

# Minutes

## Common Council Minutes

September 14, 1999

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, September 14, 1999, at the New Berlin City Hall at 10:15 P.M.

Present were Mayor Gatzke, Aldermen Bullermann, Wysocki, Patzer, Scheuble, Wilkens, Chiovatero, and Kaminski. Also present were City Clerk Bill Bowers, City Attorney Paul Reilly, Director of Planning Steve Hoese, Asst. Director of Planning Mark Lake, Director of Parks & Rec Paul Leuthold, City Engineer Jeff Chase, Utility Superintendent Larry Wilms, Police Lt. Frank Zsohar, and City Treasurer Mike Holzinger.

### Clerk's Report

City Clerk Bowers gave a Clerk's Report.

### MINUTES

Motion by Alderman Wysocki to recommend to Council approval of the Minutes of the Common Council Meeting held on August 24, 1999. Seconded by Alderman Bullermann and carried unanimously.

### COMMUNICATIONS

Communication from Paratech Ambulance Service - to City Attorney

Notice of Claim from Cramer, Multhauf & Hammes LLP regarding Zoning Permit for Preserve at Deer Creek

Motion by Alderman Wysocki to recommend to Council denial of the Cramer, Multhauf & Hammes LLP claim regarding the zoning permit for Preserve at Deer Creek, per the recommendation of City Attorney Paul Reilly. Seconded by Alderman Patzer and carried unanimously.

Communication from Kevin Larson regarding Approval for Outdoor Dining Area at Senor Luna's Restaurant

Motion by Alderman Patzer to recommend to Council approval of the amendment to the "Class B" Retailers License to include the outdoor dining area at Senor Luna's Restaurant, 1901 S. Calhoun Road, subject to the following conditions: 1) Adequate Lighting to provide security as approved by the Police Department, 2) All Wait staff serving outside are required to have Operator's Licenses, and 3) The area is monitored by restaurant staff at all times. Seconded by Alderman Bullermann and carried unanimously.

### BUSINESS:

#### PLAN COMMISSION RECOMMENDATIONS

Alderman Kaminski reported from the meeting held on September 13, 1999:

Carmen Roman Gumieny - 21951 W. Lawnsdale Rd. - NW 1/4 Sec. 30 - Final Land Division

Motion by Alderman Kaminski to recommend to Council approval of the request by Carmen Roman Gumieny for a final land division located at 21951 W. Lawnsdale Road NW 1/4 Sec. 30 subject to:

1. Waukesha County Access Permit required for Lot 1. (WDOT letter on file)
2. Principle dwelling on lot 1 (future) to be located a minimum of 50' from pond. 50' lot setback to be labeled on the face of the CSM.
3. Drafting error 56.94' (dimension from center of easement to eastern lot corner along Lawnsdale Road) to be corrected before the City of New Berlin will sign the final CSM.
4. Payment of \$1000.00 in Public Site, Open Space and Trail fees required before the City will sign the Final CSM.

Seconded by Alderman Chiovaturo and carried unanimously.

Extraterritorial Plat – Illing & Illing Partnership – Se ¼ and Ne ¼ Sec. 24, Waukesha, WI

Motion by Alderman Kaminski to recommend to Council approval of the request by Illing & Illing Partnership for an extraterritorial Plat located in SE ¼ and NE ¼ SEC. 24, Waukesha, Wisconsin with the following comments:

1. Owners to sign before the City of New Berlin will sign the Final CSM.
2. No serious objection.

Seconded by Alderman Chiovaturo and carried unanimously.

TRIAD II – 16205 W. Rogers Dr. – Two Isopropanol Tanks in Floodplain

Motion by Alderman Kaminski to recommend to Council approval of the request by TRIAD II for two isopropanol tanks in floodplain located at 16205 W. Rogers Drive subject to:

1. Submittal of a certified survey plat map of pad and tanks done by a professional engineer showing proposed improvements outside of the 500-year floodplain. Re-certification of as-built elevations after installation is required.
2. Submittal of a letter to the City of New Berlin Planning Department that documents what changes the company has undertaken to improve the problems that the company had experienced in the past.
3. The City of New Berlin Fire Department has the authority to inspect the property at any time that the business is operating and that any refusal to allow inspection would be grounds for the revocation of the conditional use permit.
4. Submittal of a plan of operation, which should include ignition sources, a layout of the entire building, indicates where the storage of chemicals and finished products will be located.
5. Building must meet all applicable building and fire codes; building must be fully sprinklered. State of Wisconsin and local fire prevention bureau approval required.
6. Must meet requirements of ILHR 10 per City of New Berlin Fire Department.
7. Submittal of MSDS sheet to the City of New Berlin Planning Department is required for this business.
8. Resolution of any and all outstanding violations, including OSHA violations. Updates kept on file.
9. Tanks must be installed by certified installer and meet all setback requirement of the M-2 district.
10. Due to the volatile nature of the Isopropanol tanks, all portions of the tank must be above the 500-year recurring flood interval. According to the FIS for Deer Creek that correlates with the FEMA Map Panel Number 550487 0002 C, the tanks need to be built at or above 846.75 feet.
11. All junk and trash must be removed from the property as this is in violation of section 10.06 of the Wisconsin State Statues. This includes all garbage, pallets and any other miscellaneous items on this property.

12. Any leaks which breach designed containment system would result in immediate revocation of Conditional Use Permit.

Seconded by Alderman Chiovaturo.

Upon voting on the motion, the motion failed with Aldermen Patzer, Wilkens, and Kaminski voting "yes".

Motion by Alderman Wysocki to recommend to Council denial of the request by TRIAD II for two isopropanol tanks in floodplain located at 16205 W. Rogers Drive due to the following concerns:

1. Lack of cooperation in the past.
2. Tanks in floodplain.
3. Fifty seven (57) violation over the years with a total of over \$250,000 in fines.
4. Not compatible with surrounding uses.
5. Past history of spills.
6. Apparent lack of risk management practices.

Seconded by Alderman Bullermann and carried with Aldermen Patzer, Wilkens and Kaminski voting "no".

#### BOARD OF PUBLIC WORKS

Alderman Wysocki reported from the meeting held this evening:

##### Greenfield Avenue Water Main - Award of Contracts

Motion by Alderman Wysocki to recommend to Council to award two construction contracts for the installation of watermain along Greenfield Avenue between Calhoun Road and Sunny Slope Road. The first contract (Project W-2A-99) to be awarded to Super Excavators, Inc. for the installation of approximately 3,700 lineal feet of watermain along Greenfield Avenue between Calhoun Road and Coachlight Drive in the amount of \$444,679. The second contract (Project W-2B-99) to be awarded to Rawson Contractors Inc. for the installation of approximately 5,000 lineal feet of watermain along Greenfield Avenue from approximately 500 feet west of Moorland Road to approximately 225 feet east of Sunny Slope Road in the amount of \$961,460. Total combined project costs are estimated at \$1,406,139, with funding to come from the 1999 CIP budget and to direct the City Clerk to prepare the proper preliminary assessment Resolution. Seconded by Alderman Patzer and carried with Alderman Scheuble voting "no".

#### UTILITY COMMITTEE

Alderman Bullermann reported from the meeting held this evening:

##### Well #3 Pumphouse; Building Remodeling and Rehab - Award of Contract

Motion by Alderman Bullermann to recommend to Council to approve the construction contract for Well #3 Pumphouse - Building Remodeling and Rehab to the lowest responsive, responsible bidder, McAllister C.D.C., Milwaukee, WI in the amount of \$114,241 and a total construction project amount not to exceed \$130,000. Seconded by Alderman Patzer and carried unanimously.

##### Well #4 Pumphouse; Building Renovation and Expansion - Award of Contract

Motion by Alderman Bullermann to recommend to Council to approve the construction contract for Well #4 Pumphouse - Building Renovation and Expansion to the lowest responsive, responsible bidder, McAllister C.D.C., Milwaukee WI, in the amount of \$230,955 and a total construction amount not to

exceed \$262,000, including installation and generators that are to be purchased separately. Seconded by Alderman Wysocki and carried unanimously.

#### Well #4 Auxiliary Generator Set - Award of Contract

Motion by Alderman Bullermann to recommend to Council to approve award of equipment purchase contract for Well #4 Auxiliary Generator Set, part of the utility water supply emergency back-up system, to the lowest responsive, responsible bidder, FABCO (Caterpillar), Milwaukee, WI, in the amount of \$71,196 and a total project Purchase amount not to exceed \$74,500. Seconded by Alderman Wysocki and carried unanimously.

#### MAYORAL APPOINTMENTS - No Report

#### ACTION ON PUBLIC HEARINGS/None

#### AD HOC POLICY COMMITTEE

Alderman Wysocki reported from the meeting held on August 31, 1999:

Motion by Alderman Wysocki to table the Enclosed Storm Drainage Projects, Engineering Grading Guidelines, and Amendments to Update Policies, for City Attorney review. Seconded by Alderman Bullermann and carried unanimously.

#### PARKS & RECREATION COMMISSION

Alderman Patzer reported from the meeting held on August 30, 1999:

#### Offer to Purchase Johnson Gravel Quarry

Motion by Alderman Patzer to recommend to Council to accept the Offer to Purchase Johnson Gravel Quarry for a community park. The purchase price is a total \$830,000 which will be paid in five (5) equal installments of \$166,000 each over a five year period plus 8% interest per year on the unpaid balance, with funding to come from the Park & Open Space Fund. Seconded by Alderman Bullermann and carried unanimously.

#### SAFETY COMMISSION

Alderman Wysocki reported from the meeting held on September 8, 1999:

#### Removal of Stop Sign at Mayflower Dr. and Mayflower Ct.

Motion by Alderman Wysocki to recommend to Council that the stop sign at Mayflower Dr. and Mayflower Ct. be removed. Seconded by Alderman Bullermann.

Motion by Alderman Wilkens to defer this item. Seconded by Alderman Scheuble and carried unanimously.

#### "No Parking" on East Side of 169 St. from Greenfield Avenue to Alley

Motion by Alderman Wysocki to recommend to Council that the east side of 169<sup>th</sup> Street from Greenfield Avenue to the alley be posted "No Parking", and to direct the City Clerk to prepare the proper Resolution. Seconded by Alderman Patzer and carried unanimously.

REFERRALS, DEFERRALS, AND TABLED ITEMS

a. Fire Department Contract - TABLED 6-22-99 - No Report

b. Moorland Road at Grange Avenue - Intersection Safety - TABLED 8-24-99 - No Report

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COMMITTEE OF THE WHOLE (Items from Consent Agenda)

Motion by Alderman Bullermann to recommend to Council to approve the following items from the consent agenda. Seconded by Alderman Patzer and carried unanimously.

UTILITY

Sewer Claims

Motion by Alderman Patzer to recommend to Council approval of payment of Sewer Utility Claims in the amount of \$74,062.32, all of which represents payments to vendors. Seconded by Alderman Bullermann and carried unanimously.

Water Claims

Motion by Alderman Patzer to recommend to Council approval of the payment of Water Utility Claims in the amount of \$119,030.94, all of which represents payments to vendors. Seconded by Alderman Bullermann and carried unanimously.

LICENSES

"Class A" Retailers License

Motion by Alderman Bullermann to recommend to Council approval of the "Class A" Retailer's License to sell Fermented Malt Beverages and Intoxicating Liquor License for the year 1999-2000 to American Drug Stores, Inc., George A. Lutz, Agent, at Osco Drug #1406, 13995 W. National Avenue, subject to approval by the Inspection and Planning Departments. Seconded by Alderman Wysocki and carried unanimously.

Bartender's Licenses

Motion by Alderman Patzer to recommend to Council approval of the Bartender's Licenses for the year 1998/2000 to Courtney C. Owrey and Todd J. Radke. Seconded by Alderman Wysocki and carried unanimously.

MISCELLANEOUS

Refund of Bow Hunting Fees

Motion by Alderman Patzer to recommend to Council that all bow hunters licenses issued from August 1, 1999 be charged the fees approved by the Common Council on August 10, 1999. Seconded by Alderman Wysocki and carried unanimously.

Criminal History Checks for License Applicants

Motion by Alderman Wysocki to recommend to Council that the City Clerk be directed to prepare the proper Ordinance authorizing criminal history checks for all liquor and adult oriented license applicants. Seconded by Alderman Patzer and carried unanimously.

#### Committee Membership Updates

Motion by Alderman Wysocki to recommend to Council that the membership of the Board of Public Works be amended to remove the Director of Public Works and include the City Engineer or his designate; the Utility Committee membership be amended to remove the Director of Public Works and include the Utility Manager or his designate; and the Safety Commission membership be amended to remove the Director of Public Works and include the Director of the Streets Division or his designate and to direct the City Clerk to prepare the proper ordinance. Seconded by Alderman Patzer and carried unanimously.

#### Municipal Code Updates

Motion by Alderman Bullermann to recommend to Council that the City Clerk be directed to draft the proper Ordinances to eliminate all references to the Director of Public Works and replace them with the proper official. Seconded by Alderman Wysocki and carried unanimously.

#### Contracts for Public Safety Building

Motion by Alderman Kaminski to recommend to Council approval of the following contracts for the Public Safety Building:

- Ceramic Floor Tile Lippert Inc. \$ 80,796
- Accoustical Ceiling Tile Quality Ceilings \$ 72,910
- Painting CBI \$109,834
- Carpet and Vinyl Floor Malkins \$ 70,630
- Epoxy Quartz Flooring Floor Care Associates \$ 2,280
- Wall Finishing Carlson Kane \$ 25,443
- Cabinetry and Solid Surface Tops RE Neumann \$ 65,153
- Raised Computer Floor CDP Inc. \$ 8,174
- Wall Panels Marlite Dover \$ 30,512
- Ballistic Protection Simmons Building products \$ 30,210
- Call Check System Dictaphone \$ 20,998
- Time Clock Kronos Inc. \$ 3,370

Seconded by Alderman Wilkens and carried unanimously.

#### Reorganization of Departments

Motion by Alderman Patzer to recommend to Council to:

1. Create a Community Development Department by combining the existing personnel from the Planning Department and Engineering Division.
2. Revise the job description of the Director of Planning to include administrative functions of the Engineering Division.
3. Rename the Parks & Recreation to Streets, Parks & Recreation and include the streets administrative functions in the job description of the Director.
4. Eliminate the Director of Public Works positions.
5. Eliminate the Department of Public Works and reassign the Office Coordinator to the Community Development Department.
6. Temporarily assign the administrative functions of the Utility Division to Steve Hoes.
7. Approve the new DBM banding for Director of Planning and Community Development D71 to E82.
8. Approve the new DBM banding for Director of Streets, Parks & Recreation from D63 to D72.

Seconded by Alderman Kaminski and carried unanimously.

## FINANCE

### Claims

Motion by Alderman Wysocki to recommend to Council approval of the bi-weekly claims in the amount of \$507,787.11, all of which represents payments to vendors. Seconded by Alderman Patzer and carried unanimously.

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## MISCELLANEOUS

### Burgraff Lawsuit

Motion by Alderman Patzer to recommend to Council to reaffirm the previous Council action and proceed with the raze order. Seconded by Alderman Wilkens and carried with Aldermen Wysocki, Scheuble, and Kaminski voting "no".

## RESOLUTIONS AND ORDINANCES

Ordinance No. 2086 "An Ordinance to Repeal and Recreate Section 1.05(7) of the Municipal Code Relating to the New Berlin Volunteer Fire Department, Inc.'s Authority to Nominate a Candidate for Fire Chief at Such Time that a Vacancy Exists" (1<sup>st</sup> Reading)

City Clerk Bowers gave the first reading of Ordinance No. 2086.

Motion by Alderman Bullermann to waive the second and third readings of Ordinance No. 2086. Seconded by Alderman Patzer and carried with Alderman Scheuble voting "no".

Motion by Alderman Bullermann to recommend to Council approval and adoption of Ordinance No. 2086. Seconded by Alderman Patzer and carried unanimously.

Ordinance No. 2087 "An Ordinance to Repeal and Recreate Section 11.05(3) of the Municipal Code of the City of New Berlin Relating to Yard Waste" (1<sup>st</sup> Reading)

City Clerk Bowers gave the first reading of Ordinance No. 2087.

Motion by Alderman Bullermann to waive the second and third readings of Ordinance No. 2087. Seconded by Alderman Kaminski and carried with Alderman Patzer voting "no".

Motion by Alderman Bullermann to recommend to Council approval and adoption of Ordinance No. 2087. Seconded by Alderman Kaminski and carried unanimously.

Council President's Report - No Report

Mayor's Report

Mayor Gatzke gave a Mayor's Report.

City Attorney's Report - No Report

Motion by Alderman Bullermann to move into Closed Session at 11:25 p.m. Seconded by Alderman Wysocki. Upon voting, Alderman Bullermann voted "yes", Alderman Wysocki voted "yes", Alderman Patzer voted "yes", Alderman Scheuble voted "yes", Alderman Wilkens voted "yes", Alderman Chiovatero voted "yes", and Alderman Kaminski voted "yes".

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.

7. 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 is or likely to become involved.

- Ziegler Claim -

Motion by Alderman Bullermann to move into Open Session at 11:30 p.m. Seconded by Alderman Wysocki and carried unanimously.

OPEN SESSION

Possible Action on Ziegler Claim

Motion by Alderman Bullermann to recommend to Council to authorize the City Attorney to settle the Scott Ziegler Claim in an amount not to exceed \$650.00. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Bullermann to adjourn the meeting at 11:30 p.m. Seconded by Alderman Patzer and carried with Alderman Scheuble voting "no".

William Bowers

City Clerk

WB/nh