

**CITY OF NEW BERLIN
COMMON COUNCIL MEETING MINUTES
Tuesday, October 12, 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, October 12, 2004 at the New Berlin City Hall at 8:40 P.M.

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

ROLL CALL Mayor Wysocki called the meeting to order at 8:40 PM. Present were Aldermen Hopkins, Augustine, Gallagher, Harenda, Hegeman, Chiovatero and Ament. Also present were City Attorney Blum, Acting City Clerk Marenda, Director of Community Development Kessler, City Engineer J. P. Walker, Planning Services Manager Jones, Division Engineer-Transportation Schildt, Director of Dept. of Utilities & Streets Grzys, Accounting Manager Chipman, Fire Chief Dobernig, Human Resource Director Potkay, Parks, Recreation & Forestry Director Schroeder; Inspection Services Manager Sigrist; Police Captain Zsohar, and Division Engineer-Storm Water Nitschke.

The Pledge of Allegiance was recited by those present and a short invocation was made.

REPORTS

City Clerk - None

Council President – Alderman Harenda presented a Council President Appointed Positions – Revision October 12, 2004.

Mayor Wysocki reviewed the Proposed 2005 Budget schedule and Public Hearing date of November 16, 2004, depending on actions taken tonight.

Mayor read a Proclamation declaring October National Breast Cancer Awareness Month and October 15 as National Mammography Day in the City of New Berlin

City Attorney- None

COMMUNICATIONS

Mayor Wysocki supplied a copy of a Press Release – Order for Summary Judgment Issued in Favor of the City of New Berlin in Sts. Constantine and Helen Greek Orthodox Church Matter

COMMITTEE, COMMISSION AND BOARD RECOMMENDATIONS

Committee of the Whole

Review and approve Proposed 2005 Operational budget with a total budget of \$29,763,877 and a total levy of \$20,195,138 and set November 16, 2004 at 7:00 p.m. for a Public Hearing on the Budget. Mayor Wysocki requested the Council reconsider its vote against creating a full time code compliance position and offered funding sources. Alderman Ament moved to change the proposed 2005 operating budget to allow the creation of a full-time code compliance position by transferring FROM: Account 530-110.03 - \$24,000; Account 530-110.02 \$3,269; Account 530-110.04 \$5,579 TO: Account 526-1110.46 for a total of \$32,848 with related health benefit costs in contingency Account 616. Seconded by Alderman Hopkins, motion carried 6-1 with Alderman Gallagher voting 'no'. Mayor also advised a letter has been received from the State Elections Board advising funds should be budgeted in 2005 for the potential purchase, maintenance, storage and programming of Accessible Voting Equipment required by January 1, 2006 by the Help America Vote Act (HAVA). Mayor will discuss with the Finance Director to determine if this is a CIP or Operating Budget item.

Discussion on the motion from Committee of the Whole to approve the proposed 2005 operating budget with a total budget of \$29,763,877 and a total levy of \$20,195,138 and set November 16, 2004 at 7:00 PM for a Public Hearing on the Budget. Accounting Manager Chipman advised as a result of an increase to revenue and expense due to adding the code compliance position, the Operating Budget total changed to \$29,784,555. Alderman Chiovatero moved to further amend the proposed 2005 operating budget to return the Roadway Maintenance account to \$781,250. Seconded by Alderman Hopkins. Motion was defeated with Aldermen Hopkins and Chiovatero in favor and Aldermen Augustine, Gallagher, Harenda, Hegeman and Ament opposed. The Proposed 2005 Operating Budget with a total budget of \$29,784,555 and a total levy of \$20,195,138 was set for public hearing on November 16, 2004 at 7:00 PM by unanimous vote of the Council.

Plan Commission

Ordinance No. 2246 to Amend Sections 275-15(D)(3) and 275-17(B)(9) of the Zoning Ordinance regarding the issuance of Administrative Permits and accept the Plan Commission Report. Alderman Ament moved for adoption of Ordinance No. 2246 and to accept the Plan Commission Report. Seconded by Alderman Hopkins, motion carried unanimously.

Ordinance No. 2247 to Rezone property known as John and Cheryl Globig property located at 2240 Foxglove Court and accept the Plan Commission Report. Alderman Ament moved for adoption of Ordinance No. 2247 and to accept the Plan Commission Report. Seconded by Alderman Hopkins, motion was defeated unanimously. Alderman Gallagher moved to deny rezoning because it conflicts with existing conservation easement in place in the Developers Agreement. Seconded by Alderman Hopkins, motion to deny carried unanimously.

Ordinance No. 2248 to Rezone property known as James French property located at 4461 S. Sunny Slope Road and accept the Plan Commission Report. Alderman Ament moved for adoption of Ordinance No. 2248 and to accept the Plan Commission Report. Seconded by Alderman Hegeman, motion carried 4-3 with Aldermen Harenda, Hegeman and Ament voting 'no'.

Set Public Hearing for November 1, 2004 to consider rezoning to A-2, R-1/R-2, R-3 and C-2 at approximately 5611 S. Calhoun Road and accept the Plan Commission Report. Alderman Ament moved to set the public hearing for November 1, 2004 and to accept the Plan Commission report. Seconded by Alderman Harenda. Director of Community Development Kessler advised that the date of the public hearing would now be December 6, 2004. Alderman Hegeman moved to amend the hearing date to December 6, 2004. Seconded by Alderman Chiovatero, motion carried unanimously. Motion as amended carried unanimously.

Transportation Master Plan as amended and Approve Resolution #PC 1-13 A Resolution adopting the Transportation Plan for the City of New Berlin as part of the City of New Berlin Master Plan, and accept the Plan Commission Report. Mayor Wysocki advised the plan has initially been approved by the Plan Commission and has been submitted to the Council for informational purposes only.

Board of Public Works

Resolution No. 04-55 A Resolution Amending the 2004 Approved Capital Improvement Program (CIP) Budget To Reallocate Funds From Wall Street to City Center. Alderman Chiovatero moved for adoption of Resolution No. 04-55. Seconded by Alderman Augustine, motion carried unanimously.

Developers Agreement for Biltmore Estates subject to review of final form by the City Attorney. Alderman Chiovatero moved for approval. Seconded by Alderman Ament, motion carried unanimously.

Utility Committee

Water Utility 2005 Budget and CIP. Alderman Gallagher moved for approval. Seconded by Alderman Harenda, motion carried unanimously.

Approval of Wastewater Utility 2005 Budget and CIP. Alderman Gallagher moved for approval of the Wastewater Utility 2005 Operating Budget. Seconded by Alderman Hegeman, motion carried unanimously. Alderman Gallagher moved for approval of the Wastewater Utility 2005 CIP Budget. Seconded by Alderman Ament, motion carried unanimously.

Award Engineering Agreement for reconstruction of City of New Berlin Wells #1 and #3

Alderman Gallagher moved to approve the Engineering agreement for the Radium Consent Order to reconstruct the City of New Berlin Wells #1 and #3 with an amount not to exceed \$100,000. Seconded by Alderman Ament, motion carried unanimously.

Stormwater Committee

Approval of Asphalt Invert Replacement Policy. Alderman Harenda moved for approval. Seconded by Alderman Hopkins, motion carried unanimously.

MAYORAL APPOINTMENTS

Mayor Wysocki presented Mayoral Appointments as follows:

Finance Committee - Keith R. Heun (Citizen Member) with Term expiring 10/12/2005. Alderman Ament moved for approval. Seconded by Alderman Harenda, motion carried unanimously.

Landmarks Committee - Timothy Herrick (Reappointment) with Term expiring 10/1/2007 and **Jackie Hermann** (Reappointment) with Term expiring 10/1/2007. Alderman Hegeman moved for approval. Seconded by Alderman Ament, motion carried unanimously.

Small Grants Special Projects Commission –

Ellen Park (Citizen Member) with Term expiring 10/12/2005: Alderman Ament moved for approval. Seconded by Alderman Hegeman, motion carried unanimously.

James J. Simonson (Citizen Member) with Term expiring 10/12/2005. Alderman Ament moved for approval. Seconded by Alderman Hegeman, motion carried unanimously.

Ronald M. Salke (Hotel/Motel Representative) with Term expiring 10/12/2005. Alderman Ament moved for approval. Seconded by Alderman Hegeman, motion carried unanimously.

Utility Committee

Robert J. Dude (Reappointment) with Term expiring 10/13/2006. Alderman Ament moved for approval. Seconded by Alderman Harenda, motion carried unanimously.

DEFERRALS, REFERRAL & TABLED ITEMS

Plan Commission

Ordinance No. 2236 An Ordinance to Rezone Wildwood Preserve from A-2, R-1/R-2, and C-2 to A-2, R-1/R-2, R-3 and C-2. DEFERRED 5-11-04/TABLED 5-24-04/REFERRED TO PLAN COMMISSION 9-28-04). Item stayed on the table.

Three (3) year extension from the date of the expiration of the first extension for Deer Creek Inn & Conference Center PUD Overlay District, Ordinance #2128, located at 1401 S. Moorland Road and accept the Plan Commission Report./TABLED 8-24-04/TABLED 9-7-04

Alderman Hopkins moved to remove from the table. Seconded by Alderman Ament, motion carried unanimously. Developer Don Kitten explained the delays in the project due to wetland delineations. Motion to approve three year extension carried 6-1, with Alderman Gallagher voting 'no'.

Citywide Streets and Decorative Lighting Policy – TABLED 9/28/04. Item stayed on the table.

Direct the City Attorney to draft an Ordinance removing various sections from Chapter 11 Civil Service Rules as recommended by Carlsen & Dettman Associates

Mayor noted the consultant requested the ordinance be amended to remove issues relating to banding and pay-for-performance from the Civil Service Code. A report will be forthcoming from the Human Resource Director. No action taken.

CONSENT AGENDA

Alderman Ament moved to approve the following items on the Amended Consent Agenda. Seconded by Alderman Hegeman, motion carried unanimously.

MINUTES

Common Council Minutes of Meeting held September 28, 2004

UTILITY AND FINANCE

Claims

- Recommend to Council approval of Water Utility Claims in the amount of \$65,986.06, Sewer Utility claims in the amount of \$60,181.89, and Bi-weekly claims in the amount of \$441,630.32, all of which represents payment to vendors.

LICENSES

Bartender Licenses

- Request for Bartender License for the year 2004-2006 for Cory N Gulbrandsen/TABLED 9/28/04. Denial recommended by Committee of the Whole 10/12/04.
- Request for Bartender License for the year 2004-2006 for Brett J. Seese. Denial recommended by Committee of the Whole 10/12/04
- Request for Bartender Licenses for the year 2004-2006 for Mary R. Hedman and Dawn C. Naden

MISCELLANEOUS

- Resolution No. 04-17 – Resolution Vacating and Discontinuing a Portion of the Service Drive on the South Side of Cleveland Avenue from 167th Street to 245 Feet West of 167th Street in the City of New Berlin. Introduced 4/13/04
- Resolution No. 04-18 – Resolution Vacating and Discontinuing a Portion of 166th Street in the City of New Berlin. Introduced 4/13/04
- Resolution No. 04-19 – Resolution Vacating and Discontinuing a Portion of 168th Street in the City of New Berlin. Introduced 4/13/04
- Resolution No. 04-20 – Resolution Vacating and Discontinuing a Portion of 170th Street in the City of New Berlin. Introduced 4/13/04
- Resolution No. 04-52 – Resolution Amending the 2004 Approved Operating Budget to Transfer Funds from the Contingency Account to Various Finance Wage and Benefit Accounts (relating to part time help for annual tax collection, quarterly utility bill collection and implementation of the new financial system)
- Resolution No. 04-53 – Resolution Amending the 2004 Approved Operating Budget to Transfer Funds from the Contingency Account to Police Contracted Services (relating to Waukesha County Trunked Radio Operating Agreement)
- Resolution No. 04-54 – Resolution Amending the 2004 Approved Operating Budget to Transfer Funds from the Contingency Account to the Street Department Gasoline Account (relating to increased costs for diesel and unleaded gasoline)
- Discussion and possible action on a Voluntary Health Insurance Opt-Out Program for 2005
- Discussion and possible action relating to the Mayoral Salary

The following items were removed from the Consent Agenda

Room Use Request from New Berlin Citizens for Responsible Government. Motion to approve carried 5-2 with Aldermen Gallagher and Chiovatero voting 'no'.

Resolution No. 04-51 – Resolution of Eligibility for Exemption from the County Library Tax Levy for 2005. Motion to approve carried 6-1 with Alderman Gallagher voting 'no'.

CLOSED SESSION. Acting Clerk Marenda read the Notice of Closed Session:

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

- (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-Teamsters Labor Agreement

- (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:

Intent to File Claim for Lien from Sigma Development
Intent to File Claim for Lien from Payne and Dolan
Intent to File Claim for Line from Zenith Tech Inc.
Intent to File Claim for Lien from D. F. Tomasini
DNR Sewage Discharge Claim
Wisconsin Corporate Central Credit Union Claim

Alderman Hopkins moved to convene in Closed Session. Seconded by Alderman Augustine, motion carried unanimously.

The Council reconvened in Open Session.

OPEN SESSION

Possible action on Lien Claims received from Sigma Development, Payne and Dolan, Zenith Tech, Inc. and D. F. Tomasini. Alderman Hegeman moved to settle these claims as presented by the City Attorney and direct the City Attorney to prepare a settlement agreement. Seconded by Alderman Augustine, motion carried unanimously.

Discussion and possible action on retainer agreement for DNR claim. Alderman Hopkins moved to approve a retainer agreement as recommended by the City Attorney. Seconded by Alderman Ament, motion carried 6-1 with Alderman Gallagher voting 'no'.

Discussion and possible action on Wisconsin Corporate Central Credit Union Claim (relating to collection of sewer and water assessments). Alderman Hegeman moved to deny claim. Seconded by Alderman Hopkins, motion carried unanimously.

ADJOURN

Alderman Ament moved to adjourn at 12:12 AM. Seconded by Alderman Hegeman, motion carried unanimously.

Respectfully submitted,

Jean K. Marendia, CMC
Acting City Clerk