

**Common Council Minutes
January 23, 2001**

Minutes of a Regular Meeting of the Common Council of the City of New Berlin, Waukesha County, Wisconsin, held on Tuesday, January 23, 2001, at the New Berlin City Hall at 8:16 P.M.

Present were Mayor Gatzke, Aldermen Bullermann, Wysocki, Patzer, Scheuble, Wilkens, Chiovatero, and Kaminski. Also present were Asst. City Attorney Tom Schmitzer, City Clerk Judy Weter, Director of Planning Mark Lake, City Engineer Jeff Chase, and Division Engineer Larry Wilms.

PLAN COMMISSION

Alderman Kaminski reported from the meeting held on January 22, 2001:

Midwest Power Plant - 6600 S. Crowbar Road - Gas Turbine Peaking Facility, a Utility - Conditional Use

At this time, a Petition was presented to the Common Council of residents opposing the rezoning of this parcel, as well as a petition with 192 signatures in favor of the power plant.

Motion by Alderman Kaminski to deny the request by Midwest Power Plant for a gas turbine peaking facility located at 6600 S. Crowbar Road based on the following:

- 1) Certificate of Public Convenience & Necessity has not been issued.
- 2) All environmental issues have not been addressed.
- 3) Adequate water supply issues have not been addressed.
- 4) Plan presented was not aesthetically pleasing.

Seconded by Alderman Scheuble.

Motion by Alderman Scheuble to allow Shari Bosmans to address the Council. Motion dies for lack of a second.

Motion by Alderman Scheuble to allow Shari Bosmans to address the Council. Seconded by Alderman Wysocki. Upon voting, the motion failed with Aldermen Wysocki, Scheuble and Chiovatero voting "yes".

Motion by Alderman Scheuble to allow Gary Suhm to address the Council. Motion dies for lack of a second.

Motion by Alderman Scheuble to allow Shari Bosmans to address the Council. Motion dies for lack of a second.

Upon voting on the motion to deny, the motion failed with Aldermen Wysocki, Scheuble and Kaminski voting "yes".

Motion by Alderman Wilkens to approve a Conditional Use Permit for Midwest Power Plant - 6600 S. Crowbar Road - gas turbine peaking facility, a utility, subject to:

- 5) Certificate of Public Convenience & Necessity required prior to building permits being issued. CPC&N Permit to Include an Environmental Impact Statement (EIS) which addresses the

following:

- a. Per §17.0705, Water Utility Consultant has identified this area as a potential municipal well field. What would the impacts of the proposed 350gpm shallow well have on the potential well field?
 - b. Siting of facility will not prohibit the future orderly development of the reclaimed S&J Development Property?
 - c. Per §17.0706 & §17.0709, Will sounds or vibrations during the operation of the facility have an adverse impact on the neighboring property owners or region?
 - d. Per §17.0702 & §17.0704, Will air emissions from the operation of the facility have an adverse impact on the neighboring property owners or region?
 - e. Per §17.0703 & §17.0707, Will chemicals or materials used during the operation of the facility have an adverse impact on the neighboring property owners or the region?
 - f. Per §17.0705, Will water used (whether treated or untreated) during the operation of the facility have an adverse impact on the neighboring property owners or the region?
 - g. Per §17.0708, Will electrical disturbances during the operation of the facility have an adverse impact on the neighboring property owners or the region?
2. Licensing by all regulating authorities required. A New Source Pollution Control Construction Permit under NR406 as well as a Construction Site Erosion Control Permit under NR216.46 required to be on file in the City of New Berlin Department of Community Development prior to building permits being issued.
 3. All plans for use of M-2 lands, as a utility, shall provide a 200' buffer (C-1 area) to the neighbors along Tans Road and Crowbar Road.
 4. Per the supporting information (and subject to State of Wisconsin Licensing) facility shall be limited to less than 250 tons of NOx per year.
 5. Submittal of a detailed landscaping plan prepared by a professional landscape architect required. Plans shall include; a buffer along Tans Road, a buffer along Crowbar Road, a buffer along Interstate 43, and street trees along both sides of new access road. In order to meet the conditions of §17.0503 plans shall include plant keys, species, botanical nomenclature, number and sizes of all existing and proposed plantings. Detailed cross-sections of all berms to be included with submission are also required. Plans shall be reviewed and approved by the City of New Berlin Department of Community Development prior to building permits being issued.
 6. Open C-1 area to be filled in with trees and other vegetation that will provide a four-season sight and sound buffer. Existing tree stands to be field surveyed (visual) to determine extent of buffer, and holes shall be filled with comparable trees, both deciduous and coniferous. Any residual open space should be considered for public recreation.
 7. City of New Berlin (Mark Lake, Director of Planning), Town of Vernon (Karen L. Schuh, Chairman), and City of Muskego (David

