will have to follow all the proper procedures.

Motion made by Council Member Reimer, seconded by Council Member Radtke, to adopt Ordinance No. 2014-25 creating a Public Art Commission. Motion carried with Council Members Czarnecki, Reimer, Radtke, Regenfuss, Thome and O'Keefe voting in favor and Council Member Filter voting present.

NEW BUSINESS

CONSIDER APPLICATION OF BAEHMANN'S GOLF CENTER, KURT E. BAEHMANN, AGENT, FOR A CLASS "B" BEER LICENSE FOR BAEHMANN'S GOLF CENTER, W73 N1122 WASHINGTON AVENUE; AND ACTION THEREON

In answer to Council Member Filter's question, City Attorney Herbrand stated that he is not sure of their plans to serve food; however, Baehmann's Golf Center is requesting to serve beer and license the entire premise.

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to issue a Class "B" Beer license to Baehmann's Golf Center, Kurt E. Baehmann, Agent, at W73 N1122 Washington Avenue because he has not heard any opposition from the Chief of Police. Motion carried without a negative vote.

CONSIDER AWARD OF CONTRACT FOR ASSESSING OF COMMERCIAL REAL ESTATE AND PERSONAL PROPERTY; AND ACTION THEREON

City Attorney Herbrand stated that a slightly revised contract has been placed in front of them for consideration. A few terms were added to require a notice to the City if the insurance coverage is ever dropped and requiring that the contract assessor clearly follows all State laws. The main change is in paragraph 9, that the contract assessor has to work with the City if there are any open records requests. This is mandated with all of the contractors.

City Assessor Timm stated that this contract amount was originally presented at budget time, with the increase included in the adopted budget for 2015. This is the same contract that he has had since 2006 and will be extended for three more years if it is approved.

In answer to Mayor Kinzel's question, City Assessor Timm stated the increase is due to reinstating the full hours that were reduced in the last contract.

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to award the contract for assessing of commercial real estate and personal property. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2014-26 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. 2014-27 AMENDING SEC. 9-2-6(c) ADJUSTING THE SANITARY SEWER CONNECTION FEE; AND ORDINANCE NO. 2014-28 AMENDING SEC. 14-1-84 ADJUSTING THE FEES IN LIEU OF PARKLAND AND AMENDING SEC. 14-1-100(g) ADJUSTING THE PUBLIC SITE FEES BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES; AND ACTION THEREON

Director Wiza stated that these three ordinances are adjusted annually and the construction cost index is 2.69% this year.

In answer to Council Member Filter's question as to whether it applies correctly to the Builders Association, Director Wiza stated that the ordinances have been reviewed and are basically inflationary adjustments.

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to adopt Ordinance No. 2014-26 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. 2014-27 amending Sec. 9-2-6(c) adjusting the sanitary sewer connection fee; and Ordinance No. 2014-28 amending Sec. 14-1-84 adjusting the fees in lieu of parkland and amending Sec. 14-1-100(g) adjusting the public site fees 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.

CONSIDER ORDINANCE NO. 2014-29 ESTABLISHING 2015 PAY RANGES FOR NON-REPRESENTED EMPLOYEES; AND ACTION THEREON

City Administrator/Treasurer Mertes stated that the different employee pay grades have been increased by 2% per band.

Council Member Radtke confirmed with City Administrator/Treasurer Mertes that she is working towards the employee assessments and evaluations.

Council Member Thome made a correction to band 8 – changing the second line of figures from hourly to yearly.

Motion made by Council Member Radtke, seconded by Council Member Thome, to adopt Ordinance No. 2014-29 establishing 2015 pay ranges for non-represented employees. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2014-30 AMENDING SEC. 15-1-101 OF THE MUNICIPAL CODE TO ADD A WISCONSIN UNIFORM BUILDING PERMIT SEAL FEE AND CREATING SEC. 5-7-1 OF THE MUNICIPAL CODE ESTABLISHING PUBLIC SAFETY FEES FOR SERVICES; AND ACTION THEREON

City Administrator/Treasurer Mertes stated that annually the Council approves an ordinance to update or establish fees for the following year. The proposed ordinance adds a Wisconsin Uniform Building Permit Seal fee in the amount of \$50. This fee is established by the State and was previously \$35. This ordinance places the fee in the City Code, which had not previously been done.

Also, not in the Code were charges for services performed by the Police Department, such as vehicle lockout fees, copying fees, fees for accident reports or copies of DVDs or CDs, photos, fingerprinting fees, etc. (Note: the vehicle lockout fee and fingerprinting fee will be no charge for City residents or those employed by businesses within the City.) This ordinance codifies these fees.

Council Member O'Keefe agreed that city taxpayers should not have to pay a vehicle lockout fee.

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to adopt Ordinance No. 2014-30 amending Sec. 15-1-101 of the Municipal Code to add a Wisconsin Uniform Building Permit Seal fee and creating Sec. 5-7-1 of the Municipal Code establishing Public Safety fees for services. Motion carried without a negative vote.

