

Minutes
Water Resource Management Utility Meeting
(Formerly Stormwater Utility)
April 8, 2008

Please note: Minutes are unofficial until approved by the Water Resource Management Utility (formerly Stormwater Committee) at their next regularly scheduled meeting.

Present: Alderman Ken Harenda, Alderman John Hopkins, Alderman Bill Moore, & Mayor Jack Chiovatero

Excused: Commissioner Jim Kern

Others Present: Nicole Hewitt (Division Engineer), Cathy Schwalbach (Stormwater Engineer), Greg Kessler (Director Comm. Development), City Attorney Mark Blum, JP Walker (City Engineer), Chuck Trevorrow (Stormwater Supervisor), Matt Bednarski (Bonestroo) & Sue Hanley (Office Coordinator Utilities & Streets)

Meeting called to order at 4:48 pm by Alderman Harenda. Roll call and declared a quorum with all members present except for Commissioner Kern who was excused.

Old Business

SW 01-08 Minutes from February 12th Meeting

Motion by Alderman Hopkins to approve the minutes from the February 12th Water Resource Management Committee meeting. Seconded by Alderman Moore and upon voting the motion passed unanimously.

SW 05-08 Resident Request for Maintenance of Weather Creek Estates Drainage way

Hewitt: Mr. Molling contacted Alderman Moore regarding maintenance of the Weather Creek Estates drainage way. Alderman Moore and Greg Kessler then issued a letter to him regarding what we viewed as the maintenance requirements on that site and that is outlined in the issue paper, which explains what the actual Developer's Agreement statement and what the Subdivision Restriction statement was. Mr. Molling then issued a letter to us asking that this be brought before the Committee for a ruling.

Alderman Moore: There are a minimum of 4 different sections here, Weather Creek Estates being one of them and the Developer's Agreements are a little bit different. Two talk about mowing down to the center line of the drainage way, which Mr. Molling has been following and is interested in everyone else following the Developer's Agreement. In our discussion with the City Attorney, he stated that the Developer's Agreement only talks about agreements between the homeowners.

John Molling 3850 Pohl Drive, New Berlin 53151: Weather Creek is behind the houses, it starts at Howard. He thanked Alderman Moore for his help and indicated this has been a problem for years. I have been here since 1991. The last 60 feet to the creek isn't even mine, it is New Berlin's, but the agreement was to keep it clean down to the center line of the creek. Probably 7-8 of the houses above me toward Howard Avenue have just not done it, and have worked with then Alderman Chiovatero in the past, and then he approached Alderman Moore. He said the letter from the City Attorney indicated that I would have more right going against my neighbors than the City of New Berlin who owns the property, but I am not about to take my neighbor to court. He said that he picks up sticks 6 feet long, and there are sticks and shrubs and debris from upstream for years, downstream the owners do clean. The cat tails are lying down and the water can't run down the stream and it spreads out. He indicated he would love to see the Fire Department burn the area, especially the cat tails.

Alderman Moore: There could be some shore land rules and DNR or Corp of Engineer wetland rules that are out of our jurisdiction.

Molling: The subdivision on the south side of Howard is washing down the stream. It is a lot of water.

Alderman Moore: There is a difference between the east side and the west side. He lives on the west side of the stream. The east side does not have the same covenant in their restrictions, so that becomes a little bit of a problem.

Alderman Harenda: The concern that I have and the Committee has is that these are things that we have let the property owners take care of, private or public drainage easement maintenance because we don't have the money or the manpower to do these things since there are a number of these in the City. I asked Attorney Blum if there is anything we can do to put some pressure on these homeowners to do the maintenance they are supposed to do according to the agreements.

