

**Proceedings of the Common Council Meeting
February 11, 2003**

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, February 11, 2003, at the New Berlin City Hall at 8:20 p.m.

Present were Mayor Wysocki, Aldermen Bullermann, Harenda, Wilkens, Chiovatero and Ament. Also present were City Attorney Mark Blum, City Clerk Marilyn Gauger, Director of Utilities and Streets Ray Grzys, City Engineer JP Walker, Division Engineer Larry Wilms, Division Engineer Ron Schildt, Finance Director Mike Holzinger and Community Development Director Greg Kessler.

Clerk's Report – Primary Election on Tuesday, February 18th and Public Hearing on Tuesday, February 25th @ 6:00 p.m. regarding water options for the city.

Council President's Report - None

Mayor's Report – None

City Attorney's Report - None

COMMUNICATIONS

Jack Collier re: Claim for Excessive Assessment

Michael Popp re: Claim for an Excessive Assessment

Dave Grumman re: Personal Property (Change of ownership of business)

All of the above were referred to City Attorney who will work with the City Assessor.

PLAN COMMISSION

Extraterritorial Plat – Oakview Crest Subdivision, Town of Waukesha

Motion by Alderman Ament to approve the Extraterritorial Plat of Oakview Crest Subdivision in the Town of Waukesha with the following comments: 1) Change name of City Clerk to Marilyn Gauger; 2) Change dates to 2003 instead of 2002. Seconded by Alderman Wilkens and carried unanimously.

City of New Berlin – 3975 S 124th St. – Rezone from R-4.5 to C-2 and C-3

Motion by Alderman Ament to set a public hearing date for April 7, 2003 @ 6:00 p.m. with Plan Commission to rezone Outlot 2 of Waterbury Estates from R-4.5 to C-2 and C-3. Seconded by Alderman Harenda and carried unanimously.

Marion Promersberger – 5155 S Woodridge Ln. – SE1/4 Sec. 29 – Two-lot Final Land Division

Motion by Alderman Ament to approve the request of Marion Promersberger for a two-lot final land division located at 1515 S Woodridge Lane, SE1/4 Sec. 29 subject to application, plans on file and the following conditions:

- 1) “No division or development of Lot 2 shall take place without the extension of Woodridge Lane” shall be placed on the front of the CSM.
- 2) Any division or development of lot 2, including building permits, shall require:

- a) The two temporary cul-de-sacs along Woodridge Lane to be removed and corresponding re-ditching and grading restoration.
 - b) The extension of Woodridge Lane to the south to create adequate frontage along lot 1 at the expense of the owners of lot 2. If Woodridge cannot be extended, lot 1 must remove the driveway providing access to Woodridge and construct a driveway to gain access to Egofske Road.
 - c) Proof of suitability for on-site private septic system shall be submitted for Lot 2.
 - d) The resolution of any encroachments by Lot 1 CSM 2079 onto Lot 2. Lot 2 shall include easements as identified in the Bicycle and Pedestrian Facilities Plan.
- 3) A road reservation 300' by 60' extending from Woodridge Lane south shall be shown on the CSM.
 - 4) An easement granting use of encroachments by Lot 1 CSM 2079 onto Lot 2 shall be shown on the CSM.
 - 5) The bearing of N89d 37'37" between Lot 2 and Lot 1 CSM 832 shall be corrected to read N89d 37'35".
 - 6) The Racine Ave ROW shall be shown as having a 120' width.
 - 7) "Woodridge Lane" is the correct name of the road (not Woodbridge).
 - 8) The owner shall sign the CSM prior to the City signing the CSM.
 - 9) Payment of Public Site, Open Space and Trail fee shall be paid before the City shall sign the CSM.

Seconded by Alderman Bullermann and carried unanimously.

BOARD OF PUBLIC WORKS

Vacation of Two (2) Unimproved Alleys Adjacent to 1811 S. 124 Street

Motion by Alderman Chiovatero that the unimproved alleys located between properties abutting 1811 S. 124th Street be vacated to the abutting property owners. Seconded by Alderman Ament and carried unanimously. *Clerk's note: No public hearing is needed per Attorney Blum however a resolution will come before Council.*

Reallocation of Westridge Phase 3 TIF Funds

Motion by Alderman Chiovatero to authorize the reallocation of \$4,000 of residual TIF funding from previously approved TIF Projects to the Calhoun Creek Floodplain Remediation And LOMR Project. The City is required to pay FEMA \$4,000 for their review of the revisions to the Calhoun Creek floodplain (LOMR). Seconded by Alderman Harenda and carried unanimously.

Water/Sewer/Road Project on Lincoln Avenue and 179th Street – ROW Acquisition & Filing of Relocation Order

Motion by Alderman Chiovatero to approve the filing of a relocation order with Waukesha County and to amend the existing contract with The Highland Group to facilitate the appraisal, negotiation, and acquisition of the temporary and permanent ROW interests needed to complete the Water/Sewer project on Lincoln Avenue & 179th Street and funding coming from Acct #511.820.01 subject to the approval of Plan Commission. Seconded by Alderman Bullermann and carried with Alderman Ament voting no.

STORM WATER COMMITTEE

Approval of Re-Directed Scope of Malone Park Stormwater Facility Contract

Motion by Alderman Wilkens to approve the re-directed scope of the Malone Park Pond Stormwater Facility Planning Design Contract with Benestroo, Rosene, Anderlik and Associates. Seconded by Alderman Bullermann and carried unanimously.

UTILITY COMMITTEE

Approval to Close Down Public Water Supply Site at the Utility Building

Motion by Alderman Ament to approve closing down the Public Water Supply site at the Utility building with a sign posted giving a 30-day notice of the closure. Seconded by Alderman Wilkens and carried unanimously.

Amend Contract with Earth Tech – Moorland Road Sanitary Sewer

Motion by Alderman Ament to authorize additional design work for a Sanitary Sewer Extension on Moorland Road from Heatherly Drive south to the Target Store, to Earth Tech, not to exceed \$12,517.00. Seconded by Alderman Bullermann and carried unanimously.

LANDMARKS COMMISSION - No Report

SAFETY COMMISSION - No Report

MAYORAL APPOINTMENTS

Plan Commission

Motion by Alderman Bullermann to approve the appointment of H. Lee Sisson to the Plan Commission with expiration date of 4-30-2006. Seconded by Alderman Wilkens and carried unanimously.

ACTION ON PUBLIC HEARINGS - None

REFERRALS, DEFERRALS AND TABLED ITEMS

Action on Public Hearings – Resolution No. 03-02 “Final Resolution in Accordance with Section 66.0703 Wisconsin Statutes Authorizing Levying Special Assessments Against Benefited Properties in the Lincoln Avenue/179th Street Special Assessment District” – TABLED 1-28-03.

Motion by Alderman Wilkens to remove this item from table. Seconded by Alderman Augustine and carried unanimously.

Motion by Wilkens to adopt Resolution No. 03-02. Seconded by Alderman Bullermann.

Motion by Alderman Bullermann to defer the special assessment charge from 3 years to 5 years w/o interest and from 10 years to make payment to 15 years to make payment. Motion dies for lack of a second.

Motion by Alderman Wilkens to defer this item. Seconded by Alderman Bullermann and carried unanimously.

After the above deferment, Mayor Wysocki asked staff to contact the contract award personnel to attempt to obtain a 2-week extension on awarding the above listed contract.

Utility Committee

**Contract Award - Water/Sewer Special Assessments - Lincoln Avenue & 179th Street –
TABLED 1-14-03 – No Action**

CONSENT AGENDA

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

MINUTES

Minutes of the Public Hearing re: Lincoln Avenue & 179th Street Special Assessments held on January 28, 2003

Minutes of the Common Council Meetings held on January 28, 2003

UTILITY & FINANCE

Claims

For January 29, 2003:

Approve payment of Water Utility Claims in the amount of \$58,245.89; Sewer Utility Claims in the amount of \$368,080.24, and Bi-weekly Claims in the amount of \$281,411.59, all of which represents payments to vendors.

LICENSES

Bartender Licenses

Bartender License for the year 2002-2004 to Duerk K Bruhl and David J Pumplum.

MISCELLANEOUS

Payment of Attorney Bill from LAW, Inc.

Approve payment of attorney bill in the amount of \$3,319.70 coming from Acct #514.519.01

Updating of City Center Plan – Professional Services Agreement

Approve the Professional Services Agreement amended 2-11-03 with the Planning and Design Institute (PDI) to update the City Center Plan in an amount not to exceed \$15,000 coming from the 2001 City Center Implementation CIP Acct #252.320.

Setting Sale Date and Terms for \$5,900,000 General Obligation Promissory Notes, Series 2003 A, for the 2003 Capital Improvement Program Projects/Resolution No. 03-03 “Resolution Authorizing Ehlers & Associates, Inc to Solicit Bids for \$5,900,000 General Obligation Promissory Notes, Series 2003 A of the City of New Berlin, Wisconsin”

Adopt Resolution No. 03-03.

LICENSES

Bartender Licenses

Motion by Alderman Ament to approve the Bartenders license for Adam N Boettcher. Seconded

by Alderman Wilkens and carried with Alderman Bullermann voting no.

Motion by Alderman Wilkens to deny the Bartenders license for Timothy M Secrist. Seconded by Alderman Chiovatero and carried unanimously.

RESOLUTIONS AND ORDINANCES

Resolution No. 03-04 “Resolution Authorizing Amendments to \$1,717,000 City of New Berlin, Wisconsin Industrial Development Revenue Bonds, Series 1999 (GS Hydraulic Sales, Inc/JNP Investments, LLC Project) Issued on December 16, 1999”

Motion by Alderman Bullermann to adopt Resolution No. 03-04. Seconded by Alderman Harenda and carried unanimously.

Ordinance No. 2193 “City of New Berlin Storm Water Management Ordinance”

City Clerk Gauger gave the third and final reading of Ordinance No. 2193.

Motion by Alderman Bullermann to adopt Ordinance No. 2193. Seconded by Alderman Wilkens and carried with Alderman Harenda voting no.

Ordinance No. 2194 “Ordinance Amending Portions of Chapter 275 of the New Berlin Municipal Code to Create a Wellhead Protection Overlay District”

City Clerk Gauger gave the only necessary reading of Ordinance No. 2194.

Motion by Alderman Ament to adopt Ordinance No. 2194. Seconded by Alderman Wilkens and carried unanimously.

Ordinance No. 2195 “Ordinance Amending the Zoning Map of the City of New Berlin to Create a Wellhead Protection Overlay District Around City Hall Well #10 and #11”

City Clerk Gauger gave the only necessary reading of Ordinance No. 2195.

Motion by Alderman Ament to adopt Ordinance No. 2195. Seconded by Alderman Chiovatero carried unanimously.

CLOSED SESSION – Clerk Gauger read the Closed Session notice.

Motion by Alderman Ament to move into Closed Session at 10:10 p.m. Seconded by Alderman Chiovatero. Upon voting, Alderman Bullermann voted “yes”, Alderman Augustine voted “yes”, Alderman Harenda voted “yes”, Alderman Wilkens voted “yes”, Alderman Chiovatero voted “yes”, and Alderman Ament voted “yes”.

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.

- (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.

- Roger Estates v. City of New Berlin Litigation -
 - Kucan Claim -
 - Kiernan Claim -
 - Tamara Potkay -

Motion by Alderman Ament to move into Open Session at 11:10 p.m. Seconded by Alderman Wilkens and carried unanimously.

OPEN SESSION

Discussion and Possible Action on Kucan Claim

Motion by Alderman Chiovero to recommend to Council denial of the Kucan Claim, per the recommendation of City Attorney Blum. Seconded by Alderman Wilkens and carried unanimously.

Discussion and Possible Action on Tamara Potkay

Alderman Bullermann read the following statement: “The Mayor and Common Council of the City of New Berlin do hereby reaffirm to Ms. Potkay that they recognize and value her contribution as a senior city staff member and member of City Hall management. They further look forward to working together with her for the benefit of the City in the coming months and years ahead.”

Motion by Alderman Bullermann to adopt the Settlement Agreement in favor of concluding the arbitration issue and payment of fees to Ms. Potkay. Seconded by Alderman Chiovero and carried with Alderman Ament voting no.

ADJOURN

Motion by Alderman Bullermann to adjourn the meeting at 11:15 p.m. Seconded by Alderman Ament and carried unanimously.

Respectfully submitted as City Clerk:

Marilyn Gauger, CMC

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