- DeAngelis, Mayor) shall be copied on all correspondences to and from all regulating/reviewing authorities.
8. All construction traffic for the facility shall be restricted from using Tans Drive.
 9. A City of New Berlin Erosion Control Plan/permit shall be required prior to building permits being issued.
 10. A detailed Storm Water Management Plan along with a detailed site grading and drainage plan that shows proposed and finished grades of the entire site shall be required to be reviewed and approved by the City Engineer prior to building permits being issued.
 11. Construction of a frontage road (former quarry access road) to City of New Berlin specifications for an industrial grade road required. Detailed road plans to be reviewed and approved by the City Engineer prior to signing final CSM and building permits being issued.
 12. Access permits the City of New Berlin Engineering Department for the relocation of the access road required.
 13. Undeveloped property, including all outlots of the CSM, shall be properly graded, cleaned up, restored and replanted or seeded within 30 days of obtaining an occupancy permit. Any residual open space should be considered for public recreation.
 14. A Developer's/Improvement Agreement for all improvements required. Agreement to be approved by the City of New Berlin Common Council prior to signing of final CSM and issuance of Zoning Permit. Agreement shall include but is not limited to, a detailed Plan of Operation being placed on file, a requirement for a Natural Resource Insurance Bond, and shall also include all performance standards of §17.07. NRI Bond to guarantee performance due to natural causes, catastrophic events, etc., and shall provide for site restoration should site be prematurely vacated prior to its expected life span of 35-40 years.
 15. Source of water used in the operation of the facility to be determined by the City of New Berlin, and approved by all regulating authorities. Due to the limited water usage required the plant shall be designed as a zero-discharge facility.
 16. Facility, its buildings, and all equipment must meet all applicable building and fire codes. State of Wisconsin and local Fire Protection Bureau plan approval required. All necessary permits must be obtained from the Building Inspection and Zoning Department prior to any construction of the peaking facility.
 17. Buildings must be maintained per Section 14.25 of the Non-residential Property Maintenance Code.

Seconded by Alderman Patzer.

Motion by Alderman Patzer to amend the motion to include Condition 18: To relieve any potential negative property value impacts, Midwest Power, LLC shall make a one-time payment of \$10,000 for unimproved parcels, and \$20,000 for improved parcels to owners of

record of 1/23/2001. A one-time payment of \$20,000 shall include the following City of Muskego properties; MSKC2183998004, MSKC2183998001, MSKC2183999, MSKC2183999002, MSKC2183999001, and shall also include W220 S6685 Crowbar Road in the Town of Vernon. Seconded by Alderman Chiovatero and carried with Alderman Kaminski voting "no".

Motion by Alderman Chiovatero to amend the motion to include Condition 19: Architectural Control Committee to review and approve facility aesthetics including, but not limited to the painting scheme, the site lighting plan, and fencing/security plan. Plans to be reviewed and approved prior to building permits being issued. Seconded by Alderman Bullermann and carried unanimously.

Motion by Alderman Scheuble to amend the motion and add Condition 20: Midwest Power to guarantee payment to those within a 5 mile radius, that we don't take the responsibility of the draw down of the water, but that they do and that they would compensate for the lowering of wells if the water quality is diminished significantly because they go from a good clean purged well down to a deeper well that is a problem due to the draw down of the aquifer, subject to the information that was presented at the Public Hearing to people that could potentially be impacted by this project. Seconded by Alderman Wysocki.

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

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

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

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

Communication from City Attorney Reilly re: Denial of Peter Neuman, Jr. Claim

Motion by Alderman Patzer to deny the Peter Neuman, Jr. Claim, per the recommendation from City Attorney Paul Reilly. Seconded by Alderman Bullermann and carried unanimously.

PLAN COMMISSION

Alderman Kaminski reported from the meeting held on January 8, 2001:

Stormy Acres - 20660 W. National Ave. - Preliminary Land Division - Lot 4

Motion by Alderman Kaminski to approve a preliminary land division for Stormy Acres Lot 4 located at 20660 W. National Avenue subject to:

- 1) The submitted CSM does not conform to the approved preliminary plat for this development. This application will be reviewed as a preliminary plat, additional fees will be required.
- 1) Final CSM will require the combining of all four lots with the following addresses:
Lot 1 - 20430 West National Avenue
Lot 2 - 20440 West National Avenue
Lot 3 - 20610 West National Avenue
Lot 4 - 20620 West National Avenue
- 2) Applicant is required to correct the following survey and platting disparity:
 - a) The platted bearing for the northerly property line is $S76^{\circ} 36'48''$ W. The proposed bearing is $S73^{\circ} 36' 48''$ W.
 - b) The ROW line along National Avenue should match the ultimate ROW of 100'. The proposed ROW line is off by 14.31'.
 - c) The northerly point of Lot 1 is off 25.25'
- 3) Approval of City of New Berlin Parks and Recreation Department is required for the removal of the proposed second access.
- 4) Applicant is required to meet all the conditions of Waukesha County Highway Department letter dated October 31, 2000. A written approval to that effect will be required.
- 5) All typographical errors on the submitted CSM must be corrected prior to signing.
- 6) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 7) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.

Seconded by Alderman Wysocki and carried unanimously.

Stormy Acres - 20550 W. National Ave. - Preliminary Land Division - Lot 3

Motion by Alderman Kaminski to approve a preliminary land division for Stormy Acres Lot 3 located at 20550 W. National Avenue subject to:

- 1) The submitted CSM does not conform to the approved preliminary plat for this development. This application will be reviewed as a preliminary plat, additional fees will be required.
- 2) Final CSM will require the combining of all four lots with the following addresses:
Lot 1 - 20430 West National Avenue
Lot 2 - 20440 West National Avenue
Lot 3 - 20610 West National Avenue
Lot 4 - 20620 West National Avenue
- 3) Applicant is required to correct the following survey and platting disparity:
 - a) The platted bearing for the northerly property line is $S76^{\circ} 36'48''$ W. The proposed bearing is $S73^{\circ} 36' 48''$ W.

- b) The ROW line along National Avenue should match the ultimate ROW of 100'. The proposed ROW line is off by 14.31'.
 - c) The northerly point of Lot 1 is off 25.25'
 - 4) Approval of City of New Berlin Parks and Recreation Department is required for the removal of the proposed second access.
 - 5) Applicant is required to meet all the conditions of Waukesha County Highway Department letter dated October 31, 2000. A written approval to that effect will be required.
 - 6) All typographical errors on the submitted CSM must be corrected prior to signing.
 - 7) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
 - 8) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.
- Seconded by Alderman Wysocki and carried unanimously.

Stormy Acres - 20440 W. National Ave. - Preliminary Land Division - Lot 2

Motion by Alderman Kaminski to approve a preliminary land division for Stormy Acres Lot 2 located at 20440 W. National Avenue subject to:

- 1) The submitted CSM does not conform to the approved preliminary plat for this development. This application will be reviewed as a preliminary plat, additional fees will be required.
- 2) Final CSM will require the combining of all four lots with the following addresses:
 - Lot 1 - 20430 West National Avenue
 - Lot 2 - 20440 West National Avenue
 - Lot 3 - 20610 West National Avenue
 - Lot 4 - 20620 West National Avenue
- 3) Applicant is required to correct the following survey and platting disparity:
 - a) The platted bearing for the northerly property line is S76° 36'48" W. The proposed bearing is S73° 36' 48" W.
 - b) The ROW line along National Avenue should match the ultimate ROW of 100'. The proposed ROW line is off by 14.31'.
 - c) The northerly point of Lot 1 is off 25.25'
- 4) Approval of City of New Berlin Parks and Recreation Department is required for the removal of the proposed second access.
- 5) Applicant is required to meet all the conditions of Waukesha County Highway Department letter dated October 31, 2000. A written approval to that effect will be required.
- 6) All typographical errors on the submitted CSM must be corrected prior to signing.
- 7) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 8) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.

Seconded by Alderman Wysocki and carried unanimously.

Stormy Acres - 20330 W. National Ave. - Preliminary Land Division - Lot 1

Motion by Alderman Kaminski to approve a preliminary land division for Stormy Acres Lot 1 located at 20330 W. National Avenue subject to:

- 1) The submitted CSM does not conform to the approved preliminary plat for this development. This application will be reviewed as a preliminary plat, additional fees will be required.
- 2) Final CSM will require the combining of all four lots with the following addresses:
Lot 1 - 20430 West National Avenue
Lot 2 - 20440 West National Avenue
Lot 3 - 20610 West National Avenue
Lot 4 - 20620 West National Avenue
- 3) Applicant is required to correct the following survey and platting disparity:
 - (a) The platted bearing for the northerly property line is S76° 36'48" W. The proposed bearing is S73° 36' 48" W.
 - (b) The ROW line along National Avenue should match the ultimate ROW of 100'. The 0proposed ROW line is off by 14.31'.
 - (c) The northerly point of Lot 1 is off 25.25'
- 4) Approval of City of New Berlin Parks and Recreation Department is required for the removal of the proposed second access.
- 5) Applicant is required to meet all the conditions of Waukesha County Highway Department letter dated October 31, 2000. A written approval to that effect will be required.
- 6) All typographical errors on the submitted CSM must be corrected prior to signing.
- 7) Owners and Surveyor required to sign the Final CSM before the City will sign the Final CSM.
- 8) Public Site, Open Space and Trail Fee waived due to 21.35 acre park dedication.

Seconded by Alderman Wilkens and carried unanimously.

APPEAL BY THE GLEISCHMAN SUMNER COMPANY FOR SIGN PERMIT

Appeal presentation was made by a Gleischman Sumner Co. Representative. Comments were also made by Director of Planning Lake.

This item was then discussed after Closed Session.

BOARD OF PUBLIC WORKS - No Report

STORM WATER COMMITTEE - No Report

UTILITY COMMITTEE

Alderman Bullermann reported from the Meeting held on January 15, 2001:

Tower 3 - Voice Stream Antenna Request

Motion by Alderman Bullermann to approve of the contract with Voice Stream subject to final review by the City Attorney. Seconded by Alderman Patzer and carried unanimously.

LANDMARKS COMMISSION - No Report

SAFETY COMMISSION

Alderman Wysocki reported from the meeting held on January 10, 2001:

Emmer Drive & Stratton Drive - Stop Signs

Motion by Alderman Wysocki to replace the temporary Yield Signs with Stop Signs, placing Stop Signs for eastbound and westbound traffic on Stratton Drive at the intersection of Stratton Drive and Emmer Drive. Seconded by Alderman Patzer and carried unanimously.

TECHNOLOGY COMMITTEE - No Report

MAYORAL APPOINTMENTS - None

ACTION ON PUBLIC HEARINGS - None

REFERRALS, DEFERRALS AND TABLED ITEMS

Minutes - Public Hearing 12-12-00; Common Council 12-12-00; Common Council 12-26-00 - DEFERRED 1-9-01

Motion by Alderman Bullermann to approve the Minutes of the Public Hearing re: ProHealth Rezoning held on December 12, 2000. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Bullermann to approve the Minutes of the Common Council Meeting held on December 12, 2000 as amended. Seconded by Alderman Wysocki and carried unanimously.

Motion by Alderman Bullermann to approve the Minutes of the Common Council Meeting held on December 26, 2000. Seconded by Alderman Wysocki and carried unanimously.

CONSENT AGENDA

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

MINUTES

Minutes of the Public Hearing re: ProHealth Rezoning held on January 9, 2001

Minutes of the Public Hearing re: Farrell Meadows PUD held on January 9, 2001

Minute of the Common Council Meeting held on January 9, 2001

UTILITY & FINANCE

Claims

From January 12, 2001:

Approve the bi-weekly claims in the amount of \$75,885.36, all of which represents payments of Tax Refunds (Overpayments).

For January 24, 2001
(2000)

Approve the Sewer Utility claims in the amount of \$114,192.92, Water Utility claims in the amount of \$26,121.17, and bi-weekly claims in the amount of \$460,982.58, all of which

represents payments to vendors.
(2001)

Approve the payment of bi-weekly claims in the amount of \$656,098.43, all of which represents payments to vendors.

LICENSES

Bartender Licenses

Approve the Bartender Licenses for the year 2000-2002 to Debra L. Cashmore, Jodi L. Goodman, Susan M. Pinkos, and Margaret R. Thoma.

MINUTES

Motion by Alderman Wysocki to approve the Minutes of the Public Hearing re: Honeyager Lane PUD held on January 9, 2001, with the amendment to include recognizing the northern strip of the parcel remaining R4.5. Seconded by Alderman Patzer and carried with Alderman Bullermann voting present.

MISCELLANEOUS

Establishing a 2001 Budget for the New Berlin Fire Department

Motion by Alderman Bullermann to recommend to Council that the approved 2001 operating budget be amended to incorporate the New Berlin Fire Department as a department. Seconded by Alderman Patzer and carried unanimously.

RESOLUTIONS AND ORDINANCES

Resolution No. 01-04 “A Resolution to Place Stop Signs on Stratton Drive at Emmer Drive”

Motion by Alderman Scheuble to approve and adopt Resolution No. 01-04. Seconded by Alderman Kaminski and carried unanimously.

Ordinance No. 2129 “Ordinance Creating Section 9.275 and Amending Section 25.04 of the City of New Berlin Municipal Code Prohibiting Possession of Ignition Devices on School Premises and Setting of the Cash Deposit for Violation of Section 9.275” (2nd Reading)

City Clerk Weter gave the second reading of Ordinance No. 2129.

Ordinance No. 2130 “Ordinance Creating section 1.06(2) and Amending Section 1.06 of the City of New Berlin Municipal Code regarding Salaries and Compensation of Elected Officers” (2nd Reading)

City Clerk Weter gave the second reading of Ordinance No. 2130.

Ordinance No. 2131 “An Ordinance to Repeal and Recreate Section 25.04(4)(b)(1) Regarding Schedule of Deposits (1st Reading)

City Clerk Weter gave the first reading of Ordinance No. 2131.

Motion by Alderman Bullermann to waive the second and third readings of Ordinance No. 2131. Seconded by Alderman Wysocki and carried with Alderman Scheuble voting “no”.

Motion by Alderman Patzer to approve and adopt Ordinance No. 2131. Seconded by Alderman

Bullermann and carried with Alderman Scheuble voting “no”.

Motion by Alderman Kaminski to move into Closed Session. Seconded by Alderman Wilkens. Upon voting, Alderman Bullermann voted “yes”, Alderman Wysocki voted “yes”, Alderman Patzer voted “yes”, Alderman Scheuble voted “yes”, Alderman Wilkens voted “yes”, Alderman Chiovero 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)(a) of the Wisconsin State Statutes.

- (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

- The Gleischman Sumner Company Sign Permit Appeal -

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

OPEN SESSION

Possible Action on The Gleischman Sumner Company Sign Permit Appeal
Motion by Alderman Patzer to approve the sign as proposed by the applicant for The Gleischman Sumner Company, and to vacate the action of the Plan Commission. Seconded by Alderman Chiovero.

Motion by Alderman Scheuble to amend the motion to pay The Gleischman Sumner Company’s attorney fees. Motion dies for lack of a second.

Upon voting, the motion carried unanimously.

Motion by Alderman Patzer to adjourn the meeting at 11:28 p.m. Seconded by Alderman Bullermann and carried unanimously.

**Judy Weter
City Clerk**

JW/nh