

**CITY OF CEDARBURG
COMMON COUNCIL
JUNE 25, 2018**

**CC20180625-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, June 25, 2018, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor O’Keefe called the meeting to order at 7:00 p.m.

ROLL CALL: Present - Common Council: Mayor Mike O’Keefe, Council Members Dan von Barga, Jack Arnett, Rick Verhaalen, Garon Chivinski, Patricia Thome, Rod Galbraith

Excused - Council Member Kristin Burkart

Also Present - City Administrator/Treasurer Christy Mertes, Director of Public Works and Engineering Tom Wiza, City Clerk Constance McHugh, Director of Parks, Recreation and Forestry Mikko Hilvo, Fire Chief Jeff Vahsholtz, Planner Jon Censky, City Attorney Mike Herbrand, Police Commissioner Linda Krieg; interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor O’Keefe’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 Thome, seconded by Council Member Galbraith, to approve the minutes of the June 11, 2018 meeting. Motion carried unanimously with Council Member Burkart excused.

PUBLIC HEARING: CONSIDER RESOLUTION NO. 2018-19 TO AMEND THE COMPREHENSIVE LAND USE PLAN – 2025 FOR THE PARCEL ADJACENT TO AND EAST OF N144 W6166 PIONEER ROAD FROM THE OFFICE CLASSIFICATION TO THE COMMERCIAL CLASSIFICATION, AND FOR THE PARCEL AT N144 W6050 PIONEER ROAD FROM THE INDUSTRIAL AND MANUFACTURING CLASSIFICATION TO THE COMMERCIAL CLASSIFICATION

Mayor O’Keefe opened the public hearing on this matter at 7:01 p.m.

Planner Censky said the applicant recently purchased the former Formart Container building at the northwest corner of Pioneer Road and Cardinal Avenue with the intent to convert it into the Kettle Moraine Appliance store. A land use plan amendment and rezoning are necessary for the applicant to proceed.

There were no comments from the public.

Motion made by Council Member von Bargaen, seconded by Council Member Thome, to close the public hearing at 7:05 p.m. Motion carried unanimously with Council Member Burkart excused.

Motion made by Council Member Thome, seconded by Council Member Verhaalen, to adopt Resolution No. 2018-19 amending the Comprehensive Land Use Plan – 2025 for the parcel adjacent to and east of N144 W6166 Pioneer Road from the Office classification to the Commercial classification, and for the parcel at N144 W6050 Pioneer Road from the Industrial and Manufacturing classification to the Commercial classification. Motion carried unanimously with Council Member Burkart excused.

PUBLIC HEARING: CONSIDER ORDINANCE NO. 2018-09 TO REZONE THE PARCEL ADJACENT TO AND EAST OF N144 W6166 PIONEER ROAD FROM B-4 OFFICE DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT, AND THE PARCEL AT N144 W6050 PIONEER ROAD FROM M-2 GENERAL MANUFACTURING DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT

Mayor O’Keefe opened the public hearing on this matter at 7:06 p.m.

There were no comments from the public.

Motion made by Council Member Thome, seconded by Council von Bargaen, to close the public hearing at 7:07 p.m. Motion carried unanimously with Council Member Burkart excused.

Motion made by Council Member Thome, seconded by Council Member Galbraith, to adopt Ordinance No. 2018-09 rezoning the parcel adjacent to and east of N144 W6166 Pioneer Road from B-4 Office District to B-2 Community Business District, and rezoning the parcel at N144 W6050 Pioneer Road from M-2 General Manufacturing District to B-2 Community Business District. Motion carried unanimously with Council Member Burkart excused.

ACCEPT AND REFER TO THE PLAN COMMISSION THE REZONING PETITION FROM S. DUANE STROBEL, JR/ALLISON MANTEL, D.D.S., MS TO REZONE THE NORTHERN MOST OF THE THREE PARCELS AT THE NORTHEAST CORNER OF EVERGREEN BOULEVARD AND PIONEER ROAD FROM RD-1 TWO FAMILY RESIDENTIAL DISTRICT TO B-4 OFFICE AND SERVICE DISTRICT

Motion made by Council Member Arnett, seconded by Council Member Thome, to accept and refer to the Plan Commission the rezoning petition from S. Duane Strobel, Jr/Allison Mantel, D.D.S., MS to rezone the northern most of the three parcels at the northeast corner of Evergreen Boulevard and Pioneer Road from RD-1 Two Family Residential to B-4 Office and Service District. Motion carried unanimously with Council Member Burkart excused.

CONSIDER APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT FOR THE GLEN AT CEDAR CREEK SUBDIVISION PHASE 2 AND 3

Planner Censky said this Development Agreement amendment is necessary to update the original Agreement to reflect phases 2 and 3 of The Glen at Cedar Creek Subdivision.

Motion made by Council Member von Bargen, seconded by Council Member Arnett, to approve the Development Agreement amendment for The Glen at Cedar Creek Subdivision phase 2 and 3, subject to an annotation on the plat specifying which is phase 2 and which is phase 3. Motion carried unanimously with Council Member Burkart excused.

CONSIDER OUTDOOR ALCOHOL BEVERAGE LICENSE FOR BRANDYWINE AT W61 N480 WASHINGTON AVENUE

Planner Censky said the owners of Brandywine are seeking to place three tables and chairs along the south side of the building and five tables and chairs along the west side of the building for outdoor dining. The area will be enclosed with a decorative post and chain fence. Because of an issue in determining private property versus public property, the Plan Commission recommended the applicant enter into a right-of-way encroachment agreement. Assistant City Attorney Tim Schoonenberg drafted an agreement that establishes specific areas along the outside front of the building where the exact location of the property line and the right-of-way line is not confirmed but where customers and employees may encroach on the right-of-way for the delivery of alcoholic beverages and food to tables.

Attorney Herbrand said basically this is a right-of-way agreement that allows the applicant to use City property. The applicant will have the right to serve and carry alcohol across the right-of-way. They will need to provide insurance, indemnify the City, and follow all other rules and regulations. He recommended the agreement expire at the end of 2018. The applicant can then seek another agreement.

Motion made by Council Member Arnett, seconded by Council Member Thome, to approve the outdoor alcohol beverage license and the right-of-way license agreement through December 31, 2018 for Brandywine at W61 N480 Washington Avenue. Motion carried unanimously with Council Member Burkart excused.

CONSIDER APPLICATIONS OF LE'S PHO LLC, W63 N146 WASHINGTON AVENUE, LY Q LE, AGENT AND BRANDYWINE LLC, W61 N480 WASHINGTON AVENUE, ANDREW C. WILSON, AGENT, FOR AN AVAILABLE 'CLASS B' LIQUOR LICENSE

City Clerk McHugh said the "Class B" liquor license currently held by Silver Creek Brewery will be available as of July 1. Two applicants who currently hold Class "B" beer and "Class C" wine licenses have applied for the "Class B" liquor license – Le's Pho and Brandywine.

Attorney Herbrand said the Council has a fair amount of discretion in terms of issuing this license as long as the decision is based on reasonable rationale. The Council is the steward of City resources and by recent actions has shown it would like to see licenses that are issued fully utilized.

Mr. Le said his restaurant is a Vietnamese restaurant that has been open for 10 days. He said customers sometimes walk out when they find out they cannot have a cocktail. Mr. Wilson said Brandywine is a restaurant emphasizing Midwestern ingredients with an Italian flair. The restaurant was open last weekend during Strawberry Festival and plans to open on a regular basis this weekend.

Council Member Thome said she did an online search of similar type Vietnamese restaurants in the Milwaukee area and found most have only Class “B” beer and “Class C” wine licenses and not full liquor licenses. She said she is excited about both restaurants being in the City but looks at this from an economic development and visitor’s perspective. She feels Brandywine will attract more visitors.

Council Member Chivinski said both restaurants are located in the district he represents. The vision of the Council seems to be having a vibrant street life on historic Washington Avenue downtown. He said he believes Brandywine will draw people into the historic district.

Council Member von Barga said he wishes there were two licenses available. Brandywine is located in the historic district and he said this restaurant will add vibrancy to the district.

Council Member Verhaalen said he is uncomfortable deciding who gets this license. He does not like giving one business an advantage over another.

Gus Wirth, owner of Echo Plaza, said if Mr. Le could be assured that he would receive the next available liquor license he would be willing to let Mr. Wilson take this license.

Attorney Herbrand said this Council cannot bind or commit a future Council.

Council Member Galbraith said this is a hard decision for the Council. It would be irresponsible for this Council to make decisions for a future Council. He said the downtown is important to the City and Brandywine will have more walk up traffic.

Mayor O’Keefe agreed these situations must be reviewed on a case by case basis. This Council cannot make future promises. He said he is delighted to have both businesses in the City. He feels downtown businesses in the historic district should have some sort of precedence for this. He took an informal poll of residents and the majority were supportive of Brandywine receiving the license.

Motion made by Council Member Galbraith, seconded by Council Member Chivinski, to grant the available “Class B” liquor license currently held by Silver Creek Brewery to Brandywine, LLC, W61 N480 Washington Avenue, Andrew C. Wilson, effective July 1, 2018. Motion carried with Council Members von Barga, Arnett, Chivinski, Thome and Galbraith voting aye, Council Member Verhaalen voting nay, and Council Member Burkart excused.

CONSIDER APPLICATION OF LE’S PHO LLC, LY Q LE, AGENT, FOR A CLASS “B” BEER AND “CLASS C” WINE LICENSE FOR LE’S PHO AT W63 N146 WASHINGTON AVENUE

Motion made by Council Member Thome, seconded by Council Member Arnett, to approve the renewal application of Le’s Pho LLC, Ly Q Le, agent, doing business as Le’s Pho at W63 N146 Washington Avenue, for a Class “B” beer and “Class C” wine license for the period ending June 30, 2019. Motion carried unanimously with Council Member Burkart excused.

CONSIDER REQUEST TO TRANSFER FUNDS FROM THE CONTINGENCY RESERVE ACCOUNT TO THE ENGINEERING PROFESSIONAL SERVICES ACCOUNT FOR A CERTIFIED SURVEY MAP (CSM) FOR THE PROPERTY FRONTAGE JUST SOUTH OF THE HIGHLAND DRIVE/CEDAR CREEK BRIDGE

Director Wiza explained that the owner of the property at W51 N664 Highland Drive has asked the City to maintain the limestone wall running along the south half of his frontage on Highland Drive. The Public Works and Sewerage Commission directed staff to obtain a survey of the property to determine ownership of the wall abutting the sidewalk. The cost of the survey is \$2,800. The engineering account for professional services has a balance of \$700 leaving the survey \$2,100 under funded.

Council Member Arnett said when a homeowner buys a property typically a survey is done. He said it does not sound like this is the case in this situation. He said there are dozens of these walls all over town. He has concerns about this request, such as whether a prior owner installed the wall, whether it can be removed by the City if it is on City property, and whether there will be more requests from other homeowners wanting the City to pay for surveys. He said the burden is on the homeowner. Council Member Verhaalen said he agrees.

Council Member Galbraith said given there is no existing survey that tells whether the wall is on City property or not, this needs to be established before the next step is taken. He said since there is no money budgeted for the survey it could be discussed at budget time and perhaps be added to the 2019 budget.

Council Member Thome said she would have thought one of the previous owners of the property would have had a survey.

Motion made by Council Member Arnett, seconded by Council Member Thome, to reject the transfer of funds from the Contingency Reserve account to the Engineering Professional Services account for a CSM for the property frontage just south of the Highland Drive/Cedar Creek bridge.

Council Member von Barga said the wall does look precarious, but does not believe there to be a big issue in terms of it falling into the creek.

Director Wiza said anything is possible, but he believes there is a low probability of the wall falling and harming someone.

With Council Members von Barga, Arnett, Verhaalen, Chivinski, Thome and Galbraith voting aye and Council Member Burkart excused, the motion carried.

CONSIDER ISSUANCE OF A TRANSIENT ENTERTAINMENT LICENSE TO RAINBOW VALLEY RIDES, INC. FOR THE OZAUKEE COUNTY FAIR ON AUGUST 1 (1:00 P.M. TO 11:00 P.M.), AUGUST 2, 3 & 4 (10:00 A.M. TO 11:00 P.M.), AND AUGUST 5, 2018 (10:00 A.M. TO 7:00 P.M.) AND THE REQUEST TO WAIVE THE REQUIREMENT FOR A CLEAN UP BOND AS REQUESTED BY AGRICULTURAL SOCIETY

Motion made by Council Member Thome, seconded by Council Member Galbraith, to approve the issuance of a Transient Entertainment license to Rainbow Valley Rides, Inc. for the Ozaukee County Fair on August 1 (1:00 p.m. to 11:00 p.m.), August 2, 3, 4 (10:00 a.m. to 11:00 p.m.), and August 5, 2018 (10:00 a.m. to 7:00 p.m.) and the request to waive the requirement for a clean-up bond as requested by the Agricultural Society. Motion carried without a negative vote with Council Member Burkart excused.

PRESENTATION OF 2017 FIRE DEPARTMENT REPORT

Chief Vahsholtz presented the following highlights from 2017:

- There were 1,032 calls for service, an increase of 32 over 2016.
- There were 589 rescue calls in the City, 215 in the Town.
- There were 146 fire calls in the City, 39 in the Town.
- There were 5 structure fires in the City, indicating a relatively low incidence of real fires.
- Over 5,000 hours of training was logged by members, all at no pay.
- The Explorer program is up and running and has done very well over the years.
- A new power load system was added to both ambulances.
- Firefighter Bryan Price was promoted to Rescue Company Lieutenant.
- Deputy Chief Kim Esselmann was awarded the Emergency Medical Responder Meritorious Service Award by the Badger Firefighter's Association. Deputy Chief Kim Esselmann was also awarded an Emergency Medical Technician of the Year Award from the American Legion Department of Wisconsin.
- Assistant Chief Bill Hintz was awarded a Firefighter of the Year Award from the American Legion Department of Wisconsin.
- Retired Chief Rich Van Dinter and part-time Fire Inspector and retired Assistant Chief Bill Koeppen were awarded Firefighter Meritorious Service Awards from the Badger Firefighter's Association.
- A new ambulance cart and Kubota UTV was purchased in 2017.
- Public Education Officer Dustin Halyburton participated in over 340 hours of public education.
- Blake Karnitz was hired as the Department's first full-time employee to fill the role of Fire Inspector.
- All 2017 Department goals were achieved. 2018 goals include:
 - Continue to build on training the Rescue Task Force
 - Replace the Department pickup truck
 - Work on replacing the Tender
 - Re-write Department policies and procedures
 - Continue to aggressively recruit new members.

Chief Vahsholtz thanked Department Heads for allowing City employees who are also members of the Fire Department to leave during the day for emergencies. He encouraged Council Members to tour the firehouses.

Council Member Galbraith said when he moved to the area 35-40 years ago the Cedarburg Fire Department was viewed as the premiere volunteer fire department in the State. When he was a member of Ozaukee County Sheriff's Department he always knew the Sheriff's Department could count on the Cedarburg Fire Department. He said it is amazing what the Department has been able to accomplish.

Council Member Thome encouraged Council Members to attend the annual Awards Night. She said it is tremendous that there are generations of families that are going through the Department.

Council Member Arnett said the Explorer Program is very interesting. He said it is amazing that the dollars included in the City's budget amount to \$25 per year per resident for fire service.

The Mayor and Council thanked Chief Vahsholtz for his presentation.

DISCUSS AND APPROVE PRELIMINARY BUDGET PARAMETERS, INCLUDING OPERATING EXPENDITURES AND/OR TAX LEVY, GROTH TARGETS FOR DEVELOPMENT OF THE PROPOSED 2019 BUDGET

City Administrator/Treasurer Mertes said annually the Council sets the parameters for staff to follow during the development of the budget. Usually the expectation is that the tax rate should be held at the same rate as the previous year. Preliminary estimates show a \$0.30 increase in the tax rate just to cover the borrowing for TID No. 4 and the increase in the debt service levy. She said it is not possible to hold the tax rate the same as the previous year. If the Council desires a lower rate increase staff is looking for suggestion as to where the budget should be reduced.

Council Member Verhaalen said the Council should not keep borrowing for the road program. This just pushes borrowing and increased budgets onto future Councils.

Director Wiza said the City is not really keeping up on road improvements. In recent years the road program has focused more on road reconstruction. Funding for the road program is very complicated as it involves the budgets for sanitary sewers, storm sewers, street improvements, and water mains. The current year's program focuses on 2.3 miles of street improvements. Either the tax rate needs to be increased or the program will need to be cut in half.

Council Member Arnett said there has been a 20% increase in the tax rate since 2011. He said this is higher than inflation. He does not want the City to become unaffordable.

Council Member Verhaalen suggested employee benefits be reviewed. City Administrator/Treasurer Mertes said this is something the Personnel Committee is discussing and the Employee Committee is working with the City's consultant on this.

Council Member Chivinski said while he is new to the budget process he has no patience for games or gimmicks. He said if the Council feels what is delivered to the residents is worth it, it must stand up for that. The Council needs to be upfront and real with residents.

Council Member Galbraith said Ozaukee County has had no increase or a decrease in taxes over the last several years. Benefits for the Sheriff's Department have been frozen or cut over the last 15 years. He said he is not sure where the City is at in terms of benefits post Act 10, but they need to be in line with the private sector. He said he would be hard pressed to vote for such a large increase in the tax rate.

City Administrator/Treasurer Mertes said since Act 10 in 2011 employee sick leave has been reduced, there are higher health insurance deductibles, contributions to HSAs have been eliminated, there have been pay freezes, mandatory pension contributions by employees, furlough days, and a reduction in staffing levels.

Council Member Thome said the Personnel Committee is discussing where the City is in terms of pay and benefits relative to other communities.

Mayor O'Keefe said the only way to increase income is to raise taxes. He said he does not want to see borrowing continue.

Council Member Verhaalen said the worst case scenario is to keep borrowing for street projects.

Council Member von Barga said the Council must find a solution to slow borrowing; then stop it. The Council must fix the problem then pay for things as it goes along. He could support an increase in the tax rate, but not \$0.30.

It was the consensus of the Council that staff work towards a tax rate increase of less than \$0.30 per \$1,000 assessed value – perhaps something in the \$0.15 range.

CONSIDER BUDGET CALENDAR FOR 2019

City Administrator/Treasurer Mertes said the proposed budget calendar for the 2019 budget is the same as last year. The budget will be distributed to the Council on October 4 with the public hearing at the October 29 meeting. Department presentations will be at the October 8 Council meeting, but it may be necessary to add dates in October for budget deliberations if necessary. Others will be present for questions. The budget is scheduled to be adopted on November 26.

PRESENT STRATEGIC WORK PLAN

City Administrator/Treasurer Mertes said the strategic work plan has a new look with the help of Director Hilvo. It also now includes a vision statement and guiding principles. She encouraged Council Members to read through the document, which is meant to guide the budget process, and provide comments and suggestions to her. Department Heads will be discussing the plan during budget presentations.

PAYMENT OF BILLS

Motion made by Council Member von Bargaen, seconded by Council Member Arnett, to approve the payment of the bills for the period 06/05/18 through 06/15/18, transfers for the period 06/09/18 through 06/22/18, and payroll for the period 06/03/18 through 06/16/18. Motion carried unanimously with Council Member Burkart excused.

LICENSE APPLICATIONS

Motion made by Council Member Galbraith, seconded by Council Member Thome, to authorize the issuance of a new Operators licenses for the period ending June 30, 2019 to:

Nicole M. Ansay	Jake G. Hebda	Heather A. Oechsner
Stephen C. Bicek	Mark T. Mentele	Richard A. Sella
Woody H. Burrell	Elsa P. Mieloch	Elisse M. Tarlo
Michael G. Harrington	Nick M. Nevins	

and to authorize issuance of renewal operators licenses for the period ending June 30, 2019 to:

Carol A. Ameen	Christine M. Jackson	Troy D. Reissmann
Denise M. Beno	Sarah J. Koch	Susan E. Schrader
Evan N. Bray	Scott A. Kosidowski	Mark J. Schubert
Angela M. Bushee	Mary C. Lever	Kelleen S. Starsky
Benjamin S. Clithero	Judy A. Mattias	Suzanne L. Stubblefield
Scott R. Galaszewski	Brenda L. Mueller	Lindsey K. Vang
Kathlyn T. Geracie	Melissa M. Radtke	Captola R. Wolfe-Bacher
Terri J. Heidtke	Kenneth W. Reid II	

Motion carried unanimously with Council Member Burkart excused.

CITY ADMINISTRATOR'S REPORT

City Administrator/Treasurer Mertes said Administrative Assistant Jenny Valenta resigned, effective July 17. She will be coming to the Council at the next meeting with a request to replace her.

City Administrator/Treasurer Mertes said the City received a lawsuit from the Friends of Historic Cedarburg regarding the creation of TID No. 5.

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member von Bargaen said it is a priority to him that the Council discuss solutions to lowering the City's debt and adopt a pay-as-you go approach.

Council Member Arnett complimented the Festivals Committee on the great Strawberry Festival that was held this past weekend.

MAYOR'S REPORT

Mayor O'Keefe said there will be a tour of the WILO plant facilities from 9:00 a.m. to noon on July 11. He said the German based company is possibly interested in relocating to Cedarburg.

Mayor O'Keefe said he would like the Council to look at the outdoor seating regulations in the City.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Thome, seconded by Council Member von Bargaen, to adjourn to closed session at 9:36 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing 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 consider cellular tower leases for location on the monopole constructed on Western Avenue. Approval of June 11, 2018 closed session minutes. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Verhaalen, Chivinski, Thome and Galbraith voting aye and Council Member Burkart excused.

RECONVENE TO OPEN SESSION

Motion made by Council Member Thome, seconded by Council Member Galbraith, to reconvene to open session at 9:46 p.m. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Verhaalen, Chivinski, Thome and Galbraith voting aye and Council Member Burkart excused.

ADJOURNMENT

Motion made by Council Member Verhaalen, seconded by Council Member Galbraith, to adjourn the meeting at 9:47 p.m. Motion carried unanimously with Council Member Burkart excused.

Constance K. McHugh, MMC/WCPC
City Clerk