

MINUTES
BOARD OF PUBLIC WORKS MEETING
November 1, 2004
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 8:08 A.M.

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

Staff Present: Ron Schildt, Division Engineer, Tammy Simonson, Civil Engineer, Greg Kessler, Director of Community Development was excused.

OLD BUSINESS

ITEM 01-04 Approval of Minutes from October 4th meeting

Mayor Wysocki made a motion to approve the minutes

JP Walker 2nd the motion

Upon voting the motion passed unanimously

NEW BUSINESS

ITEM 22-04 Award of Professional Services Contract for Consulting Services related to the Redesign of Calhoun Road

JP Walker: Requested Action is to request Common Council to approve the awarding of a Professional Services Contract to Bloom Consultants for consulting services related to the redesign of Calhoun Road. The amount of the Contract is not to exceed \$518,160.00. Funds will come from the Calhoun Road Design Account 04251100 63011 C2003.

Motion was made by Mayor Wysocki

Alderman Chiovatero 2nd the motion.

Alderman Ament: On exhibit A from Greenfield Avenue to Victor, I'm assuming that is supposed to be to Cleveland

JP Walker: No it's supposed to be Victor Road.

Alderman Ament: On the master plan that we just had, was that changed to just past Cleveland Avenue?

Ron Schildt: We discussed it at the Plan Commission; we talked about approvals on Cleveland, Southbound to Ryerson & Victor

Alderman Ament: Then the four lanes will end just south of Cleveland but there will be some improvements as far south as Victor?

Ron Schildt: Yes

Alderman Ament: It won't be four lanes all the way down.

Ron Schildt: No

Alderman Ament: On A-1 item b: are we looking at taking some whole properties or homes and if so do we know about where?

Ron Schildt: Fee amounts we pay for portions of properties are purchased; in addition there are temporary easements.

Alderman Ament: As long as we have that clear as to how far south we are going.

Alderman Chiovero: This does not include the land acquisitions right that's just for engineering.

JP Walker: Yes, that is just setting the stage for land acquisition.

Upon voting the motion passed unanimously.

ITEM 23-04 Approval of State/Municipal Agreement with WisDOT related to the Redesign of Calhoun Road

Alderman Chiovero Recommend to the Common Council the approval of the State/Municipal Agreement related to WisDOT and DAAR Engineering review of the redesign of Calhoun Road. The amount of the Agreement for the initial phase of the Project is not to exceed \$135,000.00.

JP Walker: You will notice that this is the same account number as in the previous issue. 04251100 63011 C2003. This is a requirement that we have to go through to have an official review by a representative of the DOT.

Alderman Chiovero: This is for the possibility of obtaining a grant and stay on top of the efforts to show that we are serious about the grant and that we are considered.

JP Walker: Yes, that is correct.

Alderman Chiovero: Are these costs where we thought it would be?

JP Walker: The \$80,000.00 is for DAAR and the \$55,000 for the DOT is what they gave us, both of these are not to exceed numbers and I have to assume that these numbers are correct.

JP Walker made motion.

Mayor Wysocki 2nd the motion.

Alderman Ament: On the municipal agreement I have some questions. As I go down that page it states nature of work it says improvements with additional lanes (4-lane divided) In the event that this doesn't go through and we don't get the grant are we looking at the possibility of improving the intersections and just repaving the rest of it and keeping it at two lanes just to get us by in the meantime?

JP Walker: It is a possibility if the grant doesn't go through. We are moving forward as if the grant application will be successful.

Alderman Ament: On the 2nd page of the agreement under page e 3-G & H it mentions sidewalks and street lighting. What exactly does that include? Are we looking at putting sidewalks all the way down Calhoun Road? Are they necessary because of the cost and lost of the Right-of-Way?

Ron Schildt: These are standard items that are included in the agreement. As we go further with this project, we will talk to the residents and business owners along Calhoun Road. A determination will be made in the future whether or not side paths will be included in the Project.

Alderman Ament: Under #6 –where is states “if the municipality should withdraw from the project”, is that again standard?

Ron Schildt: Yes, that is standard procedure.

Upon voting the motion passed unanimously

ITEM 24-04 Approval of the Intergovernmental Agreement with Muskego to Complete the Land Acquisition Phase and Construction Phase of the Tess Corners Creek Pond

Alderman Chiovero: Recommend to Common Council to approve the Intergovernmental Agreement with Muskego to complete the land acquisition phase and construction phase of the Tess Corners Creek Pond.

Attorney Blum: Yes, I did prepare the draft agreement with the City of Muskego but I haven't heard back from them yet. The concept was agreeable with both sides but the original municipal agreement that you have with Muskego is on the design. When you get to the actual construction and you will need a new municipal agreement and that is the purpose of this document. This is a complicated manner and we need to hear back from the city of Muskego before we can go any further with this.

Alderman Chiovero: With that said, will this come back to this board and then to Council for discussion?

Attorney Blum: Since this particular committee was dealing with this matter it should come back to this Board and then go to Council, but I will defer to you to make the final decision.

Alderman Chiovero: My concern would be time frames.

JP Walker: My understanding is that Muskego's Council meets on November 9th and we have a special Council on November 16th, if necessary we can schedule a Special Board meeting before the special Council meeting on the 16th.

Mayor Wysocki: We had to have this meeting after we knew what the actual construction cost was. As you know the greater benefit to us is that it keeps us with the DNR 2016 requirement for water runoff.

Alderman Ament: What kind of tax base loss are we now looking at? Is Muskego going to help pay for that?

Attorney Blum: New Berlin's share is \$1.3 million that is not all land acquisition, some is for construction.

Alderman Ament: Cost to be shared on a 50/50 basis?

JP Walker: The numbers as stated are correct. Based on appraisals that we received, there is a \$300,00 legal attachment on one of the properties that was put together at the time of the death of the brother of Mr. Saltzman. If he were to sell that property prior to 2010 there is a \$300,000 penalty that we would have to cover.

Mayor Wysocki: This is the cost of our efforts in terms of controlling our stormwater runoff into another municipality. If tax base loss is really farmland use, farmland is based on use value, considerably less than open development land. This will provide for us the necessary requirements for stormwater control. We will get that future value from future development.

Alderman Chiovero: Is this land being valued as current or future development? This pond is a regional requirement being required by the DNR.

Mayor Wysocki: There is construction grant money from the DNR.

JP Walker: Our share from the DNR is \$200,000.

Alderman Ament: If the amount is \$4.5 million how do we arrive at the 1.3 million?

JP Walker: 1.3 million is based on the two properties, which comes to 1,018,300.00 The 300,000 that is added on is the legal attachment for one of the properties.

Alderman Ament: When all is said and done we will pay ½ of the 4.4 million. Will future developers or land owners, that will benefit from this be reimbursing us?

JP Walker: As in previous projects future developers will pay their share on a prorated basis against the total capacity of the storage facility.

Alderman Ament: Is there any idea of how much will be coming back to us once that whole area is developed?

Mayor Wysocki: Depends on Plan Commission, depends on what they determine will be good in that area.

Alderman Ament: When we do engineering, we determine capacity, has to be rough percentage, can we get a rough idea of the numbers we are losing in the tax base?

JP Walker: I believe that is the exact analysis that our consultant took performed in determining the proper size of the facility. I can get that from the consultant.

Alderman Ament; I would like to see what the estimated tax value is that we are losing. Also looking at Intermunicipal Agreement, 2nd page under #2 that's where I was looking at the tax difference. Would like to know what that number is. Under #5 – Parties acknowledge that New Berlin will serve as the management agency. Staff time? Is Muskego going to reimburse us for staff time?

JP Walker: The way the construction contract is set up New Berlin is set up as the owner. Therefore, we are required to retain the services of contracted inspectors for the day to day inspections. Actually Reukert-Mielke will be doing the inspections. The cities are splitting the cost. There won't be a lot of staff time unless there is a situation that comes up that isn't expected. Mel Corley, our Field Services Division Engineer will be adding this to his normal route for his daily inspections

Mayor Wysocki: Muskego's staff did the first half of this. We are doing the 2nd part of the project.

Alderman Ament: Just don't want a problem when it comes to an amount agreement.

Mayor Wysocki: Made a motion to recommend to Common Council to approve the Intergovernmental Agreement with Muskego to complete the land acquisition phase and construction phase of the Tess Corners Creek Pond for the amount of \$4,438.036.00 with the cost share to New Berlin being \$2,219,018.00.

Alderman Chiovatero 2nd the motion.

Upon voting the motion passed unanimously.

ITEM 25-04 Award of Construction Contract for the Tess Corners Creek Pond

Alderman Chiovatero: Recommend to Common Council the awarding of Construction Contract to the lowest responsible bidder C.W. Purpero, Inc. of Milwaukee, in the amount of \$2,622.081.95 for the Tess Corners Creek Pond subject to approval by WDNR of the grant fund.

JP Walker: This issue was taken before the Storm Water Committee. That Issue Paper only showed half of the costs due to the 50/50 cost share. Since we do not have the inter-municipal agreement approved yet, the City Attorney recommended that we bring it to this Board following our discussion that has occurred on the inter-municipal agreement so that we can review the total contract costs.

Alderman Chiovatero: Is Muskego aware of these costs?

JP Walker: Both municipalities have received recommendation from our consultant that these are appropriate costs and our consultant recommends that they be approved.

Mayor Wysocki: These figures are within the previous motions figures, these are not additional figures.

Attorney Blum: I would recommend that when you make the recommendation to adopt this resolution you make it to include that Muskego share the cost.

Alderman Chiovero made a motion to recommend to Common Council the awarding of a Construction Contract to the lowest responsive, responsible bidder, C.W. Purpero, Inc. of Milwaukee, in the amount of \$2,622,081.95 for the Tess Corners Creek Pond subject to approval by WDNR of the grand fund and subject to approval of the inter-municipal agreement between New Berlin & Muskego.

Mayor Wysocki 2nd the motion

Alderman Ament: Do we have the number of the grant fund that the DNR was determining on October 22?

JP Walker: Yes it is the \$203,000.00.

Alderman Ament: What does the last sentence mean under the rationale?

JP Walker: We have had discussion with the two property owners. They both understand their rights under Chapter 32. We have received appraisals; both property owners have a right to get a second appraisal. One is waiting for a second appraisal to be done, I'm not aware if the other one is getting a second appraisal or not. Because we are tied into the state grant there is an expiration date of December 31, 2004. We have to show substantial progress in construction. In order to start construction, if for some reason land acquisition has not been completed we need to file a notice of intent which our consultant has already filed and there has to be a Right of Entry Agreement with the property owners for the contractors and the city to go on the property which has already been discussed with them and they are OK with it.

Alderman Ament: The only problem then is the amount agreed upon?

JP Walker: That is correct.

Upon voting motion passed unanimously.

ITEM 26-04 Dedication of Public Infrastructure (Discussion Only)

JP Walker: Chapter 235, our subdivision code requires that the City Engineer recommend approval of infrastructure when it's time for a developer to dedicate improvements to the city. I have sent letters to developers where we have actually put down the final lift of asphalt, which is the trigger for the process to start where the dedication takes place. We are starting to get the letters in from the developers requesting that the dedication of the lands take place. We have to discuss here whether this has to go not only to this Board and then on to Council.

Attorney Blum: There are two concepts that are intertwined. The first concept who actually owns the lands that are shown on the plats for purposes of public infrastructure and how does the city acquire title to those lands. The second concept is the actual physical utility improvements or road improvements that may be built on these lands, what is the process for the city to determine whether the developer has appropriately discharged their responsibilities per the developer's agreement.

With respect to the plat chapter 236.29 is very clear on that it states "When a final plat of a subdivision has been approved by the governing body of the municipality or town in which the subdivision is located and all other required approvals are obtained and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications: That same language applies to CSM. If you approve a CSM or approve a plat and that document is recorded that is all that is necessary for the city to have title to the land itself for purposes of access for future work. The issue is though as far as the conclusion of the improvements that to the extent that they are done appropriately and to the standard of the developer's handbook and under the developers agreement that is where the confusion is coming in.

Under 235-12 it states, "The Director shall review and recommend to the Common Council acceptance of public improvements based upon opinion of compliance. The Common Council may accept dedication of public improvement after hearing the Director's recommendation regarding same." It's not all together clear there but my opinion would be that they are talking about the developer's agreement in that context.

Under 235-15-C in regard to acceptance it states "The Director shall made a written recommendation to the Board of Public Works for acceptance of improvements based on the developer's compliance with the development/improvement agreement.

For purposes of accepting the final plat of the CSM, Council would work at whether there has been compliance and would afford approval of recording the plat of the CSM thereby giving title to the City.

The bottom line is when you accept improvements what you are saying is that you have complied with the developer's agreement and were satisfied that the terms of the developer's agreement have been met. That's the process that might be helpful just to clarify some language in those two sections to indicate per state statutes the title is only passed upon approval of the CSM or Plat, but when talking about actual compliance with the developers agreement you need to decide whether you want it to be reviewed by this group or at the staff level. It indicates that all public improvements should be signed off by the Board Of Public Works.

Mayor Wysocki: The final recommendations by the Director should come to this Board; because then it's also the opportunity for a culmination of did they do everything they were supposed to under the developer's agreement. The details of that are the responsibility of this Board for the developer's agreement and the recommendation of the Director, which obviously sometimes comes through the City Engineer.

Alderman Chiovatero: There was discussion about the subdivision agreement, what about commercial property? Would that be the same?

Attorney Blum: Typically you will have some division of land, even in commercial development, whether it's a plat or a CSM the same concepts will apply. Chapter 235 deals with subdivisions but that is in essence the land division provision in your ordinance is found here.

JP Walker: This allows us to set the stage for sending back the letter of credits to the developers financial institution except for the letter of credit that remains in play for the 20% of the cost for a period of two years to guarantee workmanship and materials. This is a good step. It gives staff the definite direction.

Attorney Blum: My recommendation would be that if you are comfortable with that process, the council determines whether in fact these are appropriate lands to be ultimately dedicated for public infrastructure and then with a policy that staff makes a recommendation to this board in terms of approval. Then I can make some directions to 235-12 C and 235-15 -2 which would then basically make this work. IN 235-12 I would simply pair up the language of the state statute as to when title is actually conveyed. 235-15 would deal with basically the review process.

JP Walker: The timing on this is minimum of 1 year after development starts on a subdivision or commercial development. We do not place the final lift of asphalt on any roads until it is at least 70% built-out. By that time the CSM and the final Plat are already signed and approved by Council. This is just a formal dedication of public improvements that occurs any where from a year to two years after development starts.

There was no further discussion.

Alderman Chiovatero made a motion to adjourn.

Alderman Augustine 2nd the motion.

Upon voting the motion passed unanimously.

Meeting adjourned at 8:47 AM