

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday July 26, 2005

Members Present: Alderman Gallagher, Alderman Ament, Alderman Harenda, Commissioner Jim Morrissey, and Commissioner Bob Dude

Others Present: Ray Grzys (Director of Utilities & Streets), Larry Wilms (Division Engineer), JP Walker (City Engineer), Steve Schultz (Ruekert & Mielke), Mark Wimmer (Wimmer Brothers), and Sue Hanley (Office Coordinator Utilities & Streets)

Alderman Gallagher called the meeting to order at 5:00 pm declaring a quorum with all members present.

ITEM UT I-05 Approval of minutes from June 28th meeting

Motion by Commissioner Dude to approve the minutes from the June 28th Utility Committee meeting. Seconded by Alderman Ament and the motion passed unanimously, with Alderman Harenda voting present since he did not attend the meeting.

ITEM UT 12-04A Milwaukee Water Construction Update #11

Steve Schultz from Ruekert & Mielke said that this was the final project update with the Milwaukee water project nearly completed. He said that there are still a few items on the punch list including grass at the Grange Avenue pumpstation, some minor pavement work, and some work on a water main, but these should be completed by mid-August when final payment is requested. Mr. Schultz said that the City started distributing Lake Michigan water on June 28th, which is taking the load off of the New Berlin wells. He continued that there was a slight delay from the original plan when they received a last minute call from Milwaukee water personnel that an electrical feed to a pumping station went out, and Director Grzys and staff decided that they would wait until the replacement was installed. He added that they were working with people from Milwaukee water to run the pumps at different hours to fill the towers, so that it does not conflict with their peak demands.

Steve Schultz said that the water switchover ceremony took place on July 21st, with many Milwaukee water personnel including Public Works Commission Jeff Mantes, Mayor Chiovarero and former Mayor Wysocki, Utility department staff, aldermen, members of the Ruekert & Mielke design team, and media present. He added that he had received many compliments on how nice the Grange Avenue pumping station looked.

Mr. Schultz continued that the next steps would to finish final restoration, and follow the Annex 2001 process, and limit radium compliance work as much as possible until we receive additional information. Mr. Schultz stated that the Annex 2001 was rewritten and more descriptive and favors municipalities like New Berlin that straddle the boundaries and have Milwaukee water serving some customers. He stated that he worked with staff to get the DNR to agree that we could look at what other communities have been doing with the radium compliance issue, instead of doing our pilot study, setting up mini treatment plants, etc. He said that they have also reviewed the initial work at wells 1 and 3 to see if we could reline and backfill the other wells, but found that because of the way they were built with dynamite in the 60's, there are

limits to the modifications and tools that they can drop in to work on these other wells. He said that they are moving toward a treatment solution, instead of logging and lining.

Mr. Schultz discussed the final budget figures if the Utility received the SBC payments for the mismarking error, if the City received liquidated damages or if the City did not receive reimbursement, and the final amount will still be less than the approved budget. Commissioner Dude asked Mr. Schultz what the City will have to do to receive the liquidated damages? Mr. Schultz said that this amount has been withheld from the contractor's payments and are accounted for in the contract since they were the fault of the contractor; however, he did not want to comment further since the City Attorney was not at the meeting. Commissioner Dude asked what things have been done so far to get reimbursement of the liquidated damages from SBC? Director Grzys answered that the City has sent a letter to SBC following the initial delay.

Alderman Gallagher and the Committee requested that the City Attorney write an opinion on this matter. Director said that they have not received any letter from the contractor regarding withholding the liquidated damaged from payment. Steve Schultz said that when final payment is submitted, this may generated discussion. Director Grzys said that since the project was late, it delayed road construction and cost the City additional money. Commissioner Dude suggested that Director Grzys touch base with the City Attorney regarding sending a letter for liquidated damages, and that it may be better if it is on the attorney's stationery. Director Grzys said that he would follow up on this.

Commissioner Dude asked Steve Schultz if he could present the Committee with an update on Annex 2001? Mr. Schultz said that he does not have all of the answers at this time, but would be happy to provide an update, and suggested that it be a closed session.

Alderman Harenda asked if there were any pressure problems with the new Milwaukee water? Steve Schultz said that a few valves had to be shut, but there were relatively minor problems. Director Grzys added that there were a few quality issues, as not all of the water was out of the system. Director Grzys said that City engineers looked at areas near the subcontinental divide line, especially near Coldspring road and found that they do have flow to the east. Some of these citizens were at the Public Informational meeting on June 4th, and were quite vocal at not receiving Milwaukee water. He said that staff is working with the DNR and Sewerpac at changing the boundary line of the subcontinental divide, and there is a letter will be mailed this week to the people affected. He said that there is a valve going in with the Coldspring Road project that is designed to close off or isolate this area. If staff receives an answer before the project starts, the valve can be eliminated, if not, it will be put in.

Alderman Harenda asked about the residents near Sunny Slope and Beloit that are east of the subcontinental divide but because of a main issue were not receiving the water? Mr. Schultz answered that the only way to serve these residents would be to install another 16" main, which would be a significant amount of money. Director Grzys said that because of the hydraulics of the system, pressure zones and cost, some residents did not receive Milwaukee water, but staff followed former Mayor Wysocki's goal to get the most people on the system as possible.

**Item UT 13-04 Direct City Attorney to research & advise Utility Committee on
Legal Rights concerning MMSD issues (remains tabled)**

**Item UT 51-02A Proposed Special Assessment for Moorland Road
Water & Sewer Project for benefits conveyed**

Larry Wilms, Division Engineer presented the committee with a map of the area containing the 37 parcels and explained how certain larger lots were divided into several lots that would be

deferred for assessment and potential development. In addition, he explained the lots that contained conservancy area that cannot be developed, so this area will not be assessed. Assessment on 2nd tier property in parcels 2-26 could be deferred 10 years without interest, if left undeveloped, and an option at that time to deferred it another period of time. Alderman Harenda asked if the back lots or 2nd tier lots are developed, the Utility will recoup its money at that time. Mr. Wilms answered yes, the Utility will be sharing with the cost of the oversizing. Mr. Wilms added that by deferring the assessment 10 years with no interest on the 2nd tier lots, with the City is not pushing them to develop these areas.

Commissioner Dude asked about the formula for the assessed frontage. Mr. Wilms said that assessment formula is based on 33% of the size of the lot, 34% on assessable frontage and 33% on assessable REC's. Commissioner Dude said that Lot 17 only has a small area of frontage on Moorland, and asked what the assessment would be on that parcel? Larry Wilms said they would be assessed the same amount as lots 18 and 19 since the code says they have to be charged the minimum. He added that although the frontage is only 10 feet, a house could be developed in the back. Mr. Wilms said that he will discuss this issue with the City Attorney.

Alderman Ament said that he is an alderman to half of the area (the other part is Alderman Hegeman's district), and he said that he was opposed to this when it was voted on at the end of 2003. Alderman Ament said that there is no question that if you put water and sewer in front of a farm field, most of the owners can't afford the assessment, and you are forcing development.

Alderman Harenda asked if the deferred assessments could be more than 10 years, perhaps 15 or 20? Mr. Wilms suggested 10 years with an option to petition later. Director Grzys said that the original thought of water going into this area was part of the Milwaukee water project to loop the system, and that sanitary sewer should be added at the same time. There was a public hearing on this issue in 2003, and there will be another public hearing at the next council meeting. Jim Morrissey asked what portion of the oversizing the Utility was paying for? Mr. Wilms said the Utility was paying half. Commissioner Dude asked if the \$968,217 will be recovered if payment is deferred? Mr. Wilms said that if the 2nd tier lots are not developed, that money (approximately \$295,000) would not be recouped. Commissioner Dude said that the rest of the sewer and water customers would be paying for this expense then.

Alderman Harenda asked Mr. Wilms to present the committee various assessment scenarios that he had done in the past in order to determine the fairest formula. Commissioner Dude and the other Committee members said that they did not appreciate Mr. Wilms handing them this information at the meeting with no chance to review it.

Item UT 51-02B Recommend Award of Construction Contract for the Water & Sewer Main on Moorland Road

Mr. Wilms said this item would be conditioned on the Council's approval of levying the assessment. Alderman Harenda asked what the start date would be on this project? Mr. Wilms stated that it would start upon final assessment, public hearing and award of the contract, with the finish date of substantial completion by Thanksgiving. Commissioner Dude asked who the interest is paid to in item #6? Mr. Wilms said that is the interest paid to whom the loan is taken out on, and added there is a 90-day grace period after levying the assessment. He said if the owner pays the assessment, there is no interest paid. Commissioner Dude said that he proposed in the past to borrow money from the Sewer Utility so that any interest can be paid to the Utility. He requested that Finance Director Mike Holzinger come in to answer questions and to see if this can be done. Alderman Gallagher asked if this money has already been bonded? Director Grzys said yes, that the Source of Funds is the Water and Sewer Utility accounts and approved in the 2004 CIP budget.

Motion by Commissioner Jim Morrissey to recommend to Council to award the Construction Contract for Moorland Road Water Main and Sanitary Sewer construction to the lowest responsive, responsible bidder, Mainline Sewer & Water, Inc., Pewaukee, WI, in the amount of \$997,520.25 and to waive any irregularities, with a total project cost not to exceed \$ 1,465,050. and funded from Impact Fees and Special Assessments, conditioned upon Council adoption of Final Special Assessment Levy Resolution # 05-___ for this project assessment district. Charge to Sewer Utility Acct #80-173410 and Water Utility Acct # 90-173432 included in the Approved Year 2004 CIP Budgets, Source of funds is Impact Fee accounts # 274-003 and contribution in aid of construction via Special Assessments. Seconded by Commissioner Bob Dude and upon voting the motion passed 4 to 1 with Alderman Ament voting NO.

ITEM UT 05-05 Approval of Year 2020 Upgrade Study for Regal Manor West Liftstation

Larry Wilms said that the Committee at the last meeting asked that a request for proposal be sent out for bids. Mr. Wilms said that this proposal was sent to 6 firms, with the lowest responsible bidder being Earthtech. The Utility Committee members agreed that they needed time to review this information that Mr. Wilms handed them at tonight's meeting prior to making a decision, and asked him not to put the Committee in that position again.

Motion by Alderman Ament to table this item. Seconded by Alderman Harenda and upon voting the motion unanimously.

ITEM UT 06-05 Discuss Need for Looping Main – National, Calhoun & Observatory

Motion to table Item UT 06-05 by Alderman Harenda. Seconded by Commissioner Jim Morrissey and upon voting the motion passed unanimously.

ITEM UT 07-05 Review & Action on special consideration request for metering the water supply system at the Residences of City Center

Mr. Grzys said that they are requesting the Utility Committee to discuss the need for a dedicated meter room with an individual meter for each unit in the 56-unit apartment building at The Residences of City Center. If the decision is to allow the Developer to only install 1 meter for the entire building, then recommend to Council that the Developer be granted a waiver of the requirements of Municipal Code 267.10. Director Grzys said that the revenue per quarter for a single meter is \$126.00 and \$1,050 for 56 individual meters. Director Grzys read the rationale:

The Developer has informed the City that he plans to offer the apartment units as apartments, but may offer them as condominiums if there are favorable market conditions. Apartment buildings do not required dedicated meter rooms. If the units are offered as condominiums, Municipal Code 267.10 requires the building to have an individual meter for each unit located in a dedicated meter room with outside access by the Utility Department.

The Developer has indicated in the attached letter that the Association will be responsible for making the utility payments. Staff has concerns about how the Utility will receive payments should the Association be dissolved in the future. What type of guarantees is needed from the Developer?

Mr. Mark Wimmer, of Wimmer Brothers 5300 S. 108th Street, Suite 1, Hales Corners, WI said that the City of New Berlin is the only municipality he knows with no cap on the number of units that can have a single meter. Mr. Wimmer stated that this is inefficient in building the meter

room itself, and that space, maintenance and reading meters should be considered. He said that his company is studying going from apartment complex to condos. He added that to install 56 individual meters would be \$1,800 to \$2,000 per unit for plumbing costs.

Alderman Gallagher asked if there were any similar situations in the City? Larry Wilms said that in the future there will be apartments with 34 units. Alderman Gallagher asked how the condo association would divide the water and sewer charges? Mr. Wimmer replied that generally it is a 1/56 share, but this can also be done by plumbing fixtures. Alderman Gallagher said that the City Attorney should be asked about the legalities and if this is enforceable.

Mr. Wilms said that the rationale behind the policy was that like electricity and cable, all are individually meters, whether they are apartments or condos. Mr. Wilms added that the intent was to provide a more reliable revenue stream, where the higher users pay more. He said that smaller meters are more accurate, whereas larger meters don't even register a toilet running for example.

Mr. Wimmer said that he thought the Utility staff was in favor of the request, and he would even be willing to accept an increase in the base meter charge. Commissioner Dude said that the developer usually writes the condo association declaration, and that they need a declaration that says they will pay the entire Utility bill first before they can get permission to change the code. Mr. Wimmer said that they can produce the document once it is passed, but that they did not want to go through the expense of \$10,000 to \$15,000 and come back to the Committee and see that it does not pass. Director Grzys said that they have the support of the Utility staff, but that the Utility does not want to be a collection agency. Alderman Gallagher suggested that the City Attorney look at the Municipal Code and that they look at what other communities do. Director Grzys said that he will contact the City Attorney about a proposed change in the municipal code 267.10.

Motion by Alderman Harenda to defer Item UT 07-05. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Item UT 08-05 Approval of Release of City Sanitary Sewer Easement Rights for Roadway Construction

Mr. Morrissey excused himself from any voting on this issue as he is an employee of the WisDOT.

Mr. Wilms said that the easement overlays a piece of land that the state of Wisconsin purchased.

Motion by Alderman Gallagher to recommend to Council to approve execution of WisDOT form DT-1660, Conveyance of Land Rights, associated with existing Utility easement over acquired right-of-way on parcel at 179975 W. Greenfield Avenue (aka NBC-1165-958) to avoid delay in the roadway reconstruction project schedule. Seconded by Commissioner Dude. Upon voting the motion failed 1 vote to 2 with Alderman Gallagher voting YES, Alderman Harenda voting NO and Alderman Ament voting NO. Commissioner Dude abstained from voting since he did not have time enough to review and discuss this issue and Commissioner Morrissey abstained since he is an employee of the WisDOT.

Motion to adjourn by Commissioner Dude at 6:58 p.m. Seconded by Alderman Harenda and upon voting the motion passed unanimously.

*Respectfully submitted,
Suzette Hanley - Office Coordinator, Utilities & Streets*