

**CITY OF CEDARBURG
COMMON COUNCIL
February 11, 2019**

**CC20190211-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, February 11, 2019, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor O'Keefe called the meeting to order at 7:03 p.m.

Roll Call: Present - Mayor Michael O'Keefe, Common Council – Council Members Dan von Barga, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garon Chivinski, Patricia Thome, Rod Galbraith

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Police Captain Glenn Lindberg, 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. 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 von Barga, to approve the minutes of the January 28, 2019 meeting as presented. Motion carried without a negative vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

NEW BUSINESS

CONSIDER MAYOR'S APPOINTMENTS TO AD HOC DISPATCH CONSOLIDATION COMMITTEE; AND ACTION THEREON

Mayor O'Keefe explained that the City has a responsibility to review and decide if the Cedarburg Police Department Dispatch should be consolidated with Ozaukee County. He is forming an ad hoc Dispatch Consolidation Committee and is presenting Council Members Galbraith and Chivinski, along with himself and two citizens (to be appointed at a later date) as members.

Council Member Galbraith said the idea of the Committee is to have an objective impartial outlook and gather facts, which should include input from Police Chief Frank and Fire Chief Vahsholtz. The Committee should move along in an expedient manner because it could involve potential changes and resources that can affect employees. It is important to move along at a pace that doesn't put those people in a position where it could be detrimental to the Department or its status.

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to form the ad hoc Dispatch Consolidation Committee with Mayor O'Keefe and Council Members Galbraith and

Chivinski as current members with two open positions to be appointed at a later date. Motion carried without a negative vote.

**CONSIDER POSSIBLE AMENDMENT TO TID NO. 4 DEVELOPER'S AGREEMENT;
AND ACTION THEREON**

City Attorney Herbrand explained that the Community Development Authority was given an update on the TID No. 4 Development and remediation by DJ Burns earlier this evening. A proposed first amendment to the Developer's Agreement is before the Common Council this evening. As the remediation process continues, issues are coming up along the way. The amendment involves the removal and elimination of an escrow agent to distribute the funds that are due to the developer. Title companies that normally serve as escrow agents are not used to being involved in a project of this type. Staff wants to consider eliminating the escrow agent, at an estimated cost of \$6,000 year or \$18,000 for the three year life of the remediation of the site. There is oversight by the environmental consultant and staff. The developer, staff and consultant supports this request. The second aspect of the Amendment to the Developer's Agreement is grounds maintenance at the site, primarily snow removal. This item was overlooked during negotiations. The Community Development Authority proposed an amount not to exceed \$50,000 over the three year life of the remediation to fund snow removal. Mr. Burns will have the office building completed on the southern end by the end of this year and snow removal on this parcel will be eliminated. All snow removal will end no later than September 2021. It will also end on any parcel if someone takes occupancy of a portion or a portion is sold. With the additional \$50,000, the total cost of the project, including the developer's incentive, is \$3,378,000.

In answer to Council Member von Barga's question, City Attorney Herbrand stated that Mr. Burns sought some proposals for snow removal at about \$20,000 per year for two years and \$10,000 for the remainder of this year.

Council Member Arnett stated that he felt rushed on this decision. It may be said that there should be more than two bids and he asked for clarification on where the funds would come from.

City Administrator/Treasurer Mertes explained that the City has borrowed exactly what is needed to pay the developer. Attorney Herbrand, staff time, Chris Bonniwell from GHD, Ehlers, and Attorney Buck Sweeny's time has been funded from the General Fund and this will continue. The previous maintenance that was done on the site by the City has been written off. These amounts are sitting in the TID for possible payment at the end of the life of the TID. Attorney Herbrand added that the TID has an anticipated shortfall because it is a superfund site.

DJ Burns explained that it is common to fund as-you-go on a project such as this with an expectation to recoup all of the costs. Over 27 years the City will incur costs and have those repaid by the tax proceeds. He also added that it is not an unheard mechanism that a TIF goes through five or ten amendment changes and the project costs might go up.

Council Member Arnett asked if there were any other costs that are not enumerated. He does not want DJ Burns to come back every six months with additional costs. He would like to know in advance so the costs can be anticipated.

DJ Burns explained that after meeting with City Administrator/Treasurer Mertes and City Attorney Herbrand, a provision has been worked out. He is not seeking full reimbursement for all expected weed control and snow costs. He has agreed to take responsibility for weed control and any snow removal costs above \$50,000.

Council Member Verhaalen expressed concern for additional expenses on this project and questioned why the City cannot continue to do the snow removal.

City Attorney Herbrand said that there is municipal law that states that City Departments should not be competing with private services. Furthermore, the City does not want to exert control over the site. He explained that this argument came about with a line item in the exhibit to the Development Agreement that refers City services, snow removal, weed control, etc. during the initial three years of remediation and it has a TBD cost. City Attorney Herbrand said this does not legally bind the City to pay for the costs; however, DJ Burns would take the opposite approach. Attorney Herbrand said that the City should have had this conversation during the year long negotiations and he may have proposed something along the lines of this proposal.

In answer to Council Member Verhaalen's question, City Attorney Herbrand stated that the title for the property transferred to DJ Burns in September 2018.

DJ Burns said the cost was identified as a carrying cost for the first three years when he is not making any revenue. That is why it is specific to a three year period while he is working with the EPA and DNR and would allow him to move forward. The City has historically plowed the sidewalks and portions of the drives and parking lots for fourteen years prior to his ownership. Snow removal will either fall to a contractor or to a property owner. The two bids he received for snow removal are from local businesses and only good up to 50 inches of snow per season. He agrees to cover the balance of the snow removal and any weed control.

Council Member Thome stated that \$50,000 is generous and she is inclined to a 50% split in costs.

In answer to Council Member Verhaalen's concern, City Attorney Herbrand stated that this amendment will create a new exhibit with all TBD lines changed to numbers.

Council Member Galbraith suggested settling on an amount to finish this year and to seek additional bids for the remaining two years.

Council Member Verhaalen preferred to postpone this decision.

Mayor O'Keefe was in favor of seeing more bids; however, he thought not exceeding \$50,000 was reasonable.

In answer to Council Member Burkart's question, City Administrator/Treasurer Mertes said that snow removal was never discussed. City Attorney Herbrand said that if it had been discussed he would have included some language similar to what is being proposed tonight.

Council Member Burkart was in favor of postponing this decision for additional bids.

In answer to Council Member Thome's question, City Attorney Herbrand explained that the Community Development Authority suggested that he discuss with Attorney Sweeny whether the City would incur any additional liability by making these payments directly to the developer. City Attorney Herbrand will follow through with that opinion.

Motion made by Council Member Verhaalen to postpone a portion of the amendment regarding snow removal (4F) for additional bids.

Council Member Chivinski explained that this property is in his district and all his neighbors want to see this project succeed. He said that mistakes happen. As much as he wants the project to succeed, he also understands healthy skepticism and push back. The City's investment in this property needs to be protected by making sure that good decisions are being made. As much as he does not want this project sidetracked or to fail, the City needs to make sure they are doing due diligence. He appreciates the discussion this evening.

Council Member Galbraith was in favor of coming to an agreement for the remainder of this year.

Council Members Thome and von Bargaen would agree to an amount not to exceed \$50,000.

Council Member Burkart seconded the motion to postpone this item for additional bids.

City Attorney Herbrand explained that if the City is inclined to postpone a portion of the amendment it would be better to postpone the entire amendment to a date certain and give direction to DJ Burns as to what is expected in the interim.

Council Member Burkart withdrew her second to the motion because she misunderstood and was unclear of the actual motion.

Motion made by Council Member Verhaalen, to postpone a decision on the amendment to the TID No. 4 Developer's Agreement to the next Common Council meeting on February 25 at the latest. Motion died for lack of a second.

Motion made by Council Member von Bargaen, seconded by Council Member Galbraith, to approve the amendment to TID No. 4 Developer's Agreement including the not-to-exceed amount of \$50,000 for snow plowing, with invoices to be paid upon receipt over three years and contingent upon seeking the advice of the Environmental Attorney.

Motion carried with Council Members von Bargaen, Arnett, Chivinski, Thome and Galbraith voting in favor and Council Members Burkart and Verhaalen opposed.

CONSIDER PAYMENT OF BILLS DATED 01/25/19 THROUGH 02/01/19, TRANSFERS FOR THE PERIOD 01/24/19 THROUGH 02/06/19; AND PAYROLL FOR THE PERIOD 01/19/19 THROUGH 02/01/19; AND ACTION THEREON

Motion made by Council Member Burkart, seconded by Council Member Galbraith, to approve payment of the bills dated 01/25/19 through 02/01/19, transfers for the period 01/24/19 through

02/06/19; and payroll for the period 01/19/19 through 02/01/19. Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Verhaalen, to approve new Operator License applications for the period ending June 30, 2019 for Jason D. Demczak, Emilee L. Koller, Kaylyn T. Thomas, and Cristian A. Tyrpak. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT - None

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome and Verhaalen advised that they will not be able to attend the February 25, 2019 Common Council meeting.

MAYOR'S REPORT - None

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to adjourn the meeting at 8:07 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk