

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday April 22, 2008

Members Present: Alderman Harenda, Alderman Ament, Alderman Seidl, Commissioner Bob Dude and Commissioner Jim Morrisey

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor) Mayor Jack Chiovatero, City Attorney Mark Blum, JP Walker, Bill Mielke (Ruekert & Mielke), and Sue Hanley (Office Coordinator Utilities & Streets)

Alderman Harenda called the meeting to order at 5:00 p.m. with roll call and declared a quorum with all members present.

UT B-08 Approval of Minutes from the February 26th meeting

Motion by Alderman Ament to approve the minutes from the February 26th meeting. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously.

CLOSED SESSION

The basis for the items to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (e)

Discussion and possible action to enter into closed session pursuant to Wis. Stat Sec. 19.85(1)(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:

- ◆ Discussion concerning Bargaining for the Purchase of water from the City of Milwaukee, City of Oak Creek and City of Racine.
- ◆ Review of Negotiation Strategy for extension of contract with Ruekert & Mielke for Lake Michigan water Public Relations Consultants Proposals & Discussion of Negotiation Strategy.

Motion to go into Closed Session at 5:03 p.m. by Alderman Seidl. Seconded by Commissioner Dude.

Roll call vote: Alderman Ament yes, Commissioner Morrisey yes, Alderman Harenda yes, Alderman Seidl yes, Commissioner Dude yes.

Motion to go into Open Session at 6:08 p.m. by Alderman Seidl. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Reconvene to Open Session

UT 12-04 -Status on Milwaukee Water Negotiations

-Status on Governor's Office & WDNR approval on Lake Michigan Water for remaining half of Water Utility Service Area

No new information on this item at this time.

UT 04-07 Update & Status on MMSD 2020 Plan – Impact to City of New Berlin

No new information at this time.

UT 05-07 Water Conservation Measures –Potential Rate Adjustments

Harenda: I want to set up a Special Utility Committee meeting to discuss this item and I am looking at meeting with Staff next week to discuss what we have done in our current and past operations with the Utilities, our planning and development within the City, what conservation we are doing and any code revisions our staff recommends. I invited Jeff Ripp of the Public Service Commission to give us a presentation on what he has seen across the state and any recommendations. I would like to wrap up

the meeting with suggestions of what Bob Dude, Alderman Moore, Mayor and I are recommending regarding conservation. We are looking at possibly Tuesday April 29th, but I will contact you on this via email.

NEW BUSINESS

UT 02-08 Sump Pump Requirements

Harenda: This was brought to the Water Resource Management Committee regarding stormwater I & I infiltration into the wastewater sanitary sewers. The Utility Committee discussed this in depth a few years back in conjunction with Buena Park.

Hart: We are asking for your approval to start inspecting homes for illegal sump pump connections to our sanitary sewer. We met last week with MMSD and they will start holding us to the limits we are pumping into the system now. Our graphs and flow monitors show that within 2-12 hours after a significant rain our pumping levels go way up then drop down, which means we have a lot of sump pumps that are pumping into the sanitary system which causes back ups to us and problems for residents. This was a sticky situation a couple of years ago, but we have to do something sooner or later. We have invested a lot of money into I & I projects and we need approval from the Committee and Council to inspect houses, especially in Basin 1. We have had a couple of problems during relining projects where people can't use water for 18 hours while the pipe is being cured. When the sump pumps discharge into the sewer line it fills up the basement while the curing is taking place.

Harenda: We did the Buena Park pilot study and said that we would not penalize the homeowners that worked with us and we tried to work on funding and incentive programs to help pay for this. Pre-1955 homes are still allowed to hook-up, they are grandfathered in, but they are still a problem with the system. We have a legal right to request to enter homes to do these inspections per our current ordinances.

Johnson: Yes.

Harenda: At the time, we were waiting for MMSD to require us to do more with respect to this. I read the newspaper article about flows on 124th and seeing peak flows at off times.

Ament: We did go into this in depth in the past about the cost of these inspections. Where does this fall?

Johnson: When we do the inspections of relining the lines during I & I work and people do have a problem when their sump pump water is going into the sanitary sewer. It can't go into there when the liner is being replaced and the basement backs up. We are trying to get away from the liability of the City being at fault for these people's basements being backed up with water. They are illegally hooked up and when they call with the backup we explain to them that the sump pump is going into the sanitary sewer. That would trigger us to go into the house and notify these people that they are illegally hooked up.

Ament: It wouldn't be a program over a set period of years to systematically go into homes and check?

Johnson: No. This would be through the projects that we are doing for the relining.

Ament: We would still have to look at some way of making this easier for the pre-1955 homes since back then that was what they were supposed to do. It will cost them more than some guy that has a sump pump that is going outside that stuck a line into the other side than something that was designed to go into the sanitary sewer.

Johnson: In the area that we are working at in the northeast corner of the City, a lot of people have 2 sump pumps so you have twice the amount of flow going into that line. If you divert that water we could drop our flows to MMSD.

Ament: They had a good idea in the 1800's of putting in cisterns. MMSD is requiring this and now that we have the meters showing what happens during rain events and within 12 hours after, do they have the same thing in Milwaukee for their stormwater and combined system?

Johnson: I think you should direct that to them.

Ament: If I get the opportunity I will.

Dude: I happened to have 2 sump pumps. The 2nd one is for the sanitary because it was set too low thanks to the building inspector and last week I had to replace both of them plus a pipe that broke and paid \$11,000 so I don't have a lot of empathy for people that are illegally hooked up. How much does it cost to fix this?

Johnson: Some of them are just hooking the line back out through the wall in your basement. They have a regular drain hose hooked up to the sump pump and let it go into the sanitary sewer. Some of them are hooked up to their foundations around their homes and hooked into the sanitary. They would have to dig it up and divert it.

Dude: What is it costing the Utility because they are illegally hooked up?

Johnson: On an average we are spending over a million dollars a year on the I & I to reduce our flow to MMSD. We are keeping our system tight, but we are still getting the same amount of high flow from the sump pumps into our sewer line.

Dude: The Sewer Utility customers are paying about \$100 a year for that. We have to continue to spend the money because we are hitting the limits because the illegal hookups are making us hit the limit.

Johnson: Correct.

Ament: When you say illegal, the only problem I have with that are the pre-1955.

Dude: I have no problem with that. They were grandfathered in.

Harenda: The issue we dealt with a number of years ago included a number of other things the laterals, inspections, smoke testing, clear water permits, but what you are looking for now is a little different. When you are doing relining you are looking at those homes in the area that have any illegal connections and are looking to fix it which is a little less of an impact than a few years back.

Morrisey: With this I & I program how many homes are you talking about and who would do the inspections?

Johnson: The last one we did was 380 homes. When we do the I & I project we always have an inspector included in the cost of the project. Everybody gets a notice when the work is done not to use water, so they don't have that issue of water backing up into their house. When people come home at night and call us to say their sewer is backed up and there is water in their basement, they don't realize where the sump pump water goes if they are illegally hooked up.

Morrisey: Who would do the inspections?

Johnson: The inspector that is on the job site will notify us or the resident will call us and we will go out and investigate. The ones that have backed up in the residential areas that we have been working on have changed their hook ups.

Morrisey: You would only inspect the houses that report a flooded basement. You wouldn't proactively inspect them.

Johnson: That is what we are asking the Committee. If we are working on a street, do you want us to inspect all of the houses or just when they back up?

Harenda: If you are doing one, you might as well do them all to get the problem taken care of.

Dude: We got bogged down the last time, because we were going to use Buena Park as a test case and we were going to exempt the volunteers there, but the City Attorney said that you can't do that. Then we

were going to set aside some money in the budget. We should be notifying people that what they are doing is not legal according to statutes if they purchased a home built after 1955. As you go into different areas and you let people know that is going to happen, what is our policy if we find people that are illegal and why would we not require them to become legal?

Harenda: That is our policy, it is in our ordinance right now.

Dude: Why would we not be enforcing it?

Harenda: I guess we should be.

Ament: It is finding it more than enforcing it.

Harenda: Technically they can deny us access, then we would have to get a warrant if they deny access.

Morrissey: Currently when somebody contacts you during an I & I project with a flooded basement do you then inform them this is an illegal hookup, go back and do a follow up inspection?

Johnson: Yes. Most of the people who had the basements that were backed up knew they were illegally hooked up. They say OK we will fix it, since the City is not responsible for the damage that their sump pump did to their basement.

Dude: If we have got the ordinance on the books, what is the precedence by not enforcing it?

Harenda: I don't have a problem with enforcing it. The only difference is the Buena Park project where we allowed an exemption because they volunteered to give us access.

Ament: We weren't going to specifically nail them, but whatever the policy is, whether we find out when we are doing relining or we have a citywide policy to go to "x" many homes a year, then I would think that all bets are off due to circumstances.

Harenda: We have to be fair and consistent across the board.

Dude: The way it bogged down is that the City Attorney said if you give them amnesty you have to give everybody amnesty. We looked at low interest loans and grants that would come out of the budget, but that bogged down. I think we should send everyone a letter to inform them the hookups are illegal per ordinance and how you can check it. If you check into illegal hookups we have no choice of enforcing it.

Harenda: Didn't we put some information in the city newsletter or utility bills awhile back? If not, we should be doing that and providing them information about illegal hookups.

Johnson: This year we were focusing on industrial I & I. Next year is more residential, so before we start that would be a good time to inform everyone in the area that we are working in of possible illegal hookups.

Dude: One other thing that came up in our earlier discussion. Can we as a City get a contract with 3, 4, or 5 plumbers that will give us a fair price and a reasonable rate for residents who need to repair these hookups or will that get us into a liability issue?

Johnson: I think most of these issues that are illegal the owners can fix because they probably hooked them up themselves. It is just a pipe that is going into the sanitary that they can put into the stand pipe. We are not doing any residential projects now, so we have time to make a decision and recommendations on this.

Harenda: I think your staff should implement this and do a PR campaign. We are going to target the relining project areas, but the ones we are aware of, we will have to notify them to correct the problem.

Johnson: The ones that we ran into the last project knew they were illegal and took care of it.

UT 03-08 Request for the City to Vacate an Old Force Main Easement

Walker: The City was approached by the owner of the Deer Creek golf course to abandon an old force main easement that runs across the golf course. This force main was associated with the Spruce Road Lift Station which has been abandoned for a number of years. I don't have a clear indication as to why it is an issue, but it is a request from the owner of the private property and the City has no need for the easement as far as I know.

Harenda: What have we done in the past?

Walker: We have vacated easements in the past.

Harenda: For zero compensation. We're just giving back the land.

Dude: Is this the guy we forced to move and do something else?

Walker: Yes. When he came forth with his development we required a gravity system go down Spruce Road across the Tesch property onto Howard Avenue and into his development.

Dude: As I recall he wasn't too happy about that.

Walker: He wasn't happy with the route, but he was compensated for the cost difference of the route that we required. Now that he has a gravity system that serves his development and I'm sure he is happy.

Dude: He and Larry (Wilms) went back and forth pretty heatedly as I recall.

Walker: Yes.

Ament: This whole thing of the sewer system, vacating the easement and abandoning the force main and going down Spruce was precipitated by the development that is going in now. The problem that I am having is that to do this and the main purpose of this whole thing was this development that required the sewer down Howard and ultimately from Spruce down through the Tesch property rather than using the force main. There is some benefit to the City not having to have that pump station, but the major benefactor is the developer. To do that, the City purchased that Tesch property for \$56,000 and spent \$35,285 to run the sewer through the Tesch property for a total of \$91,285. The easement goes through an existing building that they are building now and it is also where they are proposing to put an additional building in this development, which I think would be a problem for them and they wouldn't be able to do with that easement there. That is his reason for doing that, because the easement goes through his buildings. The City spent this money and in my opinion I am willing to abandon the property but I think he owes the City back the \$91,285. He is approaching us to abandon this, that is benefiting him and he should reimburse the Utility.

Harenda: Do we have the ability to get some money back on this for some of the upgrades?

Walker: That would have to be referred to the City Attorney.

Harenda: I don't know what the precedence is and what our legal obligations are.

Blum: The answer is that you can ask for anything. The question is what the legal connection is between the existing easement and the cost that Alderman Ament was identifying. If you can make a connection between those payments and you would say the City did not receive a benefit for those payments, then I guess you can make that analogy. But if you take the position that some of the money that was spent was for things that the City got benefit for otherwise, I think it will be hard to ask for the whole amount. I think at this point, as I understand it, it is an abandoned in place line that the City has no reason or need for at this point, so from a legal standpoint there doesn't appear to be a reason why it couldn't be rescinded and the easement terminated. My only concern is that since there is still a pipe in place I would be looking for some indemnity back from the property owner because I don't want a situation where there is excavation done and that thing is done and it is hit and it comes back at the City that it was our line at

some point and time and we were responsible for where it was placed. If they get it back, they would have to take all responsibilities for the in place line.

Harenda: We have no legal obligation to vacate the easement.

Blum: You got an easement in perpetuity for this purpose. If you no longer are using it for this purpose, logically you should terminate it, but is there a requirement? I haven't looked at the easement that is involved. I would suspect that there is not a requirement that it should be terminated.

Dude: If we don't have a reason to keep the easement, I am not one to use eminent domain if we don't have a reason to do that. I presume that they can still build on it, with the only problem if we ever have to use it again we have a legal right to knock the house down. On the other hand, if we did put some dollars out for the development and he wants this, if he makes some sort of offer with the indemnity that would be a middle ground. I don't know if we need the whole \$91,000.

Ament: In the original agreement in 1978 signed by Gerald Kasian it says permanent 60 foot wide sanitary sewer easement. He is coming to us and I think we should ask for the whole amount. It is a benefit to him. As a stockholder in the Utility, I would like to get all of the benefit I can and I think from somebody that already got a benefit from us and I think we have the leverage to do it. I suggest that he has anything that has to do with the abandoned main as described by the City Attorney and we want \$91,285 and if he wants to negotiate he can come back.

Motion by Alderman Ament to approve the termination of the existing sewer easement in exchange for an indemnity agreement as against future liability claims in place sewer line and reimbursement of \$91,285 spent by the utility to purchase the property and run the current main down Spruce through the Tesch property. Seconded by Alderman Seidl and upon voting the motion carried unanimously.

UT 04-08 Award of Construction Contract for Sanitary Sewer Rehabilitation Project on Lincoln Avenue

Johnson: This award for bid is for the Lincoln Avenue re-lining project that we have in the budget this year for the Industrial Park and is part of the ongoing I & I project. The low bid from Michels Pipeline came in at \$441,951, which is \$90,000 below our engineer's estimate. We are going to be doing roughly 7,000 linear feet of sanitary sewer relining and grouting of manholes.

Ament: This is from where to where on Lincoln?

Johnson: From Calhoun to Moorland on Lincoln Avenue and on 170th Street. This is one part of two I & I projects that we budgeted for this year.

Harenda: This is not in an area we are doing road reconstruction is it?

Johnson: No, this is all relining.

Motion by Alderman Ament to approve the Construction contract for Sanitary Sewer re-lining, replacement, manhole grouting, testing and sealing for the Lincoln Avenue Project to the lowest responsive and responsible bidder, Michels Pipeline, in the amount of \$441,951.00 for a total project cost not to exceed \$486,146.10. Source of Funds: Wastewater Account 81001131.52030. Seconded by Commissioner Morrissey and upon voting the motion carried unanimously.

Motion by Alderman Seidl to adjourn at 6:45 p.m. Seconded by Commissioner Morrissey and upon voting the motion passed unanimously.

Privilege of the Floor – There was no one in the audience who wished to speak.

*Please Note: Minutes are not official until approved by the Committee
Respectfully submitted,*

Suzette Hanley - Office Coordinator, Utilities & Streets