

**CITY OF CEDARBURG
COMMON COUNCIL
December 14, 2020**

**CC20201214-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held online on Monday, December 14, 2020, 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 Sherry Bubnitz, Jack Arnett, Kristin Burkart, Rick Verhaalen, Patricia Thome, Robert Simpson, 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, Assistant Engineer Mike Wieser, Police Chief Thomas Frank, City Planner Jon Censky, 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

Mal Hepburn, W62 N736 Riveredge Dr., respectfully asked the Common Council to revisit the Waste Management contract regarding service to duplexes. He owns a duplex on Cleveland Street and the trash and recycling have always been picked up from both units. It is arbitrary and unfair to not continue this practice, as the City has always paid for this service in their contract with Waste Management.

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Burkart, to approve the November 30 and December 3, 2020 Common Council minutes. Motion carried without a negative vote.

NEW BUSINESS

DISCUSSION ON ORDINANCE PROHIBITING SWIMMING IN CEDAR CREEK; AND ACTION THEREON

City Administrator Hilvo explained that the City currently has an ordinance that prohibits swimming in Cedar Creek and quarries from City owned land. The ordinance was created based on potential risk factors related to swimming in the creek which were unrelated to any contamination in the creek.

Swimming in the quarries was and continues to be prohibited based on current levels of contamination. A report done prior to the Mercury Marine cleanup of the creek shows that the exposure levels to adult/children swimming, kayaking, and canoeing was at acceptable levels. The concern was and continues to be for anglers exposed through fish consumption. Since the initial report was done Mercury Marine has cleaned up the contamination in the creek. The City's Insurance Company (CVMIC) has reviewed the issue and does not feel allowing people to go in the creek would increase liability for the City. Staff is recommending allowing people to enter Cedar Creek from established areas of city property for swimming, kayaking, and canoeing but keep the prohibition for quarries.

Police Chief Frank and Fire Chief Vahsholtz have no concerns with allowing people in the creek. Individuals can access the creek from private property and adults need to educate children. This change will allow many people to enjoy the creek.

Council Member Lythjohan expressed concern about the creek running hard and fast in the springtime and the potential for injury.

City Administrator Hilvo explained that the City does use caution tape and signage in the spring to make people aware of the fast-running water. If the Council agrees, he will bring an ordinance for approval in January.

Council Member Bublitz stated that great efforts have been made to make the creek safe and it should be utilized.

Council Member Burkart stated that the City has done a good job in the past of warning people when the creek is dangerous in the springtime. The creek is a great asset, and it should be enjoyed.

Mayor O'Keefe added that he hopes the quarries will be cleaned soon.

Council Member Arnett supports swimming in the creek; however, the Woolen Mill dam is very close to Boy Scout Park and City access should be limited to Adlai Horn Park and Cedar Creek Park.

**CONSIDER AWARD OF CONTRACT TO R.A. SMITH FOR TIF #6 CONSTRUCTION
RELATED SERVICES FOR PHASE 2 AND 3 CONSTRUCTION; AND ACTION THEREON**

Director Wiza explained that R.A. Smith is currently under contract with the City to complete the Business Park engineering design. With the site grading work now complete, the utility and road construction will begin early in 2021. The engineering services associated with this construction include construction staking, construction administration, record drawing preparation, and construction inspection. The DNR requires full-time inspection of utilities. R.A. Smith has provided a proposal which includes their hourly rates and an estimate of the hours required for an estimated total of \$245,000. Award of this contract should be made contingent on the City awarding the phase 2 and 3 construction contracts.

Council Member Arnett was hopeful that the work continues to be done under budget and perhaps the City will not need to do the additional borrowing next year.

Director Wiza explained that Phase 3 will be out for bid in January and perhaps the borrowing amount will be less than anticipated.

Motion made by Council Member Burkart, seconded by Council Member Bublitz, to award the contract to R.A. Smith for TIF #6 construction related services for Phase 2 and 3 construction. Council Member Burkart amended the motion, and it was seconded by Council Member Bublitz, to add contingent upon the contracts being awarded on Phases 2 and 3. Motion carried without a negative vote.

CONSIDER APPROVAL OF FAIRWAY VILLAGE PRELIMINARY PLAT; AND ACTION THEREON

Planner Censky explained that this preliminary plat was received on October 30, 2020, which starts a 90-day period to approve, approve with condition, or reject the plat (Wis § 236.11). Accordingly, such action must be taken on or before January 30, 2021. He noted that the plat mirrors the concept plan submitted as the basis for the rezoning last month and is detailed with the information necessary to meet State requirements for a preliminary plat.

Planner Censky reminded the Council Members that this subdivision will consist of 15 townhouse buildings (30 units) within the Rd-1 District, 36 single-family lots ranging in size from 10,400 sq. ft. to 26,500 sq. ft. within the Rs-4 District and 47 single-family lots ranging in size from 8,080 sq. ft. to 18,900 sq. ft. in the proposed Rs-5 District. He also recalled that by using PUD zoning, they approved certain modifications to the regulations of the underlying zoning district, including the side yard setback requirement for those lots zoned Rs-4 to be 7.5 feet, or 15 feet between buildings, lots zoned Rs-5 will have a setback requirement of 5 feet, or 10 feet between buildings, and the distance between the two-family building will be 15 feet. The front and rear yard setbacks for all structures in this subdivision will be 25 feet and for corner lots the side street yard setback will be 15 feet. As previously reported, this project will include all standard public road improvements with sidewalks, street trees, sewer and water utilities and a future road at the northeast corner of the project connecting the City's Business Park roadway to Hilltop Drive in the Town of Cedarburg. Through the recording of this plat, the 5.5-acre Baehmann Park will be dedicated to the City and the stand of woods at the southeast corner of the subdivision will be preserved.

Planner Censky explained that following preliminary plat approval, the next step in the approval process will be development agreement approval, landscape plan, subdivision identification signage plan and architectural design approval. He said that staff's review indicates this plat complies with State requirements for a preliminary plat and is consistent with the concept plan and the PUD zoning approved by this Council's action on October 26, 2020. Staff is recommending the following stipulations as part of tonight's approval:

- Storm water management permit required.
- All lots will require a storm sewer lateral for sump pump connection.
- The sanitary sewer at the east property line to this site is at elevation 837.56 and therefore the sewer system plans must be reviewed accordingly.
- The sewer and water utilities must be connected to the Business Park utilities.
- City Engineer review and approval of all utility plans.
- Engineering Department review and approval of the site grading, erosion control and storm water management plans.

- Typical per lot impact fees shall be applied.
- The applicant providing a concrete public sidewalk between lots 29 and 30 extending from the cul-de-sac north to the future road right-of-way and then east to the Business Park.
- Installation of sewer and water utilities shall not commence in this project until after those utilities have been installed and certified complete in the Business Park.
- Sewer and water laterals shall be extended to serve property at W74 N1204 Washington Avenue.
- The sewer system must be extended to the west R.O.W. line of Washington Avenue at Quail Court.
- An additional fire hydrant is needed on Oakmont Drive near lots 67 and 68.
- Evaluate burying the electric lines along the Washington Avenue frontage to this project.

Bryan Lindgren reviewed the types of homes that are planned for the development. He said that they will accept the stipulations and look forward to working with the City.

Council Member Lythjohan asked that the electric lines be buried along the Washington Avenue frontage because the poles detract from the attractiveness of the development.

In answer to Council Member Bublitz's question, Planner Censky confirmed that the planned future road will be dedicated to the City as part of the final plat.

In answer to Council Member Verhaalen's question, Planner Censky said it was always intended that the City be responsible for putting in the road to provide a second access to the Business Park. The road is not part of this development.

Council Member Verhaalen said it would be helpful to include the building of the road into the TIF. Director Wiza said that there may be some available funding in the TIF for the road.

In answer to Council Member Bublitz's question, Director Wiza stated that the road will be connected to the subdivision for emergency access only and that the developer has no interest in it being a vehicular connection between the subdivision and the Business Park.

Council Member Burkart said that Kip Kinzel was not happy with the townhomes in relation to the lot sizes and asked if this was a final approval.

Planner Censky confirmed that this action will lock the plan in place and that ultimately Kip Kinzel did support the motion for approval.

Council Member Burkart stated that she was not in favor of the allowances made to fit the townhomes in the plan and it is not a good design for the City.

Bryan Lindgren stated that Kip Kinzel was more concerned with the architecture and design work will include three different styles of homes.

Council Member Thome confirmed that Kip Kinzel was more concerned about the design of the townhomes.

Council Member Arnett stated that he supports the development and acknowledged that it is a balancing act to have bigger lots with more expensive homes along with accessibility and affordability. The townhomes will be built on a busy street. When the schools were planning for their referendum, they did include support for further development.

Council Member Burkart likes the variety of homes but questioned the affordability at \$400,000.

Mayor O'Keefe explained that plat maps look busy; however, this is one of the last developable areas of the City and everyone worked hard at different options. This achieves that purpose and will work well for Cedarburg.

Council Member Burkart stated that the design looks tight, and a .18-acre lot is small for a \$400,000 home.

Motion made by Council Member Arnett, seconded by Council Member Thome, to approve the Fairway Village preliminary plat with all the above listed stipulations and adding subject to road dedication at the northeast corner of the project connecting the City's Business Park roadway to Hilltop Drive in the Town of Cedarburg. Motion carried with Council Members Bublitz, Arnett, Verhaalen, Simpson, Thome, and Lythjohan voting aye and Council Member Burkart voting nay.

CONSIDER PIONEER ROAD/INTERURBAN TRAIL CROSSING IMPROVEMENTS AND POSSIBLE AWARD OF CONTRACT FOR THE ENGINEERING DESIGN; AND ACTION THEREON

Director Wiza explained that the Pioneer Road/Interurban Trail crossing has been discussed on multiple occasions due to the volume of traffic on Pioneer Road, the fact that it is four lanes, and traffic speeds. Improved warning signage was erected several years ago, but the City continues to receive requests to do more.

One complicating factor is the fact that multiple jurisdictions are involved. Pioneer Road is a County Highway, and the Interurban Trail resides on the WE Energies right-of-way. The City involvement is that we maintain the asphalt trail within the City limits.

Director Wiza stated that just recently the City was contacted by a potential donor with a tentative offer to fund crossing safety improvements to include cantilevered high visibility warning signs and flashing lights. The donor wanted to see this move ahead promptly, and so staff requested a design proposal from M-Squared Engineering. Before authorizing the engineering expenditure, however, the donor would like some assurance that the project is approved and will proceed to completion.

He further explained that this creates a bit of a catch-22 for staff, in that both We-Energies and Ozaukee County have expressed support for the project, but each is requiring that the City submit engineering drawings for approval. The only way the City can see this moving forward is if we agree to award the engineering contract and submit permit applications to the approving authorities. Once the permits are received from the County and We-Energies, the City could bid out the construction, and present the construction bids and engineering cost to the donor for approval. Then the work could proceed. The total project cost has been estimated at \$55,000. If there are any roadblocks to completing the project, the City would not get reimbursed for the \$4,875 engineering cost.

City Administrator Hilvo asked for discussion from the Council to determine if they were on board with the signage and if they are willing to award the engineering contract.

In answer to Council Member Arnett's question, City Administrator Hilvo said that an agreement would be drafted between the City and the donor.

Council Member Arnett stated that it is a generous offer and a risk worth taking.

Council Member Burkart explained that this has been discussed for over a year at the Public Works and Sewerage Commission meetings and is grateful to the donor for coming forward.

Director Wiza stated that he has also been approached by a separate group who is proposing a rapid flashing beacon once a button is pushed.

The different designs and hazards were discussed.

In answer to Council Member Simpson's question, Director Wiza stated that the City would be responsible for maintaining the system and it should not be expensive.

Council Member Bublitz said this is a small price to pay for this donation and the City should award the engineering design contract. Council Member Simpson agreed.

Mayor O'Keefe reviewed the history at this crossing and, as an avid bicyclist, said that a median would be most helpful, but this road cannot be widened enough for this purpose. In this case, he advocated for a bike bridge over Pioneer Road, similar to the bridge over I-43 where the interurban trail crosses the highway. There is a donor wall nearby this bridge, and he wondered if this could also be done in Cedarburg. He asked if the engineering study could investigate the feasibility and cost of this type of bridge.

Council Member Thome asked if the configuration of Pioneer Road is fixed for the next 20 years and if it could support this type of design into the future. Director Wiza stated that it is a County Road in good shape, and he did not see much work needing to be done in the next 10 years.

Director Wiza said that the donor wants something to happen quickly and is most likely not willing to increase the project to this size. It would be a great solution but would be very expensive.

Council Member Bublitz opined that a bridge of this type would not fit the area.

Council Member Burkart appreciates the ideas, and a bridge is an expensive solution that has been done before.

Council Member Thome stated that her experience in working with non-profit organizations have taught her that it is harder to get an influx of donor money for municipal projects at this level.

Council Member Arnett stated that a bridge would be a different ballgame than what is being proposed and people want to see a solution soon.

Council Member Simpson agreed that people want a solution soon and that a bridge would be overwhelming for Cedarburg.

Council Member Burkart stated that people want to avoid another tragedy.

Motion made by Council Member Arnett, seconded by Council Member Simpson, to approve Pioneer Road/Interurban Trail crossing improvements and award the contract for the engineering design to M-Squared Engineering in amount not to exceed \$4,875. Motion carried without a negative vote.

CONSIDER ORDINANCE NO. 2020-21 AMENDING SEC. 3-6-3 TO 3-6-7 OF THE MUNICIPAL CODE ADJUSTING IMPACT FEES FOR LIBRARY FACILITIES, POLICE DEPARTMENT FACILITIES, WATER SUPPLY FACILITIES, PARK FACILITIES, AND WASTEWATER TREATMENT PLANT; ORDINANCE NO. 2020-22 SEC. 14-1-100(g) ADJUSTING THE PUBLIC SITE FEES; AND ORDINANCE NO. 2020-23 AMENDING SEC. 9-2-6(c) ADJUSTING THE SANITARY SEWER CONNECTION FEE BASED ON THE CONSTRUCTION COST INDEX PUBLISHED IN THE ENGINEERING NEWS RECORD AND CALCULATED BASED ON THE ANNUAL INCREASE IN THE CCI INDICES; AND ACTION THEREON

Director Wiza explained that these ordinances adjust for inflation and is done each year based on the CCI Indices used by nationally based Engineering News Record. It uses a 20-city average of materials, labor, and overall costs to determine this year's increase of 2.1%.

Motion made by Council Member Bublitz, seconded by Council Member Lythjohan, to approve Ordinance No. 2020-21 amending Sec. 3-6-3 to 3-6-7 of the Municipal Code adjusting impact fees for library facilities, police department facilities, water supply facilities, park facilities, and wastewater treatment plant; Ordinance No. 2020-22 Sec. 14-1-100(g) adjusting the public site fees; and Ordinance No. 2020-23 amending Sec. 9-2-6(c) adjusting the sanitary sewer connection fee based on the Construction Cost Index published in the Engineering News Record and calculated based on the annual increase in the CCI indices. Motion carried without a negative vote.

Mayor O'Keefe recognized that this will be the last Common Council item brought forward by Director Wiza, as he is retiring on January 8, 2021. He stated that Tom Wiza was a true professional and thanked him for his service.

Director Wiza said that he has enjoyed working for the City and thanked all the elected officials that have supported him over the years, to help him meet his accomplishments.

CONSIDER LICENSE/PERMIT APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Verhaalen, to approve a new Operator License application for the period ending June 30, 2021 for Aubrey A. Thiede. Motion carried without a negative vote.

CONSIDER PAYMENT OF BILLS DATED 11/20/2020 THROUGH 12/08/2020, TRANSFERS FOR THE PERIOD 11/25/2020 THROUGH 12/08/2020 AND PAYROLL PERIOD 11/15/2020 THROUGH 11/28/2020; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Lythjohan, to approve payment of bills dated 11/20/2020 through 12/08/2020, transfers for the period 11/25/2020 through 12/08/2020 and payroll for the period 11/15/2020 through 11/28/2020. Motion carried without a negative vote.

ADMINISTRATOR'S REPORT

City Administrator Hilvo said that it is has been an honor to learn from Director Wiza and wished him a happy and well-deserved retirement.

The City has offered the Director of Engineering and Public Works position to Assistant Engineer Mike Wieser to begin on January 11, after posting and interviewing for the position.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome spoke on the confusion over the transition in refuse containers. She said that the post card that was mailed to residents could have easily been thrown away without realizing what it was for. She suggested that the Common Council meet briefly before the end of the year to discuss concerns and solutions to help the citizens.

Council Member Burkart stated that the change was handled poorly, and Waste Management did not handle the transition appropriately. The duplex situation is confusing, and options need to be discussed.

Council Member Bublitz heard from a neighbor that she was thrilled with her new container.

Council Member Lythjohan likes the new containers; however, she received her post card the day before the new cart was delivered.

Council Member Simpson said the post card could have easily been mistaken for advertising mail. Council Member Simpson spoke with people who resolved their problems directly with Waste Management to swap their carts at no charge.

Council Member Bublitz stated that the City has communicated well with the citizens regarding their options for paying their taxes to keep the traffic low at City Hall.

MAYOR REPORT

Mayor O'Keefe thanked Director Wiza for his outstanding service as City Engineer.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Bublitz, to adjourn the meeting at 8:40 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk