

**CITY OF CEDARBURG
COMMON COUNCIL
March 30, 2020**

**CC20200330-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held online on Monday, March 30, 2020, utilizing the Zoom app.

Mayor O'Keefe called the meeting to order at 7:03 p.m.

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

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, 7th Aldermanic District Candidate Barbara 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.

APPROVAL OF MINUTES

Motion made by Council Member Thome, seconded by Council Member Bublitz, to approve the minutes of the March 9, 2020 meeting. Motion carried unanimously on a roll call vote.

COMMENTS AND SUGGESTIONS FROM CITIZENS – None

NEW BUSINESS

CONSIDER BIDS RECEIVED FOR THE 2020 STREET AND UTILITY CONSTRUCTION CONTRACT; AND ACTION THEREON

Director Wiza explained that staff advertised and received bids for the 2020 Street and Utility construction contract. A total of seven bids were received, with the low bid submitted by Soper Grading & Excavating.

Soper Grading & Excavating is a relatively new firm headquartered out of Oshkosh; however, where they have worked they appear to have a good record. In addition, their Vice President has worked on several Cedarburg projects in the past, while employed with other contractors, and the City had a good working relationship. Their bid of \$1,433,700 is within budget and will be split up between streets, storm sewer, sanitary sewer, and water main budgets.

Motion made by Council Member Arnett, seconded by Council Member Thome, to award the 2020 Street and Utility Construction contract to Soper Grading and Excavating in an amount not to exceed \$1,433,740. Motion carried unanimously on a roll call vote.

CONSIDER BIDS RECEIVED FOR THE ANNUAL SIDEWALK SAWING PROGRAM; AND ACTION THEREON

Director Wiza explained that staff received bids for the 2020 Sidewalk Sawing program. Three bids were received, with the low bid coming from Hardrock Concrete Cutters, Inc. of Wheeling, Illinois in the amount of \$8,568. The second bidder was Safe Stop LLC at \$12,349.94. Hard Rock Concrete Cutters have worked in Cedarburg previously, and they did a good job.

Director Wiza further explained that \$30,000 was budgeted for sidewalk sawing and mud-jacking. Since the intent was to expend half the budget on sawing and half on mud-jacking, staff is requesting authorization to extend the quantity of sidewalk sawing up to \$15,000 at the unit prices bid.

Motion made by Council Member Galbraith, seconded by Council Member Bublitz, to award the 2020 Sidewalk Sawing program to Hard Rock Concrete Cutters, Inc. for an amount not-to-exceed \$15,000 at the unit prices bid. Motion carried unanimously on a roll call vote.

REVIEW THE 2019 ANNUAL STORM WATER COMPLIANCE REPORT; AND ACTION THEREON

Director Wiza explained that as part of the Municipal Storm Water Permit, the DNR requires the City prepare and submit a lengthy annual compliance report. They also require certification that the report has been presented to the governing body.

The report is submitted electronically, and a copy was included in the Council packet. There are also numerous sub-reports and files which are attached to the annual report that are available for review in the Engineering Department.

Director Wiza provided the 2019 Annual Storm Water Report summary:

Permit Conditions Imposed on City:

- Implement a storm water public education and outreach program.
- Inform the public of activities required under the permit.
- Maintain a program to detect and remove illicit discharges.
- Enforce erosion and sediment control for construction sites.
- Monitor post construction water quality controls.
- Sustain a water pollution prevention program.
- Achieve compliance with suspended solids and phosphorus reduction goals.
- Maintain and update City storm sewer mapping.

Annual Accomplishments:

- Cleaned over 1600 catch basin sumps as well as 6 hydrodynamic separators (84 tons sediment).
- Issued 48 erosion control permits and 2 storm water management permits.

- Provided a full display rack of storm water related information brochures at City Hall.
- Published storm water articles in the Spring and Fall Cedar Post issues.
- Maintained and updated a storm water webpage.
- Assisted AECOM with illicit discharge investigations.
- Swept downtown streets weekly and residential streets monthly (54 tons sediment).
- Collected and composted an estimated 1,000 tons of leaves, brush, and yard waste.
- Collected and recycled (or burned) used motor oil.
- Installed 14 new catch basins with 2-foot sumps which incorporate the “Dump No Waste Drains to Stream” logo on the cast iron curb head.
- Updated storm sewer mapping on GIS.
- Participated in the Sweetwater “Respect Our Waters” program for metropolitan Milwaukee.
- Participated in the Mid-Moraine Water Quality Collective.

Motion made by Council Member Thome, seconded by Council Member Galbraith, to accept the 2019 Annual Storm Water Compliance Report. Motion carried unanimously on a roll call vote.

CONSIDER APPLICATION OF THE SHINERY NEENAH LLC, P.O. BOX 128, LARSEN WI 54947, TROY D. REISSMAN, AGENT, PREMISES TO BE LICENSED: W63 N767 WASHINGTON AVENUE, KNOWN AS THE SHINERY MOONSHINE COMPANY FOR A CLASS “B” FERMENTED MALT BEVERAGE AND “CLASS B” INTOXICATING LIQUOR (ON OR OFF-PREMISE CONSUMPTION) LICENSE; AND ACTION THEREON

City Administrator Hilvo explained that Troy Reissman of The Shinery is again applying for a Class “B” fermented malt beverage and “Class B” intoxicating liquor license to be able to offer more samples in his store. This is the last regular license available in the City at this time. He added that Sunshine Winery declined the opportunity to reapply at this time because they felt that there was no apparent change of circumstances that should justify reconsideration by the Common Council of its prior decision, as stated in their email.

City Attorney Herbrand stated the Council has broad discretion when deciding to issue licenses and is not required to issue the maximum.

Troy Reissman explained that this license is needed to expand his business and is almost a necessity at this time, due to three of his stores being closed because they are located in malls during the pandemic. He has been in business in Cedarburg for four years and this license would help him during this pandemic. After speaking with a couple of Council Members he decided to apply again for the license.

Council Member Verhaalen stated that the Common Council has the power, to grant, or not grant, a liquor license. This Council has previously declined the Shinery's and Sunshine Winery's request for a “Class B” liquor license based on what the Council perceived as the possibility for a better use of the sole remaining “Class B” liquor license, a restaurant. He referred to an article by Michael Munger, and his April 24, 2019 article in the American Institute for Economic Research, titled “Capitalism in Three Principles.” In this article he lists the first principal of capitalism as the division of labor. Generally stating that if we all produce the same thing, nothing has value to anyone else. The uniqueness of sellable goods will contribute to economic success. Both The Shinery and Sunshine Winery have made their case before this Council for the uniqueness of their businesses. He believes this uniqueness

will contribute to the success of not just the Shinery's business, but of other businesses offering varying goods and services. In addition, he did not believe it is the Common Council's role to put a finger on the scale to favor one type of business over another, especially when that "other" business, or restaurant currently doesn't exist. If the Common Council were deciding to grant the license to one business versus another, that license would be contributing to sales and the local economy no matter who it is issued to. He asked if the Common Council is deciding to issue the license; thereby, assisting in sales; or not issuing the license, resulting in zero economic impact? He stated that Mr. Reissman's business may or may not succeed with this license, but it has a far better chance of success with it. It is up to businesses to determine their success or failure and he doesn't believe it is the role of government to deny the tools to be successful, especially when the tools are sitting on the shelf, not being used.

Council Member Arnett stated that Council Member Verhaalen is arguing against a State mandate that has handcuffed the City. This will only allow the Shinery to serve five samples vs. two samples with the issue equating to three more samples. The Council has expressed concern in the past over fully utilizing these licenses.

Troy Reissman explained that the additional samples would help him promote a whiskey line and wine along with using his frozen drink machine. The \$10,000 price for the reserve license would not be much for a large a restaurant.

Council Member Arnett explained that he is sympathetic to the downtown businesses. He added that Mr. Reissman could partner with a non-profit organization for Festivals that would create a great opportunity for a group. This license issue should be resolved at the State level.

Troy Reissman argued that his business will not survive without this license. This would provide an opportunity for a business to stay, as they are the number one draw to the City.

Council Member Arnett clarified that the number one deficiency in the City is restaurants and people want more, as determined in the branding report.

In answer to several Council Member's questions, Troy Reissman explained that with the license he could expand the number of days and hours that he operates, serving cocktails is not in his business plan and he will remain as a store and not a bar. This license will also allow him to offer private parties up to 20 people. He also has a new Airbnb upstairs from the store.

Council Member Thome explained that she is an advocate for full utilization of the "Class B" liquor license. She will continue to have City Attorney Herbrand review the Code for ways to accomplish this.

Council Member Bublitz explained that she was concerned about utilization when she voted last time; however, the current pandemic has changed everything, and the City needs to help the businesses in Cedarburg. She would be in favor of issuing this license to The Shinery.

Megan and Tim Schelwat of Sunshine Winery spoke on behalf of their new business and how a "Class B" license would benefit them also. They had a very successful opening and sold 500 bottles in their first week of business, before temporarily closing due to the pandemic.

Mayor O’Keefe stated that The Shinery and Sunshine Winery have mutually unique business concepts.

Council Member Arnett asked if Sunshine Winery would apply if the decision were delayed tonight.

Megan Schelwat explained that they have a huge following and would use the license to the full extent by utilizing their bar and being open seven days per week. They wanted to show the Common Council real numbers, but the pandemic caused them to temporarily close just after opening.

Troy Reissman congratulated Sunshine Winery on a successful opening; however, he has been in the City four years and this would be a tool for success for his business.

Mayor O’Keefe spoke with Senator Stroebel to discuss loosening the reins on liquor licensing to help small businesses in a tourist town, such as Cedarburg. In the past, he has advocated for holding onto the license for a restaurant and has spoke with restaurants who would be willing to pay \$10,000 for a reserve “Class B” license. He agreed with Council Member Verhaalen that this would be an opportunity to help a business and would advocate for issuance of the license to The Shinery.

Council Member Burkart explained that she was involved in the change to the Code for minimum hours of operation for liquor license holders with the intent to add vibrancy to the City. This is an opportunity to help a business and will vote for its issuance to The Shinery.

Council Member Galbraith said he would support issuing the license to The Shinery after hearing all the points tonight.

Motion made by Council Member Galbraith, seconded by Council Member Burkart, to approve the issuance of a Class “B fermented malt beverage and “Class B” intoxicating liquor license to The Shinery, W63 N767 Washington Avenue.

Council Member Thome suggested that the Common Council delay their decision for one more meeting, which would allow Sunshine Winery the opportunity to apply also.

Council Member Galbraith said a delay would not change his decision that the license should be awarded to the Shinery.

Council Member Arnett was in favor of giving Sunshine Winery an opportunity to apply to utilize their bar.

Council Member Verhaalen stated that Troy Reissman has experience and understands the need for a “Class B” liquor license. He felt Sunshine Winery would be successful without this license.

Council Member Thome stated that she felt strongly about the license being fully utilized and will continue to advocate for review of the Code. At this moment in time, she does not want to see a business close when this license would help.

Mayor O’Keefe explained that seven years ago, a local church was denied a columbarium due to a State law. In this case, a group of people banded together to get the State to change this law.

Businesses are hurting right now, and it would be a prime time to advocate for raising the limit on liquor licensing.

Troy Reissman said if the State lifts the regulation of liquor sampling, he will surrender the “Class B” liquor license back to the City.

Council Member Arnett stated that if this license is given to The Shinery, it will affect the leasing of the former Vintage Café location.

Council Member Chivinski stated the State is responsible for any change. His opinion has not changed, and he would not support awarding the “Class B” liquor license to The Shinery.

Motion carried on a roll call vote with Council Members Bublitz, Burkart, Verhaalen, Thome and Galbraith voting aye and Council Members Arnett and Chivinski voting nay.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Verhaalen, seconded by Council Member Galbraith, to approve new Operator License applications for the period ending June 30, 2020 for Wilson Phoa and Mark S. Adgate. Motion carried unanimously on a roll call vote.

CONSIDER PAYMENT OF BILLS DATED 03/06/20 THROUGH 03/20/20, TRANSFERS FOR THE PERIOD 03/05/20 THROUGH 03/27/20; AND PAYROLL FOR THE PERIOD 02/23/20 THROUGH 03/07/20 AND 03/08/20 THROUGH 03/21/20; AND ACTION THEREON

In answer to Council Member Bublitz’s question, City Administrator Hilvo explained that the \$7,553 payment for the Police Station improvement was a budgeted item for an upgrade to the dispatch equipment.

In answer to Council Member Verhaalen’s question, Director Wiza explained that the \$4,700 payment for signs is part of a rolling replacement that is overseen by Superintendent Bublitz. A portion of this amount may be reimbursed, and he will follow up with an answer.

Motion made by Council Member Burkart, seconded by Council Member Thome, to approve payment of bills dated 3/06/20 through 3/20/20, transfers for the period 3/05/20 through 3/27/20; and payroll for the period 2/23/20 through 3/07/20 and 3/08/20 through 3/21/20. Motion carried unanimously on a roll call vote.

ADMINISTRATOR’S REPORT

City Administrator Hilvo reported that City employees are responding appropriately to COVID-19 to stay safe and stop the spread.

- Public Works – Alternating work shifts with half-staff performing the following work: garbage pickup, making plexi-glass shields for election, brush pick, and weather permitting – parks will be aerated.
- Water Recycling Center – Alternating work shifts with half-staff.
- Library – Employees are working from home and at the Library at safe distances.

- Police Department – Critical services only.
- Treasurer – Employees are rotating shifts at work and working from home.
- Assessor – Working from home and City Hall when needed.
- Senior Center – Limited van operation and online learning from home.
- Clerk – Election work: in-person voting, absentee voting, preparing for Election day in gym, need for volunteer poll workers, setting up precautionary measures and planning for safe distancing.
- Building Inspection – Inspections on new construction only.
- Administrator – The County approved a blood drive at the Community Gym on April 16; FMLA guidelines will be distributed to employees this week (effective 4/1/20).

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Galbraith stated this would be his last meeting as Council Member for the 7th District. He thanked his constituents and stated that it was an honor to serve. Council Member Galbraith said it was a learning experience and he enjoyed working with fellow Council Members. Finally, he thanked City employees and Department Heads for their service to the City.

The Council Members expressed appreciation and support for the election process during the COVID-19 pandemic.

Council Member Arnett asked that college students help with the election. Training will be held on Monday, April 6 from 2 p.m. – 3 p.m.

MAYOR'S REPORT

Mayor O'Keefe commended City Administrator Hilvo and City employees for doing a great job during this difficult time.

Mayor O'Keefe thanked Council Member Galbraith for his work on the Common Council. He appreciated his conscientious work on the budget and appreciated his commonsense approach.

Mayor O'Keefe encouraged people to help on Election Day.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Thome, seconded by Council Member Bublitz, to adjourn to closed session at 8:36 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 Galbraith voting aye.

RECONVENE TO OPEN SESSION

Motion made by Council Member Thome, seconded by Council Member Arnett, to reconvene to open session at 9:16 p.m. Motion carried unanimously on a roll call vote with Council Members Bublitz, Arnett, Burkart, Verhaalen, Chivinski, Thome, and Galbraith voting aye.

NEW BUSINESS – CONTINUED

CONSIDER CONCORD GROUP PROPOSAL FOR BUSINESS PARK PROFESSIONAL SERVICES; AND ACTION THEREON

Director Wiza explained that the Concord Group assisted the City in developing the Hwy 60 Business Park engineering request for proposals and they were able to kick start the design process. The Concord Group typically serves the role of “owners’ representative” on large construction projects, and staff believes they could play an important role in keeping the business park project on track. They have provided a professional services proposal for consideration. Director Wiza said the City would benefit from the expertise of an owner’s representative on this large and complex project.

Motion made by Council Member Arnett, seconded by Council Member Burkart, to accept the Concord Group proposal for Business Park professional services. An amendment was made by Council Member Arnett, seconded by Council Member Burkart, to add: in an amount not to exceed \$49,600. Motion carried unanimously on a roll call vote.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to adjourn the meeting at 9:24 p.m. Motion carried unanimously on a roll call vote.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk