

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, December 16, 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 8:06 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, Moore and Ament. Also present were: City Clerk Marilyn Gauger, Attorney Lori Fabian, City Attorney Mark Blum, City Engineer JP Walker, Human Resources Director Tami Potkay, Community Development Director Greg Kessler, Inspector and Emergency Management Director Scott Schulpus, City Assessor Paul Koller and Associate Planner Jessica Thiel.

This meeting was noticed on Thursday, December 11, 2008 in accordance with the Open Meeting Law.

City Clerk - none

Council President - none

Mayor – Happy Holiday and Merry Christmas from the Chiovaturo residence to yours that everyone have a joyous holiday season.

City Attorney - none

COMMUNICATIONS

Makayla Peters Claim

Referred to City Attorney

Update to FEMA Flood Grant - Scott Schulpus

Emergency Government Director Schulpus indicated the City received \$77,355.72 from the Feb. 5-7, 2008 snowstorm, and the City will receive a total of \$218,635.70 from the June floods for a grand total of \$295,987.72. Mr Schulpus answered questions from Council members. Mayor Chiovaturo thanked everyone involved with all the paperwork in order to receive the grant dollars.

Letter from Virchow Krause & Company – Statement on Auditing Standard No. 114

Mayor Chiovaturo indicated letter is from our Auditors for Alderman's information.

Mayor Chiovaturo deviated from the agenda to consider the Closed Session:

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 and Doris Gregory Claim & Violet Preston Trust Claim

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

- 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: Collective Bargaining Update and possible contract ratification: AFSCME, NBPPA, and Fire Department

Motion by Alderman Seidl to go to Closed Session at 8:15 PM. Seconded by Alderman Hopkins and carried per roll call vote unanimously.

Motion by Alderman Wysocki to reconvene in Open Session at 9:03 PM. Seconded by Alderman Seidl and carried unanimously.

RECONVENUE TO OPEN SESSION

Discussion and possible contract ratification of AFSCME contract

Motion by Alderman Hopkins to ratify the AFSCME contract. Seconded by Alderman Seidl and carried unanimously.

Discussion and possible contract ratification of NBPPA contract

Motion by Alderman Hopkins to ratify the NBPPA contract. Seconded by Alderman Moore and carried unanimously.

Discussion and possible action of Richard and Doris Gregory Claim

Motion by Alderman Wysocki to approve a settlement with the Richard and Doris Gregory's in the amount of \$16,500. Seconded by Alderman Poshepny and carried with Alderman Moore voting no.

Discussion and possible action of Violet Preston Trust Claim

Motion by Alderman Seidl to refund the 2004 to 2007 real estate taxes to the Violet Preston Trust in the amount of \$4,771.44 based on a palpable error. Seconded by Alderman Moore and carried unanimously.

PLAN COMMISSION

Certified Survey Map for the property located at 2400 S. Johnson Road

Motion by Alderman Ament to approve the Certified Survey Map for the property located at 2400 S. Johnson Road and accept the Plan Commission Report. Seconded by Alderman Harenda and carried unanimously.

Mayor Chiovatero deviated from the agenda to consider other items from Plan Commission.

Ordinance No. 2399 that approves the rezoning of the property located at 2400 S. Johnson Road

Motion by Alderman Ament to adopt Ordinance No. 2399 that approves the rezoning of the property located at 2400 S. Johnson Road from A-2 and C-2 to R-1/R-2 and C-2 to field delineate the wetlands and accept the Plan Commission Report. Seconded by Alderman Moore and carried unanimously.

Ordinance No. 2400 that approves the rezoning of the property located at 17770 W. Cleveland Avenue

Motion by Alderman Ament to adopt Ordinance No. 2400 that approves the rezoning of the property located at 17770 W. Cleveland Avenue from I-1, C-1 and C-2 to I-1, C-1 and C-2 to field delineate the wetlands and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Ordinance No. 2401 that approves the rezoning of the property located at 19000 W. Lincoln Avenue

Motion by Alderman Ament to adopt Ordinance No. 2401 that approves the rezoning of the property located at 19000 W. Lincoln Avenue from C-1 and C-2 to C-1 and C-2 to field delineate the wetlands and accept the Plan Commission Report. Seconded by Alderman Seidl and carried unanimously.

Set a public hearing for January 5, 2009 for the present amended language to the New Berlin Municipal Code Chapter 275-34 (D)(3) related to Hotel Height

Motion by Alderman Ament to Set a public hearing for January 5, 2009 for the present amended language to the New Berlin Municipal Code Chapter 275-34 (D)(3) related to Hotel Height and accept the Plan Commission Report. Seconded by Alderman Seidl and carried unanimously.

Mayor Chiovatero deviated from the agenda to hear the following items:

PARK RECREATION & FORESTRY COMMISSION

Agreement for Use of School Facilities between the City of New Berlin and the New Berlin School District

Motion by Alderman Moore to approve the Agreement for Use of School Facilities between the City of New Berlin and the New Berlin School District for the period of September 1, 2008 to August 31, 2009 conditioned upon review by City Attorney. Seconded by Alderman Hopkins and carried unanimously.

MAYORAL APPOINTMENTS

Emergency Government

Motion by Alderman Moore to approve the re-appointment of Scott R Schulpius with term expiring 12-31-2011. Seconded by Alderman Poshepny and carried unanimously.

4th of July Commission

Motion by Alderman Ament to approve the appointment of Sandy Molick with term expiring 8-2-2011. Seconded by Alderman Hopkins and carried unanimously.

DEFERRED, REFERRED & TABLED ITEMS

Ordinance No. 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/REFERRED BACK TO PLAN COMMISSION 11-18-08
Public Hearing set for Monday, January 5, 2009.

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/TABLED 11-18-08

No action taken/waiting for report from NB School District.

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CONSENT AGENDA

Motion by Alderman Ament to approve all of the following items on the Consent Agenda as amended. Seconded by Alderman Moore and carried unanimously.

UTILITY AND FINANCE

For: November 26, 2008

- Water Utility claims in the amount of \$85,937.95, Sewer Utility claims in the amount of \$9,836.86, and Bi-weekly claims in the amount of \$1,254,089.26, all of which represents payment to vendors.

For: December 10, 2008

- Water Utility claims in the amount of \$54,236.80, Sewer Utility claims in the amount of \$8,567.96, and Bi-weekly claims in the amount of \$518,936.39, all of which represents payment to vendors.

LICENSES & PERMITS

Bartenders

- Bartender license for Cari Erdman.
- Bartender License for the year 2008-2010 for Amy Joers, Katherine Peterson, Timothy Ochowicz, Susan Butler, Barbie Bruchu, Daniel Schuller, Kane Sether and Amanda Kaszarek.

MISCELLANEOUS

- Presentation from IT Director Nick Roethel: Technology Status and Strategy/not given.
- Consideration of Final Resolution No. 08-39 regarding proposed Industrial Development Revenue Bond financing for GS Enterprises NA, LLC.
- Resolution No. 08-40 Resolution Transferring contingency Funds to cover the Ehlers & Associates Contract for a 3-Year Financial Plan.
- Resolution No. 08-41 Resolution Amending the 2008 City of New Berlin Operational Budget To Increase the Grant Revenue and Expenditure Accounts Within the Streets Department Budget.
- Resolution No. 08-43 Resolution Amending the 2008 City of New Berlin Operation 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.
- 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.

- 2009 Department CIP Budgets/TABLED 10-14-08/No action taken.

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City Attorney Blum arrived at this time.

ITEM/S REMOVED FROM THE CONSENT AGENDA

- **MINUTES - Common Council minutes from November 18, 2008**

Motion by Alderman Harenda to approve the Common Council minutes as amended with regard the Utility Committee action on the "Ruekert & Mielke contract for upgrade of the Grange Avenue Pump Station to bring Lake Michigan water to the expanded lake water service area". Seconded by Alderman Wysocki and carried unanimously.

- **Amend the last sentence only to the City of New Berlin Code Section 230-2 (A) regarding sidepaths/sidewalks**

Motion by Alderman Hopkins to direct the City Attorney to amend Section 230-2 (A) and bring back the appropriate ordinance. Seconded by Alderman Wysocki and carried with Aldermen Moore and Poshepny voting no and Alderman Ament abstaining.

Mayor Chiovaturo deviated from the agenda to go back to the following Plan Commission items:

Review recommendations from the Plan Commission for the establishment of an Urban Service Area Boundary for public sanitary sewer and water for the City of New Berlin and to consider the following requests for inclusion of lands in the New Berlin Urban Service Area Boundary and the Plan Commission recommendations thereon:

- **Extension of the NBUSAB boundary to include the Ultimate Planning Area for the property located at approximately 19000 W. Lincoln Avenue**

Motion by Alderman Ament to approve the Extension of the NBUSAB boundary to include the Ultimate Planning Area for the property located at approximately 19000 W. Lincoln Avenue (Geipel Sod Farm / Tax Key: 1167-997, 1167-993, 1167-992, and 1167-990) and accept the Plan Commission Report. Seconded by Alderman Moore.

Alderman Ament withdraw his motion and Alderman Moore withdrew is second.

Motion by Alderman Wysocki to deny the applications for inclusion of the Geipel, New Berlin School District (West H.S.), Posner, Boyd, Sts Constantine and Helen Greek Orthodox Church and the Polmax properties in the proposed New Berlin Urban Service Area on the grounds that said properties are outside of the previously established utility boundaries under the City's GDMP and in some instances the applicant properties are outside of the MMSD planning area either in whole or in part; in addition the City has not yet completed its comprehensive plan including the utility and community facilities element nor have the implications of the inclusion of these properties in the City's sewer system been studied to determine the impact on existing and future customers of the utility. Seconded by Alderman Ament.

Alderman Moore amended the motion to include (not deny) the New Berlin School District within the Urban Sewer Service Boundary. Died lack of a second.

Upon voting original motion carried with Alderman Moore voting no.

Discussion and possible action to adopt Resolution No. 08-42 to establish the New Berlin Urban Service Area Boundary as referred by the Council to the Plan Commission for study, analysis and the holding of a public hearing and further to consider the inclusion of additional lands within said boundary as

requested by the respective property owners and as set forth in the report and recommendations of the Plan Commission

Motion by Alderman Seidl to extend meeting to 11:30 PM. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Harenda to refer back Resolution No. 08-42 to Plan Commission and follow the current sewer service area line and hold a public hearing, Seconded by Alderman Ament.

Alderman Harenda withdrew his motion and Alderman Ament withdrew his second.

Motion by Alderman Harenda to table and have staff prepare revised line consistent with the discussion tonight (current line) and hold a public hearing to review that line before Council the first meeting of February (February 10, 2009 at 7PM). Seconded by Alderman Poshepny and carried unanimously.

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 Chiovatero indicated this is the 2nd reading.

ADJOURN

Motion by Alderman Seidl to adjourn at 11:50 PM. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Hopkins to reconvene the Committee of the Whole at 11:50 PM. Seconded by Alderman Harenda and carried unanimously.

Motion by Alderman Wysocki to adjourn at 11:51 PM. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:

Marilyn Gauger, MMC/WCMC
City Clerk