

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, November 18, 2008**

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 7:22 PM after the Committee of the Whole and Privilege of the Floor.

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

ROLL CALL: Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Poshepny (arrived 7:33 PM) Moore and Ament. Also present were: City Clerk Marilyn Gauger, Attorney Tom Schmitzer and City Attorney Mark Blum, City Engineer JP Walker, Police Chief Joe Rieder, Finance Director Mike Holzinger, Police Captain Frank Zsohar, Human Resources Director Tami Potkay, Facilities Management Director Bob Schulpius, IT Director Nick Roethel, Streets & Utilities Administrative Supervisor Sue Hanley, Streets Manager Don Ullman, Community Development Director Greg Kessler, Inspector and Emergency Management Director Scott Schulpius, City Assessor Paul Koller, Fire Chief Ed Dobernig, Administrative Services Manager Deb Delikat and Park Recreation & Forestry Director Mark Schroeder.

This meeting was noticed on Friday, November 14, 2008 and amended Monday, November 17, 2008 in accordance with the Open Meeting Law.

REPORTS

City Clerk – Christine Stefanich was appointed Deputy Clerk for the City

Council President - none

Mayor – Welcomed his wife Sue to her 1st meeting

City Attorney - none

COMMUNICATIONS - none

PLAN COMMISSION

Ordinance #2397 that approves the rezoning of the property located at 12800 W. Janesville Road

Motion by Alderman Ament to adopt Ordinance #2397 that approves the rezoning of the property located at 12800 W. Janesville Road from Rm-1 to Rm-1 and C-2 to field delineate the wetlands and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Two-year extension for the “Honeyager” Planned Unit Development (Ordinance #2166)

Motion by Alderman Ament to approve the Two-year extension for the “Honeyager” Planned Unit Development (Ordinance #2166), subject to the original conditions and accept the Plan Commission Report. Seconded by Alderman Harenda and carried with Alderman Poshepny abstaining.

Ordinance #2396 that approves the updates as proposed by the City Attorney below to the current sections of the New Berlin Municipal Code Chapter 275-34 (D)(3) related to Hotel Height

Motion by Alderman Ament to adopt Ordinance #2396 that approves the updates as proposed by the City Attorney below to the current sections of the New Berlin Municipal Code Chapter 275-34 (D)(3) related to Hotel Height and accept the Plan Commission Report. Seconded by Alderman Moore.

Motion by Alderman Harenda to amend to add the following verbiage “and not to exceed 22 feet” in the 2nd paragraph. 3rd sentence of Section I after “in excess of two floors.” Seconded by Alderman Seidl and carried with Aldermen Poshepny, Moore and Ament voting no.

Motion by Alderman Ament to amend to add the following verbiage “55 feet” in the 2nd paragraph, 1st sentence of Section I in place of “five floors”. Seconded by Alderman Wysocki and carried with Aldermen Poshepny and Moore voting no.

Motion by Alderman Wysocki to refer back to Plan Commission for public hearing. Seconded by Alderman Ament and carried with Aldermen Poshepny and Moore voting no.

Direct the Department of Community Development, City Attorney and Mayor to initiate the sewer service boundary amendment process for the property located at 18695 W. Cleveland Avenue and hold a public hearing

Motion by Alderman Ament to Direct the Department of Community Development, City Attorney and Mayor to initiate the sewer service boundary amendment process for the property located at 18695 W. Cleveland Avenue and hold a public hearing for said amendment on January 5, 2009 before the Plan Commission and accept the Plan Commission Report. Seconded by Alderman Seidl.

Motion by Alderman Ament to table. Seconded by Alderman Wysocki and carried with Aldermen Poshepny and Moore voting no.

UTILITY COMMITTEE

Water Utility 2009 Proposed Operating and CIP Budgets

Motion by Alderman Harenda to approve the Water Utility 2009 Proposed Operating Budget in the amount of \$4,767,095. Seconded by Alderman Ament and carried unanimously.

Motion by Alderman Harenda to approve the Water Utility 2009 CIP Budget in the amount of \$954,986. Seconded by Alderman Ament and carried unanimously.

Wastewater Utility 2009 Proposed Operating and CIP Budgets

Motion by Alderman Harenda to approve the Wastewater Utility 2009 Proposed Operating Budget in the amount of \$9,419,513. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Harenda to approve the Wastewater Utility 2009 CIP Budget in the amount of \$106,420. Seconded by Alderman Ament and carried unanimously.

Agreement to assess the Utility's SCADA system

Motion by Alderman Harenda to approve the Agreement with Ruekert & Mielke to assess the Utility's SCADA system and to prepare bid specifications and review bid submissions for the upgrade of said system to monitor and control the equipment necessary to bring Lake Michigan water to the expanded lake water service area in the amount of \$46,749. Seconded by Alderman Hopkins and carried unanimously.

Agreement to prepare bid specifications and review bid submissions for the upgrade and maintenance of the utility SCADA system

No action above.

Agreement With Ruekert & Mielke To Prepare Bid Specifications And Review Bid Submissions For Upgrade Of Grange Ave Pump Station To Bring Lake Michigan Water

Motion by Alderman Harenda to approve the Agreement with Ruekert & Mielke to prepare bid specifications and review bid submission for upgrade of the Grange Avenue Pump Station to bring Lake Michigan water to the expanded lake water service area as set forth in items 1 to 6 of Steve Schultz's letter of 11-12-2008 not to exceed the sum of \$85,403; however the award of construction contracts for items 3 – 6 shall not be approved until the DNR has given its approval for the expanded lake water service area and the Grange Avenue Station improvements. Seconded by Alderman Ament and carried unanimously.

Mayor Chiovaturo deviated from the agenda to hear:

MAYORAL APPOINTMENTS

Motion by Alderman Ament to appoint David Karst to the Comprehensive Plan Steering Sub-Committee with no term expiration date. Seconded by Alderman Hopkins and carried unanimously.

FINANCE COMMITTEE

Three-year Financial Plan contract with Ehlers & Associates

Motion by Alderman Wysocki to approve a contract with Ehlers & Associates to prepare a 3 Year Financial Plan for the city to use for the years 2010, 2011 and 2012 for an amount not to exceed \$10,000. Seconded by Alderman Hopkins.

Motion by Alderman Wysocki to amend the motion to include based on the availability of 2008 contingency funds. Seconded by Alderman Ament and carried unanimously.

Upon voting original motion as amended, the motion carried unanimously.

Mayor Chiovero deviated from the agenda to hear:

DEFERRED, REFERRED & TABLED ITEMS

Final Resolution No. 08-33 In Accordance With Wisconsin Statute Section 66.0703 And New Berlin Municipal Code Section 267-4 Authorizing The Levying Of Special Assessments Against Benefited Properties In The Howard Avenue Sanitary Sewer Special Assessment District/DEFERRED 11-11-08

Motion by Alderman Wysocki to approve Resolution No. 08-33. Seconded by Alderman Hopkins and carried unanimously.

At this time a 7 minute break was taken.

2009 PROPOSED BUDGET

Discussion and action on proposed 2009 budget.

Mayor Chiovero indicated the following adjustments need to be made:

- Reduce the City Clerk's budget by \$4,553 in fulltime salary and benefits.
- Reduced the Mayor's budget by \$4,553 in fulltime salary and benefits.
- Add \$20,000 to Human Resources to the Labor Attorney account.
- Add \$65,984 to Police fulltime salary and benefits.

Motion by Alderman Moore to adjust the 2009 Budget by \$76,678. Seconded by Alderman Seidl.

Alderman Seidl withdrew his seconded. Seconded by Alderman Poshepny. Alderman Moore withdrew his motion and Alderman Poshepny withdrew his second.

Motion by Alderman Seidl to reduce the City Clerk's office budget by \$4,553 in salary and benefits. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Wysocki to reduce the Mayor's office budget by \$4,553 in salary and benefits. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Poshepny to add \$20,000 into Human Resources budget. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Poshepny to add \$65,984 into the Police budget for salary and benefits. Seconded by Alderman Hopkins and carried with Alderman Ament voting no.

Motion by Alderman Moore to add \$12,982 to the Contingency Fund. Seconded by Alderman Poshepny and failed with Aldermen Poshepny and Moore voting yes.

Motion by Alderman Moore to add back \$6,905 to Mayor's budget in Membership and US Mayor's Conference. Seconded by Alderman Poshepny.

Motion by Alderman Hopkins to amend the motion to pay the dues for Membership in the amount of \$3,800 but take out US Mayors Conference. Motion dies lack of second.

Upon voting original motion failed with Aldermen Poshepny and Moore voting yes.

Motion by Alderman Hopkins to approve the 2009 levy amount at \$23,495,492. Seconded by Alderman Poshepny and carried with Aldermen Harenda and Moore voting no.

Note: The Operating Budget is \$33,955,418 with a tax rate of \$5.3538 (1.9596% increase).

CONSENT AGENDA

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

MINUTES - Common Council minutes from November 11, 2008

UTILITY AND FINANCE - none

LCENSES & PERMITS

Bartenders

- Bartender License for the year 2008-2010 for Elissa Coronado.

MISCELLANEOUS

- Resolution No. 08-38 A Resolution Amending the 2008 City of New Berlin Operational Budget To Increase the Grant Revenue and Expenditure Accounts Within the Streets Department budget.

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/no action taken.
- 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 (*changed to Report Back*) To The Common Council/Alderman Ament/REFERRED TO BOARD OF PUBLIC WORKS/8-12-08/removed from agenda
- Adoption of Water and Sewer Urban Service Area Boundaries/REFERRED TO PLAN COMMISSION/8-12-08/no action taken.
- 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/TABLED 8-12-08/no action taken.

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ITEM/S REMOVED FROM THE CONSENT AGENDA:

- 2009 Department CIP Budgets/TABLED 10-14-08

No action taken on this item.

ORDINANCES/RESOLUTIONS

Ordinance No. 2393 To Repeal And Recreate Section 261-17 Vehicles and Traffic Of The Municipal Code Of The City Of New Berlin Concerning The Operation Of Off Road Motor Vehicles – revised.

Mayor Chiovaturo indicated this is the 1st reading.

Ordinance No. 2398 To Amend Section 121-1 Of The New Berlin Municipal Code Regarding The Use Of Crossbows

Mayor Chiovaturo indicated this is the 1st reading.

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

Motion by Alderman Seidl to adopt Ordinance No.2398. Seconded by Alderman Hopkins and carried unanimously.

****PLEASE TAKE NOTICE the City of New Berlin was contacted at 2:43 p.m. on November 17th by representatives of Wisconsin DNR indicating that they wish to see additional clarifying language in Ordinance No. 2395 modifying our floodplain ordinance. The City has been in communication with**

Wisconsin DNR since that time to determine if they would accept our present ordinance until the modification could be made. Wisconsin DNR has indicated that immediate action must be taken to approve their specific language. Therefore, pursuant to Wisconsin Statute Section 19.84(3), the City concludes that good cause exists to provide less than 24 hours notice of this agenda item which agenda item shall be as follows: Discussion and possible action to amend Ordinance No. 2395 to include language requested by Wisconsin DNR clarifying the date of amendment of the flood insurance rate maps that are being included in our ordinance and to waive three readings relative to this amendment.

Motion by Alderman Wysocki that the Council concludes that because of the late notice of the Wisconsin DNR's request for supplemental language in Ordinance No. 2395 that good cause in fact exists pursuant to Wisconsin Statute Section 19.84(3) to take up this issue on this agenda with less than 24 hours notice. Seconded by Alderman Hopkins and carried unanimously.

Motion by Alderman Hopkins to waive the three readings for the amendment to Ordinance No. 2395. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Seidl that the Common Council of the City of New Berlin does hereby amend its Zoning Code Article IX A, Section 275-65.22 through 275-65.31 "Floodplain Zoning" of the Zoning Code and Zoning Map of the City of New Berlin to incorporate the Flood Insurance Rate Map (FIRM), panel numbers 55133CV001A-003A dated November 19, 2008 with corresponding profiles that are based on the Waukesha County Flood Insurance Study (FIS) dated November 19, 2008, volumes 55133CV001A-003A which are more specifically described as follows: 55133C0218F, 55133C0219F, 55133C0238F, 55133C0239F, 55133C0327F, 55133C0329F, 55133C0331F, 55133C0332F, 55133C0334F, 55133C0342F, 55133C0351F, 55133C0352F, 55133C0353F, 55133C0354F, 55133C0361F and 55133C0362F. Said panels with corresponding profiles that are based on the Waukesha County Flood Insurance Rate Study dated November 19, 2008, are hereby incorporated in the City of New Berlin Floodplain Appendix and the Floodplain Districts as set forth in Section 275-65.22 through 275-65.31 as well as the City of New Berlin Zoning Map. Seconded by Alderman Moore and carried unanimously.

Motion by Alderman Hopkins to recess the Common Council meeting. Seconded by Alderman Seidl and carried unanimously.

Motion by Alderman Seidl to reconvene the Committee of the Whole meeting. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Seidl to adjourn the Committee of the Whole meeting at 11:03 PM. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Seidl to reconvene the Common Council meeting. Seconded by Alderman Wysocki and carried unanimously.

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

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: Richard & Doris Gregory Claim

Motion by Alderman Seidl to go to Closed Session at 11:07 PM. Seconded by Alderman Ament and carried per roll call vote unanimously.

Motion by Alderman Hopkins to reconvene in Open Session at 11:17 PM. Seconded by Alderman Wysocki and carried unanimously.

ADJOURN

Motion by Alderman Seidl to adjourn at 11:19 PM. Seconded by Alderman Wysocki and carried unanimously.

Respectfully submitted:

Marilyn Gauger, MMC/WCMC
City Clerk