

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, July 28, 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 9:01 PM after Committee of the Whole and Privilege of the Floor.

ROLL CALL: Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Moore and Ament. Excused: Alderman Poshepny. Also present were: City Clerk Marilyn Gauger, Attorney Mark Blum, Chief Joe Rieder. City Engineer JP Walker, Associate Planner Amy Bennett, Community Development Director Greg Kessler and Human Resource Director Tami Potkay.

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

This meeting was noticed on Thursday, July 23, 2009 in accordance with the Open Meeting Law.

REPORTS

City Clerk – none

Council President Harenda gave a brief history and update on the City of New Berlin receiving Lake Michigan water. As the Utility Committee Chair he expressed his thanks and gratitude to everyone that was involved. This provided safe and healthy drinking water to residents and brought better protection of our natural resources and enhancing protection of the Great Lakes. He thanked current Mayor Chiovatero; past Mayor Wysocki, members of the Utility Committee – Bob Dude, Dave Ament, Jim Morrissey, Ron Seidl and former Alderman Paul Gallagher with special thanks to Utility Staff – Rick Johnson, Jim Hart, former Streets Director Ray Grzys, City Engineer JP Walker as well as all of the employees of many city departments. Thanks to the consultants Ruekert & Mielke and many governmental agencies at various levels from federal, state and local governments.

Also, the assessment notices were mailed last week Friday. Open Book is between August 3 and August 21. Contact the Assessors Office regarding your assessments. Board of Review is September 9th.

Mayor Chiovatero indicated Lake Michigan water is flowing through all utility pipes and if any residents have any questions about water softeners or the water to contact the Utility Department.

He thanked the 4th of July Commission and all who worked hard on the celebration, it was a success and enjoyed by residents, guests and his family.

Mayor announced that CNN Money Magazine has ranked New Berlin the 34th best place in the country to live up from 41st. Congratulations to all residents and the school district. Also, Alderman Poshepny is doing well and I will ask him to prepare a statement that I can read.

City Attorney - none

COMMUNICATIONS

Russell & Suzanne Sobczyk Claim

Mayor Chiovatero referred to City Attorney Blum.

The following items were taken out of order per the consensus approval of Council.

UTILITY COMMITTEE

Resolution to amend New Berlin Urban Service Area Boundary to include New Berlin West High School Resolution No. 09-17

Motion by Alderman Harenda to approve Resolution No. 09-17 Resolution to amend New Berlin Urban Service Area Boundary to include New Berlin West High School. Seconded by Alderman Wysocki and carried unanimously.

Resolution to approve Sanitary Sewer Service Area Agreement between City of New Berlin and New Berlin School District – Resolution No. 09-16

Motion by Alderman Harenda to approve Resolution No. 09-16 Resolution to approve Sanitary Sewer Service Area Agreement between City of New Berlin and New Berlin School District for connection of private sanitary sewer line conditioned on referral to MMSD being approved. Seconded by Alderman Wysocki and carried unanimously.

Note: A special Council meeting is scheduled for 7-30-09 to take up the item of “referral to MMSD”.

Sewer Service Agreement with the New Berlin School District

This item is the same as the prior item therefore no action required.

Relocation Order Resolution at Geipel property for liftstation – Resolution No. 09-19

Motion by Alderman Harenda to approve Resolution No. 09-19 Relocation order for acquisition of property rights for new sanitary sewer Liftstation at Geipel property. Seconded by Alderman Ament and carried unanimously.

Contract for acquisition of property for Westward Manor liftstation relocation

Motion by Alderman Harenda to approve the Contract with Single Source to appraise and negotiate land acquisition of property for relocated Westward Manor liftstation. Seconded by Alderman Ament and carried unanimously.

Engineering and legal fees to City of Muskego related to Linnie Lac Sewer Service area

Motion by Alderman Harenda to approve the Payment of engineering and legal review fees of the City of Muskego related to the requested expansion of the properties served under the Linnie Lac Sewer Service area agreement with a not to exceed cost of \$5,000.00. Seconded by Alderman Wysocki and carried unanimously.

Request to Connect to Municipal Water at 1415 So. 168th Street

Motion by Alderman Harenda to approve the connecting to Municipal Water for property at 1415 S. 168th Street Seconded by Alderman Hopkins and carried unanimously

PLAN COMMISSION

Ordinance No. 2416 that approves the PUD (Ordinance No. 2132) text amendment to add a statement under Area 2, I-1/PUD ProHealth Care, Inc

Motion by Alderman Ament to adopt Ordinance No. 2416 that approves the PUD (Ordinance No. 2132) text amendment to add a statement under Area 2, I-1/PUD ProHealth Care, Inc. Campus, (6) Setback and Width, (h) “The 5’ setback for parking areas, including aisles, may be reduced to zero (0) feet from internal lot lines” for the properties located at approximately 13700-13900 W. National Avenue and 13755 W. Fieldpointe Drive and accept the Plan Commission Report. Seconded by Alderman Wysocki and carried unanimously.

Certified Survey Maps for the property located at 13700-13900 W. National Avenue and 13755 W. Fieldpointe Drive

Motion by Alderman Ament to approve the Certified Survey Maps for the property located at 13700-13900 W. National Avenue and 13755 W. Fieldpointe Drive and accept the Plan Commission Report. Seconded by Alderman Wysocki and carried unanimously.

Set Public Hearing for amendments regarding the keeping and raising of animals

Motion by Alderman Ament to Set a Public Hearing date for the August 3, 2009 Plan Commission meeting regarding the adoption of 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. Seconded by Alderman Seidl and carried unanimously.

BOARD OF PUBLIC WORKS

Design Contract to Bloom Companies, LLC for Professional Engineering Services relative to Calhoun

Road Design Alternative 2009-A

Motion by Alderman Ament to approve the Design Contract to Bloom Companies, LLC for Professional Engineering Services relative to Calhoun Road Design Alternative 2009-A in a not to exceed amount of \$240,000.00 and to terminate the original design contract for Calhoun Road. Source of funds will be the previously approved Design Account 04251100 63011 2003. Seconded by Alderman Wysocki and carried with Alderman Moore voting no.

Construction Contract for 2009 LRIP Roadway Rehabilitation Project for Calhoun Road (south of Beloit Road)

Motion by Alderman Ament to approve the Construction Contract to the lowest responsive, responsible bidder, *Musson Brothers, Inc.*, for the 2009 LRIP Roadway Rehabilitation Project for Calhoun Road south of Beloit Road in an amount of \$533,119.25 with inspection and contingencies, the not to exceed Total Project costs are \$602,155, funding to come from the CIP Design Account 04251100 59040 C2009. Seconded by Alderman Harenda and carried unanimously.

Amendment No. 3 to the Design Contract with Ruckert-Mielke for Glendale Drive

Motion by Alderman Ament to approve Amendment No. 3 to the Design Contract with Ruckert-Mielke for Glendale Drive to include additional changes to the scope of work as listed in the Amendment in the amount of \$46,415.00, funds to come from Glendale Drive CIP Account 04251100 63013 C2007. Seconded by Alderman Seidl and carried unanimously.

Construction Contract for the 2009 Roadway Rehabilitation

Motion by Alderman Ament to approve the Construction Contract to the lowest responsive, responsible bidder, *Stark Asphalt A Division of Northwest Asphalt Products, Inc.*, for the 2009 Roadway Rehabilitation Project in an amount of \$798,621.39 with inspection and contingencies, the not to exceed Total Project Costs are \$861,642.00. Seconded by Alderman Moore and carried unanimously.

Construction Contract for the 2009 Roadway Rehabilitation – GlasGrid Installation

Motion by Alderman Ament to approve the Construction Contract to the lowest responsive, responsible bidder, *Road Fabrics, Inc.*, for the 2009 Roadway Rehabilitation Project – GlasGrid Installation in an amount of \$318,362 with inspection and contingencies, the not to exceed Total Project Costs are \$335,100.00. Seconded by Alderman Moore and carried unanimously.

Amendment to Design Contract for Ryerson Road

Motion by Alderman Ament to approve the Amendment of the Design Contract with Strand Associates for Ryerson Road to include additional changes to the scope of work listed in Change Order #1 in the amount of \$102,500.00. Funds to come from Ryerson Road CIP Account 04251100 63012 C2007. Seconded by Alderman Moore and carried unanimously.

Minimum 5-Year Roadway CIP Budget as amended by the Board of Public Works.

Motion by Alderman Ament to adopt the recommended minimum 5-Year Roadway CIP Budget. Seconded by Alderman Wysocki and carried with Alderman Moore voting no.

SAFETY COMMISSION

Ordinance No. 2412 Ordinance To Amend Section 6-9 Of The Municipal Code Of The City Of New Berlin With Respect To Membership Of The Safety Commission

Mayor Chiovatero indicated this is the 1st reading.

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

Motion by Alderman Seidl to adopt Ordinance No. 2412. Seconded by Alderman Hopkins and carried unanimously.

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

Dogs

Mayor Chiovaturo indicated this is the 1st reading.

Motion by Alderman Hopkins to refer back to Safety Commission with input from Finance and Police Departments. Seconded by Alderman Ament and carried with Alderman Moore voting no.

MAYORAL APPOINTMENTS

Motion by Alderman Hopkins to approve the Library Board appointment of Patti Orzel with term expiring 6-30-2012. Seconded by Alderman Harenda and carried unanimously.

Motion by Alderman Hopkins to approve the Civil Service Commission appointment of Jane Blake with term expiring 6-30-2014. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Ament to approve the Youth Advisory Board appointment of Alex Broge with term expiring 5-31-2011. Seconded by Alderman Seidl and carried unanimously.

DEFERRED, REFERRED & TABLED ITEMS

Resolution amending the Urban Sewer Service Area Boundary to include the New Berlin West High & Middle School/TABLED 5-12-09 FROM PLAN COMMISSION TO RECEIVE RECOMMENDATION FROM UTILITY COMMITTEE

Motion by Alderman Harenda to remove this item from the agenda. Seconded by Alderman Ament and carried unanimously.

CONSENT AGENDA

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

MINUTES - Common Council minutes from June 23, 2009

UTILITY AND FINANCE

Claims

For: July 15, 2009

- Water Utility claims in the amount of \$154,335.88, Sewer Utility claims in the amount of \$60,242.66, and Bi-weekly claims in the amount of \$998,607.43, all of which represents payment to vendors.

For: July 29, 2009

- Water Utility claims in the amount of \$162,180.84, Sewer Utility claims in the amount of \$35,079.58, and Bi-weekly claims in the amount of \$579,049.35, all of which represents payment to vendors.

LICENSES & PERMITS

Bartenders

- 2009-2011 Bartender License for Karl Bloom, Christy Bunke, Lynn Daluga, Benjamin Dougherty, Ashley Draeger, Donald Fritzke, Andrew Imp, Jamie Kernen, Clayton Lyon Jr., Laura Morrison, Beth Mortl, Tammy Phommason, Don Price, Ashley Schroeder, Beverly Seidl, Amanda Siodlarz, Jennifer Tessmer, Rebecca Wehr and, Michelle White, Dawn Wetzel.
- Bartender License Renewals for the year 2009-2011 to Kathryn Hablewitz, Katherine Kamenz, Katy Kazik, Kirk Kempker, John Lee, Charles Leonard, Gale Menningen and Nichole Wittenburg

Extension of Premise

- Charcoal Grill and Rotisserie at 13575 W Greenfield Avenue for Wednesday, July 29th from 5PM to 9PM for a Bike Night with Kettle Moraine Hog Chapter.

- Nickels Pub at 13915 W Greenfield Avenue for Saturday, September 19, 2009 from 12PM to 8PM for cookout in west parking lot.

MISCELLANEOUS

- Refund \$8,860 to Matthew Lee who paid \$10,000 for a 2008-2009 Reserve "Class B" Liquor License that should have been a Regular "Class B" Liquor License (\$600).
- Award Contract for the Streets Garage roof replacement to *Langer Roofing* for the amount of \$159,700 with a not to exceed amount of \$169,100.
- Refunding of collected Bike and Pedestrian Impact Fees and Trail fees collected as identified in the May 21, 2009 Impact Fee study prepared by Ehlers and presented to the Council on June 9, 2009.
- Direct the Department of Community Development, City Attorney and Mayor to initiate the MMSD sewer service amendment process for the property at approximately 19000 W. Lincoln Avenue encompassing approximately 60 acres of land requested by Jerry Geipel of Geipel Certified Sod, Inc.
- Direct the Department of Community Development, City Attorney and Mayor to initiate the New Berlin Urban Service Area boundary amendment process for the property at approximately 19000 W. Lincoln Avenue encompassing approximately 60 acres of land requested by Jerry Geipel of Geipel Certified Sod, Inc.
- Issue a Raze Order pursuant to Wi SS Section 66.0413 (1) for the property location of 3875 S Moorland Road/*This item was deferred.*
- Refer the 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/Alderman Ament
- Mayor and Aldermen to voluntarily participate with the other City non-emergency employees in the cost savings of the required furlough by pledging to repay the City the same proportion of our salary, as we are requiring all other non-emergency employees to sacrifice/*This item was informational only.*

DEFERRED, REFERRED & TABLED ITEMS

None.

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ITEM/S REMOVED FROM CONSENT AGENDA

- **Apply the Common Council action of June 23, 2009 to the non-represented sworn officers of the police and fire departments providing for up to 4 budget required furlough days per employee at the Mayor's discretion.**
Motion by Alderman Seidl to apply the Common Council action of June 23, 2009 to the non-represented sworn officers of the police and fire departments providing for up to 4 budget required furlough days per employee at the Mayor's discretion. Seconded by Alderman Moore and carried with Alderman Wysocki and Alderman Ament voting no.
- **Consider rescinding the approval of the 2009-2010 "Class B" Liquor License for China Dragon for non-compliance of City Code.**
Motion by Alderman Harenda to defer to next meeting. Seconded by Alderman Moore and carried with Alderman Ament and Alderman Seidl voting no.
- **Resolution No. 09-18 Resolution Providing for the Sale of \$6,310,000 General Obligation Promissory Notes.**
Motion by Alderman Wysocki to adopt Resolution No. 09-18 Resolution Providing for the Sale of \$6,310,000 General Obligation Promissory Notes under the tax exempt process with those notes

payment structured for levy impact. Seconded by Alderman Hopkins and carried with Alderman Moore voting no.

ORDINANCES/RESOLUTIONS

Ordinance No. 2411 To Amend Section 51-3 Of The Municipal Code Of The City Of New Berlin Concerning The Commencement Of The Term Of The City Attorney (1st reading – directed by Council on 6-9-09)

Mayor Chiovero indicated this is the 1st reading.

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

Motion by Alderman Hopkins to adopt Ordinance No. 2411. Seconded by Alderman Wysocki and carried unanimously.

Ordinance No. 2410 To Repeal & Recreate Section 267-3(C)(1) regarding Sewer Service Charges (2nd reading – 1st reading was 6-23-09 under Utility Committee)

Mayor Chiovero indicated this is the 2nd reading.

Ordinance No. 2414 Ordinance To Create Section 121-4 Firearms and Weapons of the Municipal Code of the City of New Berlin (1st reading – directed by Council on 6-23-09)

Mayor Chiovero indicated this is the 1st reading.

Ordinance No. 2415 Ordinance To Amend Section 184-11 Of The Municipal Code Of The City Of New Berlin Concerning The Discharge Of Firearms In Public Parks (1st reading – directed by Council on 6-23-09)

Mayor Chiovero indicated this is the 1st 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) (c) and (d) 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.

(d) 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:

- Union labor negotiations and contracts
- Collective Bargaining Update
- Teamster Contract
- New Berlin Firefighters

Motion by Alderman Seidl to go to Closed Session at 10:16 PM. Seconded by Alderman Wysocki and carried unanimously per roll call vote.

RECONVENE TO OPEN SESSION

Motion by Alderman Harena to reconvene to Open Session at 11:19 PM. Seconded by Alderman Hopkins and carried unanimously.

Discussion and possible ratification of Teamster Contract

Motion by Alderman Wysocki to ratify the Teamster Contract. Seconded by Alderman Hopkins and carried unanimously.

ADJOURN

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

Respectfully submitted

Marilyn Gauger, MMC/WCPC
City Clerk