

**Common Council Minutes  
November 12, 2002**

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, November 12, 2002, at the New Berlin City Hall at 10:00 P.M.

Present were Mayor Wysocki, Aldermen Bullermann, Augustine, Gallagher, Harenda, Wilkens, Chiovero and Ament. Also present were City Attorney Mark Blum, Deputy City Clerk Nancy Hoffmann, Director of Finance and Administration Mike Holzinger, City Assessor Paul Koller, Director of IT Sue Schaefer, Library Director Katie Schulz, Director of Community Development Greg Kessler, Associate Planner David Haines, Director of BIZ Bob Sigrist, Director of Streets and Utilities Ray Grzys, City Engineer JP Walker, Division Engineers Larry Wilms and Eric Nitschke, Stormwater Engineer Cathy Schwalbach, Director of Human Resources Tami Potkay, Director of Streets, Parks and Recreation Mark Schroeder, Police Chief Dan Noordyk, Police Lieutenants Frank Zsohar, Brian Yokes and Gary Blunt, and Fire Chief Ed Dobernig.

**Clerk's Report** - No Report

**Council President's Report** - No Report

**Mayor's Report**

Mayor Wysocki gave a Mayor's Report.

**City Attorney's Report** - No Report

**COMMUNICATIONS**

**Communication from Rosalinda, John & Bruce Kiernan re: Protest of Assessment** - to City Attorney

**Notice of Claim - April & Jay Thomas** - to City Attorney

**CONSENT AGENDA**

**2003 Operational Budget**

Motion by Alderman Wilkens to adopt the 2003 adjusted budget as amended, with an operational budget amount of \$31,430,994 and a tax levy of \$18,554,324. Seconded by Alderman Harenda and carried with Alderman Gallagher voting "no".

**PLAN COMMISSION**

Alderman Ament reported from the meeting held on November 4, 2002:

**Well Head Protection Ordinance**

Motion by Alderman Ament to forward to Common Council the request to set a public hearing date for December 2, 2002 and hold a public hearing before the Plan Commission relative to the request to amend the Zoning Ordinance to create a WHP Wellhead Protection Zoning District and change the zoning map to include the WHP Zoning District around City Well #10 and #11. Seconded by Alderman Wilkens and carried unanimously.

**Jacobs Ridge Condos - 17720 W. Lincoln Avenue - Four Lot Final Land Division**

Motion by Alderman Ament to approve the request for Jacobs Ridge Condos for a four lot final land division located at 17720 W. Lincoln Avenue subject to the application, plans on file, and the following:

- 1) Ridgeway Drive shall be accepted by the City prior to Common Council action on the CSM.
- 2) Payment of \$3000.00 in Public Site, Open Space and Trail fees required before the City will sign the CSM.
- 3) Payment of all outstanding invoices for review and inspection services required before the City will sign the CSM.
- 4) On southern lot line of parcel 4, the distance from the eastern lot line to the stormwater detention basin easement are to be shown on the CSM.
- 5) On the western lot line of parcel 3, the distance from the northern lot line to the wetland line are to be shown on the CSM.
- 6) Wetland preservation restrictions are to be shown on the face of the CSM.
- 7) A declaration will be prepared and reviewed that addresses the maintenance of the detention pond.
- 8) As built is required to maintain a dry pond and provide financial assurance if not completed prior to recording of the CSM.

Seconded by Alderman Wilkens. Upon voting, the motion failed with Aldermen Harenda, Wilkens and Chiovatero voting "yes".

Motion by Alderman Bullermann to reconsider the Jacobs Ridge Condos - 17720 W. Lincoln Avenue - Four Lot Final Land Division.  
Seconded by Alderman Wilkens and carried unanimously.

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- 7) A declaration will be prepared and reviewed that addresses the maintenance of the detention pond.
- 8) As built is required to maintain a dry pond and provide financial assurance if not completed prior to recording of

the CSM.  
Seconded by Alderman Wilkens and carried with Alderman Ament voting "no" and Alderman Gallagher "abstaining".

## **BOARD OF PUBLIC WORKS**

Alderman Chiovero reported from the meeting held on October 7, 2002:

### **City of Muskego (Joint Board of Public Works) Storm Drainage Issues Tess Corners**

Motion by Alderman Chiovero to continue working with Ruckert & Mielke on this project and to stay within the budget. Seconded by Alderman Wilkens and carried unanimously.

Alderman Chiovero then reported from the meeting held on November 4, 2002:

### **Erosion Control Permit Resolution/Resolution 02-31 "Resolution Adopting a Fee and Deposit Schedule for Erosion Control Permits"**

Motion by Alderman Chiovero to approve Resolution No. 02-31 to amend the Erosion Control Ordinance by establishing a revised Fee and Deposit Schedule. Seconded by Alderman Ament and carried with Aldermen Gallagher and Wilkens voting "no".

### **Execution of Transfer Documents - Westridge Pond**

Motion by Alderman Chiovero to approve of the Declaration of Drainage Easement Agreement transferring ownership from the Westridge Business Park Owner's Association to the City of New Berlin. Seconded by Alderman Harenda and carried with Alderman Ament voting "no".

### **Lyndenwood Condominiums (formerly Forest Ridge) Developer Agreement**

Motion by Alderman Chiovero to approve the Developer Agreement subject to final review as to form by the City Attorney. Seconded by Alderman Wilkens.

Motion by Alderman Augustine to table this item. Seconded by Alderman Wilkens and carried with Aldermen Chiovero and Ament voting "no".

## **STORM WATER COMMITTEE**

Alderman Bullermann reported from the meeting held on November 5, 2002:

### **Approval of Storm Water Budget for 2003**

Motion by Alderman Bullermann to approve the 2003 Stormwater Utility Operating and CIP Budget. Seconded by Alderman Wilkens and carried unanimously.

### **Calhoun Creek Streambank Stabilization - Award of Contract**

Motion by Alderman Bullermann to approve award of contract for the Calhoun Creek Streambank Stabilization Project to the lowest bidder, Steffes Construction for \$79,999.00. Seconded by Alderman Wilkens and carried unanimously.

### **Deer Creek Watershed Detention Basin Design Contract**

Motion by Alderman Bullermann to approve the Proposal for Deer Creek Retention Basin Design Contract for wet detention for two areas in the Deer Creek watershed: The Buena Park Subdivision and the Industrial Park and be awarded to Bonestroo in the amount of \$90,721. Seconded by Alderman Augustine and carried unanimously.

## **UTILITY COMMITTEE**

Alderman Gallagher reported from the meeting held on November 6, 2002:

**Water/Wastewater 2003 Budgets**

Motion by Alderman Gallagher to approve the 2003 Water Operating and CIP Budgets as proposed. Seconded by Alderman Ament and carried unanimously.

Motion by Alderman Gallagher to approve the 2003 Wastewater Operating and CIP Budgets as proposed. Seconded by Alderman Ament and carried unanimously.

**Contract Award – Well #11**

Motion by Alderman Gallagher to approve the award of Well # 11 Pumphouse and Connecting Watermain Construction Contract to the lowest responsive, responsible bidder, T.V. John and Sons, Inc., Butler, WI, for \$415,200 for Project #W-141 and waive any irregularities, for a total project cost not to exceed \$506,100 by funding from A/C #314 and conditioned upon DNR approval, and work on the project beginning after final site acquisition. Seconded by Alderman Harenda and carried unanimously.

**Contract Award – Well Construction Services**

Motion by Alderman Gallagher to approve the award of Construction Services to the lowest bidder, Strand Assoc. Inc. for \$23,900 funded by Water Utility A/C # 314 funded by Impact Fees contingent on DNR approval, and site acquisition. Seconded by Alderman Ament and carried unanimously.

**Contract Award – Valley Spring Court**

Motion by Alderman Gallagher to approve the award of Watermain Relay Construction Contract for Valley Spring Court to the lowest responsive, responsible bidder, Underground Pipeline, Inc., New Berlin, WI for \$33,865 for Project # W-17 and waive any irregularities, for a total project cost not to exceed \$45,000 from Water Utility A/C # 343. Seconded by Alderman Ament and carried unanimously.

**Water Main Special Assessment (Moorland Road)/Resolution No. 02-28 “A Preliminary Resolution Declaring Intent to Levy Special Assessments and Directing the City Engineer to Prepare a Report for the Installation of Water Main Systems Along Moorland Road (south of Heatherly Drive)”**

Motion by Alderman Gallagher to adopt Resolution No. 02- 28. Seconded by Alderman Wilkens and carried with Aldermen Augustine, Gallagher and Ament voting “no”.

**LANDMARKS COMMISSION** - No Report

**SAFETY COMMISSION** - No Report

**TECHNOLOGY COMMITTEE** - No Report

**PARKS & RECREATION COMMISSION**

Alderman Gallagher reported from the meeting held on October 21, 2002:

**DNR Urban Forestry Grant/Resolution No. 02-30 “A Resolution Authorizing the Application, Acceptance, and Expending of a State of Wisconsin Department of Natural Resources Urban Forestry Grant Program - Street Tree Inventory Report and Management Plan and National Avenue Tree Planting Phase II”**

Motion by Alderman Gallagher to adopt Resolution No. 02-30. Seconded by Alderman Harenda and carried with Aldermen Gallagher and Ament voting “no”.

**MAYORAL APPOINTMENTS/None**

**ACTION ON PUBLIC HEARINGS/None**

**REFERRALS, DEFERRALS AND TABLED ITEMS**

**Plan Commission** - Waterbury Estates - 3975 S. 124 St. - Final Plat - TABLED 10-22-02

Motion by Alderman Chiovatero to remove this item from the table. Seconded by Alderman Ament and carried unanimously.

**Motion on the Floor:** Motion by Alderman Ament to approve the Waterbury Estates final plat located at 3975 S. 124<sup>th</sup> Street subject to:

- 1) All improvements including Public Sanitary Sewer, Public Water Mains, Public Storm Drainage, Site Grading, Erosion Control, Public Roads, Public Lighting and Stormwater quality plans shall be accepted by the City prior to Common Council action on the Final Plat.
- 2) Required landscaping:
  - a. The landscaping plan shall meet the requirements of §275-56.
  - b. A fiscal security, in accordance with §275-56(2), either by bond, certificate of deposit or letter of credit with the City, to ensure that the owner is in full compliance with landscaping installation and maintenance requirements prior to Common Council action on the Final Plat.
  - c. The landscaping plan will include landscaping for Outlot 1, Outlot 2 and the portion of Lot 5 that includes the stormwater detention easement.
  - d. The landscaping plan will include a split-rail type fence and associated landscaping along Howard Avenue and 124th Street.
  - e. The landscaping plan shall include an application for monument sign depicting the location of the subdivision entrances. The cost of the sign shall be included in the fiscal security.
  - f. The landscaping plan shall be approved by the Department of Community Development prior to any installation.
- 3) The City shall initiate a rezoning of Outlot 2 to C-2 Shoreland Wetland District for the area shown as wetland on the Final Plat and rezone the remainder of Outlot 2 to C-3 Permanent Open Space / Conservation Lands.

Seconded by Alderman Chiovatero and carried unanimously.

**CONSENT AGENDA**

Motion by Alderman Ament, seconded by Alderman Wilkens carried unanimously to approve the following items from the consent agenda:

**MINUTES**

Minutes of the Public Hearing held on October 22, 2002 re: Budget  
Minutes of the Common Council Meetings held on October 22, 2002 & October 29, 2002

## **UTILITY & FINANCE**

### **Claims**

Approve payment of Water Utility Claims in the amount of \$134,184.92; Sewer Utility Claims in the amount of \$76,445.22, and Bi-weekly Claims in the amount of \$1,566,108.43, all of which represents payments to vendors.

## **LICENSES**

### **Bartender Licenses**

Approve the Bartender Licenses for the year 2002-2004 to Paul A. McLean.

Approve the Bartender Licenses for the year 2002-2004 to Matthew A. Berndt, Kathleen J. Burkhardt, Emily B. Crain, Benjamin D. Hurley, Brian D. Hyps, Elizabeth A. Kennedy, Catherine M. Parker, Brian J. Tidquist, Patricia A. Tofle, and Kathryn K. Wilson.

## **MISCELLANEOUS**

### **Cold Spring Road - Overhead and/or Underground Utilities**

Direct the City Engineer to proceed with design on the basis that the utilities will remain overhead. Except that some residents may wish to convert to underground service. For those wishing to stand the expense of this conversion, and in those locations where it would be necessary, that the City would install duct under the roadway at City expense. The cost of the underground lateral and the modification to their electrical service would be the responsibility of the resident.

### **Adoption of Fire and Emergency Service Cost Recovery Fee Schedule**

Adopt the recommended fee schedule per attached for services not exempted by section 124-7.

## **MISCELLANEOUS**

### **Wage and Benefit Adjustments - Civil Service and Non-Represented PFP Plan**

Motion by Alderman Wilkens to approve transfer of \$194,610 from Contingency Account (616) to various wage and benefits accounts per attached document. Seconded by Alderman Chiovatero and carried with Alderman Gallagher voting "no".

### **"Resolution Authorizing the Sale of \$8,900,000 General Obligation Library Bonds, Series 2002"/Resolution No. 02-29**

Motion by Alderman Wilkens to adopt Resolution No. 02-29. Seconded by Alderman Harenda and carried with Alderman Gallagher voting "no".

## **RESOLUTIONS AND ORDINANCES/None**

Motion by Alderman Augustine to move into Closed Session at 11:35 p.m. Seconded by Alderman Bullermann and carried unanimously.

## **CLOSED SESSION**

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(f) &

(g) of the Wisconsin State Statutes.

- (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- (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.

- Potkay Litigation -

Motion by Alderman Wilkens to move into Open Session at 1:20 a.m. Seconded by Alderman Chiovatero and carried unanimously.

Motion by Alderman Gallagher to move into Closed Session at 1:20 a.m. Seconded by Alderman Bullermann and carried unanimously.

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- Sts. Constantine & Helena Greek Orthodox Church Litigation -

Motion by Alderman Bullermann to move into Open Session at 1:35 a.m. Seconded by Alderman Augustine and carried unanimously.

OPEN SESSION

Motion by Alderman Augustine to adjourn the meeting at 1:35 a.m. Seconded by Alderman Ament and carried unanimously.

**Nancy Hoffmann**  
**Deputy City Clerk**

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