

**CITY OF CEDARBURG
COMMON COUNCIL
January 9, 2023**

**CC20230109-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 9, 2023 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers and online utilizing the Zoom app.

Mayor O’Keefe called the meeting to order at 7:00 p.m.

Roll Call: Present - Mayor Michael O’Keefe, Council Members Melissa Bitter, Jack Arnett, Rick Verhaalen, Robert Simpson, Patricia Thome, Mark Mueller

Excused - Council Member Kristin Burkart

Also Present - City Administrator Mikko Hilvo, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Mike Wieser, City Planner Jon Censky, Fire Chief Jeff Vahsholtz, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor O’Keefe’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. Citizen’s present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Connie Kincaide, N75 W7255 Linden Street, brought attention to a Facebook page for the Cedarburg Community Conversations, presented by the Diversity Committee in partnership with the Cedarburg Public Library, promoting the second in the series of conversations on January 16, 2023 at the Cedarburg Public Library at 6:00 p.m. The first conversation had an attendance of 50 people and several Council Members. She encouraged everyone to attend this next meeting also. Ms. Kincaide advised that she is running for School Board in the upcoming election.

NEW BUSINESS

DISCUSSION AND POSSIBLE ACTION ON CERTIFIED SURVEY MAP FOR THE FOX RUN DEVELOPMENT

City Planner Censky explained that this Certified Survey Map (CSM) will serve to dedicate the public road right-of-way for the Hanover Avenue extension south from its intersection with Western Road within the Fox Fun Development. All other roads/driveways within this project are private. He reminded the Council that this project has gone through the approval process for everything but the official dedication of the public road right-of-way and this CSM is the tool to accomplish that task. Upon the Common Council approval, staff will secure the necessary signatures and then send it to the Ozaukee County Register of Deeds office for recording. The Plan Commission recommended approval at their December 5, 2022 meeting.

Motion made by Council Member Thome, seconded by Council Member Simpson, to approve the Certified Survey map for the Fox Fun Development. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2023-01 RELATING TO POSSESSION OF VAPE DEVICES ON SCHOOL GROUNDS OR BY UNDERAGE PERSONS

Police Chief McNerney explained that the possession and use of vape devices within schools and by persons under the age of 18 is a significant issue to the schools and to law enforcement. The Police Department is unable to enforce vaping without an ordinance; thereby, he asked for the approval of Ordinance No. 2023-01.

Motion made by Council Member Thome, seconded by Council Member Mueller, to approve Ordinance No. 2023-01 relating to possession of vape devices on school grounds or by underage persons. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION TO ALLOW CITY ADMINISTRATOR TO SIGN THE OZAUKEE COUNTY EMS SUBRECIPIENT AGREEMENT FOR THE UTILIZATION OF ARPA FUNDS FOR FIRE/EMS SERVICES

City Administrator Hilvo explained that Ozaukee County has allocated ARPA funds to assist Ozaukee County Fire Departments in hiring additional Firefighter/Paramedics throughout the County. Cedarburg has been approved for \$200,000 each year for the next three years beginning in 2023. To receive these funds the City needs to sign an EMS Subrecipient Agreement with Ozaukee County.

City Attorney Herbrand stated that he has reviewed the agreement and this identical agreement has been signed by Port Washington, Saukville, and Grafton.

Motion made by Council Member Thome, seconded by Council Member Simpson, to allow City Administrator to sign the Ozaukee County EMS Subrecipient agreement for the utilization of ARPA Funds for Fire/EMS services. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON APPROVAL OF PROFESSIONAL SERVICES CONTRACT WITH RAMBOLL TO UPDATE THE DAM FAILURE ANALYSIS AND TO PERFORM HYDRAULIC CAPACITY ANALYSES ON WOOLEN MILLS DAM

Director Wieser explained that the previous consultant Graef submitted a Dam Failure Analysis of the Woolen Mills Dam to the WDNR in March of 2022. The WDNR has preliminarily assigned a “high” hazard rating to the Woolen Mills Dam and has asked for modifications to the DFA computer model. Upon completion of the model modifications and approval of the model by the WDNR, the hydraulic evaluation can be completed, and a hazard rating assigned. Based on these discussions and when the extent of the work that will be required is known, a separate scope of work and contract will be developed to move forward with the dam repairs.

Council Member Arnett referenced the Common Council minutes from November 9, 2020 along with the motion that was made after an extensive discussion at that meeting regarding the dams. “Motion made by Council Member Arnett, that the Common Council recognizes that Cedarburg's dams are

historically significant and shall be preserved for future generations. The Council hereby instructs City staff to take all actions necessary to preserve city owned Cedarburg Dams. This shall remain the position of the City of Cedarburg until modified by the Common Council. Motion was seconded by Council Member Thome. Motion carried on a roll call vote with Council Members Verhaalen, Burkart, Arnett, Bublit, Lythjohan and Thome voting in favor and Council Member Simpson excused.”

It was also mentioned that a benefactor established a fund of \$250,000 to maintain the dams in perpetuity.

Motion made by Council Member Arnett, seconded by Council Member Bitter, to approve the professional services contract with Ramboll to update the dam failure analysis and to perform hydraulic capacity analyses on the Woolen Mills Dam in amount not to exceed \$19,700. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON APPROVAL OF SEWER SERVICE AGREEMENT WITH W74 N1204 WASHINGTON AVENUE

Director Wieser explained that the resident at W74 N1204 Washington Avenue has a failing onsite septic system and is requesting to connect a sanitary sewer lateral to the sanitary manhole at their south property line. This manhole was installed in the summer of 2022 as part of the Fairway Village Phase 2 subdivision. The resident at W74 N1204 Washington Avenue is required to connect to the sanitary sewer within one year. Since this property was created by land division, they would also be required to extend the sanitary sewer main across their frontage to the farthest limit of the parcel. However, since the land to the north is in the Town of Cedarburg and cannot be annexed due to the boundary agreement with the Town, staff does not see the need for the extension of the sanitary sewer main across the frontage of W74 N1204 Washington Avenue at this time.

This agreement allows the resident at W74 N1024 Washington Avenue to connect to the sanitary sewer main at their south property line but in the event of further land division or other change of circumstances the owner would be forced to extend the sanitary sewer main to the farthest limit of their parcel at their expense.

Director Wieser added that this is an emergency situation because the owner is having to pump out their holding tank weekly.

City Attorney Herbrand explained that he has reviewed the agreement. The landowner will be bound by this agreement, and it will be recorded for any future owners of this property.

Motion made by Council Member Verhaalen, seconded by Council Member Simpson, to approve the Sewer Service Agreement with W74 N1204 Washington Avenue with amendment to paragraph three and the addition of paragraph nine. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION NO. 2023-01 DESIGNATING DEPOSITORIES AND AUTHORIZING SIGNATURES FOR CEDARBURG LIGHT & WATER COMMISSION CHECKING AND SAVINGS ACCOUNTS

City Administrator Hilvo explained that each year, a resolution must be brought before the Common Council for approval of the current banking institutions utilized by Cedarburg Light & Water and the City of Cedarburg. The Resolution must also specify who the approved signers will be on those accounts. Resolution Nos. 2023-01 and 2023-02 represent the most recent update and require Council approval.

Motion made by Council Member Thome, seconded by Council Member Arnett, to approve Resolution No. 2023-01 designating depositories and authorizing signature for Cedarburg Light & Water Commission checking and savings accounts. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON RESOLUTION NO. 2023-02 DESIGNATING DEPOSITORIES AND AUTHORIZING SIGNATURES FOR THE CITY OF CEDARBURG CHECKING AND SAVINGS ACCOUNTS

Motion made by Council Member Thome, seconded by Council Member Arnett, to approve Resolution No. 2023-02 designating depositories and authorizing signatures for the City of Cedarburg checking and savings accounts. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON COLLATERAL ASSIGNMENT OF THE TIF AGREEMENT FOR THE FOX RUN DEVELOPMENT IN FAVOR OF BANK FIRST N.A.

City Administrator Hilvo explained that as part of the TIF agreement the Developer discussed and negotiated the collateral assignment of the TIF agreement into the TIF Incentive Agreement in Article III(B) and Article VIII of that agreement with the City. The documents have since been compiled and require the City's consent. Nothing in this agreement waives the City's rights.

Motion made by Council Member Arnett, seconded by Council Member Thome, to approve the collateral assignment of the TIF Agreement for the Fox Run Development in favor of Bank First N.A. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON A PREMISE DESCRIPTION CHANGE FOR THE CULTURAL CENTER, W62 N546 WASHINGTON AVENUE, TO INCLUDE THEIR PARKING LOT FOR EVENTS SCHEDULED FOR THE FOLLOWING DATES: MAY 4, JUNE 1, JULY 6, AUGUST 3, 2023 FROM 5:00 P.M. – 9:00 P.M., TO ALLOW FOR THE SALE OF ALCOHOL

Sue Schrader of the Cedarburg Cultural Center explained that they are creating new programming ideas for 2023. One of the core components of their mission is "music," but since Covid businesses up and down Washington Avenue have music, making it harder for them to stay competitive. They want to have an OZK Night Market that would be a free, outdoor event showcasing a variety of local vendors, performers, and artists. It will be a celebration of Ozaukee's unique and inspiring creative culture. The proposed dates are Thursdays, May 4, June 1, July 6, and August 3 from 5:00 p.m. – 9:00 p.m. They are requesting that their premise description on their liquor license be extended to their parking lot on those dates/times. Sue Schrader explained that they will have people standing at the exits to ensure attendees are not leaving the parking lot with liquor, along with additional signage and posting this rule on their website.

Motion made by Council Member Verhaalen, seconded by Council Member Simpson, to approve the premise description change for the Cultural Center, W62 N546 Washington Avenue, to include their parking lot for events scheduled for the following dates: May 4, June 1, July 6, and August 3, 2023 from 5:00 p.m. to 9:00 p.m., to allow for the sale of alcohol. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND POSSIBLE ACTION ON AMENDMENT TO THE LISTING CONTRACT FOR HWY 60 BUSINESS PARK BROKER SERVICES PROVIDED BY NEWMARK

City Administrator Hilvo explained that Newmark was selected in September 2020 to provide commercial broker services for the Business Park. The agents for Newmark are Curt Pitzen and Mitchell Starcynski. Per the contract, they do not get payment unless a lot is sold. When a lot is sold they receive an 8% commission if they are the only agents involved in the sale. If an external broker is involved they would receive a 10% commission. The minimum commission is \$7,000 per acre or \$8,000 per acre if an outside agent procures a buyer. The contract was for a year and has since been extended annually. This amendment extends the contract for another year.

Motion made by Council Member Arnett, seconded by Council Member Thome, to approve the amendment to the listing contract for the Hwy 60 Business Park broker services provided by Newmark. Motion carried without a negative vote with Council Member Burkart excused.

DISCUSSION AND REVIEW OF AMCAST UPDATE

City Administrator Hilvo explained that a meeting is scheduled for March 1 with the EPA and DNR.

There will be a special Plan Commission meeting on January 23, 2023 at 7:00 p.m. for a concept review of a developer's proposed redevelopment plans for the 4.4-acre former Amcast site located southeast of the office building at the corner of Hamilton Road and Johnson Avenue.

DISCUSSION AND POSSIBLE ACTION TO CONSIDER MAYOR O'KEEFE'S APPOINTMENT OF TERRY WAGNER TO THE PUBLIC WORKS AND SEWERAGE COMMISSION

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to approve Mayor O'Keefe's appointment of Terry Wagner to the Public Works and Sewerage Commission. Motion carried without a negative vote with Council Member Burkart excused.

CONSENT AGENDA

Motion made by Council Member Thome, seconded by Council Member Simpson, to approve the following consent agenda items:

- December 12, 2022 Council meeting minutes
- New 2022-2023 Operator Licenses for the period ending June 30, 2023 for Patrick Curran, Kali Kellerman, and Anastasia Pylypiuk
- Payment of bills dated 12/03/2022 through 12/29/22, transfers dated 12/07/22 through 12/30/22, and payroll for period 11/27/22 through 12/10/22 and 12/11/22 through 12/24/22

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

CITY ADMINISTRATOR'S REPORT

City Administrator Hilvo stated that Fox Run Development has paid the City \$836,831 in impact fees and \$112,307 in permit fees, totaling \$949,138 in revenue to the City.

COMMENTS AND SUGGESTIONS FROM CITIZENS

An interested citizen on zoom asked if DJ Burns was the developer proposing a development to the January 23, 2023 Plan Commission meeting. Attorney Herbrand stated that the Developer will be presented at that meeting.

Connie Kincaide, N75 W7255 Linden Street, thanked the City for their due diligence in looking at the future Fire/EMS services to the residents, as this decision cannot be taken lightly. Ms. Kincaide also stated that she would like to see the open positions on boards, commissions, and committees posted on the City website.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Arnett stated that he collected 37 signatures and he intended to run again for District 2 Council Member; however, three people have submitted papers to run for this position and he will not be able to run because he has met his term limits. He regrets that he will not be able to support the 37 people who endorsed him. Council Member Arnett encouraged the candidates to attend Council meetings leading up to the election to be apprised of what is happening in the City.

MAYOR REPORT

Mayor O'Keefe issued a Proclamation for Dr. Martin Luther King Jr. Day.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Thome, seconded by Council Member Mueller, to adjourn to closed session at 7:50 p.m. pursuant to State Statutes 19.85(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 discussion/update on the concept of a new shared services agreement for Fire/EMS services with the Town of Cedarburg. Approval of closed session minutes from December 12, 2022. Motion carried on a roll call vote with Council Members Bitter, Arnett, Verhaalen, Simpson, Thome, and Mueller voting aye and Council Member Burkart excused.

RECONVENE TO OPEN SESSION

Motion made by Council Member Verhaalen, seconded by Council Member Mueller, to reconvene to open session at 9:13 p.m. Motion carried on a roll call vote with Council Members Bitter, Arnett, Verhaalen, Simpson, Thome, and Mueller voting aye and Council Member Burkart excused.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Mueller, to adjourn the meeting at 9:13 p.m. Motion carried without a negative vote with Council Member Burkart excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk