

**PROCEEDINGS OF THE COMMON COUNCIL MEETING
TUESDAY, JANUARY 13, 2004**

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

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, January 13, 2004 at the New Berlin City Hall at 7:35 P.M.

This meeting was noticed on December 8, 2004 in accordance with Open Meeting law.

ROLL CALL Mayor Wysocki, Aldermen Bullermann, Augustine, Gallagher, Harenda, Wilkens, Chiovatero and Ament. Also present: City Attorney Mark Blum, City Clerk Marilyn Gauger, Director of Utilities & Streets Ray Grzys, Planning Services Manager David Haines, Department of Community Development Director Greg Kessler and Director of Parks, Recreation & Forestry Mark Schroeder.

REPORTS

City Clerk – You must be registered to vote. To avoid standing in line on Election Day (February 17th) you may register to vote at the City Clerk's office or the New Berlin Public Library. Hours for the Library: Monday to Thursday from 9:00 AM to 9:00 PM; Friday and Saturday from 9:00 AM to 5:00 PM and Sunday from 1:00 PM to 4:00 PM. Hours for City Clerk's office: 8:00 AM to 4:30 PM Monday through Friday.

Council President – Alderman Bullermann presented and City Engineer JP Walker accepted an Award of Merit plaque from the Wisconsin Public Park and Recreation Association for a Streambank Stabilization project accomplished by the City's Department of Community Development and Parks, Recreation & Forestry for the Calhoun Park project dated 11-5-2003.

Mayor – thanks those citizens for attending last Saturdays' Informational Meeting and indicated another Informational Meeting is scheduled for Saturday, January 17th at City Hall regarding Gatewood Subdivision Storm Sewer project.

City Attorney - none

COMMUNICATIONS/None

COMMITTEE, COMMISSION AND BOARD RECOMMENDATIONS

PLAN COMMISSION

Elmwood School – 5150 S Sunny Slope Rd – Rezone from I-1 to R-4/Adoption of Ordinance No. 2222.

Motion by Alderman Ament to adopt Ordinance No. 2222 for a rezoning from I-1 to R-4 and accept the Plan Commission report. Seconded by Alderman Wilkens and carried unanimously.

Lyndenwood Condominiums – 14500 & 14510 W Beloit Rd – Rezone to PUD/Adoption of Ordinance No. 2223.

Motion by Alderman Ament to adopt Ordinance No. 2223 for a rezoning from R-4 to R-4.5/PUD, Rd-1/PUD and Rm-1/PUD and accept the Plan Commission report. Seconded by Alderman Wilkens and carried with Alderman Ament voting no.

Two-lot Land Division – 12705 W Forest Drive.

Motion by Alderman Ament to approve a Two-lot Land Division subject to eight (8) conditions located at 12705 W Forest Drive and accept the Plan Commission report. Seconded by Alderman Bullermann and carried unanimously.

Set Public Hearing Date before Plan Commission for Monday, February 2, 2004 at 6:00 PM for rezoning of property at 5900 S Moorland Road from A-1 to P-1.

Motion by Alderman Ament to set a public hearing date before Plan Commission for Monday, February 2, 2004 at 6:00 PM for rezoning of property at 5900 S Moorland Road from A-1 to P-1. Seconded by Alderman Wilkens and carried unanimously.

Set Public Hearing Date before Plan Commission for Monday, February 2, 2004 at 6:01 PM for rezoning of property at 14999 W Beloit Road from O-2 to B-2.

Motion by Alderman Ament to Set Public Hearing Date before Plan Commission for Monday, February 2, 2004 at 6:01 PM for rezoning of property at 14999 W Beloit Road from O-2 to B-2. Seconded by Alderman Wilkens and carried unanimously.

UTILITY COMMITTEE

Assignment of the Agreement between City of New Berlin and IMServ North America LLC to Terasen Inc

Motion by Alderman Gallagher to approve the Assignment of the Agreement between City of New Berlin and IMServ North America LLC to Terasen Inc. Seconded by Alderman Harenda and carried unanimously.

DNR Consent Order Agreement to comply with radium standards by 12-8-2006.

Mayor asked that this item be deferred until after Closed Session.

BOARD OF PUBLIC WORKS

Waukesha County Ordinance No. 158-22 "Amendment to Waukesha County Street and Highway Width Map"/Resolution No. 04-02

Motion by Alderman Chiovatero to adopt Resolution No. 04-02 "A Resolution To Approve The Amended Established Street and Highway Width Map of Waukesha County". Seconded by Alderman Harenda and carried unanimously.

Payne & Dolan Change Order No. 1 to 2003 Roadway Maintenance Project/Repairs to 147th Street and Wilbur Drive

Motion by Alderman Chiovatero to approve Change Order No. 1 to the Contract for the 2003 Roadway Maintenance Project to the lowest responsive, responsible bidder, Payne & Dolan, Inc in the amount of \$35,760.00 for Project No. R-01-03 with the original approved project cost of \$167,974 and a revised project cost of \$219,374 with the source of funds from Account #511.820.01 2003 Roadway Maintenance. Contingencies have been added to cover unknown additional repairs for damages that may have occurred following our inspection of the roadways in Spring 2003 and to provide for inspection of the repairs. Seconded by Alderman Augustine and carried unanimously.

Development Agreement for National Regency Expansion

Motion by Alderman Chiovatero to approve the Development Agreement subject to final review as to form by the City Attorney. Seconded by Alderman Augustine and carried unanimously.

Revision of Permit Fee Schedule for Culvert Installation

Motion by Alderman Chiovatero to approve the revision of the permit fee schedule for new culvert installations to cover costs incurred by the City. Seconded by Alderman Harenda and carried unanimously.

MAYORAL APPOINTMENTS

Landmarks Commission – Robert Rafel

Motion by Alderman Harenda to appoint Robert Rafel to the Landmarks Commission with an expiration date of 10-1-06. Seconded by Alderman Ament and carried unanimously.

DEFERRALS, REFERRAL & TABLED ITEMS

Ban the burning of all yard waste effective April 2004/REFERRED TO AD HOC LEAF COMMITTEE 10-28-03

No action taken.

Authorization to include Utility Building addition for Design and Construction as part of the Water & Sewer 2004 Capital Budget/TABLED 12-9-03

Motion by Alderman Gallagher to remove from the table. Seconded by Alderman Harenda and carried unanimously.

Motion by Alderman Gallagher to refer back to the Utility Committee. Seconded by Alderman Ament and carried with Alderman Ament voting no.

Recommend to Council to make the Finance Committee a permanent committee/DEFERRED 12-9-03

Motion by Alderman Wilkens to recommend to Common Council approval of the suggestions that I put forth in my letter dated January 13, 2004. Seconded by Alderman Gallagher.

Motion by Alderman Wilkens to table. Seconded by Alderman Ament and carried unanimously.

CONSENT AGENDA

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

MINUTES

Approval of Common Council Minutes from Meeting held on December 9, 2003.

CLAIMS

For: December 23, 2003

Approval of Water Utility Claims in the amount of \$29,936.62; Sewer Utility Claims in the amount of \$249,459.45; and Bi-weekly Claims in the amount of \$846,603.59.

For: December 31, 2003

Approval of Payment of Tax Overpayments in the amount of \$174,975.94.

For: January 14, 2004

Approval of Water Utility Claims in the amount of \$197,564.26; Sewer Utility Claims in the amount of \$314,716.18 of that amount \$269,807.55 represent payments to MMSD and the remaining amount of \$44,908.63 represents payment to vendors; 2003 Bi-weekly Claims in the amount of \$834,877.39; 2004 Bi-weekly Claims in the amount of \$54,368.11, all of which represents payments to vendors and approval of Tax Overpayments in the amount of \$87,368.07.

LICENSES

Denial of Bartender License for the year 2002-2004 to Joseph J. Blasczyk.

Approval of Bartender Licenses for the year 2002-2004 to Stephanie A. Booms; Barbara E. Gilbert and Jennifer Lynn Phillips.

St. Elizabeth Ann Seton Church Festival

Approval to allow bands playing at the St. Elizabeth Ann Seton Church Festival to perform until 11 p.m. on Friday and Saturday July 23 & 24, 2004 and until 7 p.m. on Sunday July 25, 2004.

MISCELLANEOUS

Approval of Resolution No. 04-01 "A RESOLUTION TO WRITE OFF DELINQUENT UNCOLLECTED PERSONAL PROPERTY TAXES".

Approval of Resolution No. 04-03 "AUTHORIZING THE ISSUANCE AND SALE OF \$6,625,000 WATER SYSTEM REVENUE BONDS, SERIES 2004."

Approval of Amendment to the Initial City Center Development Agreement with N.B. Commercial Center, LLC

ORDINANCES/RESOLUTIONS

City Clerk Gauger gave the 3rd reading.

Ordinance No. 2218 “Ordinance To Repeal Chapter 210 of the Municipal Code of the City of New Berlin” relating to Recreation and Utility Equipment Storage. (3rd reading)

Motion by Alderman Wilkens to adopt Ordinance No. 2218 as read. Seconded by Alderman Harenda and carried unanimously.

City Clerk Gauger gave the 2nd reading:

Ordinance No. 2220 Amendment to Portions of Chapter 141 of the Municipal Code of the City of New Berlin Concerning the Designation and Registration of Landmarks. (2nd reading)

Ordinance No. 2221 “Revision to Chapter 230 Section 3C (1) of the City of New Berlin Municipal Code. (1st reading)

This Ordinance will go back to Committee for clarification and additional amendments.

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) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified business whenever competitive or bargaining reasons require a Closed Session; more specifically Collective Bargaining Update; and

Section 19.85 (1) (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 State’s Claim with respect to radium in City water supply; Lease Agreement and Restoration Plan for Quarry Park; Malina Zakula Claim and Thomas D Launius Claim.

Motion by Alderman Ament to go to Closed Session at 9:16 PM. Seconded by Alderman Wilkens and carried unanimously per roll call vote.

Motion by Alderman Wilkens to go to Open Session at 11:13 PM. Seconded by Alderman Chiovatero and carried unanimously.

OPEN SESSION

Possible adoption of Consent Order

Motion by Alderman Gallagher to approve the Consent Order Agreement issued by the Wisconsin Department of Natural Resources (WDNR) to comply with Radium standards by December 8, 2006. Seconded by Alderman Ament and carried unanimously.

Possible approval of Memorandum of Understanding with respect Lease Agreement & Restoration Plan

No action taken.

Possible action on Malina Zakula Claim

Motion by Alderman Chiovatero to deny the claim based on the City Attorney recommendation. Seconded by Alderman Wilkens and carried unanimously.

Possible action on Thomas D Launius Claim

Motion by Alderman Wilkens to deny the claim based on the City Attorney recommendation. Seconded by Alderman Ament and carried unanimously.

ADJOURN

Motion by Alderman Wilkens to adjourn at 11:34 PM. Seconded by Alderman Ament and carried unanimously.

**Respectfully submitted as City Clerk
Marilyn Gauger, CMC**