

Minutes
Water Resource Management Utility Meeting
(Formerly Stormwater Utility)
February 9, 2010

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 Bill Moore, Alderman John Hopkins, Commissioner Jim Kern, and Mayor Jack Chiovaturo

Others Present: Nicole Hewitt (Division Engineer), JP Walker (City Engineer), Scott Schulpius (Inspector) and Sue Hanley (Administrative Supervisor Utilities & Streets)

Meeting called to order at 4:54 pm by Alderman Harenda. Roll call and declared a quorum with all members present.

OLD BUSINESS

SW 01-10 Approval of Minutes – January 12, 2010 meeting

Motion by Alderman Hopkins to approve the minutes from the January 12th meeting. Seconded by Mayor Chiovaturo and upon voting the motion passed unanimously.

SW 07-09 Approval of Addendum No. 1 to the Stormwater Management Master Plan

Harenda: I am still in process of reviewing this but we can move it forward if the Committee wants to and I can comment on it at the Public Hearing and Council.

Hewitt: If you do have any changes to the plan they have to be heard and made prior to the Public Hearing.

Moore: Can this Committee respond to the public hearing and make changes thereafter or just the Council?

Hewitt: You can make a recommendation after the Public Hearing on March 1st at our meeting prior to Council on the 9th.

Chiovaturo: If there is considerable or significant change, the City Attorney will ask us to take it back to Public Hearing. I looked through it, but didn't see any problems.

Harenda: Is the Plan Commission going to endorse it at Council March 23rd?

Hewitt: Not until March 29th. It will come back to Council on April 9th. If you have any concerns or questions, please let me know.

SW 20-09 Discussion on Tess Corners Pond Feasibility

No new information. Still waiting on a response from Muskego.

SW 21-09 Update on Railroad ditching plans near Elm Grove Road North of Honey Lane

Hewitt: No new information. Still waiting on a response from the railroad. I have been calling them.

NEW BUSINESS

SW 04-10 Discussion on proposed changes to DNR Storm Water Runoff Regulations

Hewitt: I attended a public hearing in Waukesha County regarding the DNR's changes to NR151, 153 and 155. 153 and 155 are grant programs and don't directly affect us as far as our regulations. They are making changes to the agriculture portions and requirements to farmers. The requirements they are proposing are for the worse cases

of farms like those that are closest to water bodies have the most pollutant effect and it wouldn't be across the board. They have to do funding for the programs.

WDNR is proposing changes to the current legislative rule NR 151. Noted changes by rule:

Agriculture

Phosphorus Index (PI) will impact farms based on their proximity to water bodies and their potential for release of phosphorus. The intention of the change is to prioritize the focus on the properties with the most effects on water bodies.

Tillage Setback will protect the structural integrity of stream banks and shorelines and to prevent the direct application of soil to state waters.

- No tillage would be allowed within 20 feet of the top of the channel of a waterbody
- Harvesting of self-sustaining vegetation within the tillage setback would be allowed

Process Wastewater Handling The purpose of this performance standard is to reduce water pollution caused by uncontrolled discharges of contaminated wastewater. This standard, which applies to all livestock producers, would:

- Prohibit the discharge of significant amounts of process wastewater from livestock production areas to waters of the state.

Construction Site Performance

- 80% TSS removal will be changed to 5 tons/acre/year. Compliance will be determined by modeling
- Applies to all sites regardless of size (removes the current 1 acre threshold)

Post-Construction Performance Standard

TSS

- Removes the current exemption for "no increase in parking lots and roads"
- Changes the 40% removal for the entire site to 50% removal for parking lots and internal roads

Peak Flow Control to protect the bank-full condition

- Adds the 1-year/24-hr storm to the discharge requirements

Infiltration to provide more attainable requirements current rule is changed to:

- 3 new levels of connected impervious conditions

Protective Area

- Increased to 75 feet from 50 feet for certain high quality wetlands

Developed Urban Area Performance Standard (WPDES Permit)

- Specifies the elements to be included in a long term storm water management plan and lays out the review procedures.
- Provides for applying practices that are not accounted for in the models. (salt application procedures, best management practices of operations...)
- Defines "maximum extent practicable" and includes a cap on expenditures
- TSS reduction on redevelopment sites will count toward the City-wide 40% TSS requirement (this will be a big impact for us since we were unable to do this in the past)

Transportation (Subchapter IV moved to Subchapter III) minor modifications to:

- Swale treatment section
- Definition of minor reconstruction

Hewitt: The public hearing answered many of my questions and I spoke to the DNR. It will be a positive for the City. The agricultural community was unclear as to how big an impact it will have.

Harenda: Is there a cost to the Utility to implement? How about reconstruction costs?

Hewitt: There is no cost to the utility. I don't think there will be an increase cost for reconstruction since it is not physical monitoring, it is the modeling. They are just changing it to a quantity rather than a percentage.

Kern: There are no minuses to the program then.

Hewitt: I feel the changes to the WPDES permit particularly help us. They are still in discussion about the cap. You would not be forced to implement procedures that would cost you above and beyond the cap. The .37 is just a placeholder as they are still negotiating that number.

Moore: I assume the present rule of self-sustaining vegetation is not allowed within the set-back area.

Hewitt: I don't believe there is a tillage setback requirement. I believe these are new regulations: The Phosphorus Index, the Tillage Setback and the Process Wastewater Handling.

Moore: Do you know why harvesting is allowed? If there is a setback you would want to maintain root structure.

Hewitt: It is not tilling, it is harvesting.

Moore: But it would actually die off. The purpose is to protect the structural integrity of stream banks and shorelines from tillage operations. The more that vegetation is decreased, the less structural integrity there will be.

Hewitt: I don't know what their definition of self-sustaining vegetation is. (This information was added as sent to the Alderman via email at 6:29 p.m. 2/9/10)

NR 151.002 Definitions. "Adequate sod, or self-sustaining vegetative cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the stream bank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

Moore: That is the only concern I have. Do you want a statement of support at this meeting or next meeting?

Hewitt: We could take it up at the March meeting.

SW 05-10 Discussion and Approval of Funds for Property Acquisition of Repetitive Loss Structure in Flood plain

Hewitt: Alderman Harenda contacted us regarding what was being done for this property at 12620 W. Grange because of the flooding. Over the last 2 years this property has sustained a lot of damage from 3 feet of water running through the house which is a slab on grade structure. When FEMA was here in 2008, the people on site said no permits should be issued to rebuild the structure. We did not issue permits. During the 2009 storm it flooded again and we found out they had remodeled it without permits. We suggested to the owner for buy-out of the structure and he again remodeled it and the insurance is paying for it. The entire structure is in a floodplain. There was mention of debris clogging up the grate but there is no indication of this. The area backs up and there is no way to upsize the pipes because it would have a large impact on other properties. There is a flood control reimbursement grant that can be applied for to get funds to purchase the property and that would be awarded in 2011 if we received it. Currently there are 237 properties in the City in a floodplain. Of those, 27 are in floodway. 16 are in the drainage list database and only 8 are prior to the storms of 2008 and 2009 and only 3 of the 16 are in the floodway.

Hopkins: How does this situation compare to the home on 124th and Meadow Lane?

Harenda: That house is not in a floodplain. If we were to purchase the property and use it as extended flood storage, it wouldn't impact the city. We would just be buying it and leaving it vacant. Typically if it is not in a floodplain, the flooding is from other sources. It is not eligible for the grant. That property is an accessory structure to the main building. The main living quarters is on the upper level. The basement is finished, but insurance does not cover basements which is where the NFIP funds these municipal projects.

Moore: Does Mr. Wisneski want to be bought out?

Harenda: He is interested and he contacted me about the possibility of doing it. This is federal flood insurance that he is paying to rehab the house.

Hewitt: We attempted to do repetitive loss on the structure because it was damaged 2 years in a row, but Wisconsin does not have a repetitive loss rule so you can rebuild as long as it doesn't go above and beyond the 50% of equalized value.

Harenda: I haven't discussed the price.

Moore: I think it is a win-win for him and downstream homes to do this. We need to allocate funds to apply for the grant. Did he know it was a floodplain when he bought it?

Hewitt: I don't know when he bought it.

Harenda: The rules and regulations have changed over the last 40 years and it is an older home.

Hewitt: The original preliminary flood boundary maps I believe were instituted in the City of New Berlin in 1968.

Harenda: Are the houses to the south behind the pumpstation in the floodplain?

Hewitt: Yes.

Harenda: There was a concern by the resident that some work down on Kelly Lake area affected it.

Hewitt: It would not have affected it. His property is considerably higher.

Kern: How confident are you to receive the grant?

Hewitt: We have to have funds available to apply for the grant. The deadline is March 15th. There is a lack of funds in those programs. If we don't get the grant you would spend the funds without the grant.

Harenda: We could apply for the grant and if we don't get the grant we can make the decision if we want to spend the funds out of the utility. How much money was he reimbursed by FEMA or his insurance company?

Schulpus: His local insurance company reimbursed him \$56,000 in 2009 and about \$35,000-40,000 in 2008.

Kern: Could he lose his insurance?

Schulpus: They could drop him, but in conversations that I had with the insurance company, because they were questioning the accumulative cost. The loss from 2008 and 2009 put him well over 50% of the fair market value so we told him that he can't rebuild unless he meets the requirements of FEMA for flood proofing the property. The insurance company challenged us accordingly. In the conversations that I had with them, there were no indications they were dropping him and I believe he still is insured by them.

Harenda: Are they reimbursed by the federal program since they are in a floodplain?

Hewitt: It is backed by the NFIP.

Schulpus: Interestingly, in 2008 he did not have that rider on his insurance policy and they still paid the claim.

Moore: The federal government is reimbursing the private insurer for this?

Hewitt: I don't know about reimbursement. It is federally backed because of the requirement on mortgages they have to hold the flood insurance. I don't believe it is reimbursement, but I would have to check.

Moore: The insurance company has to pay, but you said they can't rehabilitate it now by law if it floods again.

Hewitt: They can, as long as they don't go above the 50%

Moore: Could we negotiate with the insurance company to pay for part of the buyout.

Schulpus: If we had the accumulative loss that he exceeded 50% of the fair market value and was required to flood proof the property, they would have paid that fee to raise the property up, but we don't have that accumulative

loss. If we have accumulative loss clause in our repetitive loss ordinance and the state had that, any improvements to that property over the life of the property, once you exceed 50% of the fair market value you have to bring that property up to the requirements for flood proofing.

Harenda: He couldn't do it anyway.

Moore: Since houses are raised to move them, why not just raise the house 4 feet?

Hewitt: He is so close to the floodway so he couldn't do that unless you put it on stilts which you can't do in floodways. It has to be on fill to 15 feet outside of your property to 2 feet above the property.

Moore: If the grant is not approved, can we negotiate with the insurance company and whether or not he knows it was in a floodplain when he purchased it?

Harenda: Nicole can you look into this? Scott can you look into the possibility of negotiating with the insurance company?

Schulpius: It would be to their benefit and those were the discussions that I had with them but they put it back to us because of the repetitive loss and cumulative damage that we don't have that, they would certainly follow through with it. They look at what it would cost to raise the house up 2 feet and is it feasible. If not, they would relocate him. I did have the conversations with the insurance company, but it is cheaper for them to rebuild than to tear it down and buy a new house. In a 1976 addition put on by the owner that our engineering department reviewed at that time, it says the property is located within a flood hazard boundary.

Moore: Does the assessment decrease the value?

Chiovatero: I believe it is minimal, like 3-4%. Basically the house is unsellable.

Hewitt: When I asked about it, I indicated it was in a floodplain. It would be a beneficial spot to provide some flood storage for that area.

Moore: It would become City property and could become park land.

Harenda: Can we put quantity containment in the area that the house was?

Hewitt: Yes.

Motion by Alderman Harenda to approve the funds for property acquisition of 12620 W. Grange Ave for the amount of \$168,900 with Not to Exceed contingency of 15% but contingent upon acquiring a grant from the Municipal Flood control grant program. Funds to come from the 2011 CIP Budget. Seconded by Commissioner Kern and upon voting the motion passed unanimously.

SW 06-10 Award of Construction Contract for Underwood Creek Rehabilitation Phase 2 project

Hewitt: This is for the Underwood Creek Rehabilitation project which we have been in the permitting process for the last 4 years. Phase 1 was completed in 2007. The bids for this project came in last week for construction \$206,645.75 and the alternative bid was \$439,951.50. The base bid was for the work east of Elm Grove Road on critical locations that have significant erosion on their banks to do stabilization. The alternative bid was for work in Prospect Park. The original estimate was \$1.5 million and it came in much lower. The adjusted engineer's estimate was \$900,000. Currently we have \$331,500 in the CIP account for the Underwood Creek project left from 2003. I am looking for award of the contract for that amount.

On July 23, 2009 the City of New Berlin received WDNR Chapter 30 permit to complete the work that the DNR would permit. The project has been significantly scaled down from the original alternatives proposal from May of 2007, due to permitting issues. The revised project includes stream bank stabilization in critical locations and stream bank work, native landscaping and pedestrian path in Prospect Park. The majority of the work in Prospect Park cannot be funded with the remaining budget at this time. Although there are no funds remaining in the allocated budget for this project, the permitted project was bid in it's entirety in hopes of acquiring competitive bids and additional funding.

The permitted project includes both the base bid and the alternative bid portions. The base bid project location is at Elm Grove Road/Meadow Lane and along Underwood Creek to the East and the alternative bid project location is Prospect Park. The cost for the Prospect Park was expected to be 900,000, but it came in at \$440,000. We would like to allocate funds for that project since it will reduce the amount of maintenance in the park, clear out nuisance trees that cause the blockages downstream. We are applying for a grant (due Feb 16th) through NOAA to fund the Prospect Park project and the bioretention area along Greenfield Avenue which is was discussed in the CIP budget for 2010.

Harenda: How long is the alternative bid good for?

Hewitt: We have 90 days for the bid bond for the contract. At this point I am looking to award the \$331,500 that is in the budget and am looking for a recommendation to apply funds to cover the remainder so we can apply for the grant.

Chiovatero: We are budgeting \$500,000 per year for CIP projects. What if we borrow some early to do this project? The Utility is very low on funds and she was worried about it.

Hewitt: If we are approved for the grant, we will receive the funds this year. The remaining balance from the 331,000 is approximately 102,000 which can still apply to the alternate. The remaining amount including contingencies is 387,515.

Hopkins: The base bid would help those 4-5 properties east of Elm Grove Road and the alternative bid for work in Prospect Park wouldn't solve all of the problems but it would hold back some water and that would help everyone east of there.

Hewitt: To have a major impact on the downstream area we need 50 acre feet of storage. The storage of the park isn't near that amount, but it will help.

Hopkins: At least one resident suggested buying up several homes and building a retention pond around Conrad. I take it from what I heard that it is not a large enough area to do.

Hewitt: The properties in that area are ¼ to ½ acre at most. You would need 50 acre feet on the upstream and downstream ends and those properties are not on the creek. Out of the total of 650 acres that drains to the area, the drainage area to Conrad is about 40 acres and you would need to supply all of the storage on a quarter acre.

Moore: What kind of trees will be removed?

Hewitt: According to the forester 80% of the trees are not worth keeping.

Moore: Even poor trees will soak up water. Does he mean box elders which are native or buckthorn which is not? If we are talking about buckthorn, that is one thing, but if we are talking about other native trees, maybe the process would be to have ongoing cleanup instead.

Hewitt: I think he is talking about trees with a short life span and die off and create the debris in the stream. We want substantial trees to remain and hold the banks for stability. Cleanup is an expense that the city does not have the ability to maintain because there is a lot of debris. I brought up in the past the possibility of a volunteer group that would like to take that on, an adopt a stream length, but we don't have the manpower. The majority of the trees are along the bank. We are putting in reinforcement and building pools and riffles to encourage more aquatic life in there so we will need to remove the trees along the stream and everywhere else is grass that is mowed and we will replace that with native landscaping. If you are questioning this because of removal of trees, we can discuss that because it is a design component not a project deal breaker.

Hopkins: I understand your concerns. If you walk there in the summer time, the trees are a very small dimension and break off ending up in the creek and making the way to the grates on Conrad and Meadow and flooding. A lot of the stuff is from City property and not the property owners. We are trying to get the residents to clean up their own properties and keep them clean and they say look at the stuff coming down from the parkway. It is almost impossible to expect the Street or Park Department crews to keep going down there to keep it clean.

Moore: Probably honeysuckle and sumac trees. Some of the debris may slow down the flow.

Hewitt: The debris is not helping anybody. I am looking for approval with the alternative funding source also. The award will be in July. We would have the \$888,000 in 2010 and the \$112,000 in 2011. We would also have to go through the Utility Committee because we have only been approved for \$500,000. We need the full funding to apply for the grant. If we receive the grant, the money will be returned to the 2010 CIP budget.

Motion by Alderman Hopkins to recommend that the Common Council approve the awarding of the Construction Contract for the U-331 Underwood Creek Rehabilitation Phase 2, to the lowest responsive responsible bidder, CW Purpero, Inc. for the not to exceed amount of \$646,597.25. Source of Funds: Water Resource Utility CIP Account 04251171 61714 C2003 in the amount of \$331,500.00 and the remaining funds of \$388,515 from the 2010 CIP budget. Seconded by Commissioner Kern and upon voting the motion passed unanimously.

Harenda: Are you aware of the available funding from MMSD for \$50,000? Please layout where the funds will go.

Motion to adjourn at 5:58 p.m. by Alderman Moore. Seconded by Commissioner Kern and upon voting the motion passed unanimously

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