

**CITY OF CEDARBURG
COMMON COUNCIL
September 13, 2021**

**CC20210913-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, September 13, 2021 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 Sherry Bublitz, Jack Arnett, Kristin Burkart, Rick Verhaalen, Robert Simpson, 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 Mike Wieser, 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

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Burkart, to approve the August 30, 2021 Common Council minutes. Motion carried without a negative vote.

PRESENTATION

**WATER SYSTEM NEEDS ASSESSMENT AND IMPACT FEE STUDY
PRESENTATION BY CEDARBURG LIGHT AND WATER GENERAL MANAGER
DALE LYTHJOHAN**

Light & Water General Manager Lythjohan explained that the Cedarburg Water Impact Fee originated in 2006 with the anticipated growth from Topview Trails and the north end development to recover costs for a new water tower and booster station (which did not happen due to the economic downturn until 2021). He noted that there was also a minor update to the Water Impact Fee in 2012. Since growth is occurring, a Water System Needs Assessment and Impact Fee Study was done by Ruekert & Mielke, Inc. to update costs, growth, and costs associated directly to the growth. The following highlights were presented:

- **Capital Improvement Costs**
 - Water Tower \$2,200,000
 - Booster Station 1,136,500
 - Total \$3,336,500

- **Assignment of Costs to New Growth**

- Water Tower (75%)* \$1,650,000
- Booster Station (44.5%)** 505,743
- Total \$2,155,743

*25% system wide benefit will be funded through the Utility Fund reserves.

**35% TIF = \$398K and 20% system benefit

- **Anticipated Growth**

- Study assumed approximately 20-year growth time period
- Study reviewed potential growth areas and types of growth
 - Set growth based on water meter size
 - Predominately ¾ inch meters (typically homes or small commercial)
 - Smattering of larger meters between 1 inch to 3 inch (small commercial to medium business)
 - Future growth meter counts
 - ¾ inch 538
 - 1 inch – 3 inch 25
 - 563 total equivalent meters = 634 equivalents (25 larger meters above range from 2.5 to 1.5 x equivalents)

- **Impact Fee Calculation**

- Total new growth costs \$2,155,743
- Existing impact fee balance 923,785
- /# of equivalent meters 634
- = Fee per equivalent meter \$ 1,945 (current fee \$2,049.98)

General Manager Lythjohan concluded by noting that if the fee is approved, it should be reviewed end of year 2021 using construction cost index, as done annually by Director of Engineering for all impact fees.

In answer to Council Member Arnett's question, General Manager Lythjohan confirmed that this includes \$400,000 that will not need to be borrowed through TIF #6.

Council Member Arnett asked if the deficit is paid through reserves. General Manager Lythjohan stated that it is paid through an internal loan from the Utility. The impact fee will end when these projects are paid.

PUBLIC HEARING

A PUBLIC HEARING TO INVITE PUBLIC COMMENT ON THE WATER SYSTEM NEEDS ASSESSMENT AND PROPOSED ORDINANCE NO. 2021-18 UPDATING PUBLIC FACILITIES IMPACT FEES (CLOSE PUBLIC HEARING)

Mayor O'Keefe opened the Public Hearing at 7:10 p.m. to invite public comment on the water system needs assessment and proposed Ordinance No. 2021-18 updating Public Facilities Impact Fees.

There was no public comment.

Motion made by Council Member Thome, seconded by Council Member Bublitz, to close the public hearing at 7:12 p.m. Motion carried with Council Members Bublitz, Arnett, Burkart, Verhaalen, Simpson, Thome, and Lythjohan voting aye.

NEW BUSINESS

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2021-18 UPDATING WATER IMPACT FEES

The Water Utility is responsible for periodically updating their water impact fee schedule. Ruekert and Mielke was contracted to perform this update as explained in the presentation. This ordinance is the final step to updating the water impact fees.

Motion made by Council Member Thome, seconded by Council Member Bublitz, to adopt Ordinance No. 2021-18 updating Water Impact Fees. Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON COUNTRY IN THE BURG 2022 TO BE HELD AUGUST 26-27, 2022

Mayor O'Keefe explained that Country in the Burg is requesting to hold their concert on August 26 and 27, 2022 at Cedar Creek Park. The event was held at Cedar Creek Park in 2019 as a one-day event and then in 2021 as a two-day event. They were granted an additional night for 2021 to assist in recouping lost revenue from having to cancel in 2020. They are requesting to hold a two-day event again in 2022.

Axel Uhan stated that the 2021 concert was a huge success and provided an extensive list of benefits to the City. Some highlights include:

- Multiple hotels were sold out for three days.
- This event is a huge financial gain to the City and benefited many businesses. He estimated that attendees spent roughly \$150,000-\$300,000 locally that weekend.
- Kip Moore has over 2 million followers on social media and speaks very highly of Cedarburg, which results in more visitors.