Attorney Blum: Let me try to explain where we are at from a regulatory standpoint or an enforcement standpoint. When the request comes to me let's go in there and take care of it, my first question is what authority does the City have to do this? This was dedicated as a plat to the City and at that time the language in the developer's Agreement which is a contract between the City and the Developer that says the Developer is going to maintain this area that you are dedicating, the City will not be responsible sending a crew to do the work, the developer is responsible to do that. What the developer did then, is put a set of restrictions in place that are going to apply to all of the lots that contribute to the water that is flowing to the creek that says you are responsible as a property owner abutting that creek to maintain it. That agreement is a covenant amongst all of the property owners in the subdivision to take on certain responsibilities. The City is not a party of the subdivision restrictions. When you made the comment before that the City does not have as much standing as you to pursue it. The reason for that is that to enforce the subdivision restriction, the only parties that have the ability to do that are those that own property within that. I haven't reviewed all of the subdivisions restrictions except the one that is play here, but I am sure that the subdivision association as a whole, I don't know if it is even in existence.

Hewitt: No.

Attorney Blum: as an owner of the property, even if your association isn't up and running, the owners of the property. Say if an owner wanted to put up an out building that was bigger than the restriction, you could go to court and say he agreed when he bought the lot to abide by the restriction. The same thing applies to this stormwater requirement, but because the City is not a party to the subdivision restrictions we don't have the authority to impose that directly.

Molling: Are you saying that New Berlin does not own that property?

Attorney Blum: The City does own it but by the Developer's Agreement it transfers the responsibility to maintain that to the association and if the association isn't in existence, it is the responsibility of the abutting property owners. What can be done here? From my understanding when staff went to the property to look at it, they did not find obstructions to the water course such that would trigger a violation to our ordinances. We have ordinances that give us the ability to site a property owner if they were obstructing a water course. That applies to something that the City has title to or not. If there was a tree that fell or debris that someone threw something in there that obstructed the water course, then we could site somebody under our ordinances if they refuse to clean that up so that water ran appropriately. There are other regulatory agencies that have authority. The City has a stormwater permit NR216 that deals with water quality issues. Maybe aesthetically you may want the whole area burned out and that vegetation be gone and you would be left with a creek bed, but the DNR looking at the water quality standpoint, wants to make sure that the sediments that may be in that water that flow from a parking lot or whatever debris settles out and gets filtered and part of the way it gets filtered is to naturally go through the cat tails and other vegetation in the creek bed. For the City to say at this stage for this to be cut out, I'm sure the DNR would not look favorably on that. We have some limitations even if we wanted to do

that. The landscape has changed since this particular set of subdivision restrictions was put in place because the City no longer takes title to these kinds of water courses. We have some situations such as this that have been dedicated, we have some easements in place, but by and large we don't take title to that and make it the responsibility of the individual property owner or the subdivision and then enter into a separate contract directly between the City and the property owners so that they follow through with those responsibilities. Because of the age of this particular one, it was not something we did at that time and the water quality restrictions that we are forced to deal with in the state have changed as well. Some of the things that we could or couldn't do back then have changed. I don't think we have the authority to tell your neighbors to follow that subdivision restriction. If there is an obstruction that staff feels violates the terms of our ordinance and obstructs the water course, we do have ordinances that we can site anyone who refuses to take the responsibility for that.

Mr. Molling: If you can't help me on that I am going to need higher hip boots.

Harenda: Who went out there?

Hewitt: Both of us and Greg.

Harenda: At this time there aren't any major obstructions that you see that are violations of the current ordinances.

Hewitt: The water was flowing. Clearing all of that out the water would probably flow a lot faster and there is already erosion downstream, so having this in there is actually helping the stream stay intact as it is now. If we did go in and maintain and have it cut out like the subdivision restriction states, it would be more detrimental to the stream.

Harenda: When was the subdivision created?

Hewitt: 1990?

Mr. Molling: I moved in 1991.

Attorney Blum: It acquired a plat in 1990.

Harenda: I know the rules have changed.

