

**Common Council Minutes
November 13, 2001**

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, November 13, 2001, at the New Berlin City Hall at 7:35 P.M.

Present were Mayor Wysocki, Aldermen Bullermann, Thomas, Gallagher, Scheuble, Wilkens, Chiovero, and Ament. Also present were City Attorney Paul Reilly, City Clerk Judy Weter, Director of Community Development Greg Kessler, Director of Planning Mark Lake, Director of Finance and Utilities Mike Holzinger, Director of Streets, Parks & Rec Mark Schroeder, Streets Superintendent Lee Ystad, City Assessor Paul Koller, Director of BIZ Bob Sigrist, Maintenance Supervisor Bob Schulpus, Director of Human Resources Tami Potkay, City Engineer JP Walker, Division Engineer Larry Wilms, Civil Engineer Mark Handzlik, Library Director Katie Schulz, Police Chief Dan Noordyk, Police Captain Steve Morris, Acting Police Captain Frank Zsohar, and Fire Chief Ed Dobernig.

Clerk's Report

City Clerk Weter gave a Clerk's Report.

Council President's Report

Alderman Bullermann gave a Council President's Report.

Mayor's Report - No Report

City Attorney's Report - No Report

REFERRALS, DEFERRALS AND TABLED ITEMS

Action on Public Hearings - 2002 Budget - TABLED 10-23-01

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

Motion by Alderman Bullermann to accept the adjustments recommended by Treasurer Holzinger bringing the total expenditures to \$29,932,518 for the 2002 Operating Budget. Seconded by Alderman Wilkens and carried with Alderman Scheuble voting "no".

Motion by Alderman Thomas to add \$98,820 to the revenue account, due to tax exempt computer aid. Seconded by Alderman Chiovero and carried unanimously.

Motion by Alderman Wilkens to amend the budget and add \$34,400 to Account 211, Contracted Services in the engineering budget for an additional traffic study at Sunnyslope Rd. and Wilbur Dr. Seconded by Alderman Chiovero. Upon voting, the motion failed with Aldermen Wilkens and Chiovero voting "yes".

Motion by Alderman Gallagher to remove the proposed new Library from the 2002 CIP budget.

Motion dies for lack of a second.

Motion by Alderman Scheuble to set the new Library amount in the CIP budget at \$4 million. Seconded by Alderman Gallagher.

Alderman Scheuble withdrew the motion.

Motion by Alderman Bullermann to adopt the amended 2002 budget tax levy in the amount of \$17,763,536, with a tax rate of \$6.8047, an increase of 4.47% or .29 per \$1,000. Seconded by Alderman Wilkens and carried with Aldermen Gallagher and Scheuble voting "no".

Motion by Alderman Bullermann to approve the CIP budget as presented by Treasurer Holzinger. Seconded by Alderman Wilkens and carried with Aldermen Gallagher and Scheuble voting "no".

Motion by Alderman Bullermann to approve the Storm Water budget as presented by Treasurer Holzinger. Seconded by Alderman Wilkens and carried with Aldermen Scheuble and Ament voting "no".

COMMUNICATIONS - None

PLAN COMMISSION

Alderman Ament reported from the meeting held on November 5, 2001:

William and Kathryn Stoffers - Nw ¼ Sec. 27 - 16540 W. Beloit Rd. - Two-Lot Preliminary Land Division

Motion by Alderman Ament to deny of the request by William and Kathryn Stoffers for a two lot preliminary land division located at 16540 W. Beloit Road for the following reasons:

- 1) Does not meet requirements of R-4 zoning.
- 2) Does not meet Master Plan.
- 3) Land Use Map Inconsistent.

Seconded by Alderman Wilkens.

Motion by Alderman Scheuble to add an additional reason for denial:
4) The division would be an extension of a non-conforming lot.
Seconded by Alderman Wilkens. Upon voting, the motion failed with Aldermen Scheuble, Wilkens, and Chiovatero voting "yes".

Motion by Alderman Thomas to amend the motion to remove Condition 3 (Land Use Map Inconsistent). Seconded by Alderman Bullermann and carried with Aldermen Gallagher, Scheuble and Ament voting "no".

Upon voting on the motion as amended, the motion carried unanimously.

Tee It Up Golf Range - 20101 W. Cleveland Ave. - Miniature 18-Hole Golf Course

Motion by Alderman Ament to deny the request by Tee It Up Golf Range for a miniature 18 hole golf course located at 20101 W.

Cleveland Avenue for the following reason:

- 1) Applicant failed to respond to letter dated September 26, 2001 regarding denial of project due to inactivity.

Seconded by Alderman Wilkens and carried with Aldermen Scheuble voting "no".

Unisite, Inc. - 13300 W. College Ave. - Monopole Antenna Structure
Motion by Alderman Ament to deny the request by Unisite, Inc. for a monopole antenna structure located at 13300 W. College Avenue for the following reasons:

- 1) Applicant failed to respond to letter dated September 26, 2001 regarding denial of project due to inactivity.

Seconded by Alderman Wilkens and carried unanimously.

Trees on the Move - 5611 S. Calhoun Rd. - New Tank No. 1 - Conditional Use

Motion by Alderman Ament to approve the request by Trees on the Move to install a 550 gallon above ground diesel fuel tank located at 5611 S. Calhoun Road subject to:

- 1) Per §17.03(1)(C)(2) Double permit fees required.
- 2) Per §17.01(11) and Wis. Stats. 62.23 a Zoning Permit shall be required for the Coast Guard helicopter and memorial. The helicopter and memorial are in violation of §17.10(2) "Use, re-use, Structure, or sign Without Permit or approval," Failure to secure a Zoning Permit within 60 days of the signing of the Conditional Use Permit shall result in the City of New Berlin issuing a citation and may result in the City of New Berlin seeking remedies as identified in §17.10(3).
- 3) Per §17.08(10)(B)(1) a Sign Permit shall be required for the existing advertising panel truck, located on the edge of the freeway. The truck and sign are in violation of §17.10(2) "Use, re-use, Structure, or sign Without Permit or approval," Failure to secure a sign Permit within 30 days of the signing of the Conditional Use Permit shall result in the City of New Berlin issuing a citation and may result in the City of New Berlin seeking remedies as identified in §17.10(3).
- 4) Tank, containment system, fire/spill prevention system, shall meet all applicable building and fire codes of the City of New Berlin Fire Department and State of Wisconsin. Permits required from Buildings, Inspection, and Zoning Dept, and the Fire Department.
- 5) Payment of any and/or all outstanding fees, assessments, or personal property taxes required prior to Conditional Use Permit being issued.

Seconded by Alderman Wilkens and carried unanimously.

Trees on the Move - 5611 S. Calhoun Rd. - New Tank No. 2 - Conditional Use

Motion by Alderman Ament to approve the request by Trees on the Move to install a 550 gallon above ground diesel fuel tank located at 5611 S. Calhoun Road subject to:

- 1) Per §17.03(1)(C)(2) Double permit fees required.

- 2) Per §17.01(11) and Wis. Stats. 62.23 a Zoning Permit shall be required for the Coast Guard helicopter and memorial. The helicopter and memorial are in violation of §17.10(2) "Use, re-use, Structure, or sign Without Permit or approval," Failure to secure a Zoning Permit within 60 days of the signing of the Conditional Use Permit shall result in the City of New Berlin issuing a citation and may result in the City of New Berlin seeking remedies as identified in §17.10(3).
- 3) Per §17.08(10)(B)(1) a Sign Permit shall be required for the existing advertising panel truck, located on the edge of the freeway. The truck and sign are in violation of §17.10(2) "Use, re-use, Structure, or sign Without Permit or approval," Failure to secure a sign Permit within 30 days of the signing of the Conditional Use Permit shall result in the City of New Berlin issuing a citation and may result in the City of New Berlin seeking remedies as identified in §17.10(3).
- 4) Tank, containment system, fire/spill prevention system, shall meet all applicable building and fire codes of the City of New Berlin Fire Department and State of Wisconsin. Permits required from Buildings, Inspection, and Zoning Dept, and the Fire Department.
- 5) Payment of any and/or all outstanding fees, assessments, or personal property taxes required prior to Conditional Use Permit being issued.

Seconded by Alderman Thomas and carried unanimously.

Sports & Fitness Traders - 17400 W. National Ave. - Rezone from O-1/R-3 to B-2

Motion by Alderman Ament to deny the request by Sports & Fitness Traders to rezone the property located at 17400 W. National Avenue from O-1/R-3 to B-2 for the following reasons:

- 1) Proposed use not consistent with the Rural Commercial classification of the Master Plan.
- 2) Rural Commercial classification as identified in the Master Plan requires rezoning to B-5, Rural Commercial District, not B-2, General Retail Sales and Service District.
- 3) Property currently not served by public water and sanitary sewer. Development requires a utility extension to be reviewed and approved by the City of New Berlin, SEWRPC and MMSD.
- 4) The existing R-3, Low-Density Single-Family Residential classified land is currently encumbered by Wetlands as identified by the Natural Resources Conservation Service (NRCS). Property requires a field delineation of the Wetlands prior to any rezoning action by the Plan Commission.

Seconded by Alderman Bullermann and carried unanimously.

Harold Zastrow - 2513 S. Brookland Rd. - Ne ¼ Sec. 11 - One-Lot Preliminary Land Division

Motion by Alderman Ament to approve the request by Harold Zastrow for a one lot preliminary land division located at 2513 S. Brookland Road subject to:

- 1) Both lots shall meet the minimum requirements of §17.04(2)(4)

R-4 Low-Density Single-Family Residential District in its entirety.

- 2) Property will require substantial amounts of fill to bring up the pad height of the new home. Drainage swales will be required on each side of the home, and swales shall be constructed a minimum of five feet from each lot line.
- 3) Access permits required from the City of New Berlin Engineering Department prior to signing the final CSM.
- 4) Building permits required from Building, Inspection and Zoning Department for any future home.
- 5) Payment of \$2137.60 in Public Site, Open Space and Trail Fees required prior to the City signing the final CSM.

Seconded by Alderman Thomas and carried unanimously.

T.D.B. LLC - 5055-5155 S. Emmer Dr. - Ne ¼ Sec. 27 - Two-Lot Preliminary and Final Land Division

Motion by Alderman Ament to approve the request by T.D.B. LLC for a two lot preliminary and final land division located at 5055-5155 S. Emmer Drive subject to:

- 1) Both lots shall meet the minimum requirements of §17.04(4)(4)(4) M-1 Light Industrial District in its entirety.
- 2) Building permits required from Building, Inspection and Zoning Department for all internal improvements. Reoccupancy permits required for all new tenants.
- 3) A monument sign is required for each building.
- 4) No off-site parking, or off-site staging of vehicles is allowed. Tenant occupancy shall be limited to available parking as identified and approved during the initial use approval. Semi-truck staging, which impacts the amount of available parking, will limit use of buildings to that allowed by code for each particular use.
- 5) Payment of \$1,906.00 in Public Site, Open Space and Trail Fees required prior to the City signing the final CSM.

Seconded by Alderman Scheuble and carried unanimously.

BOARD OF PUBLIC WORKS

Alderman Chiovatero reported from the meeting held on November 5, 2001:

Jacob's Ridge Single-Family Development Agreement

Motion by Alderman Chiovatero to approve the Developer's Agreement subject to final review as to form by the City Attorney. Seconded by Alderman Wilkens and carried with Aldermen Scheuble voting "no".

The Preserve at Weatherstone Meadows Development Agreement

Motion by Alderman Chiovatero to approve the Developer's Agreement subject to final review as to form by the City Attorney to also include Section X A2 "except building permits for up to four initial buildings may be issued upon execution of this agreement and installation of a stone construction road to the building". It was clarified that the intent of Item 8 A on Page 8 is "plans to be approved". Seconded by Alderman Wilkens.

Motion by Alderman Wilkens to allow the developer to speak. Seconded by Alderman Chiovatero and carried unanimously.

Upon voting, the motion carried with Aldermen Gallagher, Scheuble and Ament voting "no".

STORM WATER COMMITTEE - No Report

UTILITY COMMITTEE - No Report

LANDMARKS COMMISSION - No Report

SAFETY COMMISSION - No Report

MAYORAL APPOINTMENTS

Landmarks Commission

Motion by Alderman Wilkens to appoint Lawrence E. Mudek to the Landmarks Commission, with an expiration date of October 1, 2002. Seconded by Alderman Ament and carried unanimously.

ACTION ON PUBLIC HEARINGS

179th St. & Lincoln Avenue Sewer and Water Main Assessment District/Resolution No. 01-28

Motion by Alderman Gallagher to approve and adopt Resolution No. 01-28. Seconded by Alderman Chiovatero and carried with Alderman Scheuble voting "no".

REFERRALS, DEFERRALS AND TABLED ITEMS

Action on Public Hearings - H & R Equipment - 17770 W. National Ave. - Rezone from B-2 to B-3 - TABLED 5-8-01 - No Report

CONSENT AGENDA

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

MINUTES

Minutes of the Public Hearing regarding the Budget held on October 23, 2001

Minutes of the Common Council Meeting held on October 23, 2001

UTILITY & FINANCE

Claims

Approve Water Utility Claims in the amount of \$114,316,50, Sewer Utility Claims in the amount of \$6,106.29, and Bi-weekly Claims in the amount of \$830,641.07, all of which represents payments to vendors.

LICENSES

Bartender Licenses

Approve the Bartender License for the year 2000-2002 to Michael J. Flood, Jennifer L. Marquardt, Sue M. Niemann, Monique O. Peplinski and Angela M. Szajna.

MISCELLANEOUS

Halloween Trick-or-Treat Hours

Change Halloween trick-or-treat hours for 2002 to 4:00 p.m. to 7:00 p.m. There would be no change in the day (Sunday before Halloween).

LICENSES

Bartender Licenses

Motion by Alderman Wilkens to deny the Bartender License for the year 2000-2002 to Roxanne L. Miners. Seconded by Alderman Ament.

Motion by Alderman Scheuble to approve a 6-month Bartender License to Roxanne L. Miners, to expire May 14, 2002. If there are any problems, the Clerk will revoke the license after 6 months; if no problems, the Clerk will approve until June 30, 2002. Motion dies for lack of a second.

Upon voting on the original motion, the motion carried with Aldermen Gallagher and Scheuble voting “no”.

RESOLUTIONS AND ORDINANCES

Motion by Alderman Scheuble that a brief synopsis be made as to what each Ordinance is referring to. Seconded by Alderman Ament. Upon voting, the motion failed with Aldermen Scheuble and Ament voting “yes”.

Ordinance No. 2159 “Ordinance Amending Section 11-5 and 11-19(C)(1) of the City of New Berlin Municipal Code Renaming Office Coordinator Streets, Parks & Recreation to Administrative Coordinator Streets, Parks and Recreation and Renaming Office Coordinator Community Development to Administrative Coordinator Community Development” (1st Reading)

City Clerk Weter gave the first reading of Ordinance No. 2159.

Ordinance No. 2160 “Ordinance Amending Section 11-5 and 11-19(C)(1) of the City of New Berlin Municipal Code Adding the Position of Payroll Supervisor with a Salary Range of Six” (1st Reading)

City Clerk Weter gave the first reading of Ordinance No. 2160.

Ordinance No. 2161 “Ordinance Amending Section 1-18(2)(a) of the City of New Berlin Municipal Code Establishing Bail Amount for Violation of Transient Lodging Facility Regulations” (1st Reading)

City Clerk Weter gave the first reading of Ordinance No. 2161.

Motion by Alderman Gallagher to move into Closed Session. Seconded by Alderman Thomas and carried unanimously.

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.

- (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.

- Hales Corners Lutheran Church - Status of Litigation - Presentation by Attorney Kevin Reak -

- Highland Memorial Park Litigation -

- Dodge Construction Company, Inc. Claim -

- Allstate Indemnity Company/Gary Marine Claim -

Motion by Alderman Ament to move into Open Session. Seconded by Alderman Chiovatero and carried unanimously.

OPEN SESSION

Possible Action on Highland Memorial Park Litigation

Motion by Alderman Ament to authorize the City Attorney to settle the Highland Memorial Park Litigation, per the written agreement. Seconded by Alderman Wilkens and carried unanimously.

Possible Action on Dodge Construction Company, Inc. Claim

Motion by Alderman Bullermann to authorize the City Attorney to settle the Dodge Construction Company, Inc. claim in the amount of \$2,300. Seconded by Alderman Thomas and carried unanimously.

Possible Action on Allstate Indemnity Company/Gary Marine Claim

Motion by Alderman Chiovatero to authorize the City Attorney to settle the Allstate Indemnity Company/Gary Marine claim in the amount of \$2,434.73. Seconded by Alderman Thomas and carried unanimously.

Motion by Alderman Bullermann to adjourn the meeting at 10:50 p.m. Seconded by Alderman Thomas and carried unanimously.

**Judy Weter
City Clerk**

JW/nh