

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, March 23, 2010**

Approved 4/27/10

Mayor Jack F. Chiovatero called the City of New Berlin Common Council Meeting to order at 8:05p.m. after Committee of the Whole and Privilege of the Floor.

ROLL CALL: Present were Aldermen Hopkins, Wysocki, Seidl, Harenda, Moore and Ament. Alderman Poshepny had an excused absence. Also present were: City Clerk Kari Morgan, City Attorney Mark Blum, City Engineer J.P. Walker, City Assessor Paul Koller and Parks, Recreation & Forestry Director Mark Schroeder.

Those present recited the Pledge of Allegiance and stood for a moment of silence.

This meeting was noticed on March 19, 2010 in accordance with the Open Meeting Law.

REPORTS

City Clerk – Clerk Morgan announced that absentee voting is currently taking place in the clerk's office and anyone wishing to vote by absentee ballot may do so during the hours of 8a.m. to 4:30p.m. Monday thru Friday.

Council President – No report.

Mayor - Mayor Chiovatero reminded everyone to send in their census reports in by April 1, 2010. There has been some confusion as to census forms showing the City of Waukesha but the City has been assured by the Census Bureau that the barcode will make sure everyone is counted correctly.

City Attorney – No report

COMMUNICATIONS

Rosenthal Claim – Referred to City Attorney.

BOARD OF PUBLIC WORKS

(BPW 01-10) Approval of the Intermunicipal Agreement with the Town of Waukesha for the rehabilitation of Springdale Road in 2010

Motion by Alderman Ament to recommend the approval of the Intermunicipal Agreement with the Town of Waukesha for the Rehabilitation of Springdale Road in 2010. Seconded by Alderman Seidl.

City Engineer J.P. Walker explained that the Town of Waukesha will pay \$115,329.90 towards the project and the City of New Berlin will pay \$145,274.62 toward the project. These amounts are based on the engineer's estimated cost.

Alderman Moore suggested the amount be included in the motion.

Alderman Ament and Seidl agreed to the amendment.

Motion to recommend the approval of the Intermunicipal Agreement as stated above in an amount not to exceed \$145,274.62 carried unanimously.

(BPW 03-10) Approval of the GlassGrid Installation Contract to the lowest responsive, responsible bidder, Road Fabrics, Inc. as part of the 2010 Roadway Rehabilitation Program. 415,787. not to exceed 457,366.

Motion by Alderman Ament to approve the awarding of a Construction Contract to the lowest responsive, responsible bidder, Road Fabrics, Inc., for the 2010 Roadway Rehabilitation Project – GlasGrid Installation in an amount of \$415,787; with inspection and contingencies not to exceed total project costs of \$457,366. Seconded by Alderman Hopkins.

After some discussion, motion carried unanimously.

(BPW 04-10) Approval of Paving Contract for the 2010 Roadway Rehabilitation Program to the lowest responsive, responsible bidder, Capital Pavers, Inc.

Motion by Alderman Ament to award the Construction Contract to the lowest responsive, responsible bidder, Capital Pavers, Inc. for the 2010 Roadway Rehabilitation Paving Project in an amount of \$1,395,445.70; with inspection and contingencies not to exceed the total project cost of \$1,927,555. Seconded by Alderman Seidl.

Alderman Ament questioned the substantial difference between the original amount and the "not to exceed amount."

J.P. explained that the "not to exceed" amount is actually the total available funds for this project. He also explained that there will be additional work required with this project that was not originally planned.

Mayor Chiovatero explained that the additional work may significantly change the bid which concerns City Attorney Blum.

Atty. Blum questioned the additional work and if it was called for in the bid specifications or if it is a totally different activity.

J.P. responded that the additional work will be a totally different activity.

Atty. Blum stated that because this is an activity not included in the original bid, he is concerned with accepting this bid.

Alderman Ament suggested he amend his motion to include it be contingent on the City Attorney's review.

J.P. stated that this approval could wait until the next council meeting if necessary.

Motion by Alderman Harenda to defer this issue to the next meeting to give the City Attorney time to look further into this issue. Seconded by Alderman Moore and carried unanimously.

(BPW 05-10) Reallocation of Funds from the Rogers Drive Design Account to the Coffee Road East Design Account via Resolution 10-06.

Motion by Alderman Ament to approve the transfer of \$34,332 of approved funds from the Rogers Drive Design Account 042511000 63017 C2009 via Resolution 10-06. Seconded by Alderman Seidl and carried unanimously.

(BPW 06-10) Approval of Amendment No. 2 to the Coffee Road East Design Contract.

Motion by Alderman Ament to recommend to Council the approval of Amendment No. 2 of the Design Contract with Kapur & Associates for Coffee Road East to include additional changes to the scope of work listed in Amendment #2 in the amount of \$34,332. Funds to come from Coffee Road CIP Design Account (0425110063017C2009) Seconded by Alderman Wysocki and carried unanimously.

PARKS, RECREATION & FORESTRY

Award Contract for Professional Services to Edge Consulting Engineers, Inc. for the Malone Park Tennis & Basketball Reconstruction Project in an amount not to exceed \$17,900.

Motion by Alderman Moore to award the contract to Edge Consulting Engineers, Inc. for the Malone Park Tennis & Basketball Reconstruction Project not to exceed \$17,900 with monies to come from CIP Account 04059100 61107 C2010. Seconded by Alderman Ament.

Alderman Harenda questioned consultant costs when Lions Park was done.

Mark Schroeder explained that the costs are very close.

Alderman Ament questioned if any of the work involved could be done by staff.

Mark stated that he has found that these are specialized projects and they usually contract for this kind of work.

Motion to award the contract as stated above carried unanimously.

SAFETY COMMISSION

Resolution 10-09 To Restrict Parking on Forest Point Boulevard and Hunter Lane

Motion by Alderman Wysocki to approve Resolution 10-09 to restrict parking on Forest Point Boulevard and Hunter Lane. Seconded by Alderman Ament and carried unanimously.

Resolution 10-10 To Install Yield Signs for East and Westbound Foxwood Drive at Highpoint Drive

Motion by Alderman Moore to approve Resolution 10-10 to install Yield signs for East and Westbound Foxwood Drive at Highpoint Drive. Seconded by Alderman Wysocki.

Alderman Moore mentioned that he conducted a survey a few years back and many people wanted yield or stop signed at this location.

Motion to approve Resolution 10-10 as stated above carried unanimously.

DEFERRED, REFERRED & TABLED ITEMS

Ordinance No. 2417 that approves the amendments to Section 275-41.A (2) (Keeping and Raising of Animals) and 275-70 (Definitions) of the City's Zoning Code and accept the Plan Commission report. TABLED 9-8-09/REFERRED TO AD HOC COMMITTEE 9-22-09, 12-8-09 NO ACTION 1-12-10 NO ACTION 1/26/10 REFERRED TO PLAN COMMISSION

Ordinance No. 2413 Ordinance to Amend Section 152-10 Regarding the Regulation and Licensing of Dogs (3rd reading) 11-19-09 TABLED

CONSENT AGENDA Motion by Alderman Hopkins to approve the consent agenda. Seconded by Alderman Wysocki and carried unanimously.

MINUTES – Common Council Minutes from March 9, 2010

UTILITY AND FINANCE

Claims

- **For: March 24, 2010**
Recommend to Council approval of Water Utility claims in the amount of \$60,960.06, Sewer Utility claims in the amount of \$4,917,460.55 and Bi-weekly claims in the amount of \$414,329.61

LICENSES/PERMITS

- Massage Establishment License for the 2010-2011 year to Leah Ratliff, 14702 W. National Avenue
- Massage Therapist License for the 2010-2011 year to Leah Ratliff

MISCELLANEOUS

- Consideration of final Resolution 10-07 Regarding Industrial Development Revenue Bond Financing to Benefit Process Displays, Inc. Project (Project on behalf of Westridge PDI, LLC)
- Resolution 10-08 Authorizing Staff to Submit an Urban Non-Point Source Grant Application to WDNR for Ryerson Road

DEFERRED, REFERRED & TABLED ITEMS

- Direct the City Attorney to create an ordinance that authorizes the City Clerk to allow public forums to be held in the Council Chambers at City Hall as long as a city function has not been previously scheduled and which includes the provisions presented/Referred to Communications Committee 2/9/10

ITEM/S REMOVED FROM CONSENT AGENDA:

- **Direct the City Attorney to draft an ordinance that will require the City of New Berlin to purchase automobiles and light duty vehicles and equipment having at least 51% of the monetary value of the parts manufactured in the United States, and 51% of the vehicle manufactured in the United States, or in the case of public safety vehicles, 51% of the monetary values of part manufactured in the United States. *Motion by Alderman Hopkins to direct the City Attorney to draft an ordinance as indicated above. Seconded by Alderman Harenda on 3/9/10; REFERRED TO FINANCE COMMITTEE 3/9/10; REFERRED BACK TO COUNCIL 3/11/10 & AMENDED BY FINANCE COMMITTEE.***

Motion by Alderman Wysocki to amend the original motion made on March 9, 2010 to drop the word "equipment" in the requested action statement. Seconded by Alderman Harenda. Motion carried with Alderman Moore abstaining..

- **Request that the New Berlin City Council direct the authorization in the reduction of municipal forfeitures for enforcement actions taken by the court and the City Attorneys Office with regards to Municipal Code Chapter 267-9. Request that Council direct the City Attorney to petition the Municipal Court for a reduction of these forfeitures. Additionally request that Council direct staff and City Attorney to develop a specific policy on this matter and present to Council at a future date for approval.**

Clerk Morgan: Motion by Alderman Harenda to direct the authorization in reduction of municipal forfeitures for enforcement seconded by Alderman Hopkins. That motion was not acted on. Then there was a motion to turn over...for the City Attorney to review the information turned over to the Mayor and the City Attorney and Staff to look into the future and direction of Municipal Court. Motion carried unanimously with Alderman Moore opposing.

Attorney Blum: No, I think the motion was actually the first one to seek reimbursement of those fees and for review then of the process to look at future enforcement actions. So I think it was really part of both My recollection is that there was a motion made consistent with the RAS to seek refund of the fees and then there was also a request that staff and myself work on a policy to bring back to future which I think was consistent with the original RAS. That was the motion and it was made and approved with Alderman Moore voting no.

Alderman Moore: Yes, I voted against the \$240 being request deleted back to the court, but at the time I didn't understand as to whether that second part was included or not but it doesn't really matter I mean I voted... For the record at least that first portion is what I voted against.

Attorney Blum: But the motion I think was in essence the RAS that Alderman Harenda brought forward. It's my understanding...

Mayor Chiovero: That's my understanding of what the motion was. The rest was more discussion.

Attorney Blum: Right. So the motion before you now is the motion in essence to approve the RAS as requested by Alderman Harenda.

Mayor Chiovero: Which passed with Alderman Moore voting no.

Attorney Blum: Correct.

Clerk Morgan: Motion carried with Alderman Moore opposing.

CLOSED SESSION

City Clerk Morgan read the following:

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, more specifically:
- **Peters v. City of New Berlin et al**
 - **Leary v. City of New Berlin et al**
 - **Review of State Board of Assessment Determination concerning Chris Hansen, Inc.**
 - **William Honeyager v. City of New Berlin**

In addition to the above items being discussed an additional item to be discussed in Closed Session is as enumerated in Section 19.85 (1)(e) of the Wisconsin State Statutes. ***This closed session item was not addressed.***

- (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, more specifically:
- **Poplar Creek Interceptor**

RECONVENE TO OPEN SESSION – Motion by Alderman Seidl to reconvene to open session at 9:12p.m. Seconded by Alderman Ament and carried unanimously.

- **Peters v. City of New Berlin et al** – None.
- **Leary v. City of New Berlin et al** – None.
- **Review of State Board of Assessment Determination I concerning Chris Hansen, Inc.**
Motion by Alderman Wysocki to approve partial refund of taxes to Chris Hansen, Inc., 16300 W. Lincoln as indicated by the State Board of Assessor's Determination. Seconded by Alderman Seidl and carried unanimously..
- **William Honeyager v. City of New Berlin** – None.
- **Poplar Creek Interceptor** – Not addressed.

ADJOURN

Motion by Alderman Seidl to adjourn at 9:16PM. Seconded by Alderman Hopkins and carried unanimously.

Respectfully submitted:
Kari Morgan
City Clerk