Chiovatero: Several years ago when I was an alderman before the Water Resource Utility was formed. At the time there was a lot of overgrowth in this stream. We tried to help him and at the same time we found out about the issue with the covenants. At the time I think Jeff Chase was the City Engineer and possibly the Director of Public Works and we found out there wasn't too much we could do. Mr. Molling does take a lot of pride in his property and keeps it in great shape. At that time the City Engineer or Director of Public Works had offered to clear cut the area and put in concrete inverts all the way down or stone, but it would be charged back to all of the residents along the creek and the cost estimates were steep enough, I think around \$1,000 that they declined it and I don't know if we could have done that because of the DNR issues. Even Mr. Molling wasn't looking for that. I penned a letter with either the City Engineer or Director to clean the creek up or some action may be taken. The contact I got was they didn't want the concrete invert; they liked the privacy between the yards between east and west of the creek. The City did clean up the culvert around Howard Avenue to keep the flow going and a couple of neighbors did clean up the debris. We also got the owner of the property going underneath 124th Street to clean up some of the debris there too. I just wanted to give you the history.

Harenda: I worked with Cathy and Eric on a similar issue of the City getting more involved with the maintenance of private retention ponds and sending a letters to the residents getting them to reform the homeowners associations to pick up the cost of maintaining the ponds. If the City had to come in and do the work, it would have to be back charged to the residents. This is kind of a similar issue. Where are we with that issue?

Hewitt: The Stormwater Best Management maintenance is part of the comp plan.

Harenda: This is similar to this. Is this considered a navigable waterway?

Hewitt: I believe it would be and the paperwork for when this was built and when the creek had to be relocated, there is documentation that the DNR and the Army Corp of Engineers gave approval to do that, otherwise they would say they don't have any jurisdiction if it wasn't navigable.

Blum: I suspect it would be. There is a mechanism in place and inform them of the covenant in the developer's agreement. You are not going into the subdivision restrictions since we don't have any authority in that area. You could also make them aware of the 2 sections in the code 137-7 and 230-13 that deal with obstructions to the water course and if the City wanted to go in a clean within the bounds of the dedicated waterway, although I don't know if we could get in there without getting easements from the property owners, but assuming that could happen you could charge that back as a special charge for current services which is allowed under the statutes since it is benefiting these properties. From a water quality standpoint, I don't know how much of the vegetation the DNR would allow us to remove without violating the state statutes and state administrative code.

Hewitt: We couldn't do anything within the creek bed itself.

Blum: If the creek bed is all we have within the dedicated area then that answers the question unless we make a state application with the DNR.

Harenda: Is there any way we can assist by sending out some type of letters to the homeowners?

Chiovatero: It did help a lot last time, but some people did ignore it.

Blum: We can't say that there are restrictions and you have to abide by the restrictions or the city would take steps to enforce those. We can say when this was dedicated that this is part of the developer's agreement with your predecessor and interest and this is what it provided for and also include copies of those 2 ordinances that deal with obstruction of the water course. From what your staff is saying they really don't think there is any current violation of those ordinances so it would just be information going forward trying to tell them they should be doing something right now.

Harenda: The only concern I have is that if we push them to do some type of maintenance and they do more than they probably should, that puts us in some type of jeopardy.

Blum: The DNR would not look kindly on that.

Moore: Looking at our ordinances, the developer's agreement and wetland rules and shore land rules, if we try to do anything at all the only thing that I think might be legal is to encourage homeowners to cut off the tops of the cattails so large clumps won't float downstream and cause problems, especially at the corner of the stream of downstream culverts. That would allow for retention of the growth while it would discourage downstream dispersal of debris that may be caught.

Hewitt: You would be able to cut vegetation around that area without getting a permit, just not dredge or disturb the creek bed.

Moore: That would allow the natural materials to grow during the summer, but there wouldn't be debris downstream.

Hopkins: We might want to say cut and remove.

Moore: Yes, it would have to be taken away, but roots would have to stay.

Harenda: I have some of these issues in my district and if the homeowners would do this, it would alleviate some of the problems with debris and education the public about this. Is there a letter that we can put out to the residents to communicate our idea and not put us in legal jeopardy and get some movement that way?

Hewitt: We could send out a letter to the owners to the abutting property without going into enforcing it.

Blum: The difference is it is not an "or else" letter. We don't have an ordinance that says you have to whop off the top of cat tails in the fall. We do have an ordinance that says you can't obstruct the waterway and we can inform the residents of that and what would be helpful to maintain that habitat but it is more informational than confrontational.

Harenda: We are supposed to be doing that anyway; it is in the budget and one of the issues we can work towards.

Hopkins: We can prepare a letter and ask the City Attorney to review it and send it out.

Chiovero: This is a good time of year to send it out and it will be a lot easier to clean than in summer.

Harenda: Is there a concern of downstream erosion?

Hewitt: Picture #1 and #3 if you look past where it bends, it is kind of undercutting the bank.

Molling: It is getting a little wider down stream.

Harenda: Is that something we are going to have to look at in the future. I know we have done stream bank stabilization before at the golf course.

Hewitt: Eventually if it comes into play and causes problems upstream, then we usually go in and try to take care of the problems that are happening.

Harenda: On 124th street we are letting the residents know not to build sheds or plant trees or gardens that cause obstructions. Just let them know that we had to notify people in certain parts of the City to remove those. Thank you Mr. Molling. Can we just direct staff and the City attorney to write a letter?

Chiovero: Let's try an educational letter and see if we can put any force in there to encourage people to do it.

SW 07-06
Remains on the table

SW 19-05 Approval of Stormwater Utility Updated Five-Year Plan (tabled)

Motion by Alderman Hopkins to remove the item from the table. Seconded by Alderman Moore and upon voting the motion passed unanimously.

Brief discussion to drop this item from the agenda and wait until the Comp Plan is updated to bring this back. There will also be an update to the Stormwater Management Plan and the 5-Year Plan.

Alderman Moore expressed concern that the work that has gone into the 5- year plan will not be lost.

Schwalbach: That is correct. The information that we have gathered is being used in the Comp Plan. The Utility has been functioning a few years without a 5- year planning knowing that this is coming. It makes more sense to wait until the Comp Plan is updated to establish a 5-Year Plan.

Hewitt: We currently don't have the funds to do many of the projects that are in the plans until 2010.

Moore: That is one of my concerns, that without a plan we don't have a reason to ask for the funds.

Hewitt: The Stormwater component of the Comp Plan is to look into those issues and what projects need to be done and the permits.

Moore: I am concerned that we are 3 years behind much of stormwater needs.

Harenda: I think we are ahead of most of the other communities.

Moore: I am talking about the drainage list.

Harenda: Maybe for the next meeting, if Staff could give us an overview of everything we have approved regarding the Comp Plan review, AES, HNTB that is going to be doing the work for us, so that the Committee knows what is happening over the next 1 ½ years with the Comp Plan and how we are integrating the components into that.

Hewitt: I did include their Scope of Services in Exhibit B.

Harenda: I see the Scope of Services. We are doing a lot of different things in the Comp Plan and I just want to make sure that we are putting money into the Comp Plan for the Stormwater Update, including information from the SLAMM Analysis and there are recommendations from our consultant to meet our 2013 requirements and how we are going to tie everything together in the coming years. I don't want a big reports, just some information on how this is going to pan out and a timetable.

Motion by Alderman Hopkins to drop this item from the table. Seconded by Alderman Moore and upon voting the motion passed unanimously.

SW 03-08 Sump Pump Requirements

Motion by Alderman Hopkins to remove this item from the table. Seconded by Alderman Moore and upon voting the motion passed unanimously.

Harenda: Staff put some information for us. This will be on the upcoming Utility agenda in 2 weeks and we will discuss it further regarding Sewer issues.

Hewitt: Talking with Staff, I gave you some history from Doug Davis of what has been done in the past and the reasons why we do connect to the storm sewers.

Harenda: Alderman Moore you brought your concerns about disconnecting illegal discharges, we know that has to be done, but with respect to disconnection of future development and making sure that if any new development goes in it should not be connected to stormwater systems, if there is a stormwater system infrastructure in place besides a regular conveyance ditch. Doug Davis put together some information, the state code and interpretations of why we are doing what we are doing now.

Moore: I appreciated his explanations and I understand it. I wish that there would be a way there would be a difference between what we do in the winter and what we do in the summer, but since that sounds like an expensive proposition, I understand why it is being done and that ends my discussion.

Harenda: We will be discussing this further and the implications of other illicit discharge and extensions to the sanitary sewers at the Utility Committee and that will probably assist on those issues.

SW 04-08 SLAMM Analysis Final Report

Matt Bednarski: I am from Bonestroo and was here 2 months ago to talk about our initial results and now the study is complete. The reason for the SLAMM Analysis is two-fold. 1. To show compliance with the WPDES permit and look at the total suspended solids discharging to the waters of the state within the City limits. 2. Look at the recommendations from the past Stormwater Management Plan and the practices currently being used with regard to water quality. Bonestroo did a water quality analysis with software following the guidelines from the DNR for the stormwater model. For the purposes of the WPDES permit there are some exclusions in land use that the City benefited from and out of the 23,593 acres that make up the City, we only modeled 9,737 acres based on the way the permit is put together. The results pollutant loadings and phosphorous before and after applying BMP's and total removal rate of 31.7% which meets and exceeds the permit requirements for 2008 and compared to most communities in the region who are in the mid-20's, that is very good. The practices that are being used have made strides toward 2013 requirement which is 40%.

Harenda: This report only takes a snapshot up to October 2004 and anything thereafter was not included in this report correct?

Bednarski: That's right. The structural BMPs, the ponds were the snapshot portion up to 2004, but anything you are doing such as street sweeping or catch basin cleaning are the current practices.

Harenda: We have installed some retention ponds or control ponds at Malone Park; does that give us credit for that in this report?

Bednarski: Malone Park was included.

Hopkins: What about Underwood Creek? Are these figures up to 2008 or back to 2004?

Bednarski: 2004 is the date the DNR establishes as the baseline, October of 2004, so for existing conditions. After that the DNR put into practice the NR151 which requires 80% removal for any new development so it says you have to do that anyway so we are not going to give you credit for that.

Moore: In table, I note that within any one watershed the higher percentage of industrial land means a greater percentage of increase in total suspended solids.

Bednarski: That is correct.

Moore: What are the plans to alleviate that particular problem?

Bednarski: The 2nd part of the report includes some recommendations in order to try to meet the 40% requirement. For the Industrial lands themselves, there is a report from HNTB with regard to water quality, that plan is in place and being enforced.

Hewitt: With any new roads that are being designed within the industrial park we are trying to initiate any additional BMPs that we can, bioretention swales or anything we can so that they work and function properly, including properties that come in for development to modify. We are imposing that they have to provide for stormwater management practices where currently they don't have any.

Moore: Would that include bioretention swales along Calhoun?

Hewitt: I'm not sure.

Harenda: There are bioretention swales in the HNTB report.

Hewitt: I know they are along Glendale and Lincoln.

Moore: I heard you say when a new road comes in, is there a greater need beyond that to solve the problem within the industrial parks.

Hewitt: We will be looking at that as far as a cost-benefit ratio of how much we will advance toward the 2013 requirements.

Moore: This SLAMM Analysis will be part of the Comp Plan.

Hewitt: It gives us the jumping point as far as the loading and where we should concentrate our efforts.

Harenda: This report shows what this Committee has done over the last 5-6 years as well as what current Staff and past Staff has done as well as our Street crews to achieve the goal of 20% and far exceeded that and we are almost to the 40% and we have a number of years to go. The City and the Utility have been proactive in trying to improve what we have out there and I appreciate it, Chuck, Nicole and Cathy and past staff.

Moore: In 2000 when we hired our first people in relation to stormwater, prior to that we didn't have a significant process and since that time we have come a long way and I just wanted to echo that.

SW 06-08 Resolution to Authorize Application for Urban Nonpoint Source and Storm Water Planning Grant for the "Keep our Waters Clean" Education Program

Schwalbach: The City of New Berlin has a WPDES permit in a group known as the Root River Group. We did not apply separately because being part of a group saved expenses and allowed us to pool ideas in order to accomplish the requirements together. We are looking to begin our public education program and that is a program put together by the Root Pike Wind Group using people from UW Extension and it is called Keep Our Waters Clean. We had budgeted funds this year knowing that we would have to begin this program. The Root Pike Win Group suggested that we apply for grant funding that is available for this type of program and they are doing all of the work. They are putting together the application and paperwork and as a group we will all benefit and they asked for a community to represent them for the grant application. This resolution is for us to be the representative for the group to submit the application. It will allow us to cut our expenses 70% for the next 2 years for public education and we have worked with grant funding before, we are very familiar with dealing with DNR and the paperwork that is requires and this resolution is for your approval and then going to Council for approval to represent this group and apply for the grant. The grant is actually being applied for by the group. We are just the City to put on the application which will take responsibility for handling things and making sure they are done properly.

Motion by Alderman Hopkins to recommend to Common Council to approve Resolution 08-10 to authorize application by the Water Resource Management Utility, for the Urban Nonpoint Source & Storm Water Planning Grant for the Public Education Project as part of the Root River Permit Group. Seconded by Alderman Moore and upon voting the motion passed unanimously.

SW 07-08 Update on Street Sweeping

Trevorrow: We have been doing some sweeping, but it is not our normal sweeping. Cathy has developed a priority list of where we are starting for our normal sweeping for the year. What we have been doing the last few weeks, until we had the snow on Good Friday was trying to hit the spots that we had to put down additional sand because of the rain/freezing last February. We had to put that mixture down on the curbed areas to keep it from getting worse, but unfortunately Mother Nature prevented that. If we had put pure salt down, it would have melted and that melt would have frozen again anyway. We have been sweeping the areas that we had to concentrate in these ice damns. I know the aldermen have received calls, the sweeper has been in my area but he didn't do my street, it is because we have been concentrating on these bad areas and a couple of roads farther out on the hilled areas like on Glen Garry and Barton before the sand ended up in the ditch lines. We have been doing a lot of hopping around and trying to keep that sand from ending up in the storm sewers.

Harenda: Is it possible that you could send an email to the other aldermen to restate this to them in case they get calls.

Trevorrow: Exactly.

Harenda: When you get back to the regular schedule, are we doing the entire City when we are sweeping or just the eastern half of the City.

Trevorrow: We are trying to do all of it. Up until this last year we have been using the salt, so there really isn't a need to get into the rural areas, so we were concentrating on the curbed areas in the eastern part. Now that we have come up with this list of priorities, we have the industrial park, but we can't do the parking lots, but we will concentrate on the industrial main roads, the curbed areas and the retention facilities first.

Moore: Since this is the first year in some time since we put so much sand out, do you have enough capacity with the one sweeper?

Trevorrow: Right now we are using our old sweeper which is a mechanical sweeper, it doesn't have the vacuum on it, so we are doing a rough sweeping. It is hard to say, because of the sand this year, I would honestly say no it's not enough, but we will see how things go with budget issues and Mother Nature issues in years to come if anything else is needed, but for this year it is going to be very hard.

Motion to adjourn at 5:51 p.m. by Alderman Hopkins. Seconded by Alderman Moore and upon voting the motion passed unanimously.

Respectfully submitted by Sue Hanley, Office Coordinator Utilities & Streets