

**CITY OF CEDARBURG
COMMON COUNCIL
April 27, 2020**

**CC20200427-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held online on Monday, April 27, 2020, utilizing the Zoom app.

Mayor O'Keefe called the meeting to order at 7:05 p.m.

Roll Call: Present - Mayor Michael O'Keefe, Council Members Sherry Bubnitz, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garan Chivinski, Patricia Thome, Barbara Lythjohan

Also Present - City Administrator Mikko Hilvo, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Tom Wiza, Light & Water General Manager Dale Lythjohan, 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.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Steve Brill, W69 N419 Fox Pointe Avenue, read the following statement:

Mayor & Council Members,

I understand you may be close to authorizing repairs to one or two structures in Cedar Creek. Going back to 2001 I have commented at Common Council meetings appealing for the "Restoration of Cedar Creek." We are appreciative of finally having an opportunity to present a new vision for Cedar Creek. A waterway that when restored will respect its history but move us forward for another Century. Often described as dams, these structures are actually man-made "impediments" as they are not truly a dam as I know. A dam has the capacity to hold back and release water. These impediments hold back sediment suspended in the water and only allow water to flow over the top of their structure. There really is not any control of the water levels taking place. These impediments contribute to the poor water quality above and below the structures! The structures can be repaired but will eventually need to be removed as the DNR Setback Rules Do Not allow for new structures to be built! Unless there is a severe safety hazard to the public, we are asking you to delay any repairs to the structures. We are asking for a cohesive plan to be developed for the restoration of Cedar Creek. This would be a transparent process with the inclusion of property owners, City Staff & Elected Officials, WI DNR Officials, Engineers...I envision both private & public Engineers, along with College Students, Business Owners, Local Residents & Volunteers. I am asking you to open your minds and be forward thinking...

First and foremost, this is not about just cutting a hole in the structures or demolishing them and letting Cedar Creek create its own path. This is about "Restoring Cedar Creek".... Man-made structures would be removed, soils would be cleaned. In place of the man-made structures, we have the

opportunity to select natural materials to create numerous waterfalls to control the elevation changes! The water channel can be narrow and wide at strategic places. At areas where the water channel narrows, people are invited to wade or even take a dip! There is a potential to have a "Natural Walking Path" open to all regardless of ability! Fish and birds will be numerous! There is a movement all across the country to restore the water quality of small creeks and river watersheds. Many of them include the removal of structures and impediments like we have in Cedar Creek (Wausau...Whitewater Park; Milwaukee County...North Ave, Estabrook Park Dams; Grafton....(2) structures; Stoughton WI....; Approved project Iowa...; dozens of projects Colorado.)

Funding:

Grants: Federal/DNR

Local Taxpayer Money Budgeted for repairs, repurposed to the restoration!

Sell 115 acres of land @ 1838 Pioneer Road...Tax Key # 130360300200....Market value of over \$1.5 million

I get it, you like status quo or just do not see the need to do something so drastic. Cedarburg is always slow to embrace change. A positive example of change is the closure of Washington Ave during Strawberry and Harvest Festivals...There was a grass roots effort to close Washington Ave....Citizens sought to involve Police, Fire, Festival Staff, Business Owners, etc.....Surprisingly for over 3 years the Fire Department and Washington Avenue Business Owners were very reluctant to close the street! Ultimately with a cohesive plan set in place, the street was closed! I think we can all agree the street closure was a win/win for everyone! Locally the movement to restore Cedar Creek is picking up steam. A website has been created RESTORECEDARCREEK.ORG. They are ready to let their voice be heard and take an active role in the restoration of Cedar Creek.

We are asking you to please budget funds that allow for developing a cohesive restoration of Cedar Creek, which includes the removal of man-made structures. A plan that will make a positive impact on the watershed, wildlife, property & business owners and our Community

Thank you, Steve Brill

W69 N419 Fox Pointe Ave, Cedarburg, WI 53012

Final public comments:

I asked Common Council Members to be transparent on what the City is going to do with the farmland Cedarburg owns on Pioneer Road!

