

MINUTES
BOARD OF PUBLIC WORKS MEETING
October 3, 2005
New Berlin City Hall Common Council Chambers
3805 S Casper Drive

Please note: Minutes are unofficial until approved by the Board of Public Works at their next regular scheduled meeting.

The meeting was called to order at 8:00 A. M.

Members Present: Mayor Jack Chiovatero, City Engineer J.P. Walker, Alderman Ament, Alderman Moore and Alderman Augustine

Staff Present: Ron Schildt, Division Transportation Engineer, Tammy Simonson, Civil Engineer, Amy Bennet, Associate Planner

Others Present: Alderman Ken Harenda, City Attorney Mark Blum

Guests Present: Attorney Bernard J. Kearney, Quarles & Brady LLP

OLD BUSINESS

ITEM 01-05 Approval of Minutes from the September 12, 2005 meeting.

Alderman Moore made a motion to approve the minutes.

JP Walker 2nd the motion.

Upon voting the motion passed unanimously.

Alderman Ament: In the minutes from the August 1, 2005 meeting there was an error on the top of page 7. It should read "an increase" instead of "a decrease".

Motion by Mayor Chiovatero to rescind the minutes from August 1, 2005.

Alderman Ament 2nd the motion.

Mayor Chiovatero: There was another correction on page 7, where it states that Alderman Moore starts out by saying "It looks to me that..." should actually read that Alderman Augustine made the statement.

Upon voting the motion passed unanimously

Motion by Alderman Ament to approve the minutes as amended.

Alderman Moore 2nd the motion.

ITEM 32-05 Constructing of Cul-de-Sac(s) on Small Road (Tabled from 8/01/05)

Motion by Alderman Ament to remove this item from the table.

JP Walker 2nd the motion.

JP Walker: We tabled this at our August 1st meeting because Alderman Harenda was going to have a meeting with the neighbors along Small Road.

Alderman Harenda: Last Monday I had a meeting with the residents on Small Road. Ron Schildt was there with me. We discussed and reviewed some of the things that we had brought up in the past. We talked about 1-way

roads as one option, side paths as another. The consensus was that they still would like to put the cul-de-sacs in. Instead of the City go ahead and put them in, one of the ideas was to put a temporary cul-de-sac in. One of the options that was talked about was sidepaths, the residents are concerned with where the sidepaths would go, because of the trees and growth along the road that buffers the homes now. Speed tables would help with the speed tables, but not with the volume of cars.

Motion by Mayor Chiovatero to allow the citizens speak.

Alderman Ament 2nd the motion.

Upon voting the motion passed unanimously.

Louie Fenick – 5090 Small Road, just north of Valley View Park. We moved out here 8 years ago when Small Road was just a small country road. It doesn't connect anything except Beloit to Moorland and it won't because there is no sizeable development that can add another road to it. Since the development of Marcus the industrial park, the restaurants and developments on Beloit Road the traffic is going to get even worse. This morning there was traffic going 40 miles per hour down the road. Usually between 7 and 9, and then again between 4 and 6 we get them going 40 miles per hour, just to bypass the lights on Moorland and Beloit Road. My 10-year-old son can't ride his bike on the road because there isn't enough shoulder on the road to ride a bike or even walk because the road is only, according to Ron's papers, 11 feet wide. We want something to keep it safe. My daughter waits for the bus at the end of our driveway, two years ago she was home sick. A car came around the corner and hit our mailbox, if she had been out there, she wouldn't be here today. We were told The Pizza Buffet would impact us by only 200 cars. Then we have Hickory Hills and the Krahn development that will impact us another 600 cars, we already can't walk or ride bikes on the road because of the traffic. We are asking for something to be considered so we can have our quality of life along this road the way it was 3 or 5 years ago. All we see the speed tables doing is slowing down people like us; the people in a hurry to go to work aren't going to worry about the speed tables. They don't follow the 25-mile per hour speed limit that we had it reduced to last year, what's going to make them slow down for speed tables? If we put up a one-way barricade system with signage that it is a one-way street, fire, police and buses will still be able to get thru. Fire and police say it's going to be a problem with water, we haven't had water there since I've lived there and has been voted down twice by the residents. There is no legitimate reason that Police and Fire have that is going to stop anything, with a barricade on the end they still would be able to drive thru. School buses could be an issue, if they drive thru a barricade; there are self-opening and closing barricades.

Mark Kastner-15185 Small Road: In the community meeting we had this past week we discussed trying out a temporary barricade to see how this would work, as well as addressing some of the issues that the City has with closing the street off. I feel that it would be a good idea to try the temporary gate before anything is done. I did some research last night and have printed out copies of a self-closing gate that I will now hand to everyone. They can be used in pairs, one on each side of the street.

Alderman Ament: Under fiscal impact it say \$20,000 to \$107, 500 why is there such a spread?

Ron Schildt: Because of the different options that we had, the 20,000 would be the estimate for speed tables along that stretch, and the two cul-de-sac option would be the higher cost.

Alderman Ament: If the recommendation were for a full cul-de-sac we would be in the \$107,00 range?

Ron Schildt: That is a rough estimate for the two back-to-back cul-de-sacs. The \$107,000 was for a permanent one. If we were to do a temporary one like the residents talked about, we could put a barricade there but then there would be a problem with school buses and snow plows turning around. We would have to put in a temporary turn around T in place.

Alderman Ament made the motion that we recommend to the Council that we do this right and do the cul-de-sacs as originally mentioned. Just make a recommendation to do it and then the Council would have to determine how they would fit it into the budget.

JP 2nd the motion for discussion purposes only.

JP Walker: The requested action is actually to the Plan Commission not to the Council. The Plan Commission will then bring a recommendation based on what we bring to them to the Council.

Alderman Ament: I would make that change in the motion to send it to the Plan Commission.

JP Walker: I would like to get more information on this temporary gate. Mr. Kastner just passed out a picture of the gate and I can recognize what it is supposed to do. I'm concerned about a two-year period where before we get an approved budget, if the Council decides to go with the double cul-de-sac that Alderman Ament is recommending, there is still a period of two years in which there should be some type of temporary control. I have no idea what the cost is, we would still have to find that out and then determine how we would budget for that.

Ron Schildt: Not sure how much the cost of the gate is but it's minimal compared to the cost of installation, especially because we would have to get power to the gates.

JP Walker: If the decision is made to go with the temporary device, then what is required for signage?

Ron Schildt: There would be the same signage, as a regular cul-de-sac would have. There would be signs at both Moorland and Beloit saying that there is no outlet. There wouldn't be a lot of money involved for signage.

JP Walker: Would there have to be some kind of alerting signs as you approach this temporary location that has some type of reflective material on it in case the driver isn't aware that the temporary system is there?

Ron Schildt: Would want to make sure that when you get to the end that there is some type of road marker. If we were going to put two of these in we would then put a barricade on one side of the street and then put one gate in.

Mark Kastner: These are actually built with breakaway hinges so that they can be gone right thru if necessary.

Alderman Moore: I don't believe this is a unique situation. We need to take care of the needs of the residents but this particular idea I have a significant problem with. I agree with the problem in the increased traffic that the Pizza Buffet and the rest of the businesses will provide. When Westridge was developed the commercial section was supposed to be just on the North side of the highway. I agree with the concerns of the citizens wanting to keep it safe. The answer is right in your petition where it says "Also the Industrial Park, commercial development and increased traffic from the disc golf course has made this road unsafe for daily residential type activity (children biking to their friend's house, walking the dog, jogging, etc.)" I don't believe that these things should be on the road in the first place. The sidepath can go inside the tree line; it doesn't have to be a straight line.

Alderman Augustine: The motion on the floor is for a permanent cul-de-sac. If we vote on this today to make recommendations would this prevent the speed table or swinging gate option?

Mayor Chiovarero: We are just making a recommendation to the Plan Commission, they will look at what the recommendation is from the Board of Public Works. I understand the concern of the residents. I feel a one-way road is the way to go. If we go with cul-de-sacs I feel the back-to-back cul-de-sacs is a better option. Would be inclined to go with a temporary cul-de-sac or gates to see how that will work.

Alderman Ament: I don't believe that cul-de-sacing Small Road is going to spur anything except that there will be some people who decide they want one, but it is still our decision as to whether this is a good idea or not. On page 3 of the staff report it says, "West Small Road is described as a local street" that is what it is, a street not a road. I feel spending money on temporary solutions is not the way to go at this time. I feel cul-de-sacing is the way to go.

Ron Schildt: Just to inform you, the City's Transportation plan is to maintain connectivity between roads and therefore goes against cul-de-sacing this type of road.

Upon voting the motion failed with Mayor Chiovarero, Alderman Moore, Alderman Augustine and JP Walker voting no. Alderman Ament voting yes.

Alderman Augustine: Would like to bring a motion forward to vote on temporary swinging gates as a solution.

Alderman Ament; 2nd the motion for the temporary.

Alderman Augustine: I voted against the permanent cul-de-sac because I would like to test it out to see how it works in reality to shut off that road. The temporary gate would provide some relief for the residents and to see how it would really work.

Alderman Moore: The temporary gate is no different then a permanent one in regards to stopping the traffic. I don't feel that this is the way the city should go. We need to solve the problem rather then create another one.

Mayor Chiovatero: I would prefer a one-way road. We can divide the street up using some of the street as a possible side path. I am willing to try the temporary solution. Are we talking about a temporary double cul-de-sac?

Ron Schildt: It would basically have the same effect as a double cul-de-sac.

Alderman Ament: If we put in temporary cul-de-sacs should there be some type of time frame?

Ron Schildt: We need to see how it affects the plows, the disc-golf season in spring and summer and the school year. There are a number of different issues involved here.

Mayor Chiovatero: I would like to see one-year trial period. I feel this should give us enough information. Then we can start looking at the budget to see where we can fit it in.

JP Walker: On the diagram on page 26 of the staff report, I'm assuming that the locations of this temporary device if we decide to go that way would be South of the driveway into the park.

Ron Schildt: The one that is in there is showing permanent cul-de-sacs. The temporary ones would be in either of the locations either down by the Pizza Buffet site or by the park. If we put it just using the existing driveway there would be no entrance from the south side of the park all the traffic to and from the park would have to go in from Beloit Road. That would be the next issue, if you want a temporary one where would the location be, and how much should we put into it?

JP Walker: If we do something at the entrance to the park there are going to be residents that are going to loose out on something. If we go with one-way consideration people living North of the park, if the road would go in that direction, could not get to the park unless they go all the way around or they walk, which goes back to the fact where you have a road that is only 11' wide. I'm not in favor of this option, there has to be something done.

Alderman Harenda: I do agree that we should do this for at least one year. I don't have a problem of bringing Alderman Moore's option to the alternative transportation committee. The residents are looking for something that is going to help them with the traffic problem. The concern I have on the motion is with the temporary cul-de-sac being at the Pizza Buffet how it is going to affect the buses and plows. I can go back to the residents with the cul-de-sacing at the park or the temporary one down by the Pizza Buffet.

Alderman Moore: Would like to see this go to the Alternative Transportation Committee.

Alderman Ament: We are discussing now as to whether we should deny this temporary access and just let it die and then start something else. Sidepaths are a separate discussion. These people want to do something with the traffic on their street. Lets make a decision on the cul-de-sacing now and can deal with the sidepaths at a different time. We need to look at the scope of time we can't keep dragging this out.

Alderman Moore: This could be an amendment, if this motion passed there would be temporary barriers then it would also go to the Alternative Transportation Committee the amendment doesn't change what this motion talks about. That's why I asked if it would be better to have an amendment to this motion or should I make it after this motion? Just so I have the opportunity to get it to the Alternative Transportation committee in addition to whatever else is being done.

Upon voting the motion passed with Alderman Ament, Alderman Augustine & Mayor Chiovatero voting yes. JP Walker and Alderman Moore voting no.

Alderman Moore: Would like to move that this get on the Alternative Transportation Agenda.

There was no second so motion dies for lack of discussion.

Alderman Harenda: What is the location for the cul-de-sacs?

Mayor Chiovatero: I thought by the park would be the best one, but now I think down by the Pizza Buffet is better because then the school buses and plows would only have to make one trip.

NEW BUSINESS

ITEM 37-05 Development Agreement for Honeyager Fields Subdivision

JP Walker: The requested action is to recommend to the Common Council to approve of the Development Agreement for Honeyager Fields subdivision subject to for by the City Attorney and I so move.

Alderman Ament 2nd the motion.

Alderman Ament: Under rationale on the fourth line I believe that should say sewer. Also on page 7 on the very bottom of page 7 under Roadways – B 1, does it need to be stated or is it already in the code that it needs to be 66'?

JP Walker: It's curb and gutter so it only needs to be 60'.

Alderman Ament: On page 14 under #E where it says "The City agrees to charge and to endeavor pursuant to New Berlin Municipal code Section 267-4 (4) to collect from said property owners the expense for said utility improvements at such time as the property owners seek connection to the CITY sewer system." Does this fall under a special assessment for those people on the North side?

Attorney Blum: The area is already served by privately constructed system and there is an agreement in place with respect to that, that in the event there is connections made to that privately constructed line that there be some reimbursement of the developer. Endeavor means we will make an effort to collect from those that connect in the future and reimburse the contractor that originally put that line in.

Alderman Ament: Ultimately we cannot prod them into paying that is between them and the developer?

Attorney Blum: Ultimately it is a matter of the terms of the agreement that we have with the developer we would make a good faith effort to collect that.

Alderman Ament: On page 15-J, is the Kasian (Kasco) project part of the Honeyager Fields subdivision? Is that why these are together?

JP Walker: They are adjoining developments that has the same requirements as Honeyager Fields as will have the same requirements Honeyager-Farrell development.

Alderman Ament: It says subject to final review and recommendation for signal lights at Howard. It says \$15,000, does that apply to just Honeyager or does it apply to both? If it is to both is the \$15,000 a combination.

JP Walker: It applies to each of the developments and the \$15,000 is the share per development. That would also include the proposed Honeyager-Farrell development.

Mayor Chiovatero: Did not see any reference to any type of Homeowners Association.

JP Walker: It should be part of this. Mayor Gatzke and I both missed it.

Attorney Jim Gatzke: I may have missed it, but my sense was that since these were going to be all privately owned properties there was no common space and that the maintenance of the supporting facilities could be picked up by Honeyager-Farrell, that there really was no need to create a Homeowners Association for these 8 lots.

Alderman Moore: It is my understanding that all future developments will have a Homeowners Association, is that not true.

Attorney Blum: The whole idea here is that in general that the developer that puts together the subdivision constructs it and then that developer may shift gears and that particular entity that created the subdivision may be dissolved and move on to some other situations. From the City's standpoint you would be looking for some entity, usually it's the Homeowners Association that would be responsible for the ongoing maintenance of the improvements and so forth.

Alderman Moore: Then your response is that it should be added?

Attorney Blum: My response is that as a general proposition you should have a Homeowners Association as part of the Developers Agreement. This is unique because of the size of the development.

Alderman Moore: Would like to make a motion to ask staff to add language at the appropriate location for a Homeowners Association and could be united with a neighboring subdivision.

Alderman Ament 2nd the motion.

Attorney Blum: Under section 6 that is referring to storm drainage paragraph B-4 those two paragraphs reference the responsibility for storm water maintenance as being that of the developer or property owner, in this case the successors. If it were approved the way it is written right now you would have to go after the property owners individually instead of the Homeowners Association as a whole.

Alderman Moore: Should we request changes to that also.

Attorney Blum: This will modify it to make it consistent.

Upon voting the amendment passed unanimously.

Alderman Moore: There is a map of Honeyager Fields subdivision and then there is separately Exhibit A. I'm wondering which one or do both of these apply to this subdivision?

JP Walker: The agreement that you are referring to is the Howard Avenue road construction agreement that is between the developer for the Kasco PUD South Phase and the developer for Honeyager Fields. They both agreed to cost share in the costs associated with improving Howard Avenue, because it affects both developments.

Alderman Moore: Has that been approved?

JP Walker: Yes, it is already constructed.

Alderman Moore: In relation to reconstruction that means that it will be torn up.

JP Walker: The term reconstruction is in there because right now Howard Avenue is not centered on the section line. As part of this development it is required to be shifted and reconstructed with curb, gutter and storm sewer.

Mayor Chiovatero made the motion to approve the agreement as amended.

Upon voting the motion passed unanimously.

Alderman Augustine left the meeting at this time and forwarded the chair over to Mayor Chiovatero.

ITEM 38-05 Development Agreement for Ronald Reagan Elementary School

JP Walker: The requested action is to recommend to the Common Council approval of the Development Agreement for Ronald Reagan Elementary School subject to final review as to form by the City Attorney, and I so move.

Alderman Ament 2nd the motion.

JP Walker: Ronald Reagan Elementary School will be located just North of the existing New Berlin Center school on Calhoun and National, when built and occupied it will allow us to combine the existing Prospect Hill and New Berlin Center elementary schools. We have been working very carefully, we being with the City Attorney and the representative for the school district in working out this agreement. There are still some issues that need to be discussed.

Attorney Blum: Just by way of clarification so that you can see what in this documentation that differ from agreements that you would normally see. The school district just like the City is governed by state statutes that limits its scope of authority on various issues and one of those has to do with property rights. The school board in itself does not have the authority to do that. That is something that has to be done by a meeting of the district electors, which is a separately noticed meeting from the normal school board meeting. For that reason you will see a number of instances in this document that indicates that while the district may be accepting the responsibility of storm water easement the ultimate authority to do so will have to come from the district electors and therefore that promise that they are making is conditioned on the electors ultimately agreeing to do that. The issues that you will see and have been discussed are the Surety Obligations and the Indemnity Obligations. The Surety Obligations are required so that the improvements that are called for in the developers agreement will in fact be performed and will be paid for so when they are dedicated to the City you will know that they are done. The Indemnity obligation we normally require provides that any liability that the City will incur by consenting to the improvements would be the responsibility of the contracting or developing party. The district has asked that they be limited to simply the liability that may arise different from a breach of the normal developers agreement. The reason that we have gone broader than that is even though they are performing the terms of the developer's agreement that still doesn't mean that the city couldn't incur liability from third parties.

Attorney Kearney: The Surety Obligation makes perfect sense when it applies to a private developer coming on board. It does not make sense here with the public school district. The letter of credit that you get is probably going to be less trustworthy then the school district itself. The increase cost for the project that the letter of credit will cost will ultimately be passed on to the taxpayers. We feel this is not necessary given the relationship with the parties involved. We are certainly happy to indemnify anything and hold the City harmless for anything for we do in breach of the agreement. Any possible third party claims is not something that the school district could agree to. We have the obligation to provide an easement subject to electoral agreement and in order to do that we would need to spell out the terms of the easement in a bit more detail.

Alderman Ament: As far as the Surety is concerned what kind of exposure does the city have?

Attorney Blum: If you look at page 10 letter C the first paragraph reads "to guarantee performance of the terms of this Agreement", in other words if they start the project they are going to finish it. Public improvements are going to be finished as designed. It's a performance obligation on the part of the District to make sure that the work is accomplished. It then lists a number of the projects. The top of page 11 goes on to further describe the letter of credit for 100% of improvements, and also the maintenance surety instrument to make sure that storm water obligations and so forth are met. If you don't have that in place you won't have access to the funds to do the work in case for some reason you would have to do the work yourself. The main difference is availability of funds. This could become an issue. The concern would be that as the legislature further is dealing with constraints as far as dealing with the taxing authorities to raise and issue the funds, if for some reasons those constraints are narrowed further in the future, this could be one of the issues that wouldn't be funded, because the money was needed for something else.

Alderman Ament: I feel more concerned about the indemnity.

Attorney Blum: They are saying that if there is a breach of contract, for example they are supposed to do the sewer lines and we request that they do them up to our departments specifications and they don't do that, and we receive liability claims as a result they would be liable. If the situation were that a neighbor was upset with the way the water flows onto his property even though it's consistent with the plans but something just didn't work out right and

they come back to the city saying, why did you approve this development, you are on the hook for that and they wouldn't owe you an obligation for indemnification.

Alderman Ament: I have less of a problem with the Surety Obligation, but I cannot approve the removal of the Indemnity Obligation.

Attorney Blum: What you have before you still has the Surety and Indemnity Obligations in it. The school district wants you to modify what you have before you. If you approve this as written it will include these items.

Mayor Chiovero: What did we do for Elmwood School?

Attorney Blum: A Developers Agreement wasn't required for that development.

JP Walker: The whole question on what is private and what is public comes down to what the electors decide. If the electors are not willing to approve the easement that's all of the infrastructure, the water, the sewer and the storm water then the related improvements would have to be private. They strictly would not be any public entity there at all. If the electors approve the easements then all of that infrastructure would be public. Its all contingent on what the electors approve.

Attorney Blum: In a Developers Agreement normally the improvements are done and we make sure that they are done up to the city's requirements.

JP Walker: If there are some questions in the Boards' mind as to why are we dealing with a Developers Agreement at this time, it is because the school district needs to start constructing the school. They want to have it open at the earliest next fall, maybe into the winter months. They are asking us to take action now contingent on what the decision is of the electors.

Alderman Moore: Does that mean that we can't defer this to the next Board Meeting?

JP Walker: Yes that is what I am saying. That would put us another month behind.

Mayor Chiovero: This has to go to Council next Tuesday? Can we have these items clarified? I'm willing to approve it as written. If there are any items about the Surety or Indemnity can we have them clarified before next Tuesday.

Attorney Blum: We are looking for some direction as to whether do you want us to modify this to give them relief given everything that you have heard to allow the indemnity to be only as a breach of contract and eliminate the surety language all together, or to keep it as originally drafted.

Alderman Ament: If we take out the Surety Obligation out it probably won't be a serious problem because it is a public indemnity. Ultimately somehow it would still fall on the taxpayers.

Attorney Blum: It would, but the only concern is that if the future legislatures would put limits on district expenditures just like they are looking for from you in the future, they might not have the flexibility to pay for something. In the short term though their obligations should be satisfied.

Alderman Moore: This protects us the way it is written.

Attorney Blum: The way it is written now we have a Surety obligation to guarantee performance and it also talks about maintenance surety agreement for two years.

Alderman Moore: What are our two options.

Attorney Blum: The two options are take it or leave it as is with the surety, and as far as the indemnity to put their modifying language in or not.

Alderman Moore: What would your recommendation be?

Attorney Blum: Leave it as is. However, I understand that this is a unique situation where you might prefer to relieve the district from some of this.

Alderman Ament: I would prefer to leave it in. If the Council decides that they want to take that risk that's up to them, I don't think we should take that responsibility.

Mayor Chiovero: I agree with that. But they are obligated to do everything that we need they only thing that they are looking for is relief from the actual Surety Instrument itself.

Attorney Blum: The Surety and the Indemnity Obligation. It's different because the district may decide not to convey any of these improvements to the City. In which case then they are responsible for it.

Alderman Moore: We don't have the indemnification language before us do we?

Attorney Blum: Yes, you do it is on page 13 – Item H where it states “expenses arise from the City's approval of this Development of the completion of such Development...” they are asking that the language be modified to indicate the indemnity that arises from their breach of the developers agreement. What you see here is what normally is required.

Mayor Chiovero: I agree with Alderman Ament, that this is discussed at the Council level.

JP Walker: How do we make sure that this is discussed at the Council meeting?

Attorney Blum: Perhaps we can request Attorney Kearney to prepare a letter to the Council regarding the concerns that the district has with the language as drafted and that can be included as part of the packet for the Council meeting.

Attorney Kearney: Will that delay the improvement? Will the Council then decide if they do decide to forgo the Surety and Indemnity Clauses will it then have to go back to the Board?

Attorney Blum: I'm not sure what the Council is going to do. I think what they would do is to approve it as written accepting the Board recommendation or they would give directions to the staff to modify in accordance with the discussion.

Mayor Chiovero: I think a letter would help initiate some of that discussion and Council is very sensitive to the situation with schools and trying to get things moving.

Alderman Ament: If this goes to Council unchanged it's less likely that they will want to bounce this back to us, they will just make that decision.

JP Walker: We will need to have that letter before noon on Thursday, October 6th.

Alderman Moore: Separate discussion. As I'm going over these plans I do not see that there along National and Calhoun and sidepaths.

Ron Schildt: There was sidewalk that was requested along Calhoun, there is a short stretch that goes up from National up to the driveway, when the school was built we wanted then to extend it along the property line and that was taken off the plan, along with any requirements along National Avenue. It was at the Plan Commission asked at their meeting for a waiver not to put the sidewalk in.

Mayor Chiovero: The thought at the Plan Commission meeting was that the sidewalks would end at both the property lines, thought it would be useful inside the school property, we thought that the children would be using other means beside the sidewalks to get around the property.

Ron Schildt: There are stretch about 150' long that goes North along the West side of Calhoun from the intersection and goes up to the existing driveway at the school. Depending on how the plans go that section may be able to stay, or it may have to come out.

Alderman Moore: Just from National to the driveway?

Ron Schildt: The existing driveway. The new drive way is going to be on the North end of the existing building. The existing sidewalk falls about 300' short of the new driveway.

Alderman Moore: Are there sidewalks inside the property

Ron Schildt: Yes, from the parking lot to the building, but nothing from the street into the school.

Alderman Moore: There is no way to walk along the street and get into the school without walking in the roads?

Ron Schildt: There is fencing that is going to be proposed along that whole stretch because of the ball field.

Alderman Moore: I would like to see some changes made.

