

**CITY OF NEW BERLIN  
PROCEEDINGS OF THE COMMON COUNCIL MEETING  
Tuesday, January 10, 2006**

**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 9:00 PM after Committee of the Whole and Privilege of the Floor.

***This meeting was noticed on January 6, 2006 in accordance with the Open Meeting Law.***

Those present recited the Pledge of Allegiance.

**ROLL CALL:** Present were Aldermen Hopkins, Augustine, Gallagher, Harenda, Hegeman, Moore and Ament. Also present were: City Attorney Mark Blum and City Clerk Marilyn Gauger, Director of Community Development Greg Kessler, Planning Services Manager Nikki Jones, Division Engineer Eric Nitschke, Parks and Human Resource Director Tami Potkay.

City Clerk – Primary Election is Tuesday, February 21, 2006 for New Berlin School Board Candidates. Only those voters within the New Berlin School District will be allowed to vote. The City has 3 other School Districts within its boundary. The other 3 School Districts do not have primaries. Their School Board candidates will be on the April 4, 2006 ballot.

Council President - none  
Mayor - none  
City Attorney - none

**COMMUNICATIONS**

**Austin Mlada Claim**  
Referred to City Attorney

**Roberta Derhammer Claim**  
Referred to City Attorney

**Carol Garces**  
Referred to City Attorney

**Offer to Purchase City property easement for improvement to I-43**  
Referred to Utility Committee and City Attorney

**STORMWATER COMMITTEE**

**Ordinance No. 2298 AN ORDINANCE TO AMEND VARIOUS SECTIONS IN CHAPTER 65, STORMWATER UTILITY, AND TO CREATE SECTION 6-18 IN CHAPTER 6 BOARDS, COMMISSIONS AND COMMITTEES OF THE MUNICIPAL CODE OF THE CITY OF NEW BERLIN (1<sup>st</sup> reading)**

Motion by Alderman Hopkins to waive the 2<sup>nd</sup> and 3<sup>rd</sup> reading. Seconded by Alderman Hegeman and carried unanimously.

Motion by Alderman Hegeman to adopt Ordinance No. 2298. Seconded by Alderman Hopkins 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 the rezoning petition of Crossroads Community Church and the Sts Constantine & Helen Greek Orthodox Church.

Motion by Alderman Ament to go to Closed Session at 9:05 PM. Seconded by Alderman Harenda and carried by roll call vote.

Motion by Alderman Ament to reconvene to Open Session at 9:40 PM. Seconded by Alderman Hegeman and carried unanimously.

#### **OPEN SESSION**

Discussion and possible action on the following items:

#### **DEFERRALS, REFERRAL & TABLED ITEMS**

#### **Sts Constantine and Helen Greek Orthodox Church TABLED 3-15-05**

No action taken.

#### **Ordinance #2293 that approves the rezoning of property known as Crossroads Community Church located at 4315 S Moorland Rd from R-3 to I-1 DEFERRED 12-13-05**

Motion by Alderman Gallagher to adopt Ordinance No. 2293 with the Plan Commission condition that approval of a building permit is needed prior to construction. Seconded by Alderman Hegeman. Motion failed with Alderman Harenda and Alderman Ament voting no.

*Note: A super majority vote (6 in the affirmative) is needed to approve the rezoning due to the protest petition that was filed and deemed valid.*

Motion by Alderman Harenda to refer back to Plan Commission and staff to assist the church with building the church within our codes and ordinances. Seconded by Alderman Ament.

Motion by Alderman Moore to table discussion regarding the referral to Plan Commission. Seconded by Augustine and carried with Alderman Ament and Harenda voting no.

Motion by Alderman Gallagher to go back to Closed Session at 9:55 PM because of the legal implications due to the referral back to Plan Commission that we did not have an opportunity to discuss with legal counsel. Seconded by Alderman Moore and carried per roll call vote with Alderman Harenda and Alderman Ament voting no.

Motion by Alderman Hegeman to reconvene in Open Session at 10:25 PM. Seconded by Alderman Moore and carried unanimously.

***The following matters subsequent to this second Closed Session are for purposes of the actions of the City considered void and will be taken up again at a Council meeting on Tuesday, January 17, 2006 at 7:00 PM.***

Motion by Alderman Moore to remove from the table the referral to Plan Commission. Seconded by Alderman Hopkins and carried unanimously.

Alderman Harenda withdrew his motion to refer back to Plan Commission. Alderman Ament withdrew his second.

Motion by Alderman Ament to deny the request by the Crossroads Community Church to rezone the property at 4315 S. Moorland Rd. from R-3 to I-1 for the following reasons: application is not in conformance with the City of New Berlin Master Plan, as stated in the November 7, 2005 Staff Report; The Future Land Use Map designates this property as Urban Residential (R-3); request is not consistent with the Master Plan or the GDMP, which designates this property as Urban Residential (R-3) as stated in the November 7, 2005 Staff Report; request is not consistent with Chapter 275 of the City of New Berlin Zoning Code. Chapter 275-22 (F) (1), which states under AMENDMENTS TO THE ZONING ORDINANCE. RECOMMENDATIONS AND DECISIONS ON AMENDMENTS TO THE ZONING ORDINANCE SHOULD BE BASED ON CONSIDERATION OF THE FOLLOWING CRITERIA:

- (B) – “Whether the proposed amendment is consistent with the Master Plan and the stated purpose of this chapter.”
- This request is not consistent with the City of New Berlin Zoning Code. Chapter 275-22 (F) (2) – which states under Changes to the zoning district boundaries (rezoning). “In acting on a rezoning petition, the Common Council shall (MUST) consider the stated purpose of the proposed zoning district and shall (MUST) approve the petition ONLY if it finds that: (a) The proposed rezoning is consistent with the Master Plan and the stated purpose of this chapter; (f) The proposed rezoning

will not be used to legitimize, or "spot zone" a nonconforming use or structure." The Staff Report under "Findings" states this request does NOT meet these criteria. It says the "Future Land Use Map identifies this site as Urban Residential." (g) "The proposed rezoning is the minimum action necessary to accomplish the intent of the petition, and an administrative modification, variance, or CONDITIONAL USE PERMIT could not be used to achieve the same result."

- The Church has the option to apply for a Conditional Use permit that would allow a church to be built while protecting the neighbors, the GDMP and the Master Plan, especially the Land Use Component of the Master Plan.
- The Church has yet another option, to apply for a PUD with an underlying residential zoning district (R-3/PUD) that would allow them to build a church with additional options that would likewise protect the neighbors, the GDMP and the Master Plan.

Motion died lack of a second.

Motion by Alderman Harenda to reconsider his motion for approval of the rezoning petition of Crossroads Community Church. Seconded by Augustine and carried with Alderman Ament voting no.

Motion by Alderman Hegeman to approve Ordinance #2293 that approves the rezoning of property known as Crossroads Community Church located at 4315 S Moorland Rd from R-3 to I-1. Seconded by Alderman Augustine and carried with Alderman Ament voting no.

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**CONSENT AGENDA**

Motion by Alderman Ament to approve the following items on the consent agenda. Seconded by Alderman Augustine and carried unanimously.

**MINUTES – Common Council minutes of December 13, 2005**

**UTILITY AND FINANCE**

From December 28, 2005

Request for approval of Water Utility claims in the amount of \$520,525.33 Sewer Utility claims in the amount of \$346,864.08, of that amount \$285,042.09 represents payment to MMSD and Bi-weekly claims in the amount of \$384,963.21 all of which represents payment to vendors. Also, there are tax overpayments in the amount of \$54,892.79.

For January 11, 2006

Recommend to Council approval of Water Utility claims in the amount of \$16,144.98 Sewer Utility claims in the amount of \$10,784.91 and Bi-weekly claims in the amount of \$501,824.36 all of which represents payment to vendors. Also, there are tax overpayments in the amount of \$121,566.20.

