

**Common Council Minutes  
March 13, 2001**

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, March 13, 2001, at the New Berlin City Hall at 7:50 P.M.

Present were Mayor Gatzke, Aldermen Bullermann, Wysocki, Patzer, Scheuble, Wilkens, Chiovatero, and Kaminski. Also present were City Attorney Paul Reilly, City Clerk Judy Weter, Director of Community Development Greg Kessler, Planning Tech Tony Kim, City Engineer Jeff Chase, and Division Engineer Mark Handzlik.

**PRESENTATION: Annual Citizen of the Year Award**

Mayor Gatzke presented the Citizen of the Year Award to this year's recipient, Alfred A. Peters.

**Clerk's Report**

City Clerk Weter gave a Clerk's Report

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

**Mayor's Report** - No Report

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

**COMMUNICATIONS/None**

**PLAN COMMISSION**

Alderman Kaminski reported from the meeting held on March 5, 2001:

**New Berlin City Center Development - SW 1/4 Sec. 14 - 15051 W. National Ave. - Preliminary Plat**

Motion by Alderman Kaminski to approve the preliminary plat for New Berlin City Center Development located at 15051 W. National Avenue SW 1/4 Sec 14 subject to:

- 1) Payment of \$1110.00 in outstanding application fees required.
- 2) Location of proposed Wilbur Drive extended requires WDNR/ACOE approval. Final Plat/CSM shall incorporate any modifications required as part of WDNR/ACOE approval.
- 3) Final Plat/CSM shall include vision corner easements on all intersections.
- 4) Final Plat/CSM shall include length, bearing and ties to all easements (public and private) and wetlands.
- 5) Final Plat/CSM shall include the metes and bounds descriptions of all wetlands.
- 6) Detailed road/infrastructure/stormwater/grading plans to be reviewed and approved by the Engineering Department prior to writing of the developer's agreement.

- 7) Sewer and water plans to be approved by all regulating authorities.
- 8) Developer's Agreement for all public improvements required. Agreement to be approved by the Board of Public Works and Common Council. Approval of all surety instruments required prior to the City signing the final Plat/CSM.
- 9) Timing of site clearing, grubbing, grading and/or utility/infrastructure work to be determined by City Engineer.
- 10) An approved Erosion Control Plan and deposit is required prior to clearing, grubbing or grading.
- 11) Access permits required from the City of New Berlin Engineering Department for the extension of Howard Avenue and Wilbur Drive.
- 12) Access permits required from the Waukesha County Department of Public Works for the extension of Coffee Road (Street).
- 13) All owners to sign prior to City signing Final Plat/CSM.
- 14) At time of dedication of Coffee Street, Tesch Road shall be combined with parcel 4.
- 15) Combine Parcel 6 & 8 showing Parcel 6 as drainage easement.
- 16) Lot 5 would not be developed, label as an Outlot.
- 17) Northerly access easements shall be consistent with traffic and impact study.

Seconded by Alderman Wilkens.

Motion by Alderman Wysocki to allow Mr. Larry Witzling from PDI to address the Council. Seconded by Alderman Kaminski and carried unanimously.

Upon voting on the motion, the motion carried with Aldermen Wysocki and Scheuble voting "no".

**The Crossings - 13800 W. Beloit Rd. - Final Subdivision**

Motion by Alderman Kaminski to approve of The Crossings final subdivision located at 13800 W. Beloit Road subject to:

- 1) City shall not sign final plat until all provisions of the Developers Agreement are approved by City Engineer.
- 2) Change street names: Prairie Lane to N. Oak Blvd, Golden Lane to Loftus Lane, and Wildflower Circle needs to be addressed differently to meet policy.
- 3) Based on the estimate prepared by the City Assessor in accordance with Section 18.10, the required fee for your requested residential development is as follows:

= \$23,450	Public Site Fee:	\$ 670.00 per lot	x 35 lots	
4,550	Open Space Fee:	\$ 130.00 per lot	x 35 lots	= \$
<u>7,000</u>	Trail Fee:	\$ 200.00 per lot	x 35 lots	= \$
	Total:			

\$35,000

- 4) Schedule:

December 28, 2000 - Plat Received

February 26, 2001 - 60-day time limit expires  
February 5, 2001 - Plan Commission date for final  
action  
February 13, 2001 - Common Council date for final  
action  
Extension to March 13, 2001 - Common Council date  
for final action

5) Side lot variances shall not be allowed on all interior lot  
lines (City Attorney to draft language to address deed  
restrictions)

Seconded by Alderman Bullermann and carried with Alderman  
Scheuble voting "no".

**New Berlin Commercial Center - Approx. 15155 W. National Avenue -  
Revised PUD**

Motion by Alderman Kaminski to approve the text revision to the  
PUD for New Berlin Commercial Center located at approx. 15155 W.  
National Avenue subject to:

- 1) Language of the final PUD document shall be worked out with  
the City Attorney and the Department of Community  
Development prior to submittal to Common Council for  
approval.
- 2) The use, site and architecture applications within the City  
Center PUD shall substantially conform to the guidelines  
established in the City Center Development Plan, including  
but not limited to Visual Character, Traffic Safety,  
Circulation and Parking, Activities and Uses and, the  
Natural Environment and Landscape, and Streetscaping.
- 3) Use, Site and Architectural approval required for each use.
- 4) A design theme for each exclusive Village Housing area(s)  
and the overall Village District shall be reviewed and  
approved by the Architectural Control Committee and Plan  
Commission prior to development.
- 5) A sign design theme for each district and/or theme area, and  
an overall sign theme encompassing all the PUD districts,  
shall be reviewed and approved by the Architectural Control  
Committee and Plan Commission prior to USA approval of any  
individual sign.
- 6) Proposed wetland mitigation to be approved by all regulating  
authorities.
- 7) Preliminary Plat showing lands being dedicated (ROWS) and  
initial parcel configurations required.
- 8) Detailed road/infrastructure/stormwater/grading plans to be  
reviewed and approved by the Engineering Department prior to  
writing of the developer's agreement.
- 9) Sewer and water plans to be approved by all regulating  
authorities.
- 10) Developer's Agreement for all public improvements required.  
Agreement to be approved by the Board of Public Works and  
Common Council. Approval of all surety instruments required  
prior to the City signing the final Plat/CSM.
- 11) An executed Developer's Agreement is required prior to  
clearing, grubbing, grading and/or utility/infrastructure

- work commencing.
- 12) Developer's Agreement shall address maintenance of areas of common ownership and undedicated open space.
  - 13) Sidepaths required in all Districts. Pedestrian links to the Deer Creek/Pond SP2 pathway and Moorland Square are required.
  - 14) Connections to Wilbur Drive and Howard Avenue shall be required.
  - 15) Army Section 404 permits required for wetland dredging, filling, or ponding.
  - 16) WDNR Section 401 Water Quality permits required for wetland modifications.
  - 17) Conformance to and participation in Regional Stormwater Management Plan Required.
  - 18) To ensure that adequate land (or fee in lieu of) is set aside and preserved for the development of public parks, recreation, open space, and to allow for future services to serve the needs of a growing community, conformance with §18.04(17) shall be required.

Seconded by Alderman Wilkens.

Motion by Alderman Wilkens to amend on Page 3, under B-2/PUD, Village District, Paragraph (1), Principal Uses Items n, o, s, and w to be made conditional uses, not principal uses, and be listed as such on Page 5. Seconded by Alderman Kaminski.

Motion by Alderman Wilkens to allow Mr. Steve Stewart to address the Council. Seconded by Alderman Patzer and carried unanimously.

Upon voting on the amendment, the motion carried unanimously.

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

**Stormy Acres - 20430 W. National Ave. - Final Land Division**

Motion by Alderman Kaminski to approve the Stormy Acres final land division located at 20430 W. National Avenue subject to:

- 1) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 2) Submittal of a revised proof of perc. required prior to signing the final CSM.
- 3) Submittal of and approval of page(s) 2 and 3 required prior to signing the final CSM.
- 4) Adjacent "unplatted lands" must reflect CSM recording. City shall not sign CSM unless adjacent "unplatted lands" reflect proper legal information based on order of recording.
- 5) Must meet all the conditions of Developer's Agreement prior to building permits being issued.
- 6) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.
- 7) Access easements to be recorded prior to first CSM.
- 8) Gas pipeline to be properly labeled as easement on CSM.

9) Right-Of-Way dedication shall represent the ultimate highway width established by Common Council and County.  
Seconded by Alderman Wilkens and carried with Alderman Kaminski voting "no".

**Stormy Acres - 20440 W. National Ave. - Final Land Division**

Motion by Alderman Kaminski to approve the Stormy Acres final land division located at 20440 W. National Avenue subject to:

- 1) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 2) Submittal of a revised proof of perc. required prior to signing the final CSM.
- 3) Submittal of and approval of page(s) 2 and 3 required prior to signing the final CSM.
- 4) Adjacent "unplatted lands" must reflect CSM recording. City shall not sign CSM unless adjacent "unplatted lands" reflect proper legal information based on order of recording.
- 5) Must meet all the conditions of Developer's Agreement prior to building permits being issued.
- 6) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.
- 7) Access easements to be recorded prior to first CSM.
- 8) Gas pipeline to be properly labeled as easement on CSM.
- 9) Right-Of-Way dedication shall represent the ultimate highway width established by Common Council and County.

Seconded by Alderman Scheuble and carried with Alderman Kaminski voting "no".

**Stormy Acres - 20610 W. National Ave. - Final Land Division**

Motion by Alderman Kaminski to approve the Stormy Acres final land division located at 20610 W. National Avenue subject to:

- 1) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 2) Submittal of a revised proof of perc. required prior to signing the final CSM.
- 3) Submittal of and approval of page(s) 2 and 3 required prior to signing the final CSM.
- 4) Adjacent "unplatted lands" must reflect CSM recording. City shall not sign CSM unless adjacent "unplatted lands" reflect proper legal information based on order of recording.
- 5) Must meet all the conditions of Developer's Agreement prior to building permits being issued.
- 6) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.
- 7) Access easements to be recorded prior to first CSM.
- 8) Gas pipeline to be properly labeled as easement on CSM.
- 9) Right-Of-Way dedication shall represent the ultimate highway width established by Common Council and County.

Seconded by Alderman Wilkens and carried with Alderman Kaminski voting "no".

**Stormy Acres - 20620 W. National Ave. - Final Land Division**

Motion by Alderman Kaminski to approve the Stormy Acres final land division located at 20620 W. National Avenue subject to:

- 1) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 2) Submittal of a revised proof of perc. required prior to signing the final CSM.
- 3) Submittal of and approval of page(s) 2 and 3 required prior to signing the final CSM.
- 4) Adjacent "unplatted lands" must reflect CSM recording. City shall not sign CSM unless adjacent "unplatted lands" reflect proper legal information based on order of recording.
- 5) Must meet all the conditions of Developer's Agreement prior to building permits being issued.
- 6) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.
- 7) Access easements to be recorded prior to first CSM.
- 8) Gas pipeline to be properly labeled as easement on CSM.
- 9) Right-Of-Way dedication shall represent the ultimate highway width established by Common Council and County.

Seconded by Alderman Wilkens and carried with Alderman Kaminski voting "no".

**Sue Zauner - 20211 W. Lawnsdale Rd. - Nw 1/4 Sec. 29 - Preliminary Land Division**

Motion by Alderman Kaminski to deny without prejudice of the request by Sue Zauner for a preliminary land division located at 20211 W. Lawnsdale Road, NW 1/4 Sec. 29 based on the following:

- 1) Per Section 18.09 of the Subdivision and Platting Ordinance, all lots shall front on a public street. Section 17.1402 defines a lot as "a parcel of land having frontage on a public street, occupied or intended to be occupied by a principal structure or use ..." The proposed land division does not have frontage on any public street.
- 2) Per § 17.0306 (2) (d) allows for the keeping of domestic livestock and general farming on parcels five (5) acres or larger as an accessory use provided that: "Not more than one (1) head of livestock or 20 head of poultry shall be permitted for each acre." The applicant currently has a minimum of 9 horses on the existing 10 acres parcel. A land division will require the reduction in the number of livestock.
- 3) The submitted CSM show another division around the northwest corner of parcel 1, technically making this a 3 lot land division. This reduces the size of parcel 1 to 4.42 acres, less that minimum 5 acres required for R-2 parcels and required for the keeping of livestock.
- 4) The existing access driveway is not wide enough for future public road and utilities. A minimum of 60' road right-of-way will be required. The existing drive is only 24.75'.
- 5) This land division will result in the creation of another land-locked parcel that will preclude future orderly land

development, fire and utility requirements.  
6) No legal description provided for the existing parcel.  
Seconded by Alderman Wilkens and carried with Aldermen Wysocki,  
Scheuble and Chiovatero voting "no".

**BOARD OF PUBLIC WORKS**

Alderman Patzer reported from the meeting held on March 5, 2001:  
**Danny Road Vacation**  
A Resolution vacating a portion of Danny Road was introduced.

Motion by Alderman Patzer to recommend that a portion of Danny Road, which is no longer needed for public purposes be vacated and deeded to the adjacent landowners. Seconded by Alderman Chiovatero.

A Public Hearing was scheduled for May 8, 2001 at 7:00 p.m.

**City Fleet Vehicle Acquisition for 2001**

Motion by Alderman Patzer to approve a 3-year lease/purchase for the acquisition of the following vehicles, which will replace existing vehicles in the City Fleet:

2 - 2001 Ford Focus

2 - 2001 Ford F150, 4X4, Pickup Trucks

with the source of funds to come from Account No. 562.243.01 - Vehicle Leasing.

Seconded by Alderman Wysocki and carried with Alderman Scheuble voting "no".

Alderman Patzer reported from the meeting held this evening:

**Midwest Power Development Agreement**

Motion by Alderman Patzer to approve the Midwest Power Development Agreement. Seconded by Alderman Chiovatero.

Motion by Alderman Wysocki to amend the Agreement and add the following language to Page 2, after the January 8, 2001 WHEREAS paragraph:

"WHEREAS, on January 22, 2001, the New Berlin Plan Commission recommended denial of the request by Midwest Power for a conditional use approval allowing for a gas turbine peaking facility to be constructed, operated and maintained on the Property;"

Seconded by Alderman Chiovatero and carried with Aldermen Bullermann, Patzer and Kaminski voting "no".

Motion by Alderman Wysocki to amend the Agreement and remove the following last sentence from Page 14, Section 6.01: "The preceding statement notwithstanding, if the City constructs the City Water Option and supplies other parties with water from the water well comprising the City Water Option, then Midwest Power shall have no further well guarantee requirements under this Agreement."

Seconded by Alderman Scheuble.

Motion by Alderman Wilkens to amend the motion to waive Midwest Power's obligation only when the use, as advised by the City, of additional users exceeds the use of Midwest Power. Seconded by Alderman Chiovatero. Upon voting, the motion carried with Aldermen Wysocki and Scheuble voting "no".

Motion by Alderman Patzer to allow Mr. Steve Schultz of Ruckert & Mielke to address the Council. Seconded by Alderman Bullermann and carried unanimously.

Upon voting on the amendment, the motion failed with Aldermen Bullermann, Wysocki and Scheuble voting "yes".

Motion by Alderman Scheuble to amend the Agreement and add the following language on Page 15 to Section 6.03, 3<sup>rd</sup> line: ". . . modifying private wells 'or supplying of municipal water to properties in New Berlin' judged by the City . . .". Seconded by Alderman Wysocki and failed with Alderman Scheuble voting "yes".

Motion by Alderman Scheuble to defer this item. Seconded by Alderman Wysocki. Upon voting, the motion failed with Aldermen Wysocki and Scheuble voting "yes".

Motion by Alderman Patzer to allow Mr. Steve Schultz of Ruckert & Mielke to address the Council. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Wysocki to allow Alderman Scheuble one minute to speak. Seconded by Alderman Kaminski and carried with Aldermen Patzer and Wilkens voting "no" and Alderman Scheuble voting present.

Motion by Alderman Scheuble to establish a baseline for water quality through some test modeling. Seconded by Alderman Wysocki and failed with Aldermen Wysocki and Scheuble voting "yes".

Motion by Alderman Scheuble to allow Mr. Brian Teclaw to address the Council. Seconded by Alderman Wysocki and failed with Aldermen Wysocki, Scheuble and Kaminski voting "yes".

Upon voting on the motion as amended, the motion carried with Alderman Wysocki voting "no".

**STORM WATER MANAGEMENT - No Report**

**UTILITY COMMITTEE**

Alderman Bullermann reported from the meeting held on March 6, 2001:

**Expansion of Scope and Well Siting Study**

Motion by Alderman Bullermann to authorize an increase in the scope and project fees under the current Ruekert and Mielke, Inc. agreement in the amount of \$46,500 to perform necessary Sand and Gravel Test Borings with payment from A/C 923.42. Seconded by Alderman Wysocki and carried with Alderman Scheuble voting "no".

**Elimination of Public Water Supply**

Motion by Alderman Bullermann to authorize the termination of free water availability with a 30 day notice to citizens. Seconded by Alderman Patzer.

Motion by Alderman Patzer to end debate. Seconded by Alderman Wilkens and carried with Alderman Kaminski voting "no".

Upon voting, the motion failed unanimously.

**LANDMARKS COMMISSION** - No Report

**SAFETY COMMISSION**

Alderman Wysocki reported from the meeting held on February 21, 2001:

**New Ordinance Relative to School Buses Stopping on Highways**

Motion by Alderman Wysocki to adopt an Ordinance to be consistent with that of the City of Brookfield's, allowing school buses to use flashing red lights on divided highways and in areas where there are curbs and sidewalks. It is further recommended that the City take the necessary steps to make citizens aware that such an Ordinance has been adopted, and to direct the City Clerk to prepare the proper Ordinance. Seconded by Alderman Bullermann. Upon voting, the motion failed with Aldermen Bullermann, Wysocki and Patzer voting "yes".

**TECHNOLOGY COMMITTEE** - No Report

**MAYORAL APPOINTMENTS** - None

**ACTION ON PUBLIC HEARINGS**

**New Berlin School District - 5900 S. Sunnyslope Rd. - Rezone from R-3 to I-1 Institutional/Elmwood School Replacement**

**Motion on the Floor:** Motion by Alderman Kaminski to approve the Rezoning from R-3 to I-1 Institutional/Elmwood School Replacement for New Berlin School District, 5900 S. Sunnyslope Rd., subject to the following:

- 1) Use, Site and Architectural approval required for any site development.
- 2) Permits are required from the Building, Inspection, and Zoning Department for all construction.
- 3) Building shall meet all applicable building and fire codes.
- 4) Building must be maintained per § 14.25 of the Non-residential Property Maintenance Code.

Seconded by Alderman Chiovatero and carried unanimously.

**Super Products - 17000 W. Cleveland Avenue - Rezone from C-1 to M-1 for Building Addition**

Motion by Alderman Kaminski to approve the request by Super Products to rezone the property located at 17000 W. Cleveland Avenue from C-1 to M-1 subject to:

- 1) Plat of Survey required showing all C-1 areas on property prior to signing of this ordinance.

Seconded by Alderman Wilkens.

Motion by Alderman Patzer to end debate. Seconded by Alderman Bullermann and carried with Alderman Wysocki voting "no".

Upon voting on the original motion, the motion carried unanimously.

**REFERRALS, DEFERRALS AND TABLED ITEMS/None**

**CONSENT AGENDA**

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

**MINUTES**

Minutes of the Public Hearing re: Establishment of Storm Water Utility rates held on February 27, 2001

Minutes of the Public Hearing re: 2001 Updates to Chapters 17 & 18 held on February 27, 2001

Minutes of the Common Council Meeting held on February 27, 2001

**UTILITY & FINANCE**

**Claims**

Approve payment of Sewer Utility Claims in the amount of \$2,291,268.96, of which \$2,275,705.00 represents payment to MMSD and \$15,563.96 represents payments to vendors, Water Utility Claims in the amount of \$33,903.00, and Bi-weekly Claims in the amount of \$354,830.33, all of which represents payments to vendors.

**LICENSES**

**Appeal to Denial of Bartenders License**

Motion by Alderman Scheuble to approve the appeal and grant a 6-month Bartender License to Ryan H. Sims, to expire September 11, 2001. Any contact with Police will be cause for immediate revocation. If no further problems, the Clerk will approve until June 30, 2002. Seconded by Alderman Wilkens and carried with Aldermen Wysocki, Chiovatero and Kaminski voting "no".

**Bartender License**

Motion by Alderman Kaminski to approve a 6-month Bartender License to Vincent R. Franz, to expire September 11, 2001. 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.

Seconded by Alderman Chiovaturo and carried with Aldermen Bullermann, Wysocki and Patzer voting “no”.

## **RESOLUTIONS AND ORDINANCES**

### **Ordinance No. 2133 “An Ordinance Establishing a Stormwater Utility and Setting Rates for Stormwater Management Services” (3<sup>rd</sup> Reading)**

City Clerk Weter gave the third and final reading of Ordinance No. 2133.

Motion by Alderman Bullermann to approve and adopt Ordinance No. 2133. Seconded by Alderman Wilkens and carried with Alderman Scheuble voting “no”.

Motion by Alderman Kaminski to move into Closed Session. Seconded by Alderman Chiovaturo. Upon voting, Alderman Bullermann voted “yes”, Alderman Wysocki voted “yes”, Alderman Patzer voted “yes”, Alderman Scheuble voted “yes”, Alderman Wilkens voted “yes”, Alderman Chiovaturo voted “yes”, and Alderman Kaminski voted “yes”.

## **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 is or likely to become involved.

- Sperka Claim -

Motion by Alderman Kaminski move into Open Session. Seconded by Alderman Chiovaturo and carried unanimously.

## **OPEN SESSION**

### **Possible Action on Sperka Claim**

Motion by Alderman Bullermann to authorize payment of the initial claim in the amount of \$1,000, per the recommendation of City Attorney Paul Reilly. Seconded by Alderman Patzer and carried unanimously.

Motion by Alderman Patzer to adjourn the meeting at 12:25 a.m. Seconded by Alderman Bullermann and carried unanimously.

**Judy Weter  
City Clerk**

JW/nh