Mayor Chiovatero: We cannot make those changes here. That was a huge discussion and was brought on by financial obligations. The discussion was that these sidewalks would have no connectivity to other sidewalks they would start at the property line and end at the property line, and that's why the waiver was granted.

JP Walker: Since this was a Plan Commission that took the sidewalk out then I believe the proper place would be back at the Plan Commission.

Alderman Moore: Can I make a motion to go back to the Plan Commission to put the sidewalks back in.

Mayor Chiovatero: The Developers Agreement has no issue with sidewalks.

Upon voting the motion passed unanimously.

ITEM 39-05 Vacate the right-of-way of Blom Street from Honey Lane south to the New Berlin Hills Golf course.

JP Walker: The requested action is to recommend to the Common Council that the right-of-way of Blom Street from Honey Lane south to the New Berlin Hills Golf Course be vacated and retain the easements necessary to maintain the existing utilities and drainage ways. I so move.

Alderman Moore 2nd the motion.

JP Walker: The City has received requests from the residents that about the existing right-of-way and asked if the City would be willing to vacate the unused right-of-way. There is actually a right-of-way there, but there is no street. Staff recommends that the right-of-way, they see no need for it to exist since there is no road there.

Alderman Moore: Does this allow them to build in the right-of-way?

JP Walker: The southern half has utilities in it and that in itself will prevent them from building on that right-of-way. I will have to look at the area between Honey Lane and Park Avenue cause there are no utilities there. It's a grassy area. There are still set back requirements that have to be followed. There will not be any structures in the Southern half because of the easement that is required. The Northern half, there is the possibility that there could be but they would have to follow the zoning code requirements.

Attorney Blum: It's not going to be built in this area, but maybe the setback has been moved so that they can build it closer to their existing line. It won't be built in this area itself; it will allow them to move up closer on their existing property.

Alderman Moore: Set back requirements would keep them out of this area.

Attorney Blum: The bottom line is that they can't put structures in the easement area, which is the utility area. They will still have to measure their set back areas.

Alderman Moore: Does that then become a new property line for the people in that area?

Attorney Blum: Yes.

Alderman Moore: So they are essentially deeded?

Attorney Blum: The vacation resolution is recorded with the register of deeds and that has the effect of conveying the property in half with each side receiving one-half of that right-of-way area.

Alderman Moore: When we go to the property owner and we have to condemn property because we are going to build a street we have to buy it from them. In this case would we not require them to buy it from us in order to use it as his property?

Attorney Blum: The right-of-way area is deeded to the adjacent property owners.

Alderman Moore: WE have precedence here.

Attorney Blum: The vacation statute that allows us to do this does not talk in terms of the municipality being compensated for this right-of-way. The reason that this is being done is because it has been determined that this property no longer has a use to the city as a public right-of-way.

Alderman Moore: All it does is allow them to spread out their possible buildings. The land is already there. What benefit is there to the City by doing this?

Attorney Blum: The land goes back to the property owners and then can be taxed to the property owners as a large piece of property. The City will no longer be liable for anyone that might be on that property and hurt themselves.

Alderman Moore: Will their taxes go up?

Attorney Blum: There will be a minimal increase in their taxes.

Alderman Ament: If the land owners want to sub-divide their properties and work together, could that create enough area there to make that section a buildable lot?

JP Walker: There are two vacant lots starting at Honey Lane. There are two properties on both sides that have a dwelling. The track itself with common ownership is vacant lots. What this allows is that these vacant lots now become a marker and more easily can be developed. I believe that at the current size they cannot be developed. By vacating this right-of-way they will have to provide access thru the lot directly to the North, if they were to develop the Southern half. They would have to go thru a land division and go thru the entire Plan Commission approval process before they would be allowed to do that. I believe that they do want to sell the properties eventually, they are quite elderly.

Alderman Ament: When I looked at the overall map and look at the length of the streets without a North and South connection and you go to the section above that it does have that almost like a natural follow thru. Is that stretch without any North/South cut thru a problem in the future as far as a safety standpoint, such as fire or police?

JP Walker: I've looked at it. Ron has not looked at it. The existing conditions are not changing. There is not street there and has never been one there. Don't even know why the right-of-way is there.

Alderman Ament: I can see why it was originally on there because if you look north it follows the same line. This is not going to be an issue where kids have to walk on a dangerous street all the way around to get to Elmwood. They won't use this as a cut-through.

JP Walker: The issue was never brought forth by the residents that petitions whether or not there were pedestrians even using that area. When you drive past this area, you wouldn't even know it is a right-of-way area.

Alderman Moore: I think if we create a situation where it enables someone to create value to property, they get an automatic boost, it's like giving them thousands of dollars. I would like to hold off on this until we revisit our ordinances that keep us from charging people if they want to take over the land. I would prefer to table this and ask whatever committee or board to look at what we do in this instance.

JP Walker: This can be a form of discussion with the Plan Commission tonight; they are taking action on it. The Plan Commission has the final decision prior to Council because this affects the official City map. As far as revenue for the City the people will be charged higher taxes because they will have more property.

Alderman Moore: I'm less concerned about the money that we would get rather than some homeowner getting a windfall while the rest don't.

JP Walker: In my tenure as a City Engineer we have had three vacations that come to mind, all in Buena Park Subdivision North of the area of the Cul-de-Sac. That discussion never took place. Essential each property gained 30' in width. The only difference was that they paid more taxes.

Alderman Moore: I have no problem with adding land to someone's property line except for the fact that if this creates a situation where they can sell the property to create a new home then they get a windfall.

Alderman Ament: I believe that we have to move this along. Better at the council level. It is not our place to determine if someone is making money or not.

Mayor Chiovatero: The reason that is before the Board is because it is a road and we are vacating it. It is the determination of the Plan Commission or the Council to decide what the land will transform into.

Upon voting the motion passed unanimously.

Item 40-05 Change the Name of Sally Drive to Highpoint Drive

JP Walker: The requested action is to recommend to Common Council that the name of a stub street (Sally Drive) be changed to Highpoint Drive

JP Walker: With the development of the Park Central Subdivision Highpoint drive is extended through the subdivision and it connected to what is currently called Sally Drive which is one property long. Staff feels that it should be Highpoint Drive all the way from National Avenue all the way down to Crawford. With the development of Park Central I believe this makes sense and I so move.

Alderman Moore 2nd the motion.

Alderman Ament: Is that area around that potentially going to be developed with more homes.

Mayor Chiovatero: Currently where you see the red line, there is a road right there, with cul-de-sac, curb and gutter. Currently there is one home there already.

Alderman Ament: Are there going to be more?

Mayor Chiovatero: Yes. That is a thru street. Crawford goes thru to Highpoint Drive. When the home was built that owner had to determine if he wanted a Sally Drive address or Highpoint Drive. The original owner decided he wanted a Sally Drive address for sentimental reasons.

Alderman Ament: Does Highpoint Drive go thru to Crawford?

Mayor Chiovatero: Yes, it currently does.

Upon voting the motion passed unanimously.

ITEM 41-05 Change the Name of Tara Drive to Winterberry Way

JP Walker: The requested action is to recommend to the Common Council that the name of a stub street (Tara Drive) be changed to Winterberry Way.

JP Walker: With the development of the Conservancy of New Berlin in the Conservancy Winterberry Way now connects to Tara Drive in the Karrington Woods subdivision, for common name purposes staff is requesting that Tara Drive be changed to Winterberry Way and I so move.

Alderman Moore 2nd the motion.

Alderman Moore: I wish there would have been a map as to where Winterberry comes on the first of the two overview pictures.

JP Walker: It is difficult for us to do, because we don't have the final plat yet. In general terms, Winterberry Way was the original street that the original proposal was going to be connected to Kelly Pointe subdivision at the Cul-de-sac that you see called Valley View. The decision was made that there would not be a connection there, that the only connection would be at Tara Drive.

Alderman Moore: I was wondering where the Conservancy portion would be for the undeveloped land would be. Are there going to be houses along the new winterberry Way?

JP Walker: We have the construction plans in our office; we can show you the complete layout of the subdivision. The Conservancy area is in the southeast section of the layout.

Upon voting the motion passed unanimously

ITEM 42-05 Completion of segment #31 as identified in the original Alternative Transportation Plan with sidepaths on both sides of Moorland Road from mark Drive north to Coffee Street and discuss possible budget options.

JP Walker: The requested action is Alternative Transportation Sub-committee & Plan Commission have recommended the City pursue the completion of this trail segment (31) as identified in the Alternative Transportation Plan, and to ask Waukesha County to include it in their planned rehabilitation project on Moorland Road and I so move

Alderman Moore 2nd the motion.

Alderman Ament: When we discussed this at budget did we separate the phases and vote on them separately?

Mayor Chiovero: I believe we did.

Alderman Ament: Can we do that here?

Mayor Chiovero: I don't see why not.

JP Walker: I suggest we talk about the phases and then decide what the amendment to the motion should be.

Ron Schildt: Segment 31 basically covers the area from Mark Drive on Moorland just South of National all the way to Coffee. The original Transportation Plan called for all four quadrants in that intersection to have sidepaths on them. As part of the National Avenue sidepath project in 2000-2001 the section on the North East quadrant by McDonalds & Taco Bell, that section was put in, the section on the South East quadrant down by Papa Murphy's and Atlanta Bread area they actually put part of the sidewalk in along Howard and their property line along Moorland but we ran out of funds when we were doing National Avenue to actually complete that area. Plans were never drawn up actually for the west side although along the Walgreen' land they did put a section of sidepaths in South to their property line. We have had discussion with the safety commission and the citizens that have asked us to look at putting in sidewalks especially along the South East and South West side from Regal Manors East and Regal Manors West up to National Avenue. We went to Alternative Transportation because we wanted them to look at this and actually decide where that could be and the other reason being that Waukesha County is starting rehabilitation along Moorland and this section will probably be worked on next year sometime, if there is a desire to

put money into our budget to pay for this there could probably be some cost savings if we ask Waukesha County to do this with their project.

Alderman Moore: The whole plan is good and it would be good to get some money for this. Are the monies for this just to complete what has not been done in those areas that you mentioned?

Ron Schildt: Yes, the North East area is done so there is no option for that area, but this is just for the other 3 sections that are not completed.

Alderman Moore: Is this our portion of it or is that the full portion and we pay less if the County were to do this.

Ron Schildt: I estimated those numbers based on fitting a sidepath in the existing right-of-way, which means we would have to have a 6' or 7' curb wall along those areas. They would be walking up right along the side of the curb, there would be no way to purchase right-of-way before next year when Waukesha County is starting their project. It would have to fit in the existing right-of-way that we already have. The dollar figures are figured similar to what we had on National Avenue per linear footage.

Alderman Moore: Please clarify if this is our portion or after the County pays a portion.

Ron Schildt: The County is not going to pay a portion of it. This is all going to be City funded but if we include it in a larger project that is going to have allot of concrete work, if there is going to be a concrete contractor that is going to be doing all of work along there we might be able to decrease the price of what we are going to pay for this.

Alderman Ament: Is the stretch from National to Coffee Road going to be entirely along the curb?

Ron Schildt: All four of the locations had problems with right-of-way that area. All three of those other areas will probably have to have a 6' or 7' curb walk so the sidewalk will be up against the back of the curb.

Mayor Chiovarero: Do we want to vote on these phases individually?

Alderman Ament: Would prefer to.

Mayor Chiovarero: Then we have to withdraw the original motion

JP Walker: The original motion talks about all three. In the packet it describes the three phases of segment 31. We need to know if there are concerns about _____ or including all three phases, if all three phases are decided to be included then there is no amendment. If there is an issue about a given phase then we have to amend the motion to not include that phase.

Alderman Ament: Why is this here, we included this in the budget. This is part of the Alternative Transportation Plan, is it not?

Ron Schildt: Yes, it is. But at council it was discussed to talk to the County to see if this could be included in their project. That's why it didn't come to the Board. I put it here so we could talk about it again to see whether it should be included as a project in next years.

Mayor Chiovarero: It's here because it has something to do with the Moorland County Road renovation.

Ron Schildt: Alternative Transportation already looked at this, and it went to Plan Commission and then it went to Council. The question came up at Council that they were just looking at it as a project that we want done at some time but not actually what the funding was for it.

Mayor Chiovarero: It seems to me that this is a decision for the Alternative Transportation, Plan Commission and Council decision not one for the Board of Public Works.

JP Walker: The reason why it could be here is because this is a public infrastructure. It has to be acted on by the Board for that reason.

Alderman Ament: I would like these separated and I do have an issue with the National to Coffee section for several reasons, cost is one of them, but that's not our issue here. The main thing is the lack of any kind of maintenance policy on sidewalks. I have a problem with approving it. The reason that I don't have a problem with the other two is because they are very short sections.

JP Walker: I agree, when you look at the properties in any of these areas it's all commercial except for the West side of Moorland Road north of National and south of Coffee. With that distinction I agree that the segment on the West side of National is not as important as the other two phases.

Alderman Moore: I would hope to approve all three of these, because if people who do live on the West side, if they want to go down to the corner to cross, they have to walk on other peoples grass. We need to stop this type of situation.

Mayor Chiovero: Isn't there an auxiliary lane already there for people to walk on?

Alderman Ament: I have never seen anyone walking along there. I'm not saying that this is not something that should eventually be done but given that area it is a good idea in the long run, but right now without a maintenance program in place and the budgetary concerns I just don't feel it is necessary at this time.

Alderman Moore: In regard to the maintenance it has been pretty much discussed that we don't have a specific plan for all the sidewalks, that means that people don't have to maintain it, they don't have to shovel the snow off. I would like to see some kind of policy in place.

JP Walker: We do have an ordinance that requires property owners to clear off the sidepaths. If the driveway crosses the sidepath they are required to clear it for residential. All commercial properties are required to clear the sidewalks.

Alderman Ament: That has been the problem, there is an ordinance in place, if you have three homes that face the road and three homes that don't the city is responsible for the three that don't and the resident is responsible for the three that do it would be rather ludicrous for the guy to come down the sidewalk and clear a part of it, go over a part of it and then do the rest of it and clear the next section. For the city the cost of maintaining these walks is more of a concern then the cost of the installation of the walks. You can't leave them sit the city is responsible for keeping them clean.

Mayor Chiovero: We need a sidepath ordinance as to what we are going to maintain and what we are not going to maintain.

Ron Schildt: The ordinance is in place, the City has a machine to clean the sidewalks. This would be another section for them to maintain.

JP Walker: The staff is currently working on a sidepath policy; it is still being drafted which we will bring to the Board when it is ready for review.

JP Walker: The motion is the completion of segment #31 as identified in the Alternative Transportation Plan.

Alderman Moore: It does say pursue the completion of this trail segment and ask Waukesha county to include it.

Alderman Ament: Made a motion to recommend that we approve Phase 1 completion of sidepaths on the East side of Moorland Road from Mark Drive to National Avenue.

JP Walker: Would like to remove the original motion.

JP Walker: The restated motion would be in accordance with the recommendations of the Alternative Transportation Sub-Committee and the Plan Commission staff is requesting that segment 31 of the trail system as identified in the original Alternative Transportation plan be completed and ask that Waukesha County include it in their plan for the rehabilitation project on Moorland Road.

Alderman Moore 2nd the motion.

Upon voting the motion passed with Alderman Ament opposing.

Motion to Adjourn by Alderman Moore

JP Walker 2nd the motion.

Meeting adjourned at 10:39

Motion by JP

Upon voting, the motion passed unanimously.