

**CITY OF NEW BERLIN  
PROCEEDINGS OF THE COMMON COUNCIL  
Tuesday, October 13, 2009**

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

Mayor Jack F Chiovatero called the City of New Berlin Common Council Meeting to order at 7:41 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: Deputy City Clerk Christine Stefanich, City Attorney Mark Blum, City Engineer JP Walker, Parks Recreation & Forestry Director Mark Schroeder, Human Resource Director Tami Potkay, City Assessor Paul Koller, Director of Facilities Bob Schulpus, Mayor's Intern Rula Jabbour, Associate Planner Jessica Titel, Police Chief Joe Rieder and IT Director Nick Roethel.

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

***This meeting was noticed on Thursday, October 8, 2009 in accordance with the Open Meeting Law.***

**REPORTS**

City Clerk – none

Council President – President Harenda updated the council regarding the Comprehensive Plan. He stated Alderman Ament will be dealing with the next discussion November 2, 2009. He stated feedback; questions or requests will be welcomed and addressed by staff.

Mayor – Mayor Chiovatero wanted to make everyone aware that October is designated Breast Cancer awareness month and asks all women to follow up with their annual checkups. He stated with updated and current technology this disease could be less difficult on those affected. He also stated Military Family day went very well with high attendance and an hour and half presentation.

City Attorney - none

**COMMUNICATIONS**

**Dennis and Kim Harmon Claim**

Referred to City Attorney

**State Farm Claim**

Referred to City Attorney

**PLAN COMMISSION**

**Certified Survey Map for the property located at 18200 W. Observatory Road**

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 18200 W. Observatory Road and accept the Plan Commission Report. Seconded by Alderman Hopkins and denied unanimously.

*Note: These divisions do not go through the full subdivision process and therefore many concerns are not addressed.*

Motion by Alderman Ament to deny based on the lack of traffic analysis; potential storm water issues and concerns and plan analysis, future safety concerns on the development of Observatory Road, locations of drainage tiles and the lack of a process for repair of drainage tiles, concerns with drainage fields not being sited in the conservation area/conservation easement. Seconded by Alderman Wysocki and carried unanimously.

**Resolution #09-29 that approves the amendment of the MMSD Sewer Service Area Boundary to include the property located at 18695 W. Cleveland Avenue**

Motion by Alderman Ament to approve Resolution #09-29 that approves the amendment of the MMSD Sewer

---

Service Area Boundary to include the property located at 18695 W. Cleveland Avenue (Tax Key: 1187-988) New Berlin West High School and accept the Plan Commission Report. Seconded by Alderman Harenda and carried unanimously.

*Brief recess taken at this time.*

#### **BOARD OF PUBLIC WORKS**

##### **Resolution No. 09-26 Transfer of \$25,000.00 of approved funds from the Rogers Drive Design Account 04251100 63018 C2008 to the Coffee Road West Rehabilitation Design**

Motion by Alderman Ament to Transfer of \$25,000.00 of approved funds from the Rogers Drive Design Account 04251100 63018 C2008 to the Coffee Road West Rehabilitation Design Account 04251100 63019 C2009 via **Resolution No. 09-26** for Survey Work Associated with Preparing an In-house Design for the Rehabilitation of Coffee Road West of Calhoun Road. Seconded by Alderman Seidl and carried unanimously.

##### ***Crispell-Snyder, Inc., for Surveying Services on Coffee Road west of Calhoun Road***

Motion by Alderman Ament to approve the Professional Services Agreement to the lowest responsive, responsible Bidder, *Crispell-Snyder, Inc.*, for Surveying Services on Coffee Road west of Calhoun Road in an amount of \$17,000.00 with contingencies, the not to exceed Total Surveying Costs are \$25,000.00. Seconded by Alderman Seidl and carried unanimously.

#### **PARKS RECREATION & FORESTRY**

##### **Malone Park parking lot paving contract**

Motion by Alderman Moore to approve the Malone Park parking lot paving contract to the lowest responsive, responsible bidder *Suburban Asphalt, Inc* in the amount of \$162,390 with funding from CIP Acct#040591000 61112 C2009, Hickory Grove Cell Tower Account and 2009 Roadway Rehabilitation Funds. Seconded by Alderman Hopkins and carried unanimously.

##### **Lease Agreement with the New Berlin Historical Society**

Motion by Alderman Moore to approve a Lease Agreement with the New Berlin Historical Society for the old Fire Station #3 property on National Avenue subject to deleting the second sentence of number 10 on page 2. Seconded by Alderman Harenda and carried unanimously.

#### **SAFETY COMMISSION**

##### **Purchase and install four (4) temporary speed tables**

Motion by Wysocki to approve the purchase and installation of four (4) temporary speed tables on Lincoln Avenue between Moorland Road and Parkside Drive. Seconded by Alderman Ament.

Motion by Alderman Moore to send to Board of Public Works Committee to address the Council concerns of where the funds are coming from; what the word "temporary" means; alternatives to speed tables; city employees placing them (speed tables) in – if cheaper; etc. Seconded by Alderman Wysocki and carried unanimously.

#### **DEFERRED, REFERRED & TABLED ITEMS**

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

City Attorney will accept the track changes as proposed and change the word "kill" to "euthanize" and send to City Clerk to place on next agenda for the 1<sup>st</sup> reading.

##### **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**

Mayor Chiovatero indicated committee members were appointed and their 1<sup>st</sup> meeting is in one week.

\*\*\*\*\*

---

**CONSENT AGENDA**

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

**MINUTES** – September 22, 2009 Common Council

**UTILITY AND FINANCE**

**Claims**

- Water Utility claims in the amount of \$136,694.71, Sewer Utility claims in the amount of \$52,316.80 and Bi-weekly claims in the amount of \$1,332,858.91, all of which represents payment to vendors.

**LICENSES & PERMITS**

**Bartenders**

- Bartender Licenses for the year 2009-2011 to Nancy Mueller, Laura Rodey, Zachary Schmidt, Samantha Copus, Joseph Zieske, Ryan Jastroch and Brittany Kappes.

**MISCELLANEOUS**

- Recommendation from Fire Chief Ed Dobernig approving the Fireworks Permit for New Berlin West High School Homecoming on Friday, October 9, 2009.

**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/no action taken.
- 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**

**Licenses**

Motion by Alderman Ament to approve the Bartender License for the year 2009-2011 to Keri Jakubonski. Seconded by Alderman Seidl and carried with Alderman Moore voting no.

**Extension for Stone Fire Pizza Stipulation**

Motion by Alderman Wysocki to amend Item #2 on the current Stipulation dated July 2, 2009 to read: "That by January. 15, 2010 Stone Fire Pizza Company shall tender full payment for the outstanding personal property and real estate taxes for Stone Fire Pizza Company at 5320 S. Mooreland Rd. Seconded by Alderman Hopkins and carried with Alderman Seidl voting no.

**Direct City Clerk to advertise for Aldermanic District #5 vacancy in selected newspapers/DEFERRED 9-8-09/this item was omitted from consent agenda at 9-22-09 meeting.**

No action taken at this time – see below after closed session.

**Discussion and possible action on the Proposed 2010 City Operating Budget & Set Public Hearing Date**

No action taken at this time – see below after closed session.

**ORDINANCES/RESOLUTIONS**

**Ordinance No. 2414 Ordinance To Create Section 121-4 Firearms and Weapons**

Mayor Chiovatero indicated this is the 3<sup>rd</sup> reading.

---

Motion by Alderman Hopkins to adopt Ordinance No. 2414 Ordinance To Create Section 121-4 Firearms and Weapons of the Municipal Code of the City of New Berlin. Seconded by Alderman Seidl and carried unanimously.

**Deputy City Clerk Stefanich read the following:**

**CLOSED SESSION**

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

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(e) Deliberating or negotiating 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:

- Potential contract amendments
- Discussion of possible action regarding retirement agreements

(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:

- Anchor Bank Litigation
- State of Wisconsin Radium Consent Order Claim
- New Berlin vs. Eaton (NB Heating & Air Conditioning)
- Letter from Attorney Gatzke concerning Joseph Poshepny

Motion by Alderman Ament to go to Closed Session at 9:17 PM. Seconded by Alderman Seidl and carried unanimously per roll call vote.

Motion by Alderman Wysocki to reconvene to Open Session at 10:30 PM. Seconded by Alderman Seidl and carried unanimously.

**RECONVENE TO OPEN SESSION**

**Anchor Bank Litigation**

No action taken.

**State of Wisconsin Radium Consent Order Claim**

No action taken.

**New Berlin vs. Eaton (NB Heating & Air Conditioning)**

Motion by Alderman Hopkins to approve the settlement with Eaton for \$18,000. Seconded by Alderman Seidl and carried with Alderman Moore voting as being present.

**Letter from Attorney Gatzke concerning Joseph Poshepny**

No action taken.

**Direct City Clerk to advertise for Aldermanic District #5 vacancy in selected newspapers/DEFERRED 9-8-09/this item was omitted from consent agenda at 9-22-09 meeting.**

Motion by Alderman Harenda to table the request to Direct City Clerk to advertise for Aldermanic District #5 vacancy in selected newspapers. Seconded by Alderman Seidl and carried with Alderman Wysocki voting no.

*Note: City Attorney Blum indicated this means the Committee of the Whole motion to advertise the vacancy will not be acted on.*

---

**Discussion and possible action on the Proposed 2010 City Operating Budget & Set Public Hearing Date**  
Mayor Chiovatero indicated to make a zero % operating budget as you requested a \$600,281 decrease in the proposed budget is needed within accounts made up of retirement opportunities, contract negotiations and layoffs.

Mayor Chiovatero indicated all Wage, FICA, WRS and Health Insurance accounts will be reduced and the Unemployment Compensation account will increase by \$67,893 and after the Budget Public Hearing any employees who decide to take the retirement packages; all details would come to you (Council) for your decision. The levy increase is 3.59% which includes debt service and the operating budget at zero percent increase. However it is based on the approved 2009 levy amount not the 2009 adjusted levy amount.

Motion by Alderman Hopkins to recommend to Common Council the Proposed 2010 Operating budget in the amount of \$34,443,170 (**correct amount is \$34,443,112**) with a general tax levy of \$24,338,120 (**correct amount is \$24,338,062**), with a tax rate of \$5.1558 per \$1,000 of assessed value being attained by voluntary retirements; union negotiations or layoffs. Seconded by Alderman Moore with a 3 to 3 tie with Mayor Chiovatero breaking the tie resulting in a 4 to 3 affirmative vote. Aldermen Wysocki, Seidl and Harenda voted no.

Motion by Alderman Wysocki to set Tuesday, November 10, 2009 at 7:00 PM as the date for the Budget Public Hearing on the proposed 2010 Operating Budget. Seconded by Alderman Hopkins and carried unanimously.

**ADJOURN**

Motion by Alderman Wysocki to adjourn at 11:22 PM. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:  
Christine Stefanich  
Deputy City Clerk