

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday July 27, 2010

Members Present: Alderman Harenda, Alderman Ament, Alderman Wysocki, Commissioner Bob Dude & Commissioner Jim Morrisey

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor), Mayor Jack Chiovatero, City Attorney Mark Blum, Ryan Bailey (Accounting Manager), JP Walker (City Engineer) and Sue Hanley (Admin Supervisor 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.

Call meeting to order. Roll Call and Declaration of quorum and public notice

UT 01-10 Approval of Minutes from the June 22, 2010 Meeting

Motion by Alderman Wysocki to approve the minutes from the June 22, 2010 meeting. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously with Commissioner Dude voting present.

UT 07-09 Discussion regarding the procedures used to authorize the payments of costs and fees for utility consultants and contractors

No action or discussion at this time.

CLOSED SESSION

The basis for the item to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. More specifically:

UT 25-09 Milwaukee Water Utility rate application PSC contested case hearing

Motion by Alderman Ament to go into Closed Session at 5:02p.m. Seconded by Alderman Wysocki. Roll call vote: Alderman Ament yes, Commissioner Dude yes, Alderman Wysocki yes, Commissioner Morrisey yes, Alderman Harenda yes.

Motion by Alderman Morrisey to go into Open Session at 5:10 p.m. Seconded by Alderman Wysocki and upon voting the motion passed unanimously.

Reconvene to Open Session

UT 25-09 Milwaukee Water Utility rate application, PSC contested case hearing – discussion and possible action

No discussion in open session

UT 08-10 Update, Discussion & Possible Actions on the Design & Construction on relocating the Westward Manor Liftstation

Hart: Our final design meeting is later this week. Bids will be advertised August 12th & 19th with bid opening August 26th so may want to reschedule the UT meeting for that date to get this moving.

Harenda: Sue please send out an email to see if everyone is available to move the meeting to August 26th and check if the Council chamber is available.

Wysocki: Have the easement issues been resolved? How did we fare with the rains?

Hart: Yes. The issues have been resolved, we had 2 soil borings and we had to do a little foundation work to the building because of how wet it is, but it is under control. We had 6-8" of water a few weeks ago and lost the underground power. WE Energies put a temporary cable above ground for us.

Wysocki: All the more reason to get this done as quickly as possible.

UT 10-10 Discussion & Possible Action on the AT&T Cellular Tower Lease Agreement

Blum: The premise on this issue is to consider a contract identical to the one we are currently operating under, but if they were looking at negotiating other terms we weren't amenable to that. They sent us a contract that is similar, but made modifications to 2 issues. One is the amount or renewal terms available. The current contract has 2 in addition to the initial term for a total of 15 years. This revision would make it 30 years if they exercised all of the renewal options. The other issue is the payment terms. The current issue provides for 5% increase annually or an adjustment based upon CPI to the extent there is inflation that number could be greater. The new contract only has the 5% annual increase. I contacted their representative and their response was that they have been using the straight 5% and have not been willing to make that modification. They were willing to look at a shorter term.

Dude: Most of our other contracts have 5% and I don't have an issue with that. I think if you look back over the past 20, 30 years, 5% is a lot more than CPI has been. I don't see any reason that we should increase the term since our other contracts are similar.

Motion by Alderman Wysocki to recommend to Council to approve the proposed AT&T cell tower lease for the water tower at 5161 S. Sunnyslope Rd, as presented, subject to the term of the lease together with any optional renewals being limited to a total not to exceed fifteen years. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT 14-10 Impact Fee Review, Discussion and Possible Recommendation to Council

Wysocki: We asked for a report with regards to Water in terms of the Smart Growth Plan and if anything is on the horizon.

Johnson: Ralph is working on this.

Wysocki: Can we get the report prior to the next meeting because we need to take action on these impact fees?

Johnson: Yes.

Blum: I have a copy of a memo from Ralph dated July 2nd that was sent to the Mayor and the Aldermen. He provided analysis and status of the city's various impact fees. We do need the analysis of the water impact fee from Ralph yet. From my understanding that was dispersed for the regional benefits payment for Milwaukee water contract. I don't know the specific numbers, but from my understanding there is a minimal balance in that account.

Wysocki: The discussion led to that we should continue collecting this in view of the potential impacts of the Smart Growth Plan, in terms of continuing development. The report was to validate that since there are some subdivisions that don't have water and if they requested it would it be considered new service. Not that I am forcing it on them but that always could happen. The issue is whether we should continue collecting and the decision is also driven by the Smart Growth Plan and any new services.

Blum: There was that discussion in the January 18th meeting, but the concern we had given the constraints that exist on the duration of time between collection and required disbursement, that unless we have a project in the pipeline, there is an issue of whether we would spend the money for those improvements within the time limits that we have. The thought was that you may want to repeal this fee and if you have a timeline for example work in Section 35 and you have project costs identified, you would start to collect a fee specific to that area since that is the area that would benefit. If we continue to

collect the water payments and we don't have a place to use them, we may have to return the money. There could be an argument that if you collect them citywide and there is new growth that is being created in one section of the city, is this fair to the other people that you collect the money from. When we had the meeting on January 18th, the conclusion was that because of the 7 year window that we have to collect and use them, it may be better to wait until you have more definition of when Section 35 would develop. I can ask Ralph to clarify this.

Dude: We have \$6.7 million dollars in sewer. Some sewer impact fees were collected prior to 1995.

Blum: Some of these were collected as connection fees prior to the evolution of impact fee law statewide and also the impact fee ordinance in New Berlin. Those fees were collected with a rationale similar to an impact fee, to fund the infrastructure needed for new development and only for capital improvement projects not maintenance and operation. We treated them as impact fees because of how they would be used. There is an issue because they were collected prior to impact fee law, to what extent restrictions in placed there would be operable to those funds collected prior to 1995. There is some limitation also to what the fees collected prior to this could be used for. This is where Section 35 comes into play, whether there would be an extension of an interceptor there and the existing impact fee study anticipated using some of the funds for that purpose. The issue would be if we should continue to collect them and the consensus was because of the timeline between collection of these new fees and the dates that you have to spend them, it would make sense not to do it until there was a defined project and then collect them.

Wysocki: The Utility did make a motion at the last Committee meeting and the Council did approve discontinuing the collection of the sewer impact fees so now it is the water impact fee. I only raised the issue to see if there was something within that window. It is harder to bring back the fee.

Harenda: What if we wanted to extend water to portions of the northeast side of the city that doesn't have water utility now?

Blum: That was not something contemplated in your existing impact fee study. It would be appropriate to update your impact fee study and if you identify a project like that you would have to get engineering numbers and costs then use it to decide what impact fee to charge and to charge just that area of the city or citywide.

Dude: Can you use impact fees to replace infrastructure?

Blum: You can't use it for maintenance or replacing existing infrastructure or I & I. It can only be used for improvements to accommodate new development, such as over sizing pipes to add capacity to serve a new area or accommodate new development.

Dude: Could this be used for Mill Valley?

Blum: Yes. You don't have that as part of your existing impact fee study. You would have to decide what improvements would be necessary and decide if you would levy an impact fee for that extension.

Harenda: Sue, please check with Ralph about this report and we will discuss at the next meeting.

NEW BUSINESS

Information: Parkland Green Update

Hart: We have about 75% of the water main in and 80% of the services. Everything from Brookside to the east should be done in the next 10 days and then they will move to Rohnke and Schneider. We are hoping within the next 2-3 weeks the Utility portion will be completed. They have started paving in some of the cul-de-sacs.

Harenda: We will finish this up by the end of the year JP?

Walker: Yes

Wysocki: I have received comments from people in the subdivision and do appreciate the cooperation of the workers and they have been extremely helpful.

Information Utility Payables, Monthly Financials, Financial Statements

Mr. Dude reviewed the Financial Statements. Water Utility for 2009 we did have a positive change in assets of \$1.3 million, operating income \$1.2 million, but investment income was down and a negative \$45,000 from the Department of Justice. Even though we had a jump for Milwaukee water, we have a strong balance sheet with working capital about \$7.5 million and current ratio of 11:1.

Wastewater Utility 2009 had 2 years in a row of negative earnings and we did not have a rate increase since 1996. In 2009 we had an operating loss of \$700,000 some of which was made of from investment income, although it was down from the year before. 81% of the account is controlled by MMSD and I & I work. We have a considerable amount of working capital and unexpended surplus that can be used for the utility. The Water Utility has borrowed from the Wastewater Utility for the last few projects, saving money for fees on the front end for borrowing and interest rate goes back and forth between the 2 utilities. The Water Utility as the borrower gets better rates than on the market and the Wastewater Utility receives a better return than they would on the market. We are running a good shop and are in good shape.

UT 15-10 Review, Discussion and Possible Action on how Utility Components in Roadway projects should be funded

Harenda: This item will be discussed at this Utility and Water Resource Management Utility and the Board of Public Works.

Walker: This item was discussed at the BPW on July 19th. We are trying to maximize the bang for the buck in our roadway rehab projects. The spreadsheets break down costs of every street we plan to rehab through 2016. The Utility will be looking at the cost for manholes and valve boxes and the WRM Committee for the cost of replacing culverts. The percentages are not very high, but over time manhole adjustments over the next 7 years will equate to approximately 1.4 miles of roadway rehab and valve box adjustments will equate to about .28 miles. We would like the Utility's viewpoint as to whether or not these components should be paid for by the entity that they are the infrastructure in.

Dude: I am on this committee to represent the utility. I don't have an issue for utilities paying for a utility product – hydrants and manholes, but you are talking about replacing things over and above. When you dig up a road do you find other utilities such as phone, electricity and cable? Do you bill them?

Walker: They are required to make the repairs or relocate themselves at their cost.

Dude: When we put in culverts which are very expensive, does the WRM utility pay for this?

Walker: Not at this point, but it is going to be discussed at the WRM Utility.

Dude: The WRM Utility is composed of 100% of the population, but the Utility is 60% at best of the population. You are asking 60% to pay for things that benefit 100% of the population. Do you agree roads benefit everyone in the community and people not in the community?

Walker: Yes.

Dude: Why should a narrow gap of people pay for things that benefit more for themselves? We are supplicating to the City of Muskego to try to get a utility out to get \$160 million dollars worth of new taxable property in Mill Valley. If we didn't have the Utility here we wouldn't have the taxable base we have right now. That 60% of the population is already paying for things that help this community lower taxes. You are asking us to put money into things that benefit everything.

Morrisey: I disagree. As an employee of the DOT when we do a project, we require the Utility to pay for their own adjustments. This is our utility in the roadway at the pleasure of the city. This is a benefit to the

utility customers. Private utilities such as AT&T, Time Warner, WE Energies pay for their own adjustments. You are asking for the city as a whole to pay for that adjustment.

Wysocki: For a long time, other than the other utilities, we included it in the roadway project costs. The utilities are only going to the utility users. There are no manholes in the western part of the city. We are using the city roadway or easements to put our utilities. We are separate from the city and our own enterprise and are like Time Warner when it comes to the relationship between us and city facilities. He makes a strong argument for us to look at this.

Ament: In discussions with JP, it was my suggestion to put this on the BPW agenda. They are looking at the input from both Utility committees to gauge whether this is an appropriate thing to do. Bob's arguments actually make me more convinced this is the right thing to do. When you talk about the 60% population of the utility customers, right now the problem is people not on the utility are paying for the improvements through their tax dollars. As far as the discussion without the utilities you wouldn't have the businesses and without the roads you wouldn't have the utilities or the businesses or you wouldn't be able to get to them. The utilities are separate and this would be a major shift for the city and will require some hard decisions, but I think they are legitimate changes. These utilities service non-profits and now you have non-profits in the utility that are not helping to pay for this that the rest of the taxpayers are paying for. The Council will ultimately decide based on feedback from the Utility committees and the Board of Public Works and as a Council member if I had to vote I would vote for the utilities to pay their own way.

Dude: I would suggest that the utilities should not pay for anything west of Calhoun where we don't have any utility customers. If you have a community road that benefits 100% of the people of New Berlin and if only 60% of the people are paying for it, I have an issue. I have less of an issue with stormwater since everyone pays that fee. Who pays, the water or sewer utility and if you go by people that aren't customers do we pay for that too? I want a consultant hired to determine what should be charged.

Morrisey: The cost of manhole adjustments and valvebox adjustments is a bid item and nobody is going to set that price, it will be set by the market. This money is to adjust our facilities and I would stand shoulder to shoulder with you if Council was trying to raid our piggybank. We are talking about a half million dollars over the next 8 years.

Dude: Slippery, sliding slope. If you do this to the utility, you better to it to the stormwater utility.

Wysocki: We are talking about our utility work, our utility assets. We are not talking about giving money for some celebration or buying new squad cars. We are potentially recognizing that we have fiscal responsibility in that project with regard to our assets relative to the completion of the project. Much like WE Energies when they have to move, they have had to purchase easements. We are an independent enterprise that has access to the road and we have a responsibility there. We are not taking utility funding for a non-utility operation or service.

Harenda: Commissioner Dude is correct. The biggest one is the stormwater utility. I do understand his point of view that the majority of the infrastructure is in the eastern half of the city which is a majority of our tax base and we get tax abatement out of a lot of facilities there versus the industrial park.

Motion to table UT 15-10 by Alderman Wysocki. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously.

UT 16-10 MMSD Request to the WDNR to amend its 2020 Facilities Plan for sanitary sewer service to the southwest portion of Franklin and portions Muskego and New Berlin - For Discussion & Possible Action

Harenda: Alderman Ament saw an article in the Waukesha Freeman with respect to some discussion regarding utility adjustments and changes to the 2020 Facilities Plan from MMSD that referenced the Muskego, Franklin and the southwest portion of New Berlin.

Walker: 2 years ago I attended several meetings to bring the Ryan Creek Interceptor in Franklin into MMSD. Contributing to the interceptor is the City of Muskego and flows from Linnie Lac in New Berlin

and potentially the Mill Valley area that sometime in the future could be flowing to the Ryan Creek interceptor.

Harenda: They aren't talking about other portions of the city?

Walker: Not as far as I know. The last meeting I attended was about 2 years ago. I tried to contact my counterpart in Muskego but was unable to today.

Harenda: Could you contact your counterpart and the DNR and MMSD to find out specifically what they are requesting here?

Ament: It also shows the estimated cost is \$10-12 million but it isn't broken down. If New Berlin is going to be asked to pay for part of this, whether it is indirectly or through Muskego, it would be nice to know the amount so we know if it will affect our sewer rates.

Harenda: MMSD or the DNR put out a press release and didn't receive any dialog from the agencies?

Walker: This is the first I have heard of it and I haven't had a meeting in 2 years.

Wysocki: It says to amend its 2020 Facility Plan. As I understand it the amendment is that they want to take over the Ryan Creek interceptor.

Walker: Yes.

Morrissey: I believe they do want to extend it too. I have a passing knowledge from a DOT road project.

Walker: Yes, I believe it would be extended to provide service to Muskego.

Wysocki: How can they do this when they can't handle the stuff already?

Walker: This will help that issue.

Harenda: Please get some info for the next meeting.

Dude: Will this help Muskego more than us?

Walker: Much more.

Motion by Alderman Wysocki to table UT 15-10. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Motion by Alderman Ament to adjourn at 6:10 p.m. Seconded by Commissioner Morrissey and upon voting the motion passed unanimously.

*Please Note: Minutes are not official until approved by the Committee
Respectfully submitted,
Suzette Hanley – Administrative Supervisor, Utilities & Streets*