Alex Uhan stressed that this event is about giving back, and showing off Cedarburg, and having people enjoy a fun weekend with family and friends while also helping all the local businesses and raising money for charity. There were no citations issued by the Police Department for this event.

Council Member Arnett explained that he received only three negative emails regarding Country in the Burg. He shared a few stories and facts, stating that the positive feedback far outweighs the negative concerns. Last year the event provided contributions to Wounded Warriors, Mel's Charities, and Children's Hospital and will do the same this year. It is a charitable event that gives back to the community. The Common Council often must make difficult decisions and he will vote to continue this two-day event.

Council Member Bublitz explained that she has family that lives near the Fairgrounds, and it is an inconvenience to live there during the County Fair and large events; however, these events offer many benefits to the Community. It is a small sacrifice for a big gain.

Mayor O'Keefe received a lot of positive feedback from people attending the event and many were from out of state. He commented on how lucrative a two-day event is for the charities and non-profit organizations that participate in the success of Country in the Burg that they cannot get in a one-day event.

Council Member Burkart attended Country in the Burg on Friday evening and stated that it is a very nice event. However, she received quite a few complaints and is in favor of a one-day event over a two-day event, to respect and compromise with the nearby residents.

Council Member Thome stated that Country in the Burg is an incredibly well-run event and she thanked them for their contributions to the Community. She stated that her district is in the center of most of the activity in the City including Summer Sounds every Friday night in summer, baseball games, and numerous special events in the park. She received several messages Friday night, from a wide age range of residents, complaining about the sound level. Saturday's sound level was better and that was appreciated. Council Member Thome would like to see the event moved to Fireman's Park.

In answer to Council Member Verhaalen's question, Alex Uhan stated that all the preparation work including the fencing is completed by Friday and it is a waste not to use that evening for a concert.

In answer to Council Member Burkart's question, Alex Uhan stated that attendance was 4,500 – 5,000 people per night and 60 – 70% of the attendees saw both concerts. Next year they want to offer 1- or 2-day options to attend Country in the Burg.

Council Member Thome appreciated the fact sheet that was provided by Alex Uhan. She stated that bars and restaurants benefit the most from the event, more so than the shop owners. The event should be moved to Fireman's Park.

Alex Uhan explained that the Fairgrounds is not ready for this event. It will require the grandstands to be rebuilt. Financially and logistically, it would not work at the Fairgrounds at this time.

Council Member Arnett opined that people would not have the walkability to downtown from the Fairgrounds and Cedar Creek Park is beautiful and has a great stage. He questioned how many people it should take to cancel an event if a fraction of 1% of population complain. Every decision has a tradeoff.

Andrea Acosta, owner of That Taco Guy, lives within blocks of the park and the events are part of the charm of Cedarburg. As a local business owner, these events make a huge difference for them. She asked that the Common Council consider how Country in the Burg benefits the Community as a whole. The charitable contributions alone are impressive.

Paul Hayes, N63 W5795 Columbia Road, has lived in this quiet and stable neighborhood since 1979 holding long time residents who are older than recent arrivals. The park and wildlife are important to the neighbors. He enjoys music but often times the music in Cedar Creek Park arrives distorted and is reduced to screaming and percussion into their neighborhood. The neighbors understand that Cedarburg is a destination for many, and they do not resent merchants benefitting from that, but do resent the noise that exceeds approved decibel limits and time limits.

Paul Hayes continued by reading the following statement:

Country in the Burg

Everybody in Cedarburg should know how the City and private interests are using the public parks. The City should actively dispense such information when it agrees to such uses: It is beyond the capacity of the average citizen to sit through -- especially in these days of covid -- each meeting of the Council and the Park Board.

Dissemination, for example, of the details of the special arrangement arrived at with the promoters of Country in the Burg and the City regarding lifting the limits on sound volume and extending the nighttime time limit for ending the concert should have been public knowledge long before the concert took place.

The parks are owned and paid for by the people through our property taxes. The details of special uses of the parks by private interests should be made public. How much does the City get for the exclusive use of public spaces? How much do taxpayers spend to support such uses in Police, Fire and Public Works personnel and equipment? What are the ethical questions involved in private promoters profiting from events in public spaces. We understand that some of the gate receipts go to charity. We need an accounting of how much and how it is distributed and who decides on the charities.

In short, if this is to become an annual event -- and it seems that that decision has already been made -- the neighbors and indeed all of Cedarburg's taxpayers deserve to be made aware and be involved in the decision-making process from the beginning.