APPROVAL OF MINUTES

Motion made by Council Member Bublitz, seconded by Council Member Burkart, to approve the April 13, 2020 Common Council minutes. Motion carried without a negative vote.

PUBLIC HEARING

CONSIDER ORDINANCE NO. 2020-06 REZONING THE 59.21 ACRE PARCEL LOCATED AT N1300 W6603 STATE HIGHWAY 60 FROM TEMPORARY RS-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO M-3 BUSINESS PARK DISTRICT; AND ACTION THEREON

Mayor O’Keefe called the public hearing open at 7:08 p.m.

Planner Censky explained that City records indicate that when this site was annexed into the City from the Town of Cedarburg in 2005, it was placed in the Rs-1 Residential (Temporary) District, as required by Code, until public facilities were available and the use of the property was certain. Since it has now been decided to move ahead with the planning and development of the Highway 60 Business Park, this site must be rezoned to reflect that use. Accordingly, to proceed with the future business park, Council Members must rezone the property from Rs-1 Temporary Zoning to the permanent M-3 Business Park Zoning, as indicated in the attached Ordinance. Since the M-3 District is consistent with the “Industrial and Manufacturing” classification of the Comprehensive Land Use Plan – 2025, no change to that plan is needed. He added that the Plan Commission reviewed this request at their March 2, 2020 meeting and recommended approval by unanimous vote.

There was no public comment.

Motion made by Council Member Thome, seconded by Council Member Arnett, to close the public hearing.

Motion made by Council Member Arnett, seconded by Council Member Thome, to adopt Ordinance No. 2020-06 rezoning the 59.21-acre parcel located at N1300 W6603 State Highway 60 from Temporary RS-1 Single Family Residential District to M-3 Business Park District. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Chivinski, Thome and Lythjohan voting aye.

PRESENTATIONS

PRESENTATION ON THE POSITIVE EFFECT OF DAM REMOVALS FOR A COMMUNITY

Marty Melchior, Principal Ecologist & Fisheries Biologist with Inter-Fluve, said that it is not his position to advocate one way or another to remove a dam; however, he provides the following information to municipalities to help guide their decision.

Dam Impacts

- Fragmentation – aquatic organism passage
- Thermal pollution
- Persistence of lentic conditions vs. lotic
- Sediment accumulation upstream
- Accumulation of toxic chemicals
- Sediment starvation downstream
- Flooding
- Potential failure
- Public Safety/attractive nuisance issues
- Long term repair/replacement costs

Scoping an Urban Dam Removal Project – Dam removal typically includes

- Feasibility study (\$10-50K)
 - Cost estimates
 - Concepts
 - Potential hurdles
- Public outreach
- Design
- Construction
- Maintenance and Monitoring

Feasibility and Design: long-term benefits vs. short-term impacts

- Public Safety/Aesthetics
- Water Quality
- Connectivity/passage
- Habitat Complexity
- Three potential long-term impacts if not managed well
 - Contaminants
 - T&E losses/Invasive species
 - Infrastructure

Design Considerations in Dam Removal

- Desktop Analysis – Existing Data Review
- Property Boundaries
- Fluvial Geomorphic Assessment
- Field Data Collection – Survey
- Sediment Volume Estimation
- Sediment Management
 - Most dam removals include some combination of active and passive sediment management
- Contaminant Testing

Public Engagement

- Hydrology and Hydraulics
 - Hydrology: Magnitudes and probabilities of flows
 - Hydraulics: Depths and velocities of flows
- Storage vs. Run of River
 - Flood/Power Storage Potential
 - has storage volume and flow through a controlled outlet
 - only 15% of dams in US are flood control; most of these in West
 - flood control is consistently the most misunderstood concepts in dam removal, but also the most concerning to residents
 - Run of River
 - Has full impoundment and constant flow over spillway

Construction

- Hydraulic Modeling

- Infrastructure Protection
- Assess Infrastructure – Bridges, Retaining Walls, Utilities
- Structural Evaluation
- T&E Species plan
- Site-specific issues
- Recreational access considerations
- Demolition plan
- Construction Management

Maintenance and Monitoring

- Restoration Design – Public perception is often based on intermediate stages of restoration and outmoded methods of removal.

Mr. Melchior provided some general dam removal costs. He has worked on removing 50 dams, 350 river restorations, and has three or four projects going at one time.

In answer to Council Member Bublitz's question, Mr. Melchior said that only approximately three times out of 50 the DNR may not have concerns about sediment.

In answer to Mayor O'Keefe's question, Mr. Melchior said the work done by Mercury Marine and flow rate would not be affected because the hydraulics of the river are not affected down stream from the dam removal. During the removal process there may be a pulse of water that could affect part of the design process.

In answer to Council Member Verhaalen's question, Mr. Melchoir said he has worked with communities that have had remediation work done, similar to that done by Mercury Marine, and they do take that work into consideration.

In answer to Council Member Arnett's questions, Mr. Melchoir explained that there are some grants available and funding of up to 25% - 50%, depending on where the money is coming from. He said that the feasibility study helps a community by providing a cost estimate.

In answer to Council Member Lythjohan's question, Mr. Melchoir said that he has not had an instance yet where the dam should be left as is. Mr. Melchoir said that he provides the science and the engineering, and the community makes the decision on whether or not to remove a dam.

PRESENTATION ON THE VALUE THAT THE DAMS PROVIDE CEDARBURG

Paul Hayes provided the following presentation: The Best Dammed City in Wisconsin

Remarks before the Cedarburg Common Council. Monday April 27, 2020.
Paul G. Hayes, N63W5795 Columbia Rd., Cedarburg, WI 53012.

The story of Cedarburg's dams is a story of immigrant settlers who saw the opportunity in the water of Cedar Creek, which falls 80 feet in less than a mile. They built three mill dams to put that water to work and the city grew up around them. The dams were the reason the town is where it is and why it looks the way it does. My street, Columbia Road, was named for Columbia Mill dam, not the other

way around. The first dam builder in the 1840s gave Cedarburg its name for the white cedar trees that grow in the exposed limestone on each side of Cedar Creek. I can't find another place in the United States where three pioneer dams are so close together. All three can be visited in an hour's stroll. Visitors often carry cameras or canvases, paints and easels. Pictures of our dams hang on the walls of many homes. The dams are a big reason for Cedarburg's popularity as a tourist destination. This summer, starting on May 8 and running through August 30, the Cedarburg Art Museum will feature the work of five area artists who were commissioned to paint Cedarburg's historic mills as additions to its permanent collection. Because of the times, it will be shown online until further notice. I have written about Cedarburg's dams for 25 years. And for 25 years I have heard from people who don't like dams. So enough with nostalgia and history. Let's address the critics.

Opponents of dams want to remove abandoned, useless, deteriorating and possibly dangerous dams because of their expense and because of their environmental impact and for safety reasons. So do I. Wisconsin has 3,900 dams, many of which should be removed. But Cedarburg's pioneer dams are an exception and because they are an irreplaceable feature of Cedarburg's exceptional character they are not abandoned or useless. Here are the arguments against dams.

--The dams block the passage of fish.

This is true. But in some cases, this may be a benefit. Our minnows, crappie, perch, bass, bluegill, sunfish, pike, bullheads, suckers and, yes, carp are self-sustaining species similar to those in the Cedar lakes of Washington County, the source of Cedar Creek. They are sustained by the pond. That is true also for our turtles, frogs and crayfish, muskrats, mallards and geese. Once established, some species reproduce in or around the pond. We have plenty of fish which explains why nice days seldom pass without anglers on the banks. The dams indeed block the upstream migration of fish, but these are mostly introduced Lake Michigan species of steelhead, coho and Chinook salmon on their seasonal upstream runs to die. It also includes the parasitic sea lamprey, which we certainly don't want. The migration argument is moot for the City of Cedarburg for as long as the privately-owned Nail Factory dam downstream in the town of Cedarburg remains. I do not know if the owner has been approached.

--The dams degrade the natural environment.

Dams do not necessarily *degrade* the environment. They *change* it, and the changes often enable new uses and recreation and therefore new supporters. We live on Columbia Mill pond, a 15-acre lake formed by the Columbia Mill dam. There are 41 houses that surround the pond, both on Columbia Road on Edgewater. There are about 20 piers, and at least 30 boats, mostly kayaks but also canoes, rowboats and paddleboats. Kayaks have already appeared on the pond this spring. It's a pleasant way for neighbors to get together even while practicing social distancing. In summer, vehicles pull into Adlai Horn Park bringing more kayaks to be launched from the park for a day of recreation. Two new fishing platforms at Adlai Horn park are in use almost every nice day by kids and adults. This winter found at least three hockey rinks on the ice on Columbia Mill pond, all heavily used by both adults and kids. If snow covers the ice, the pond and Adlai Horn Park become cross country ski trails. Upstream, Woolen Mill Pond is where annual Giant Pumpkin Charity Regatta takes place during Wine and Harvest Festival and where the annual Winter Fest bed races are held on ice. Many homeowners on Sheboygan Road and Riveredge Drive also have piers and launch their own kayaks, canoes and paddle boats. If the dams were removed, these activities would vanish. Apparently, the only users would be white-water kayakers and occasional fly fishermen during the salmon run. Far fewer people would use the creek.

--The dams no longer function as intended when they were built.

That's half true. They no longer channel the water to power mills, but they still maintain water levels in the ponds.

--The ponds will eventually fill with silt and either they will become marshes or they will require expensive dredging.

That is true. Three summers ago, Mercury Marine Outboard Motor Co., which had polluted the pond decades ago with PCBs, paid more than \$20 million to remove hundreds of tons of polluted silt from Columbia Mill Pond, trucking thousands of it to landfills. The water behind my house was deepened from less than a foot to as deep as seven feet. It rescued the pond from what was becoming a weed-choked swamp to a healthy flowing and deep waterway. The previous dredging of the pond had occurred in the 1940s, according to Al Hoffmann, our late neighbor. That dredging kept the pond usable for more than 70 years. If past is prologue, we won't need to have this conversation for another 65 years. I don't believe I'll be joining you. And it improved habitat for some species. Our neighbor Roger Sundell, a dedicated birder, had this to say about the rejuvenated pond: "Many more species of birds are resident here now, or nest here now, than before, and raise their young, or find haven here during spring and fall migration." Last summer, the first year of the freshened pond, an osprey regularly fished the pond. Just this evening after the rain, I saw my first kildeer of the season. They showed up first last year and nested on the newly-planted Lenore Horn Island. Here is a side note: Thanks to the dams, not all of the PCBs reached the Milwaukee River and Lake Michigan.

--The dams are costly to repair and maintain.

That is true, but I believe removing the dams would cost much more not only for the demolition itself, which would require heavy equipment and produce hundreds of tons of waste rock and concrete to be transported and disposed of. If the three dams were removed, the water level of the creek would drop 18 feet at Woolen Mill Dam, 17 feet at Ruck Dam and 15 feet at Columbia Mill Dam. The least affected probably would be the Woolen Mill Pond, but my guess is that it would narrow from about 60 feet now to about 12 to 20 feet, depending on rainfall and snowmelt, exposing much unstable bank. Questions of ownership and maintenance responsibility for the newly exposed land -- whether the city or the property owners -- would be sure to arise. This would be especially sensitive for the owners on the banks of Ruck Pond, the Washington Avenue merchants on the right bank and the residents and enterprises on Edgewater and Mequon Streets on the left bank. The now narrow creek would run between two steep banks and be so far below grade as to be largely inaccessible. The banks would have to be stabilized and I suspect that strong fencing would be needed on both sides of the creek for safety. The greatest expense would occur at Columbia Mill Pond. Removing the dam would drain the lake, leaving almost 15 acres of uneven, boulder-strewn floodplain that would take many years to grade, plant and develop into parkland. I believe the cost of doing so would be at least several millions, far more than the \$320,000 cost of repairing the Columbia Mill dam a year ago.

Which brings me to the question of why we are having this conversation at all. Columbia Mill Dam was recently repaired. Ruck dam was judged to be sound when Ruck Pond was dredged in 1994. Repairs to the Woolen Mill dam are in the planning and engineering stage. We have not discussed another positive aspect of Cedarburg's dams: Property values up and down the creek are rising, as are property taxes, good news for the city. A house is now being built on one of the last empty lots on Columbia Pond. Every season brings evidence of remodeled and improved existing homes all because

the residents love what the pioneer dam builders did for us, whether they know the history of not. Dams are human artifacts, and, like all things created by humans, they are destined to vanish if they become useless and neglected. To survive, they must have human attention, investment and be valued. Our dams are useful, for reasons I've already discussed, they are aesthetic, both visually and musically. And they are educational, telling us about the human uses of energy before the age of petroleum. In this time of oil insecurity and global warming we should be thinking creatively about such matters. The dams fit our exceptional little city, which flourishes because the farsighted leaders among us saw the worth of the sturdy stone mills and downtown buildings and preserved Cedarburg as a living, outdoor museum of life in Wisconsin from the days of pioneer settlement to World War I. In my opinion, we are the best dammed City in Wisconsin. Let's keep it that way.

NEW BUSINESS

CONSIDER AWARD OF ENGINEERING SERVICES CONTRACT FOR NR-216 STORM WATER COMPLIANCE; AND ACTION THEREON

Director Wiza explained that AECOM has been assisting the City with storm water management planning and general DNR program compliance over the years. For 2020 the City is asking them to complete the storm water illicit discharge detection and elimination (IDDE) field screening report, and also prepare a storm water pollution prevention plan for the Public Works facility. Both are permit requirements from the DNR and it is beyond what staff can do.

Motion made by Council Member Burkart, seconded by Council Member Thome, to award the engineering services contract to AECOM in an amount not to exceed \$11,700 for the NR-216 Storm Water Compliance. Motion carried without a negative vote.

CONSIDER MAYOR O'KEEFE'S APPOINTMENTS TO VARIOUS BOARDS, COMMISSIONS AND COMMITTEES; AND ACTION THEREON

Motion made by Council Member Lythjohan, seconded by Council Member Bublitz, to approve Mayor O'Keefe's appointments to various Boards, Commissions and Committees as listed:

Board of Appeals – 3 year term

Aaron Olejniczak	(04/20/23)	
Megan Torres	(04/30/23)	First Alternate
Tim Schelwat	(04.30/23)	Second Alternate
Jay Stutz, Chair		

Board of Review – 5 year term

Eric Hofhine, Chair	(04/30/25)
Julia Oliver	(04/30/25)

Economic Development – 3 year term

Michael Pahl	(04/30/23)
Brett Krzykowski	(04/30/23)

Landmarks Commission – 3 year term, Alt. 1 year term

Doug Yip, Alternate (04/30/21)

Library Board – 3 year term

Dewayna Cherrington (04/30/23)

Parks, Recreation and Forestry Board – 2 year term

Glenn Herold (04/30/22)

Terry Wagner (04/30/22)

Plan Commission – 3 year term

Sig Strautmanis (04/30/23)

Public Art Commission – 2 year term

Lisa Brobst (04/30/22)

Sue Schrader (04/30/22)

Paul Yank (04/30/22)

Council Member Sherry Bublitz (1st District)

Library Board

Personnel Committee

Festival Committee Liaison

Council Member Jack Arnett (2nd District)

Community Development Authority

Economic Development Board

Council Member Kristin Burkart (3rd District)

Public Works and Sewerage Commission

Representative to Mid-Moraine Municipal Association

Council Member Rick Verhaalen (4th District)

Parks, Recreation & Forestry Board

Ad hoc Mayor's Community Enhancement Award Committee

Council Member Garan Chivinski (5th District)

Public Art Commission

Mid-Moraine Municipal Association (Alternate)

Council Member Patricia Thome (6th District)

(Council President)

(Plan Commission/Council Representative)

Personnel Committee – Chair

Light & Water Commission

Council Member Barbara Lythjohan (7th District)

Landmarks Commission

Personnel Committee
Ad hoc Debt/Investment Committee

Motion carried without a negative vote.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Council Member Burkart, seconded by Council Member Lythjohan, to approve issuance of a 6-month Class “B” Beer license to Cedars III LLC, Michael Kowalkowski, Agent, for Cedars III Concession Stand, N52 W5925 Portland Road, from May 1, 2020 to October 31, 2020. Motion carried without a negative vote.

CONSIDER PAYMENT OF BILLS DATED 04/09/20 THROUGH 04/16/20, TRANSFERS FOR THE PERIOD 04/13/20 THROUGH 04/24/20 AND PAYROLL PERIOD 04/05/20 THROUGH 04/18/20; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Thome, to approve payment of bills dated 04/09/20 through 04/16/20, transfers for the period 04/1/20 through 04/24/20 and payroll period 04/05/20 through 04/18/20. Motion carried without a negative vote.

ADMINISTRATOR’S REPORT

City Administrator Hilvo explained that the City is following the COVID-19 guidelines. There will most likely be phases of opening through June and July. The City is working with the Chamber of Commerce on a citizen survey.

COMMENTS AND SUGGESTIONS FROM CITIZENS

Steve Brill, S69 N419 Fox Pointe Avenue, said that he was impressed with City Administrator Hilvo’s approach to providing both sides of the City’s dams and he encouraged the City to hire him as the permanent Administrator. He appreciated that the City had the foresight to purchase the land on Pioneer Road 20 years ago.

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Chivinski announced that he bought a house in the Town of Cedarburg and will be stepping down from the City Council on May 13, 2020. He stated that representing his neighbors has been one of the greatest and most unexpected honors of his life. He added that he has been amazed and humbled by this community’s superb public servants and elected officials. He thanked the Council Members for sharing their encouragement, insight and experience.

The Mayor and Common Council Members thanked Council Member Chivinski for his service and stated that it was a pleasure to have him on the Council.

Council Member Arnett asked the Common Council to provide any ideas on moving forward in the City after COVID-19. He believes the business park will be the foundation to rebuilding the economy.

MAYOR’S REPORT- None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Burkart, seconded by Council Member Lythjohan, to adjourn to closed session at 8:24 p.m. pursuant to State Statute 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, discussion of Highway 60 Business Park. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Chivinski, Thome and Lythjohan voting aye.

RECONVENE TO OPEN SESSION

Motion made by Council Member Arnett, seconded by Council Member Bublitz, to reconvene to open session at 8:55 p.m. Motion carried unanimously on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Lythjohan voting aye.

NEW BUSINESS – CONTINUED

CONSIDER PETITION OF THE CITY OF CEDARBURG TO CONSTRUCT AND MAINTAIN AN EXTENSION OF THE CITY OF CEDARBURG'S SEWER SYSTEM TO SERVE LIMITED PARCELS WITHIN THE TOWN OF CEDARBURG; AND ACTION THEREON

City Attorney Herbrand explained that the petition is to be presented to the Town of Cedarburg at their May 6 Town Board meeting to request their approval to extend sewer services to Circle B Recreation as part of an easement to accommodate the Business Park.

Motion made by Council Member Burkart, seconded by Council Member Chivinski, to approve the petition of the City of Cedarburg to construct and maintain an extension of the City of Cedarburg's sewer system to serve limited parcels within the Town of Cedarburg. Motion carried without a negative vote.

ADJOURNMENT

Motion made by Council Member Chivinski, seconded by Council Member Thome, to adjourn the meeting at 9:00 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk