

**CITY OF CEDARBURG  
COMMON COUNCIL  
July 28, 2014**

**CC20140728-1  
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, July 28, 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, Mitchel Regenfuss (after taking official oath), Patricia Thome, Mike O'Keefe

Excused - Council Member Paul Radtke

Also Present - City Administrator/Treasurer Christy Mertes, Director of Engineering and Public Works Tom Wiza, City Clerk Constance McHugh, Police Chief Tom Frank, City Attorney Michael Herbrand, Library Director Linda Pierschalla, Library Board President Sue Karlman, Library Board Members Debra Goeks and Steve Ruggieri, interested citizens and news media

**STATEMENT OF PUBLIC NOTICE**

At Mayor Kinzel's request, City Clerk McHugh verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

**APPROVAL OF MINUTES**

Motion made by Council Member O'Keefe, seconded by Council Member Czarnecki, to approve the minutes of the July 14, 2014 meeting. Motion carried unanimously with Council Member Radtke excused.

**COMMENTS AND SUGGESTIONS FROM CITIZENS**

Library Board Member Debra Goeks updated the Council on the new Library and presented photos of the dedication on July 12. She said there was a great crowd for the dedication and staff did a wonderful job of moving everything to the new building. The new Library has a lot of new technology, including a 3D printer. The new building has lots of great public space as well as quiet places. Two pieces of permanent art have been donated to the Library by Merlin Rostad and CT Whitehouse. Mr. Whitehouse and his wife Barbara Joosse have also loaned art to the Library for six months up to one year.

Matt McManus, N30 W6863 Lincoln Blvd., said he contacted his Council Member Art Filter regarding the possibility of yield to pedestrian signs in the eastern crosswalk at Evergreen Blvd. and Lincoln Blvd. He said this is a heavily travelled area.

Chief Frank said that he and Director Wiza can look into more signs in the area. There were signs of this type in the area but they are often moved to areas without high traffic because permanent signs tend to blend into the surroundings.

**CONSIDER APPLICATIONS/CONDUCT INTERVIEWS/CONSIDER APPOINTMENT TO  
FILL THE 5<sup>TH</sup> DISTRICT ALDERPERSON VACANCY**

Individuals applying for the 5<sup>th</sup> District Aldermanic vacancy are John P. Kuerschner, N30 W6078 Lincoln Blvd., Gerald Vetter, W61 N404 Washington Avenue, and Mitch Regenfuss, W62 N339 Hanover Avenue. After introductions, the candidates were interviewed by the Council and provided answers to questions submitted to them in advance of the meeting.

Council Member O'Keefe thanked the applicants for applying. He said the Council has three excellent candidates to select from. The Council concurred. Council Member Filter encouraged the candidates who are not selected to run for office in the future if they would like to serve the community. Council Member Czarnecki said there are opportunities to serve on various Boards and Commissions.

City Clerk McHugh said according to Policy CC-20A on filling aldermanic vacancies, each Council Member votes for one candidate. The individual receiving the least number of votes on the first ballot will no longer be considered a candidate and additional balloting continues using the same process until only one candidate receives a majority of the votes cast. A candidate must receive a majority of votes from the Council, but not less than three, to be elected. In the case of a tie vote for the final two candidates for an aldermanic position, the Mayor will break the tie. Council voting is done by paper ballot and voting results are announced. Ballots must contain the name of the person voting, as well as the name of the person voted for, so that the vote of each member can be ascertainable.

The first round of voting resulted in Council Members Reimer and Filter voting for John Kuerschner and Council Members Czarnecki, Thome, and O'Keefe voting for Mitchel Regenfuss. Mr. Vetter was eliminated.

The second round of voting resulted in Council Member Filter voting for John Kuerschner, and Council Members Czarnecki, Reimer, Thome and O'Keefe voting for Mitchel Regenfuss.

Motion made by Council Member Filter, seconded by Council Member Czarnecki, to appoint Mitchel Regenfuss as 5<sup>th</sup> District Alderperson. Motion carried unanimously with Council Member Radtke excused.

**OATH OF OFFICE: COUNCIL MEMBER 5<sup>TH</sup> ALDERMANIC DISTRICT**

City Clerk McHugh administered the oath of office to Council Member Mitchel Regenfuss and the new Council Member was seated.

**CONSIDER ORDINANCE NO. 2014-11 ANNEXING THE 5.007 ACRE PARCEL ADJACENT TO AND NORTHWEST OF THE PRAIRIE VIEW SUBDIVISION; AND ACTION THEREON**

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to adopt Ordinance No. 2014-11 annexing the 5.007 acre parcel adjacent to and northwest of the Prairie View Subdivision owned by Matthew and Minal Hahm from the Town of Cedarburg to the City of Cedarburg. Motion carried unanimously with Council Member Radtke excused.

**DISCUSS USE OF CONSTRUCTION MANAGER FOR PROPOSED PUBLIC WORKS FACILITY**

Director Wiza said there are two common ways to construct public works facility projects. They are to: 1) bid the work to a general contractor; and 2) to use a construction manager. At the direction of the Public Works and Sewerage Commission, staff solicited Statements of Qualification (SOQ's) from three construction management firms. The firms included Beyer Construction, Camosy Construction, and Mortenson Construction. The Commission recommended Camosy Construction and staff was to refine the work scope and obtain a complete price proposal.

Director Wiza distributed a publication discussing negotiated fees versus competitive bidding. The article states that the single factor of qualifications far outweighs all considerations-especially that of price-in retaining consultants. Competitive bidding for engineering and architectural services is not in the best public interest because it may easily lead to employment of a lesser qualified or least qualified firm (rather than the best qualified as should be the objective).

Director Wiza said that he is looking for direction from the Council as to whether he should obtain a complete fee proposal from Camosy Construction and bring it back to the Council for authorization to proceed with only the "preconstruction services" at this time. Another option would be to bring in a second firm to provide a cost proposal.

Mayor Kinzel said he voted against the motion to have Camosy Construction provide a price proposal. He said he would have liked to see proposals from both Camosy Construction and Beyer Construction. Beyer Construction was the firm that built the new Library.

Council Member Czarnecki said that he would also like to see two proposals. He said the library building was a far more complex project and he is not sure the Public Works facility requires the same level of expertise.

Council Member Filter questioned whether the cart is before the horse. He said the Council is considering hiring a construction manager without knowing what will be constructed yet.

Director Wiza said the advantage of hiring a construction manager and architect at the same time is that the two will be able to work together.

Steve Ruggeri, Vice-President of the Library Board, said the Library Board worked with Engberg Anderson Architects and Beyer Construction for 9 years and both were a tremendous help. He said the Council can expect good things from Beyer Construction.

Council Member Thome said she respects the recommendation of the Public Works and Sewerage Commission, but also appreciates the great experience the City had with Beyer Construction. She also suggested getting a proposal from Beyer Construction.

Director Wiza said he can get price proposals from two firms.

Council Member Reimer said that as a member of the Public Works and Sewerage Commission, he is not clear as to what this Commission's role is on the project in the future.

Mayor Kinzel said the Council oversees the budget and the Public Works and Sewerage Commission makes recommendations to the Council.

Director Wiza said the Council may want to meet jointly with the Public Works and Sewerage Commission in the future to consider the decisions that must be made.

Council Member O'Keefe said the Council is responsible for the scope of the project, but the Commission is responsible for the detailed work.

Council Member Regenfuss agreed that obtaining two cost proposals would be a good idea.

Motion made by Council Member Filter, seconded by Council Member Thome, to direct Director Wiza to obtain complete fee proposals from both Camosy Construction and Beyer Construction, but proceed only with the "preconstruction services" at this time. Motion carried unanimously with Council Member Radtke excused.

**UPDATE ON THE STATUS OF THE WINDOW REPLACEMENTS AT N58 W6194 COLUMBIA ROAD**

Mayor Kinzel said that in short, Mal Hepburn, owner of the building at N58 W6194 Columbia Road, was told by the Building Inspector that replacement windows had to be wood, not aluminum clad. Mr. Hepburn asked the Landmarks Commission to consider recommending an ordinance change that would allow the windows that were installed and signed an agreement stating the improperly installed windows would be replaced with Code complying windows if there was not a recommendation to the change the ordinance. The Landmarks Committee did not recommend any changes; however, the owner has not installed the correct windows.

City Administrator/Treasurer Mertes said the Council asked the former City Attorney on March 10, 2014 to send a letter requiring compliance. The former City Attorney called Mr. Hepburn to discuss the matter but did not officially send a letter until April 21. The letter simply asked Mr. Hepburn to consider compliance.

As City Attorney Herbrand's firm has a conflict in this matter, she contacted Attorney Ron Stadler to determine his interest in assisting the City in dealing with this issue. Attorney Stadler said he would be willing to assist the City but would like to have the complete file from former City Attorney Vance. The Council needs to provide direction to Attorney Stadler.

Council Member Reimer said that Mr. Hepburn is in violation of the City ordinance and should receive a per day fine. He questioned why staff is not assessing fines. He asked City Administrator/Treasurer Mertes to check with Building Inspector Baier to see why fines are not being issued and let the Council know.

It was the consensus of the Council that staff restart the process to obtain compliance and engage the services of Attorney Stadler to assist with this.

### **CONSIDER INTERNAL BORROWING FROM LIGHT & WATER**

City Administrator/Treasurer Mertes said the City planned to borrow \$895,000 in 2014 for various projects and \$750,000 in 2015, excluding the DPW garage. An additional \$1,000,000 is to be borrowed in 2016. She discussed borrowing options with the ad hoc Debt/Investment Committee and Ehlers. Ehlers recommends doing a larger borrowing this year to cover projects through 2016, excluding the DPW garage project, to take advantage of low interest rates. The Debt/Investment Committee suggested doing a short term internal borrowing. The Light and Water Commission discussed this option and authorized a loan of \$895,000 for up to 24 months at 1.75% interest at its meeting on July 21, 2014.

Motion made by Council Member Thome, seconded by Council Member Filter, to authorize an internal borrowing from Cedarburg Light & Water in the amount of \$895,000 for up to 24 months at 1.75% interest. Motion carried unanimously with Council Member Radtke excused.

### **CONSIDER MAYOR KINZEL'S COUNCIL MEMBER APPOINTMENTS TO VARIOUS BOARDS, COMMITTEES, AND COMMISSIONS**

Mayor Kinzel said he is appointing Council Member O'Keefe to the Library Board to replace former Council Member Maher. He said Council Member Regenfuss' appointments will be made at a later date.

Motion made by Council Member Thome, seconded by Council Member Czarnecki, to ratify the appointment of Council Member O'Keefe to the Library Board. Motion carried with Council Members Czarnecki, Reimer, Filter, Regenfuss, and Thome voting aye, Council Member O'Keefe abstaining, and Council Member Radtke excused.

### **PAYMENT OF BILLS**

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to approve payment of bills for the period 07/03/14 through 07/22/14, ACH transfers for the period 07/12/14 through 07/25/14, and payroll for the period 07/06/14 through 07/19/14. Motion carried unanimously with Council Member Radtke excused.

### **LICENSE APPLICATIONS**

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to authorize the issuance of new Operators' licenses for the period ending June 30, 2015 to:

Kelly J. Cooper

David B. Haberman

Motion carried unanimously with Council Member Radtke excused.

Motion made by Council Member Reimer, seconded by Council Member Thome, to authorize the issuance of renewal Operators' licenses for the period ending June 30, 2015 to:

Katherine D. Bennett	Miranda J. Burns
Jordan Z. Cole	Megan T. Czisny
Robert A. Kitzerow	Mary J. Spingola
Suzanne L. Stubblefield	Gene Szudrowitz

Motion carried unanimously with Council Member Radtke excused.

**CONSIDER RECOMMENDATION OF POLICE CHIEF TO DENY NEW OPERATOR'S LICENSE APPLICATION OF CHRISTOPHER R. HICKEY**

Attorney Herbrand said this matter was tabled at the last meeting and the Council requested more information from Chief Frank as to the reasons for the denial recommendation. He said this application is for a new operator's license, not a renewal. If the Council votes to deny the license, the applicant is not entitled to a full hearing. The City Clerk will send the applicant a letter listing the reasons for denial. The City's ordinance does allow for reconsiderations of licenses that are denied.

Chief Frank said one reason he recommended denial was because of an incident at the Roadhouse Bar in the Town of Cedarburg on December 11, 2011. He said Mr. Hickey has various arrests and contacts with law enforcement that are directly related to licensing activity. He explained that Mr. Hickey was at the Roadhouse Bar as a patron, drinking heavily, and got into a heated argument with another patron over the music being played on the jukebox. The bartender intervened and closed the establishment. The victim, supported by two friends, was walking to his car when Mr. Hickey hit him in the face, broke his nose, and caused him to bleed profusely. Mr. Hickey was restrained until law enforcement arrived. Chief Frank said causing serious injury to another person is a very serious offense. In addition, Chief Frank said Mr. Hickey was deceptive on his application by not answering correctly the question as to whether he has any disorderly conduct offenses or charges.