**LICENSES/PERMITS**

**Bartender Licenses**

Request for approval of Bartender License for the year 2005-2007 for Nicole Marie Van Scoy, Tanya Marie Phillips, Ilene Marie Ramirez, Nicole Lelah Mesich, Tanya Marie Mena, Troy Matthew Windorff, Charles Glen Ziemer, Marjorie A Bukiewicz, Kevin Michael Boger, Josie Anne Peterson, Sarah E. O'Keefe, Kyle A. Ervin and Joe John Filip.

**MISCELLANEOUS**

Resolution No. 05-56 RESOLUTION VACATING AND DISCONTINUING BLOM STREET IN THE CITY OF NEW BERLIN.

Set a Public Hearing date of Tuesday, February 14, 2006 at 7:00 PM for the vacation and discontinuing of the emergency access way in the Karrington Woods Subdivision.

Reassignment of Water Resource Management Division (Utility) from Department of Utilities and Streets to Department of Community Development.

Dedication of land for Veterans Memorial at the northeast corner of Casper Drive and National Avenue.

Set a Public Hearing date for Monday, February 6, 2006 at 6:00 PM before Plan Commission for a petition to rezone property located at 2815 South Calhoun Road and 17301 W Cleveland Avenue from O-2 & R-3 to M-1.

**DEFERRED/TABLED ITEMS**

None.

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**ITEM/S REMOVED FROM CONSENT AGENDA**

**Declaration of Official Intent for the 2006 CIP Debt Issue**

Motion by Alderman Augustine to authorize the Director of Finance and IT to sign the Declaration of Official Intent for the 2006 CIP Debt Issue. Seconded by Alderman Moore and carried with Alderman Hegeman voting no.

**Direct Sellers Permit**

Motion by Alderman Hopkins to grant the appeal of denial pursuant to Section 152-5 F of the Municipal Code/Michael Stempel for Weather Tight Corp and direct the City Clerk to issue the license. Seconded by Alderman Hegeman and carried with Alderman Gallagher and Alderman Ament voting no.

**ORDINANCES/RESOLUTIONS**

**Ordinance No. 2291 Ordinance to Amend Section 152-15(B)(2) Alarm Systems of the Municipal Code of the City of New Berlin – Permit Fee (3rd reading)**

Motion by Alderman Hegeman to adopt Ordinance No. 2291. Seconded by Alderman Hopkins and carried with Alderman Ament voting no.

**Ordinance No. 2292 Ordinance to Amend Section 267-10(A)(1) and (2) Utility Service Standards of the Municipal Code of the City of New Berlin (3rd reading)**

Motion by Alderman Hegeman to adopt Ordinance No. 2292. Seconded by Alderman Hopkins and carried with Alderman Moore voting no.

**Ordinance No. 2297 Ordinance to Amend Chapter 198-1 of the Municipal Code of the City of New Berlin (Disposal of Abandoned Property) (1<sup>st</sup> reading)**

Motion by Alderman Harenda to waive the 2<sup>nd</sup> and 3<sup>rd</sup> reading. Seconded by Alderman Ament and failed with Alderman Hopkins, Alderman Harenda and Alderman Ament voting yes.

*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) (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 the New Berlin Professional Police Association contract.

Motion by Alderman Augustine to go to Closed Session at 10:50 PM. Seconded by Alderman Hopkins and carried by roll call vote.

Motion by Alderman Moore to reconvene to Open Session at 11:18 PM. Seconded by Alderman Hegeman and carried unanimously.

**OPEN SESSION**

**Possible ratification of the New Berlin Professional Police Association contract**

Motion by Alderman Hegeman to approve the ratification of the New Berlin Professional Police Association contract. Seconded by Alderman Augustine and carried unanimously.

**ADJOURN**

Motion by Alderman Ament to adjourn 11:20 PM. Seconded by Alderman Augustine and carried unanimously.

Respectfully submitted:

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Marilyn Gauger, CMC  
City Clerk