CONSIDER MAYOR KINZEL'S APPOINTMENT OF CRAIG RAUSCH TO THE PARKS, RECREATION AND FORESTRY BOARD (EXP. 4/30/15) AND THE COMMUNITY POOL COMMISSION (EXP. 4/30/16); AND ACTION THEREON

Motion made by Council Member Radtke, seconded by Council Member Thome, to approve the appointment of Craig Rausch to the Parks, Recreation and Forestry Board (Exp. 4/30/15) and the Community Pool Commission (Exp. 4/30/16). Motion carried without a negative vote.

Director Hilvo thanked all the people who stepped forward to serve on the Parks, Recreation and Forestry Board, the Community Pool Commission and the Public Art Committee.

CONSIDER MAYOR KINZEL'S APPOINTMENTS TO THE PUBLIC ART COMMISSION; AND ACTION THEREON

Motion made by Council Member Reimer, seconded by Council Member Czarnecki, to approve the appointment of the following Commission Members:

Pat Thome – Council Member
Stephanie Hayes – Cultural Center (expires 4/30/17)
Kristine Hage – Chamber of Commerce (expires 4/30/17)
Dave Eitel – Artist Guild (expires 4/30/17)
Deb Mortl – Cedarburg School District (expires 4/30/17)
Chris Christon – Cedarburg Art Museum (expires 4/30/17)
Sue Schrader – Summer Sounds (expires 4/30/16)

Paul Yank – Arts Representative (expires 4/30/16)
Scott Sidney – Arts Representative/Downtown Business owner (expires 4/30/16)

Motion carried without a negative vote.

PAYMENT OF BILLS

Motion made by Council Member Filter, seconded by Council Member Radtke, to approve payment of bills for the period 11/20/14 through 11/26/14, ACH transfers for the period 11/20/14 through 12/01/14, and payroll for the period 11/09/14 through 11/22/14. Motion carried without a negative vote.

UPDATE ON THE ADVENT LUTHERAN CHURCH STOP WORK ORDER, W63 N642 WASHINGTON AVENUE

City Attorney Herbrand stated that this item is not on the agenda to argue the merit of a columbarium in downtown Cedarburg. It has been given a lot of public scrutiny and it is of a sensitive nature and has a potential for litigation. He recommended that the Council does not make any comments on the merits of a columbarium in the downtown area. He is only providing an update on the actions that have occurred last week.

He stated that in 2013 a letter was sent to Advent Church from Planner Marchek advising them that the prayer garden was approved and it did not include the columbarium. This last summer the church applied for a conditional use permit to have a columbarium. At that time, his office issued an opinion to Planner Censky that a columbarium constitutes a mausoleum under State law and a mausoleum can only be placed in a cemetery. Therefore, his recommendation was that it could not be allowed by the City. When this opinion was issued, Attorney Herbrand and Planner Censky met with representatives of Advent Church and had a debate of sorts over the opinion. They asked the representatives of Advent Church to provide any law or response to the opinion. The representatives provided some law that Attorney Herbrand did not feel was persuasive. He further advised the church that they have the right to process their conditional use permit; however, in September the church elected to withdraw their application.

In answer to Council Member Czarnecki's question, City Attorney Herbrand stated that they submitted the conditional use application in June and withdrew the application on September 8.

City Attorney Herbrand stated that there is nothing pending before the City and it was a surprise to see trucks at the church Thursday morning to unload what appears to be the columbarium. At that point, there was no other choice but to issue a stop work order. Under Chapter 15 of the City Code, the Building Inspector has the right to stop work on any structures. This meets the definition of a structure in the Code and it seems to be clear violation. The Planner will be sending a 30 day notice to the church to cure the zoning violation of noncompliance.

City Attorney Herbrand stated that this is for information only and no action needs to be taken.

In answer to Council Member Reimer's question, City Attorney Herbrand confirmed that the City has made no decision what so ever relative to whether their structure can be built any place in the City.

Steve Brill, W69 N419 Fox Pointe Avenue, encouraged the Council to continue on the path of discouraging the construction of the columbarium. It should not be in public view of residents and tourists. The City has worked many years to develop a downtown business district and it is discouraging. He respects and understands the parishioners of Advent who would love to have their family remains on the property of the church and he understands that connection. He would understand more if it were in the back of the building or somewhere off on the side that is not in public view. However, having a columbarium directly across from the interurban trail in full view of what is going on, is not respecting the rights of the public. What is to prevent other congregations in the future from petitioning to have their deceased members on their property? He is also extremely upset with the timing of the structure, at one of the most religious times in the calendar year. It appears that a crèche was built and was used to conceal what was going on behind this structure. It also appears to have been done underhandedly and he hopes they come forward and apologize for their actions. He has heard threats to the community of a large law group coming into play. He asked the Council not to let those threats intimidate them and spend as much funds as possible to prevent this from happening.