Mr. Hickey, W52 N206 Pierce Avenue, said Chief Frank's description was straightforward, but he is past that now. He said he made a bad decision that night. He said he has cut back on his drinking. Being a bartender provides him with a flexible schedule and yet help pay for his children's activities. He said everyone deserves a second chance.

Motion made by Council Member O'Keefe, seconded by Council Member Thome, to deny the application of Christopher R. Hickey for a new operator's license. Motion carried unanimously with Council Member Radtke excused.

**CONSIDER RECOMMENDATION OF THE POLICE CHIEF TO DENY NEW OPERATOR'S LICENSE APPLICATION OF ZACHARY WR KOHLER**

Chief Frank said Zachary Kohler has a pending felony charge with the Manitowoc County Sheriff's Office for 2<sup>nd</sup> degree sexual assault/use of force. The date of the arrest was December 27, 2012. He said that this is a serious allegation.

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to deny the application of Zachary WR Kohler for a new operator's license. Motion carried unanimously with Council Member Radtke excused.

**RECONSIDERATION OF THE APPLICATION OF MATTHEW A. TONN FOR AN OPERATOR'S LICENSE THAT WAS DENIED BY THE COUNCIL ON JUNE 30, 2014**

Matthew Tonn, N56 W6251 Center Street, acknowledged that he was not the best child growing up and had a colorful childhood. He said he recently started a career at Speedway and is in training for an assistant manager position. He said this position is in jeopardy without a bartender's license.

Chief Frank said Mr. Tonn has had several contacts with law enforcement, including selling to an underage person at the Roadhouse Bar in 2010, an OWI charge in 2011, a warning for disorderly conduct from the Cedarburg Police in 2012, and another warning for disorderly conduct in 2013 stemming from an argument with another person and allegations of one of the parties urinating in public. Based on the number of contacts with law enforcement, he is recommending denial of the license.

Council Member Filter asked City Clerk McHugh how many operators' licenses are issued each year and how many are denied.

City Clerk McHugh said the Clerk's Office issues between 300 and 350 licenses each year. On average there are about 4 denials per year.

Mr. Tonn said that in the terms of one of the disorderly conduct allegations he got into an argument with a man who was urinating on his apartment building. In terms of selling to a minor, he was presented with an ID of the patron's sister who looked just like the patron. He received the OWI shortly after his mother died of cancer. He said he is trying to start a new career.

Attorney Herbrand said the Council could move to reconsider issuance of the license, affirm the denial of June 30, or do nothing and let the denial stand.

Motion made by Council Member Reimer to reconsider the issuance of the license. The motion died due to a lack of a second.

There being no other action, the denial of June 30, 2014 stands.

**CITY ADMINISTRATOR'S REPORT**

City Administrator/Treasurer Mertes said the City received the Distinguished Budget Award from the Government Finance Officers Association (GFOA) for the 2014 budget. She said that although the City did not apply for the award in 2010, 2011, and 2012 due to the costs associated with it, the City previously received the award for 14 years in a row.

The Council congratulated City Administrator/Treasurer Mertes for achieving the award and making the budget process easier for everyone involved.

**COMMENTS AND ANNOUNCEMENTS FROM COUNCIL MEMBERS**

Council Member Filter asked if his constituent who was present earlier in the meeting would receive a follow up from staff.

City Administrator/Treasurer Mertes said Mr. McManus' request would be forwarded to Director Wiza.

**CLOSED SESSION**

Motion made by Council Member Filter, seconded by Council Member O'Keefe, to adjourn to closed session at 9:12 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the purchase of public properties, 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 proposed TID #3 developer's agreement. Approval of closed session minutes of July 14, 2014 With Council Members Czarnecki, Reimer, Filter, Regenfuss, Thome, and O'Keefe voting aye, and Council Member Radtke excused, the motion carried unanimously on a roll call vote.

**ADJOURNMENT**

Motion made by Council Member Filter, seconded by Council Member Thome, to adjourn the meeting at 10:02 p.m. Motion carried unanimously with Council Member Radtke excused.

Constance K. McHugh, MMC/WCPC  
City Clerk