

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, August 12, 2008**

Please note: Minutes are unofficial until approved by the Common Council at the next regularly scheduled meeting.

Mayor Jack F Chiovero called the City of New Berlin Common Council Meeting to order at 9:33 PM after Committee of the Whole and Privilege of the Floor.

ROLL CALL: Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Poshepny, Moore and Ament. Also present were: City Clerk Marilyn Gauger, City Attorney Mark Blum, City Engineer JP Walker, Human Resource Director Tami Potkay, Human Resources/Safety Administrator Pat Hermann, IT Director Nick Roethel and Associate Planner Jessica Titel.

Those present recited the Pledge of Allegiance and stood for a moment of silence.

REPORTS

Clerk – none

Council President Harenda wished to recognize 3 New Berlin officers and 1 dispatch person that were awarded commendations for the performance of their duties during a domestic disturbance in July of 2006. Also requested Aldermen email the Mayor on dates for budget discussions either daytime or evening.

Mayor Chiovero thanked everyone for their best wishes, letters, cards and gifts to his new bride and himself.
City Attorney - none

COMMUNICATIONS

Daniel Williams Claim – referred to City Attorney.

PLAN COMMISSION

Modification To Section 275-34 (D) (3) Of The Municipal Code And Schedule A Public Hearing

Motion by Alderman Ament to Accept The City Attorney's Suggested Modification To Section 275-34 (D) (3) Of The Municipal Code And Schedule A Public Hearing For September 15, 2008 Before The Plan Commission And Accept The Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Certified Survey Map for the property located at 3915 S. Woelfel Road

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 3915 S. Woelfel Road and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried with Alderman Moore and Alderman Ament voting no...

Ordinance No. 2386 that approves the rezoning request by Mr. Kasian and Mr. Honeyager for an amendment to rezone and realign the boundaries of their respective PUD Ordinances for the properties located at approximately 14300 W. Howard Avenue

Motion by Alderman Ament to adopt Ordinance No. 2386 that approves the rezoning request by Mr. Kasian and Mr. Honeyager for an amendment to rezone and realign the boundaries of their respective PUD Ordinances for the properties located at approximately 14300 W. Howard Avenue and formerly identified as 3949 S. Sunny Slope Road (more specifically now known as Tax Keys: 1241-999-016 and 1241-999-017). Areas 4, 5, and 6 of Ordinance No. 2094 (The Preserve at Deer Creek Planned Unit Development Overlay District) are proposed to be rezoned from R-4.5, Rd-1/PUD, P-1/PUD, C-1/PUD and C-2/PUD to R-4.5, Rd-1/PUD, P-1/PUD, C-1/PUD, and C-2/PUD and to field delineate a wetland pocket. Ordinance No. 2166 (The Honeyager Planned Unit Development Overlay District) is proposed to be rezoned from Rd-1/PUD and C-2/PUD to Rd-1/PUD and C-2/PUD authorizing a 15' adjustment that modifies the boundary of each PUD District and accept the Plan Commission Report. Seconded by Alderman Harenda and carried unanimously.

Certified Survey Map for the property located at 14300 W. Howard Avenue

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 14300 W. Howard Avenue and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Ordinance No. 2387 that approves the rezoning of property known as City of New Berlin Fire Department located at 5120 S. Racine Avenue

Motion by Alderman Ament to adopt Ordinance #2387 that approves the rezoning of property known as City of New Berlin Fire Department located at 5120 S. Racine Avenue from R-1/R-2 to I-1 and accept the Plan Commission Report. Seconded by Alderman Moore and carried unanimously.

Certified Survey Map for the property located at 12723 W. Honey Lane

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 12723 W. Honey Lane and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Certified Survey Map for the property located at 4320 S. Moorland Road

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 4320 S. Moorland Road and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

CIVIL SERVICE COMMISSION

Classification of Administrative Coordinator Fire to Administrative Services Manager – Ordinance No. 2390

Motion by Alderman Wysocki to waive the 2nd and 3rd readings. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Wysocki to adopt Ordinance No. 2390. Seconded by Alderman Hopkins and carried unanimously.

LANDMARKS COMMISSION

Designate the barn owned by Rosemarie Luthi located at 20680 Downie Road

Motion by Alderman Seidl to Designate the barn owned by Rosemarie Luthi located at 20680 Downie Road a New Berlin Landmark. Seconded by Alderman Harenda and carried unanimously.

BOARD OF PUBLIC WORKS

Development Agreement for Moorland Reserve

Motion by Alderman Moore to approve the Development Agreement for Moorland Reserve, a proposed development on the property located at 15620 W. Beloit Road subject to final review as to form by the City Attorney. Seconded by Alderman Ament and carried unanimously.

WATER RESOURCE MANAGEMENT

Reallocation of Funds from open Water Resource Management Utility CIP Accounts to the Cold Spring Road Retention CIP Account – Resolution No. 08-22

Motion by Alderman Harenda to approve Resolution No. 08-22 Reallocation of Funds from open Water Resource Management Utility CIP Accounts to the Cold Spring Road Retention CIP Account 04251171 61713 C2003 in the amount of \$60,716.00. Seconded by Alderman Moore and carried unanimously.

Contract for Eisenhower High School (EHS) Underground Detention Facility

Motion by Alderman Harenda to Award the Contract for Eisenhower High School (EHS) Underground Detention Facility to the lowest responsive responsible bidder, *Willkomm Excavating & Grading, Inc.* in the amount of \$483,153.00. Source of funds: Cold Spring Road Detention CIP C2003 \$509,952; Cold Spring Road CIP C2004 \$42,391 for a total project cost of \$552,131.00. Seconded by Alderman Moore and carried unanimously.

MAYORAL VETO

Per Statute 62.09 (8) Override Council action for formation of a Personnel Committee that was passed by the Common Council on July 8, 2008.

Mayor Chiovaturo read his veto paper.

The following motion is from the 7-8-08 Council meeting:

“Motion by Alderman Ament to approve Reinstating the City Personnel Committee for issues related to pay and benefits for employees of the city with the change that at least one (1) of the members, not two (2), are appointed from the Finance Committee; adding the Mayor as an advisor and create an ordinance to that effect. Seconded by Alderman Seidl and carried with Aldermen Hopkins and Moore voting no.”

City Attorney Blum indicated the Mayoral veto is before you, a motion is not needed however to override the Mayor's veto of approving a Personnel Committee, five (5) yes votes are required.

Upon voting, the Mayor's veto was sustained by a vote of 4 to 3. Aye: Aldermen Wysocki, Seidl, Harenda and Ament. Nay: Aldermen Hopkins, Poshepny and Moore.

MAYORAL APPOINTMENTS

Electrical Review Board

Motion by Alderman Ament to approve the re-appointment of Robert J. Kutchera with term expiring 8/31/2010. Seconded by Alderman Seidl and carried unanimously.

Motion by Alderman Wysocki to approve the re-appointment of Wayne H. Wielebski with term expiring 8/31/2010. Seconded by Alderman Hopkins and carried unanimously.

Fourth of July Commission

Motion by Alderman Ament to approve the re-appointment of Nancy A. Perkins with term expiring 8/1/2012. Seconded by Alderman Harenda and carried unanimously.

Motion by Alderman Ament to approve the re-appointment of Anida Rose with term expiring 8/1/2009. Seconded by Alderman Harenda and carried unanimously.

Motion by Alderman Ament to approve the re-appointment of Cheryl Schober – Fourth of July Coordinator with term expiring 8-1-2012. Seconded by Alderman Hopkins and carried unanimously.

DEFERRALS, REFERRAL & TABLED ITEMS

Sidepath and Trail Inspection and Maintenance Policy/TABLED 9-25-07/DEFERRED 10-9-07/TABLED 10-23-07/TABLED 2-12-08

Motion by Alderman Harenda to remove from the table. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Moore to adopt the revised Sidepath and Trail Inspection and Maintenance Policy the final copy before you with the addition of this phase after Section A. page 6: "However, single family homeowners shall not be required to clear snow and ice from sidepaths that abut their rear property line.". Seconded by Alderman Poshepny, motion failed with Alderman Poshepny and Alderman Moore voting yes.

Motion by Alderman Harenda to approve the revised Sidepath and Trail Inspection and Maintenance Policy with the following amendments: Section A. page 6: change 24 hours to 72 hours; the last sentence to read as follows: "However, single family homeowners shall not be required to clear snow and ice from sidepaths that abut their property lines if they pre-existed prior to the enactment of Ordinance No. 2367; and eliminate Section D. Seconded by Alderman Hopkins and carried with Alderman Poshepny voting no.

Motion by Alderman Seidl to extend the Common Council meeting by 30 minutes per Common Council Rules. Seconded by Alderman Harenda and carried unanimously.

Ordinance No. 2367 Ordinance To Amend City of New Berlin Municipal Code Chapter 230 Streets and Sidewalks Section 230-2 Snow and Ice Removal - 3rd reading and TABLED 12-11-07

Mayor Chiovatero deviated from the agenda to take up Ordinance No. 2367 because it is directly related to the above policy.

Motion by Alderman Ament to remove from the table. Seconded by Alderman and carried unanimously.

Motion by Alderman Ament to waive the 2nd and 3rd readings. Seconded by Alderman Hopkins and carried with Alderman Poshepny and Moore voting no.

Motion by Alderman Seidl to adopt Ordinance No. 2367 with the amendments from the policy. Seconded by Alderman Harenda and carried with Alderman Poshepny and Moore voting no.

Resolution No. 07-29 to approve SEWRPC's Year 2035 Transportation Plan for the region and accept the Plan Commission Report/TABLED 11-13-07

This item remained on the table.

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CONSENT AGENDA

Motion by Alderman Wysocki to approve all of the following items listed on the Consent Agenda as amended. Seconded by Alderman Moore and carried unanimously.

MINUTES - Common Council minutes from July 8, 2008

UTILITY AND FINANCE

For: July 23, 2008

- Recommend to Council approval of Water Utility claims in the amount of \$60,804.45, Sewer Utility claims in the amount of \$46,669.95, and Bi-weekly claims in the amount of \$368,070.50, all of which represents payment to vendors.

For: August 13, 2008

- Recommend to Council approval of Water Utility claims in the amount of \$130,125.35, Sewer Utility claims in the amount of \$51,709.26, and Bi-weekly claims in the amount of \$1,358,850.95, all of which represents payment to vendors.

LICENSES & PERMITS

Bartenders

- Bartender License for the year 2008-2010 to James Thelen.
- Bartender License for the year 2008-2010 to Leanne Arne, Joyce Boyce, Christopher Burr, Amber Buschke, Christopher Case, Farrah Corrao, Anne Dent, Emily Dillon, Nicole Ellenson, Ken Handyside, Carolann Hanrahan, Phillip Holly, Jason Hermanowksi, Abdul Hunzai, Lauren Kopas, Crystal Knott, Gregg Krause, Mark Krause, Karen Kruschke, Cindy LaChapelle, Kristy Lycan, Amanda Mottl, Brisna Nieves, Laurie Nowak, Dawn Retherford, Kim Rishel, Christina Rumppe, Nicholas Schafer, Jennifer Schrader, Nicole Spoon, Tim Streets, Dawn Ziolkowski and Salvatore Tagliavia.

Extension of Premise – Class B

- Matty's Bar & Grille/Agent Matt Anderson at 14460 W College Avenue for fundraising event held Sunday, August 10 from 4PM to 9PM/approved by Mayor previously.

MISCELLANEOUS

Resolution from Finance

- Resolution No. 08-21 Electing To Continue The Distribution Of School Levy And Lottery And Gaming Property Tax Credits By The State Of Wisconsin Directly To The City Of New Berlin.

Issuance of Credit Cards

- City issued credit cards for Department Heads and Staff/Finance Committee

Howard Avenue Special Assessment Sewer Project

- Direct the City Attorney to Prepare the Final Resolution for the Howard Avenue Special Assessment Sewer Project

This item was tabled.

BPW Monthly Meeting Date and Time Change

- Refer The Changing Of The Regular BPW Monthly Meeting Date And Time From The First Monday Mornings Of The Month At 8:00AM To The Evening Of The 3rd Wednesday Of The Month At 6:00PM To The BPW For Their Discussion And Recommendation Back To The Common Council/Alderman Ament.

Refund of Tax Penalty

- Direct the City Treasurer to refund the penalty payment paid by John Fiedler related to his third Property Tax Payment/Alderman Wysocki

Resolution From Director of Human Resources and Fire Chief

- Resolution No. 08-23 Establishing Benefits for Full-Time Firefighters Assigned to the 56 Hour Work Week Schedule

Council Meeting Dates

- Discussion of Possible Alternate Date for First Meeting in September/City Clerk will email dates.
- Adoption of "Three-Quarters" Majority Vote For Any Future Extension of Water and Sewer Outside Established New Berlin Urban Service Area Boundary (NBUSAB). These Boundaries Are To Be Adopted Within The Next 60 Days By The New Berlin Common Council
This item was tabled.
- Adoption of Water and Sewer Urban Service Area Boundaries

DEFERRED, REFERRED & TABLED ITEMS

- Common Council approves any pay or benefit increases before they go into affect. Instruct the City Attorney to draw up a resolution or ordinance (whichever is appropriate) to be approved at the next Common Council meeting/REFERRED TO FINANCE COMMITTEE 5-13-08
This item remained on the table.
- Class A Combo (Beer & Liquor)
Wal-Mart Stores East LP at 15333 W National Avenue/Dennis San Felippo, Agent for 7-1-08 to 6-30-09/DEFERRED 6-24-08/TABLED 7-8-08
This item was approved.
- Resolution No. 08-19 Resolution Establishing Salary Ranges for Civil Service Employees/DEFERRED 6-24-08/TABLED 7-8-08
This item was approved with 3 positions removed.

Extension of Premise – Class B Combo

- StoneFire Pizza Company at 5320 S Moorland Road for a 1 time event to be held on Friday, August 15, 2008 "Exotic Car Show" for the south parking lot with beer only/TABLED 7-8-08
This item was approved.

ITEM/S REMOVED FROM CONSENT AGENDA

Bartenders

- Bartender License for the year 2008-2010 to Lacey Samz

Motion by Alderman Seidl to approve the Bartender License for the year 2008-2010 to Lacey Samz. Seconded by Alderman Harenda and carried with Aldermen Wysocki, Poshepny and Moore voting no.

Reconsideration of Ordinance

- Reconsideration of adoption of Ordinance No. 2380 To Amend Section 11-22(C) And 11-22(E) Of The Municipal Code Of The City Of New Berlin Regarding Short-Term Disability And Vacation Benefits For Part-Time Employees at the July 8, 2008 Council meeting/Alderman Seidl.

The following motion is from July 8th Council meeting whereby Alderman Poshepny was excused.
"Motion by Alderman Hopkins to adopt Ordinance No. 2380. Seconded by Alderman Moore and carried with Mayor Chiovatero breaking a tie vote with Alderman Wysocki, Alderman Harenda and Alderman Ament voting no".

Upon voting, the motion to adopt Ordinance No. 2380 failed with Aldermen Hopkins, Poshepny and Moore voting yes.

ORDINANCES/RESOLUTIONS

Mayor Chiovatero deviated from the agenda to consider this item due to the late hour.

Resolution No. 08-24 Adopting the Salary Range Assignments for Civil Service and Non- Represented Positions

Motion by Alderman Wysocki to approve Resolution No. 08-24 with the exception of HR/Safety Administrator

position at grade 9. Seconded by Alderman Moore and carried with Alderman Hopkins voting no.

Motion by Alderman Moore to direct the City Attorney to include HR/Administrator in a new resolution and bring forth. Seconded by Alderman Hopkins.

Alderman Wysocki called for the question. Seconded by Alderman Hopkins and carried with Aldermen Harenda and Moore voting no.

Upon voting, the motion failed with Aldermen Hopkins, Poshepny and Moore voting yes.

Motion by Alderman Wysocki to refer back to Civil Service Commission with a recommendation back to Council. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Wysocki to extend the Common Council meeting by 30 minutes per Common Council Rules. Seconded by Alderman Seidl and carried unanimously.

Ordinance No. 2384 Ordinance To Amend Section 152-5(G) Licenses And Permits Of The Municipal Code Of The City Of New Berlin Regarding The Permitted Hours Of Solicitation For Direct Sellers (3rd reading)

Motion by Alderman Wysocki to adopt Ordinance No. 2384. Seconded by Alderman Hopkins and carried unanimously.

Ordinance No. 2385 Ordinance To Create Section 171-3 Noise Of The Municipal Code Of The City Of New Berlin Concerning The Regulation Of Engine Compression Braking

Motion by Alderman Harenda to waive the 2nd and 3rd readings. Seconded by Alderman Hopkins and carried with Alderman Moore voting no.

Motion by Alderman Harenda to adopt Ordinance No. 2385. Seconded by Alderman Ament and carried unanimously.

Ordinance No. 2388 Ordinance To Amend Section 6-1 Boards, Commission And Committees Of The Municipal Code Of The City Of New Berlin Concerning The Membership Of The Board Of Public Works

Motion by Alderman Seidl to waive the 2nd and 3rd readings. Seconded by Alderman Wysocki and carried with Alderman Moore voting no.

Motion by Alderman Seidl to adopt Ordinance No. 2388. Seconded by Alderman Harenda and carried with Alderman Moore voting no.

City Clerk Gauger read the following:

CLOSED SESSION

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85 (1) (g) of the Wisconsin State Statutes.

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:

- Thomas and Linda Templin Claim

Motion by Alderman Seidl to go to Closed Session at 12:06 AM. Seconded by Alderman Wysocki and carried unanimously per roll call vote.

RECONVENE TO OPEN SESSION

Motion by Alderman Seidl to reconvene to Open Session at 12:11 AM. Seconded by Alderman Harenda and carried unanimously.

ADJOURN

Motion by Alderman Wysocki to adjourn at 12:12AM. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:

Marilyn Gauger, MMC/WCMC
City Clerk