Council Member Radtke stated that he is very disappointed at what transpired last week.

Brook Brown applauded the City for the stop work order. He asked the Common Council to consider and look closely at the information that is provided by individuals. The Council needs to be somewhat cautious when individuals make statements to the effect that many other churches have utilized columbarium. He has only found two columbaria in a downtown area and he encouraged the Council Members to look for this information and not just take his word for it. He stated that a columbarium represents a quiet, peaceful, tranquil, reflective area which he does not feel is appropriate for a downtown historic district. In downtown Minneapolis, the columbarium is completely encased within walls and is not in view for individuals to see. The columbarium in Brookfield is in a residential area and is not in a City downtown area, but is located on a large expanse. The Mequon columbarium is located on several acres and is not virtually seen by anyone. Mr. Brown agreed that the Plan Commission did approve a columbarium idea in 2010; however, in 2013 the Plan Commission rejected it unanimously. He cautioned the Council to know all of the facts.

Council Member Radtke clarified his earlier statement by saying that he is very disappointed in what transpired initially across the street. He is not happy with the steps that the church took.

Council Member Czarnecki made the following statement:

“The Church understands the approval process. A number of years ago, the Church went through the approval process. They received approvals, but allowed the permits to “burn off” nullifying the approvals. The Church must resubmit an application.

The Church cancelled the submission for the approval process on September 8, 2014. Paul Rushing, an architect in Cedarburg, I believe was the church representative. Based on the type of

materials, I would estimate that the church knowingly withdrew from the submittal process at the same time that they were ordering the materials.

On Thursday, Pastor Kinens contacted the media. How many media outlets did he contact? (Five?) How many people at the City did Pastor Kinens contact (he understands that the City was not contacted). Nowhere in the *Journal Sentinel* online story did I see the Pastor say that the project did not get approved by the City.

The Pastor attended the Stilt House “outdoor seating” Council meetings and spoke in favor. The Pastor understands the process. Why does the Pastor not feel that the residents and local businesses have the same right to speak about the Church’s intended project and plans?

The Pastor’s actions are going to require that the residents of Cedarburg spend money to enforce the laws and ordinances in the Downtown area. This is a regrettable waste of taxpayer’s money due directly to the Pastor’s reckless actions. The Pastor’s actions will be costly to the residents of the City.

Advent’s actions are clearly illegal. Their methods are arrogant and thuggish.

The Pastor’s actions are damaging to the merchants of the Downtown area during a critical time of year, Christmas. The Cedarburg Merchants Organization, Chamber of Commerce and the Festivals Organization all spend time and money burnishing the image of Cedarburg. Numerous volunteer groups make similar and parallel efforts. Advent Church’s “methods” are counter-productive to these efforts.

Ultimately the Pastor is thwarting the rule of law and process established over 150 years in Cedarburg. Advent Church is breaking the law for financial gain. The breaking of our laws is being wrapped in a religious freedom argument and this is distasteful (to say the least).

The approval process in many municipalities is difficult; difficult by design. Downtown Cedarburg is recognized as a Historic District with the nuances and vagaries that that entails. The Cedarburg Historic District has an approval process that the Federal government has some influence over.

When the Church learned residents and business owners didn’t like their plans in 2013, the Church looked to subvert the law and process of the City of Cedarburg. This is a process that all property owners must follow. These are laws that all Cedarburg residents must abide by. As elected officials in Cedarburg, elected by the people of Cedarburg, we swear an oath to uphold the laws.

In an interview orchestrated by Pastor Kinens, he is quoted as saying “It’s embarrassing for the City, I think.” Curious that it would appear Advent Church has broken the law and the Pastor would make this statement. I assure the Pastor that the residents of the City are not embarrassed. The City’s many civic and volunteer groups are not embarrassed. The property owners of Cedarburg are not embarrassed. The City’s merchants are not embarrassed. I am not embarrassed. None are embarrassed – everyone has to follow the law and Advent Church is not above the law.”

In answer to Council Member Radtke's question, City Attorney Herbrand stated that the City needs to grant a 30 day cure period to give them the opportunity to remove the structure. The letter will go out at the end of this week.

Steve Brill encouraged the City to make a public statement to the residents to show that this is going to be stopped.

Mayor Kinzel stated that the City will carry out the required process.

LICENSE APPLICATIONS

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to authorize the issuance of a new Operators license for the period ending June 30, 2015 to: Edmund R. Baehmann and Daniel J. Gogin. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes stated that the Cedarburg Police Department was awarded a \$4,000 grant for traffic safety for participating in State traffic enforcement activities this year.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Radtke wished fellow Council Members, city staff and people in the audience a very Merry Christmas and/or Happy Holidays.

MAYOR'S REPORT

Mayor Kinzel brought attention to the *Journal Sentinel* article (Cedarburg is Full of Festive Charm During the Holidays – November 30, 2014) that was included in the packet.

ADJOURNMENT

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

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk