

**CITY OF NEW BERLIN
PROCEEDINGS OF THE COMMON COUNCIL
Tuesday, September 25, 2007**

Please note: Minutes are unofficial until approved by the Common Council at the next regularly scheduled meeting.

Mayor Jack F Chiovatero called the City of New Berlin Common Council Meeting to order at 8:10 PM after Committee of the Whole and Privilege of the Floor.

Those present recited the Pledge of Allegiance.

Present were Aldermen Hopkins, Seidl, Harenda, Poshepny and Moore. Excused: Alderman Ament. Also present was: City Clerk Marilyn Gauger, City Attorney Mark Blum, Director of Parks, Recreation and Forestry Mark Schroeder, City Engineer JP Walker, Stormwater Engineer Eric Nitschke and Director of Community Development Greg Kessler.

This meeting was noticed on Thursday, September 20, 2007 in accordance with the Open Meeting Law.

REPORTS

City Clerk - none

Council President – 2nd Budget discussion is October 1st starting at 8AM in Council Chambers. **(Since this meeting the starting time has changed to 11AM)**

Mayor - none

City Attorney - none

COMMUNICATIONS

Vince Breider Claim was referred to City Attorney Blum.

PLAN COMMISSION

Ordinance #2359 that approves the rezoning of property known as Tracy and Patricia Johnson located at 18665 W. Coffee Road

Motion by Alderman Harenda to adopt Ordinance #2359 that approves the rezoning of property known as Tracy and Patricia Johnson located at 18665 W. Coffee Road from A-2, C-1 and C-2 to A-2, R-1/R-2, C-1 and C-2 and to field delineate the wetland and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Certified Survey Map for the property located at 18665 W. Coffee Road

Motion by Alderman Seidl to approve the Certified Survey Map for the property located at 18665 W. Coffee Road and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Ordinance #2360 that approves the rezoning of property known as New Berlin City Center located at 14967 and 15055 W. National Avenue

Motion by Alderman Poshepny to adopt Ordinance #2360 that approves the rezoning of property known as New Berlin City Center located at 14967 and 15055 W. National Avenue from B-2 to B-2/PUD in order to bring the development under the City Center Planned Unit Development Ordinance and accept the Plan Commission Report. Seconded by Alderman Hopkins and carried unanimously.

Ordinance #2361 that approves the rezoning of property known as Robert T. Fittshur located at 21965 Lockleven Lane

Motion by Alderman Hopkins to adopt Ordinance #2361 that approves the rezoning of property known as Robert T. Fittshur located at 21965 Lockleven Lane from R-1/ R-2 and C-2 to R-1/ R-2 and C-2 districts and accept the Plan Commission Report. Seconded by Alderman Poshepny and carried unanimously.

Resolution #07-21 approving a contract with the Planning and Design Institute, Inc. (PDI) for the preparation of a Smart Growth compliant Comprehensive Plan

Motion by Alderman Moore to approve Resolution #07-21 approving a contract with the Planning and Design Institute, Inc. (PDI) for the preparation of a Smart Growth compliant Comprehensive Plan update and to increase the Grant Planning Revenue and Expenditure Accounts within the DCD Planning Services Division subject to approval by staff. Seconded by Alderman Hopkins and carried unanimously.

Resolution #07-22 approving a Public Participation Plan and the Creation of a Comprehensive Plan Steering Sub-Committee

Motion by Alderman Moore to approve Resolution #07-22 approving a Public Participation Plan and the Creation of a Comprehensive Plan Steering Sub-Committee. Seconded by Alderman Seidl and carried unanimously.

BOARD OF PUBLIC WORKS

Development Agreement associate with a Three-Lot Land Division at 3461 Long Acre Drive

Motion by Alderman Moore to approve the Development Agreement associate with a Three-Lot Land Division at 3461 Long Acre Drive, subject to final review as to form by the City Attorney. Seconded by Alderman Hopkins and carried unanimously.

Development Agreement for the Deer Creek Inn & Conference Center

Motion by Alderman Moore to approve the Development Agreement for the Deer Creek Inn & Conference Center subject to final review as to form by the City Attorney. Seconded by Alderman Poshepny.

Motion by Alderman Harenda to amend Sections E and F (deletions and additions) of the Development Agreement to read as follows:

- E. DEVELOPER shall be responsible for managing all of the storm water issues on-site. The CITY clearly states in this Agreement that to the extent that the DEVELOPER concludes now or in the future that regional storm water issues are adversely impacting the DEVELOPMENT, that the DEVELOPER is responsible for his own mitigation.. The DEVELOPER and all subsequent owners, their agents, tenants and assigns shall not demand financial aid from the CITY or any other form of assistance for flood abatement programs that may be required to protect the DEVELOPMENT in the future. The DEVELOPER shall be solely responsible to fund any potential flood mitigation projects that become necessary to protect only the DEVELOPMENT and the property on which the facility lays. The parties further acknowledge that any regional storm water issues will be reviewed in the future by the CITY on their merits.

- F. DEVELOPER shall monitor groundwater levels during dewatering to determine if adjacent water supply wells are being adversely impacted by the construction. DEVELOPER shall monitor the discharge of the dewatering system used to dewater the excavation by one of the following methods: 1) direct measurement by a device such as a flow meter, orifice weir, or similar device, 2) a calculation of the discharge based on the power consumption of the pumps, run time of the pumps, and the pump capacity and efficiency, 3) any other method proposed by the developer that is acceptable to the CITY. DEVELOPER shall also measure water levels in at least two monitoring wells completed in the water table aquifer and one monitoring well completed in the perched aquifer. The wells should be as close to the excavation as practical. DEVELOPER may use existing monitoring wells as approved by the CITY. In addition, the DEVELOPER shall measure water levels in at least one monitoring well completed in the perched aquifer adjacent to any wetland deemed worthy of protection by the CITY. All measurements shall be made daily during the first two weeks of dewatering and reported to the CITY. After two weeks, measurements shall be made and reported on a weekly basis. If the dewatering system discharge or drawdown in the monitoring wells differs significantly in the opinion of the CITY from the projections made by Giles in their engineering reports and represent a significant threat to private wells or significant wetlands in the opinion of the CITY, the DEVELOPER shall use any means necessary to protect the affected wells or wetlands. These means may include cessation of dewatering, reduced pumping, alternative excavation techniques, or other methods

adequate in the opinion of the CITY. DEVELOPER shall continue to monitor groundwater at locations designated by the CITY for a period of two months following dewatering or until conditions stabilize. The DEVELOPER, his heirs, successors and assigns, and future owners shall indemnify the CITY against any adverse impacts of the construction on groundwater and the adjacent water supply wells. Requirements set forth in this Paragraph were developed in part as a result of information presented to the CITY in the Giles Geotechnical Report, dated 08/02/07 and a peer report, dated 08/07/07 as submitted by Dr. John Jansen of Aquifer Science and Technology which reports are incorporated herein as though fully set forth.

Alderman Augustine arrived at 9PM.

Amended motion seconded by Alderman Seidl and carried unanimously with Alderman Augustine voting as being present/abstain.

Upon voting the original motion as amended, motion carried unanimously with Alderman Augustine voting as being present/abstain.

Sidepath and Trail Inspection and Maintenance Policy

Motion by Alderman Augustine to approve the Sidepath and Trail Inspection and Maintenance Policy. Seconded by Alderman Moore.

Motion by Alderman Harenda to table. Seconded by Alderman Seidl and carried with Aldermen Poshepny and Moore voting no.

UTILITY COMMITTEE

Resolution No. 07-27 A Resolution To Authorize The Loan From The City Of New Berlin Sewer Fund To The City Of New Berlin Water Fund To Refund The 1999 City Of New Berlin Water Revenue Bonds

The Utility Committee did not recommend this item for approval at their meeting earlier this evening.

Motion by Alderman Harenda to table. Seconded by Alderman Seidl and carried unanimously.

WATER RESOURCE MANAGEMENT COMMITTEE

Motion by Alderman Harenda to approve the 2008 Operating Budget Expenditures for the Citywide Comprehensive Plan & Stormwater Management Master Plan update with a cost not to exceed \$120,000. The funds are to be charged to Drainage Account 70710710 59060. Seconded by Alderman Hopkins and carried unanimously.

PARKS, RECREATION AND FORESTRY COMMISSION

Motion by Alderman Moore to Extend the addendum to Lease Agreement with Johnson Sand & Gravel for Quarry Park. Seconded by Alderman Hopkins and carried unanimously.

MAYORAL APPOINTMENTS - none

DEFERRALS, REFERRAL & TABLED ITEMS - none

CONSENT AGENDA

Motion by Alderman Seidl to approve the items listed on the Consent Agenda. Seconded by Alderman Moore and carried with Alderman Augustine voting as being present/abstain.

MINUTES - Common Council minutes from September 11, 2007

UTILITY AND FINANCE

Claims

- Water Utility claims in the amount of \$107,589.71, Sewer Utility claims in the amount of \$336,843.13, of that amount \$319,656.46 represents payment to MMSD, and Bi-weekly claims in the amount of \$952,857.74, all of which represents payment to vendors.

LICENSES & PERMITS

Fireworks Permit

- Recommendation of approval from Fire Chief Ed Dobernig for New Berlin West High School, W. Cleveland Avenue for Homecoming Display on Friday, October 12, 2007.

MISCELLANEOUS

- Resolution No. 07-19 A Resolution Designating Public Depositories and Approving other Financial Institutions for Investments
- Resolution No. 07-20 A Resolution To Write Off Delinquent Uncollected Personal Property Taxes
- Resolution No. 07-24 A Resolution Authorizing the City of New Berlin to Borrow the Sum of \$4,750,000 by Issuing General Obligation Promissory Notes Pursuant to Section 67.12 (12) of the Wisconsin Statutes and Authorizing the Sale of the Notes.
- Resolution No. 07-25 A Resolution Authorizing the Redemption of Water System Revenue Bonds, Series 1999B, Dated June 1, 1999.
- Resolution No. 07-26 A Resolution Approving the City of New Berlin's Grant Application for the Development of a Comprehensive Plan.
- Authorize execution of Participation Agreement with the Boardman Law firm regarding cable franchise legislation.
- Construction contract for a salt storage dome to Engineered Buildings, Inc. of West Bend, Wisconsin in the amount of \$163,935.00. Source of Funds: 04056200 61209 C2007. *(This item was tabled unanimously)*

DEFERRED, REFERRED & TABLED ITEMS

- Resolution No. 06-42 A Preliminary Resolution Declaring Intent to Levy Special Assessments and Directing the City Engineer to Prepare a Report for the Installation of Sanitary Sewer System to Service Areas on the North Side of Howard Avenue (west of Sunny Slope Road)/TABLED 11-14-06

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ITEM/S REMOVED FROM CONSENT AGENDA

Bartenders

Motion by Alderman Moore to approve the Bartender License for the year 2007-2009 to Tracey Will. Seconded by Alderman Hopkins and carried with Alderman Poshepny voting no and Alderman Augustine voting as being present/abstain.

ORDINANCES/RESOLUTIONS - none

City Clerk Gauger read the following:

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, more specifically:

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- Temporarily suspend the time remaining to complete the condition necessary to continue the existence of the PUD Ordinance #2128 for the Deer Creek Inn & Conference Center until the final judgment has been issued by the court and the time period for appeal of that decision has passed.
 - Janacek Investments Claim
 - David and Ruth Piper Claim

Motion by Alderman Harenda to go into Closed Session at 9:17 PM. Seconded by Alderman Moore and carried per roll call vote.

RECONVENE TO OPEN SESSION

Motion by Alderman Seidl to reconvene in Open Session at 10:09 PM. Seconded by Alderman Augustine and carried unanimously.

DISCUSSION AND POSSIBLE ACTION:

Approval of request to Temporarily suspend the time remaining to complete the condition necessary to continue the existence of the PUD Ordinance #2128 for the Deer Creek Inn & Conference Center until the final judgment has been issued by the court and the time period for appeal of that decision has passed and accept the Plan Commission Report.

Motion by Alderman Seidl to defer to next meeting. Seconded by Alderman Augustine and motion ended in a tie with Mayor Chiovatero breaking the tie. Motion failed with Aldermen Augustine, Seidl and Harenda voting yes.

Motion by Alderman Poshepny to approve request to temporarily suspend the time remaining to complete the condition necessary to continue the existence of the PUD Ordinance #2128 for the Deer Creek Inn & Conference Center until the final judgment has been issued by the court and the time period for appeal of that decision has passed and accept the Plan Commission Report. Seconded by Alderman Moore and motion ended in tie with Mayor Chiovatero breaking the tie. Motion carried with Aldermen Augustine, Seidl and Harenda voting no.

Janacek Investments Claim

No action taken.

David and Ruth Piper Claim

Motion by Alderman Harenda to deny the David and Ruth Piper Claim. Seconded by Alderman Seidl and carried unanimously

ADJOURN

Motion by Alderman Augustine to adjourn at 10:11 PM. Seconded by Alderman Seidl and carried unanimously.

Respectfully submitted:

Marilyn Gauger, CMC/WCMC
City Clerk