Thank you, Paul G. Hayes

Tom Stanton, Executive Director of Mel's Charities, explained that he started Mel's Charities in 1999 with a \$15,000 donation to a single person in-need and has given \$1.5 million in donations since it's inception. Country in the Burg has been very generous to their cause, along with other charities, and he appreciates their support. He asked that the event be approved for two days.

Karen Sundell, N64 W5719 Columbia Road, stated that the residents in her neighborhood support causes and no one can be against the benefits of this concert. However, it is important to look at the specifics and its detrimental effects to a large group of people. This is not a black and white issue. The noise was so loud on Friday evening that it rattled her windows and prevented them from talking, reading, or watching a movie. She called the Police Department and was told that the concert was within the allowable decibel level and an exemption was made to perform past 10:00 p.m. In this case the City should reconsider its decibel limit and time limit. The

neighbors want to have a say in what happens in the park. Saturday night, the noise level was much lower; however, she asked that something be done so this does not happen again. She lobbies for a change of venue or restricting the event to one night with a lower allowable decibel level.

Motion made by Council Member Arnett, seconded by Council Member Lythjohan, to approve Country in the Burg 2022 to be held on August 26 and 27, 2022.

Council Member Thome stated that she would like the location changed and would vote no.

Council Member Burkart asked for a compromise to a one-day event and would vote no to a two-day event.

Motion carried with Council Members Bublitz, Arnett, Verhaalen, Simpson, and Lythjohan voting aye and Council Members Burkart and Thome voting nay.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2021-17 TO APPROVE A NEW RANGE OF PENALTIES

Deputy City Clerk Kletzien explained that the Common Council approved a new Bond Deposit Schedule as recommended by the Mid Moraine Municipal Court at the August 30 Common Council meeting. As a result, Section 1-1-7 of the City Code must be updated to reflect the new penalty limits.

Motion made by Council Member Burkart, seconded by Council Member Bublitz, to adopt Ordinance No. 2021-17 approving a new range of penalties, Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON AWARD OF ENGINEERING DESIGN CONTRACT WITH RA SMITH FOR THE CONNECTION OF FORWARD WAY TO HILLTOP DRIVE IN THE HWY 60 BUSINESS PARK

Director Wieser explained that RA Smith is currently under contract with the City to complete the Business Park engineering design and construction services. As part of the amended Memorandum of Understanding with the Department of Transportation, the City is required to connect Forward Way to Hilltop Drive by the end of 2022. RA Smith submitted a proposal for the design of the roadway connection from Forward Way to Hilltop Drive and the reconstruction of Hilltop Drive up to Sycamore Lane for a total of \$30,320. The following services are included as part of this proposal:

- Topographic survey over the project limits.
- Roadway design (plan/profile sheets, typical cross sections, cross sections, details, and storm sewer).
- DNR Wetland Permit and mitigation.
- Specifications and cost estimates.
- Possible watermain design.

In answer to Council Member Arnett's question, Director Wieser said that the proposal is in line with his estimate and recommends awarding the contract.

Motion made by Council Member Bublitz, seconded by Council Member Simpson, to award the engineering design contract with RA Smith for the construction of Forward Way to Hilltop Drive in the Hwy. 60 Business Park in an amount not to exceed \$30,320. Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON AGREEMENT BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE CITY OF CEDARBURG

City Administrator Hilvo explained that the State of Wisconsin, through the Community Development Block Grant, has awarded the City of Cedarburg the sum of \$222,000. The agreement between the Department of Administration and the City of Cedarburg outlines the activities of the grant including the scope of work to be completed, timeline for completion, and corresponding rules. Common Council approval is required as part of the CDBG grant process.

Motion made by Council Member Burkart, seconded by Council Member Thome, to approve the agreement between the Department of Administration and the City of Cedarburg. Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON A TEMPORARY LIMITED EASEMENT AGREEMENT FOR A RESIDENCE ON HIGHLAND DRIVE

Director Wieser explained that at the April 26 meeting, the Common Council directed staff to repair the damaged part of the Highland Drive retaining wall with owner consent to be on the property with the caveat that this is not acknowledgment of the land belonging to the City. City Attorney Herbrand drafted a Temporary Limited Easement Agreement to be signed by the property owner and City. Staff has recently received the signed Temporary Limited Easement Agreement from the property owner and is requesting the Mayor's signature to move forward with the wall repair. This work will be done mid next week.

Council Member Lythjohan noted that the property owner's signatures were not notarized. City Attorney Herbrand stated that he would follow up to have the signatures corrected.

Motion made by Council Member Bublitz, seconded by Council Member Simpson, to approve a Temporary Limited Agreement for a residence on Highland Drive subject to property owners resigning the document in front of a Notary Public. Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2021-19 REMOTE MEETING ATTENDANCE

City Administrator Hilvo explained that while communities are not legally obligated to allow governmental body members or the public to attend meetings remotely, many have chosen to do so because of positive experiences with remote attendance during the pandemic. It is the recommendation of the League of Municipalities that each municipality adopt a policy or ordinance regarding remote attendance to provide the framework and structure for governing

bodies moving forward. City Clerk Sette and City Attorney Herbrand worked together to present Ordinance No. 2021-19 for remote meeting attendance for discussion.

Council Member Lythjohan expressed concern for the quality of remote meetings and difficulty in understanding people when they are wearing masks.

City Administrator Hilvo explained that he is trying new equipment this evening to facilitate better zoom meetings.

Council Member Thome stated that the Rotary uses this equipment for their zoom meetings, and it works well.

Discussion ensued on ways to make remote meeting attendance better. It was the consensus of the Common Council to revisit this Ordinance if needed.

Motion made by Council Member Bublitz, seconded by Council Member Burkart, to adopt Ordinance No. 2021-19 Remote Meeting Attendance. Motion carried without a negative vote.

DISCUSSION AND POSSIBLE ACTION ON NEW WARD MAPS RESULTING FROM REDISTRICTING

City Administrator Hilvo explained that as a result of the 2020 Census, redistricting has begun. There were delays associated with the release of population data due to Covid. Those delays have resulted in an escalated timeframe for completion of redistricting. Ozaukee County is currently in the process of redrawing Supervisory district lines and a copy of the tentative proposal is included in the packet. The County will be holding a public hearing to approve the new districts on September 15. The proposed Supervisory lines represent small changes for some of the Ward lines for the City of Cedarburg. No boundary changes would remove a Council Member from their current district. The tentative Ward changes for the City will be brought to the Council at the September 27 meeting for approval.

No action was taken.

CONSIDER LICENSE/PERMIT APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Verhaalen, seconded by Council Member Burkart, to approve new Operator License applications for the period ending June 30, 2022 for Stephen R. Anderson, Paul J. Barry, Corinne R. Kaminsky, Robert J. Kaminsky, Gregory P. Myers, Mackenzie A. Neumann, and Gina M. Stupak. Motion carried without a negative vote.

Motion made by Council Member Verhaalen, seconded by Council Member Thome, to approve renewal Operator License applications for the period ending June 30, 2022 for Gia Fazal, Kristine Raymond, Robin Hammetter, and Blake Klug. Motion carried without a negative vote.

Motion made by Council Member Burkart, seconded by Council Member Thome, to authorize the granting of a Class "A" fermented malt beverage and "Class A" intoxicating liquor (off-premise consumption only) application for period ending June 30, 2022 of Barry, Paul James; Irish Boutique LLC, W63 N680 Washington Avenue, Cedarburg, WI 53012, Paul J. Barry,

Agent, premises to be licensed: W63 N680 Washington Avenue, known as The Irish Boutique of Cedarburg. Motion carried without a negative vote.

Motion made by Council Member Burkart, seconded by Council Member Arnett, to authorize the issuance of a Festival Celebration Permit to Festivals of Cedarburg, Inc., for Oktoberfest to be held on Saturday, October 2, 2021 from 10:00 a.m. – 5:00 p.m.

CONSIDER PAYMENT OF BILLS DATED 08/25/2021 THROUGH 09/03/2021, TRANSFERS FOR THE PERIOD 08/28/2021 THROUGH 09/05/2021 AND PAYROLL FOR PERIOD 08/22/2021 THROUGH 09/04/2021; AND ACTION THEREON

Motion made by Council Member Bublitz, seconded by Council Member Burkart, to approve payment of bills dated 08/25/2021 through 09/03/2021, transfers for the period 08/28/2021 through 09/05/2021 and payroll for period 08/22/2021 through 09/04/2021. Motion carried without a negative vote.

ADMINISTRATOR’S REPORT – No further discussion.

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS AND ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Thome stated that the Mayor along with several Council Members attended the CFD awards event in Cedar Creek Park on September 11. It was a very nice event and a good reminder of all the volunteers that give back to the community. The Greater Cedarburg Foundation Annual Gala event will be held on October 2, and she encouraged fellow Council Members to attend.

Council Member Arnett stated that anyone interested in transparency and notification of things happening within the City should sign up on the Notify Me tab on the City’s website to be informed.

MAYOR REPORT – None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Arnett, seconded by Council Member Verhaalen, to adjourn to closed session at 8:51 p.m. pursuant to State Statute 19.85 (1)(g) conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically, discussion on Prochnow Landfill. Approval of August 30, 2021 closed session minutes. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Simpson, 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 9:07 p.m. Motion carried on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Simpson, Thome, and Lythjohan voting aye.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Bublitz, to adjourn the meeting at 9:08 p.m. Motion carried without a negative vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk