

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Thursday, November 19, 2009**

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

Mayor Jack F Chiovaturo called the City of New Berlin Common Council Meeting to order at 7:39 PM after Committee of the Whole and Privilege of the Floor.

ROLL CALL: Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Moore and Ament. District #5 seat is vacant. Also present were: City Clerk Marilyn Gauger, City Attorney Mark Blum, Finance Director Mike Holzinger, Maintenance Supervisor Ernie Giesegeh, Parks Recreation & Forestry Director Mark Schroeder, Administrative Coordinator Cheryl Bowers, Human Resource Director Tami Potkay, City Planning Services Manager Nikki Jones, Community Development Director Greg Kessler, Deputy Assessor Mary Hlavinka, Police Chief Joe Rieder, Library Director Katie Schulz, IT Director Nick Roethel, Streets Manager Don Ullman, Administrative Supervisor Sue Hanley, Administrative Services Manager Deb Delikat, Fire Chief Ed Dobernig, Assistant Fire Chief Tom Dobernig, Assistant Fire Chief Joe Dahlman, Assistant Fire Chief Scott Gillard, Transportation Engineer Ron Schildt, Election/License Tech Sherri Hanson and Record Clerk Lori Schulpius.

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

This meeting was noticed on Monday, November 16, 2009 in accordance with the Open Meeting Law.

REPORTS

City Clerk – none

Council President Harenda indicated that the Aldermen were issued packets tonight from DCD. He asked that you review the materials before the 12-8-09 Council meeting.

Mayor Chiovaturo indicated that Saturday, December 5th at 4:30 PM a tree lighting ceremony sponsored by the Lions Clubs will be held at the New Berlin Veterans Memorial site. There will be stockings for the kids and Santa will be there. A Happy Thanksgiving to all from all of us.

City Attorney - none

COMMUNICATIONS

Millers First Insurance Claim

Referred to City Attorney Blum

BOARD OF PUBLIC WORKS

Changing the Truck Route Map

Alderman Ament read all 6 of the changes to the Truck Route map that came from Board of Public Works.

Motion by Alderman Ament to Amend Truck Route Map to remove and designate Coffee Road as restricted from Racine Avenue to Moorland Road. Seconded by Alderman Seidl.

Discussion followed on concerns that Coffee is arterial road and may be more restricted than other city streets – other city streets do not have a restriction. Transportation Engineer Ron Schildt indicated the verbiage (No trucks) after “Other City Streets” on the draft copy of the NB Comprehensive Plan Truck Routes Map should not be on the map. That is incorrect. Using “restricted” for truck routes is a tool to save road base that may be deteriorating in order to add to the longevity of the road. After reconstruction however specific roads would not be restricted.

Motion by Alderman Moore to refer the amendment regarding Coffee Road back to Board of Public Works. Seconded by Alderman Ament and carried unanimously.

Motion by Alderman Ament to amend the Truck Route map to keep Wehr Road as restricted. Seconded by Alderman Harenda and carried with Alderman Wysocki voting no.

Discussion followed on making sure an approved Truck Route map be part of the Comprehensive Plan which needs to be completed prior to the end of this year.

Motion by Alderman Ament to rescind the motion to refer Coffee Road back to the Board of Public Works. Seconded by Alderman Seidl and carried unanimously.

Motion by Alderman Ament to approve the Truck Route Map included in the Comprehensive Plan update with the amendment of keeping Wehr Road as a restricted truck route. Seconded by Alderman Seidl and carried unanimously.

Change the Comprehensive Plan Update to reflect the ROW for Calhoun Road as being 110' wide from Greenfield Avenue to National Avenue; 100 ' wide from National Avenue to Small Road as shown on the Waukesha County ROW Width Map.

Motion by Alderman Ament to Change the Comprehensive Plan Update to reflect the ROW for Calhoun Road as being 110' wide from Greenfield Avenue to National Avenue; 100 ' wide from National Avenue to Small Road as shown on the Waukesha County ROW Width Map. Seconded by Alderman Seidl and carried unanimously.

Amendment #2 to the Ryerson Road Design Contract to include \$69,000 for the redesign of a water main relay.

Motion by Alderman Ament to approve the Amendment #2 to the Ryerson Road Design Contract to include \$69,000 for the redesign of a water main relay with funds from the Ryerson Road CIP Account resulting in an amended not to exceed amount of \$371,250. Seconded by Alderman Hopkins and carried unanimously.

WATER RESOURCE MANAGEMENT

2010 Water Resource Management Utility Operating Budget

Motion by Alderman Harenda to approve the 2010 Water Resource Management Utility Operating Budget. Seconded by Alderman Moore and carried unanimously.

FINANCE COMMITTEE

Alderman Wysocki indicated these 3 items do not require Council action however want to make sure we are updated on these items therefore this is for discussion purposes only.

Wisconsin Act 28 - be updated on any and all impacts re: Emergency Services Maintenance

Alderman Wysocki read from the minutes that the legislature as part of the budget bill added a maintenance for emergency services requirement, meaning that henceforth the amount you spend for initial response for police and fire has to be at least the same, if not more than what was spent the year before. The issue is that to the extent that you have used shared revenues to pay for emergency services. It is the service on the street and could be part or one or several line items. The report goes to the DOR either May or June and will set the baseline and would be a discussion at Finance Committee level.

Refund Outstanding Debt Issues – be updated on Outstanding Debt Issues

Alderman Wysocki indicated will get input from Ehlers and wait to Dec 2010.

Proposed City Strategic Plan - be updated on the Proposed City Strategic Plan

Mayor Chiovaturo agreed to meet with staff and work on plan for next year.

RECONSIDERATION OF MOTION TO DIRECT CITY CLERK TO ADVERTISE FOR ALDERMANIC DISTRICT#5 VACANCY/Alderman Seidl

The following motion made November 10, 2009 at the Common Council meeting is up for reconsideration: "Motion by Alderman Harenda to direct the City Clerk to advertise for Aldermanic District #5 vacancy in the city's official newspaper, city's website and city's cable channel. Seconded by Alderman Wysocki and carried with Hopkins and Moore voting no."

Point of Order: Questioned whether this item should be taken up due to the lawsuit that is currently pending.

City Attorney Blum indicated the purpose of this is to put the Council action back where it was prior to the action and vote taken the first time. Your options are to go ahead to take action or table until after Closed Session.

Motion by Alderman Seidl to reconsider the motion. Seconded by Alderman Hopkins and carried unanimously.

City Attorney Blum indicated the motion before you is "direct the City Clerk to advertise etc".

Motion by Alderman Wysocki to amend the agenda and take up after Closed Session. Seconded by Alderman Hopkins and carried with Alderman Moore voting no.

MAYORAL APPOINTMENTS

Board of Review

Motion by Alderman Wysocki to approve the appointment of Alan Barnes/replacement with a term expiring 5-31-2013. Seconded by Alderman Harenda and carried unanimously.

2010 PROPOSED OPERATING BUDGET

Discussion and possible action on the proposed 2010 City of New Berlin Operating Budget

Motion by Alderman Wysocki to amend the budget to add back \$587,681 to the budget resulting in a budget of \$34,443,112.

After some discussion it was decided to take action on each of the 7 expense line items and 3 revenue line items where the Mayor's adjustments were made after the Public Hearing.

Alderman Wysocki withdrew his motion.

Motions to take action on the 10 line items were as follows:

Expenses:

Motion by Alderman Hopkins to amend **General Government** expenses by reducing an amount of \$21,871 from \$5,300,711 to \$5,278,840. Seconded by Alderman Harenda and carried unanimously.

Mayor Chiovatero indicated early retirement packages were offered and it resulted in a savings of \$323,578.

Motion by Alderman Hopkins to amend **Public Safety** expenses by adding an amount of \$177,962 from \$14,357,635 to \$14,535,597. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Moore to amend Public Safety expenses to add \$48,185 for the part time Social Worker position. Seconded by Alderman Ament, motion failed with Alderman Ament and Alderman Moore voting yes.

Motion by Alderman Harenda to amend **Public Works** expenses adding an amount of \$23,355 from \$4,469,512 to \$4,492,867. Seconded by Alderman Ament and carried unanimously.

Motion by Alderman Hopkins to amend **Community Development** expenses by adding an amount of \$18,575 from \$620,926 to \$639,501. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Harenda to amend **Library** expenses by reducing an amount of \$2,645 from \$1,121,941 to \$1,119,296. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Hopkins to amend **Park and Recreation** expenses by adding an amount of \$34,380 from \$1,684,617 to \$1,718,997. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Harenda to amend **Unclassified** expenses by reducing an amount of \$70,886 from \$370,886 to \$300,000. Seconded by Alderman Seidl and carried unanimously.

Revenues:

Motion by Alderman Harenda to amend **General Property Tax** revenues by reducing an amount of \$2,676 from \$24,338,062 to \$24,335,386. Seconded by Alderman Seidl and carried unanimously.

Motion by Alderman Seidl to amend **Interest on Investments** revenues by adding an amount of \$42,000 from \$2,365,541 to \$2,407,541. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Harenda to amend **Debt Service Fund** revenues by adding an amount of \$119,546 from \$150,000 to \$269,546. Seconded by Alderman Moore and carried unanimously.

Finance Director Mike Holzinger indicated the levy was at a 3.59% increase at the Budget Public Hearing and the levy increase now is 3.57%.

Motion by Alderman Wysocki to reduce Mayor's budget by \$6,705 resulting in a reduction of \$3600 from Membership Dues and \$3105 from Conferences. Seconded by Alderman Seidl.

Mayor Chiovatero indicated the Conference of Mayors agreed to reduce his membership dues to \$1500 and to provide a conference discount resulting in a \$150 reduction.

Motion by Alderman Moore to amend the motion to decrease membership dues to \$1500 and decrease the conference cost by \$150 based upon the 40% and 25% discounts offered to the Mayor. Seconded by Alderman Hopkins and motion failed with Alderman Moore and Alderman Hopkins voting yes.

Upon voting the original motion, the motion carried with Alderman Hopkins and Alderman Moore voting no.

Motion by Alderman Wysocki to add to surplus \$389,000 (anticipated 2009 surplus) for a total of \$1,389,000. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Wysocki to reduce Property Tax revenue by \$389,000. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Seidl to take \$444,000 from surplus to balance the budget. Seconded by Alderman Harenda and carried with Alderman Moore voting no.

Motion by Alderman Wysocki to reduce Computer Aids from \$210,000 to \$206,214. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Hopkins to accept the 2010 Budget in the amount of \$34,595,277; with the levy at \$23,499,467 and a tax rate of \$4.979166. Seconded by Alderman Seidl.

Motion by Alderman Hopkins to amend/add back \$5,055 in the 2010 Budget for the Mayor's conference. Seconded by Alderman Moore, motion failed with Alderman Hopkins and Alderman Moore voting yes.

Upon voting, the motion carried with Alderman Moore voting no.

DEFERRED, REFERRED & TABLED ITEMS

Ordinance No. 2417 that approves the amendments to Section 275-41.A (2) (Keeping and Raising of Animals) and 275-70 (Definitions) of the City's Zoning Code and accept the Plan Commission report. TABLED 9-8-09/REFERRED TO AD HOC COMMITTEE 9-22-09

No action taken.

SAFETY COMMISSION - Purchase and install four (4) temporary speed tables on Lincoln Avenue between Moorland Road and Parkside Drive/REFERRED TO BOARD OF PUBLIC WORKS 10-13-09/REFERRED BACK TO SAFETY COMMISSION 10-27-09

No action taken.

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CONSENT AGENDA

Motion by Alderman Wysocki to approve all of the following items listed. Seconded by Alderman Seidl and carried unanimously.

MINUTES – November 10, 2009 Common Council

UTILITY AND FINANCE

Claims

- Water Utility claims, Sewer Utility claims and Bi-weekly claims all of which represents payment to vendors.

LICENSES & PERMITS

Bartenders

- Bartender License for the year 2009-2011 to Jacquelyn Trew and Premilaben Patel

Class “A” Beer Licenses

- Stacy A. Anderson, Agent, 1713 Rapids Drive, Racine, WI for Kwik Trip #499 at 15700 W. Small Road.

“Class B” Liquor License

- Jeannie Boyce, Agent – Norah Jaynes, LLC (formerly Calhoun Station) at 1849 S Calhoun Road.

MISCELLANEOUS

- Cemetery Access Easement for public access to the German Evangelical Reformed Lutheran Church Cemetery (aka Sittel Cemetery) on Racine Avenue/approved as amended

DEFERRED, REFERRED & TABLED ITEMS

- Changing of the regular BPW monthly meeting time, from 8:00AM to 6:00PM, to the BPW for their discussion and recommendation back to the Common Council/REFERRED TO BPW ON 7-28-09/recommendation not to change, will be removed from agenda
- Common Council to amend City of New Berlin City Code - Chapter 220-4 RECYCLING to include both single stream as well as co-mingled recyclable pick up in the city of New Berlin and direct the City Attorney to prepare an ordinance reflecting this change/DEFERRED 9-8-09/TABLED 9-22-09/no action taken

ITEM/S REMOVED FROM CONSENT AGENDA, if any

Reinstate Joseph Poshepny as the alderman for District 5

Motion by Alderman Moore to send to Common Council without a recommendation. Seconded by Alderman Hopkins and carried with Alderman Wysocki and Alderman Harenda voting no.

Mayor Chiovaturo indicated we will hold this item off until after Closed Session.

ORDINANCES/RESOLUTIONS

Ordinance No. 2413 Ordinance To Amend Section 152-10 Regarding The Regulation And Licensing Of Dogs

Mayor Chiovaturo indicated this is the 3rd reading.

Motion by Alderman Moore to adopt Ordinance No. 2413. Seconded by Alderman Hopkins.

Discussion followed on the definition of vicious dog (animal) and what was the original intent by the Safety Commission in making the ordinance change. An Ad Hoc Committee was suggested. Mayor Chiovaturo indicated he would meet with anyone wanting to provide input to the ordinance.

Motion by Alderman Harenda to table. Seconded by Alderman Seidl and carried unanimously.

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

Ordinance No. 2419 Ordinance To Amend Section 80-3 Concerning The Time Limits For Expending Impact Fees

Mayor Chiovaturo indicated this is the 3rd reading.

Motion by Alderman Wysocki to adopt Ordinance No. 2419. Seconded by Alderman Ament and carried unanimously.

Ordinance No. 2420 Ordinance To Create Section 235-34 (C) (3) (B) (5) Concerning The Use Of Public Site, Open Space and Trail Fees

Mayor Chiovaturo indicated this is the 3rd reading.

Motion by Alderman Wysocki to adopt Ordinance No. 2420. Seconded by Alderman Ament and carried unanimously.

Ordinance No. 2421 Ordinance To Amend Section 188-1(D) Peace And Good Order Of The Municipal Code Of The City Of New Berlin Regarding Disorderly Conduct

Mayor Chiovaturo indicated this is the 2nd reading.

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.

- (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:
- State of Wisconsin Radium Consent Order Claim
 - Dennis and Kim Harmon Claim
 - Jessica & Edward Lisinski Claim
 - TRD Real Estate LLC vs City of New Berlin
 - Poshepny vs City of New Berlin

Motion by Alderman Seidl to go to Closed Session at 11:10 PM. Seconded by Alderman Ament and carried per roll call vote.

Motion by Alderman Ament to reconvene in Open Session at 12:06 AM. Seconded by Alderman Seidl and carried unanimously.

RECONVENE TO OPEN SESSION

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

State of Wisconsin Radium Consent Order Claim

No action taken.

Dennis and Kim Harmon Claim

Motion by Alderman Wysocki to deny the Dennis and Kim Harmon Claim. Seconded by Alderman Seidl and carried with Alderman Hopkins voting no.

Jessica & Edward Lisinski Claim

Motion by Alderman Harenda to authorize the City Attorney to settle the claim in the amount of \$3,690.65. Seconded by Alderman Wysocki and carried unanimously.

Reinstate Joseph Poshepny as the alderman for District 5

City Attorney Blum read the motion that is before Council: "Motion by Alderman Harenda to direct the City Clerk to advertise for Aldermanic District #5 vacancy in the city's official newspaper, city's website and city's cable channel". Seconded by Alderman Wysocki.

Alderman Hopkins indicated we should not touch this subject because the City is being sued and some aldermen are being sued. Alderman Ament and Alderman Seidl indicated they did not want to spend money on staff time and publication.

Upon voting, motion failed with Alderman Wysocki voting yes.

Mayor Chiovaturo indicated we have a Requested Action Statement brought forth by Alderman Moore.

Point of Order by Alderman Wysocki who indicated that per Council Rule 12 & 35, Alderman Moore's Requested Action Statement required format is not appropriate with all the "whereas" and he requested everything from the Rationale portion be removed.

Mayor Chiovaturo referred back to Alderman Moore. Alderman Moore indicated they are all in order in the Requested Action Statement.

There was disagreement regarding if the Requested Action Statement is in the required format.

Mayor Chiovaturo read Council Rule 12 and referred back to Alderman Moore. Alderman Moore indicated they are one in the same (Requested Action and Rationale). He felt he was being kept from indicating why Joe Poshepny should be the alderman. Mayor Chiovaturo indicated the Requested Action Statement is a public document and saw no problem with Alderman Moore reading it. It was suggested he could re-write it for next meeting. Mayor Chiovaturo indicated sometimes the rationale is read, sometimes not. He then asked Alderman Moore to remove the "whereas" portion and read the "therefore" portion. Mayor Chiovaturo asked Alderman Moore his intent. Alderman Moore believes the action to unseat Joe Poshepny was political; but he indicated in order to move things along this evening he will make the following motion:

Motion by Alderman Moore that the New Berlin Common Council hereby reinstates Joseph Poshepny as the alderman for District 5. The Council further directs staff to pay Alderman Poshepny any salary unpaid through this date. Seconded by Alderman Hopkins.

Alderman Hopkins indicated because a lawsuit was filed against the city and against individuals and he does not want more liability against the city or any Aldermen, we should not take action on this.

Alderman Moore began to read his Requested Action Statement.

Mayor Chiovaturo stopped Alderman Moore and asked if he gave any thought to what Alderman Hopkins said?

Motion by Alderman Hopkins to table. Seconded by Alderman Wysocki.

Point of Order by Alderman Moore who indicated Council Rule 34 indicates the vacancy should be filled however a vacancy does not exist.

City Attorney Blum indicated a motion to table is not debatable.

Upon voting, motion carried with Alderman Moore and Alderman Ament voting no.

ADJOURN

Motion by Alderman Moore to adjourn at 12:26 AM. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:

Marilyn Gauger, MMC
City of New Berlin