

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday May 26, 2009

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

Others Present: Rick Johnson (Utility Manager), Mayor Jack Chiovatero, City Attorney Mark Blum, Bob Pulliam (NB School District), Ralph Chipman ((Accounting Manager), JP Walker (City Engineer), Chris Stamborski (R.A. Smith), Doug Nelson (Ruekert & Mielke), and Sue Hanley (Administrative Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 5:03 p.m. with roll call and declared a quorum with all members present.

OLD BUSINESS

UT 12-04 Milwaukee Water Expansion – Status of the State’s review of the diversion Application and the status of the DNR’s enforcement of the radium consent order

Harenda: The DNR gave their approval with respect to our diversion request last Thursday. You should have received the Findings of Fact, Water Supply Service Area Plan & Diversion Approval, Diversion Application, Public Comments Response Summary and maps of the Approved New Berlin Water Supply Service Area and Approved New Berlin Diversion Area.

Dude: What is the timing between turning on the water and billing the new rates approved by the PSC?

Harenda: We executed the construction contract that was due on Thursday May 21st before they expired. I guess we are looking at mid-summer to turn on the water?

Dude: We want it on as soon as we can, but since we only bill quarterly, I don’t know if we want to turn it on in July and not be able to bill for it until September.

Chipman: I did hear from Dave Procholska of the PSC last week to ask where we were on approval. When we got the rate case it was a step increase when something else happens, we notify them and we can charge the new rates. It is the same thing that happened when we hooked up to Milwaukee water last time. We need to notify the PSC when we are hooked up to Milwaukee water and let them know we are going to charge the new rates that they approved. If we can get the water pumping July 1st, the new rates would go into effect and would be on the invoice that goes out the 1st week of October.

Dude: If you turn it on in August, can you charge July and August at the old rate and September at the new rate on the October bill?

Chipman: Technically if you change rates you need to do a blended rate. If you change in August, you would have to bill 1 month at the old rate and 2 months at the new rate. Right now it appears that our financial software won’t allow us to do that. If it doesn’t make it by July 1st or very close to it, we will have to decide what to do.

Dude: Let’s say you use 10, 20 and 20. Can you add those and divide by 3 and get a blended rate?

Chipman: The PSC wants us to do it on actual readings, especially in summer when it is variable based on usage. That is the PSC ruling on that.

Wysocki: The Water Supply Service Area Plan and Diversion Approval agreement Section III says the maximum diversion amount of 2.142 million gallons per day averaged over a calendar day. That is just for the portion that is the diversion correct? The water we are using in the basin is a different amount?

Johnson: Correct.

Wysocki: Section IV Monitoring it says within 30 days of the date of approval the City shall create a GIS data layer that shows the location of the boundary between the Lake Michigan basin and the Mississippi River basin. Do we already have that?

Johnson: Most of the items in that section we started working on today. I haven't sat down and talked to Greg Kessler to see what the GIS department is going to be able to do for us otherwise Ruekert & Mielke said they could do it to us for a charge. I believe we can do it in house.

Wysocki: I would like to see that cost identified in terms of who can do it and the cost. It says within 60 days we have to identify in the database which utility customer is within the basin and which customer is outside the basin.

Johnson: The people that have Milwaukee water now have a code that says Milwaukee basin. The customer accounts on the west side of the subcontinental divide will be coded Mississippi basin.

Wysocki: It also says within 90 days that in cooperation with MMSD we will monitor return flow. The City is required to obtain approval from the DNR for the methods of monitoring and estimation of sanitary sewerage system return flow and the methods shall be consistent with the best engineering practices. Do we have that in place?

Johnson: We already accept that data right now through SCADA throughout our liftstations. It is metered and it is an acceptable method. We take the information and email it down to them

Wysocki: It is not an additional cost then. Section VII: Additional Requirements indicates beginning 2 years after the date the approval is signed the City shall not use any municipal wells within the approved water supply service area and approved diversion area to supply water to the municipal system, except 1 or more municipal wells may be used on a temporary basis only as agreed upon in a written extended well abandonment agreement between the City and the DNR. Do we have this agreement?

Johnson: The biggest part right now is the abandonment of the deep radium wells which we have 5 years to do. They will be done before that. The shallow wells will be on a standby. The projected flow from Milwaukee shows that we will probably not even need them.

Harenda: Is it possible that you or one of your staff can email the Committee members address the dates and requirements in sections 4, 5, 6, & 7 so that we are on target.

Johnson: Most of these items are entering the data into the billing system and it will do it all itself.

Wysocki: Are we on track to get this water service throughout our current utility by the end of July?

Johnson: I contacted the contractor today that is doing the pipe work for us but he has not returned my call. They have to make the pipe up and install it so it could be a matter of weeks before they can start doing their work. I will email or call you when he contacts me. There are a few things we need to do in our pumphouses to have them do our work. I don't see it is going to be a big delay.

Dude: On our next bill we should officially tell the people who will be getting Milwaukee water and if there is anything they need to know about shutting down their water softener.

Johnson: We plan to send out a letter like we did the last time for those going onto Milwaukee water. Those people that will be receiving it will receive a letter.

Harenda: I want to pass on some congratulations for all of the hard work on the diversion application that has gone down different paths to our Committee members, Mayor Chiovatero and former Mayor Wysocki and current and former Council members. This is a long time coming and it is for the best interest of the city and the health and safety of utility customers now and in the future.

UT 05-07 Water Conservation Measures

Harenda: We are working on this as part of the agreement and there is nothing new.

UT 05-08 Westward Manor Lift Station Reconstruction- Recommend to Council the adoption of a Relocation order for the acquisition of property rights for a new sanitary sewer lift station at Geipel property (Tax key # 1167-999)

Hart: The consultant has some concerns for Nikki Jones and Greg Kessler and we are going to meet next week to discuss it and probably bring it back next month.

UT 09-08 Milwaukee Water and Rate Case Requirements

Harenda: Ralph already addressed this.

UT 02-09 Request to Amend Inter-Municipal Agreement between New Berlin & Muskego to Increase Number of Sewer Connections in Linnie Lac Sanitary Sewer District

Harenda: Alderman Wysocki requested City Attorney Blum to review the old agreement.

Blum: We started on 2 different paths. The first is the issue of the MMSD billing and the fact that there is a different amount for these contracted customers through Muskego as opposed to the normal MMSD charges. Ralph and I have worked on this and brought forth an ordinance to create a two-tiered system, one to deal with the Muskego customers and one to deal with the normal MMSD customers, that is the revision to Chapter 267. Then the issue concerning the potential 5 new connections came up and the question was whether the City would have the responsibility to pay the legal and engineering costs associated with this. The letter you have is my response to that. If you look at the original 1974 agreement there is a section referred to as "Incidental Charges" that talks about the legal and engineering costs associated with these connections as being the responsibility of the City of New Berlin. My conclusion is that the charge that they are seeking from you is consistent with past practice concerning this agreement. If you want to reach some new agreement fine, but what you currently have on the books would require that you pay those review expenses. The third issue is what we do with the collection or trying to reimburse the utility with the charges that might be associated with that kind of work. One way would be a special connection charge that would have to deal with the cost associated with providing service to these customers. We currently have a connection charge in your ordinances but it is tied to impact fees and we don't want to go down that road. This would be a 660821 charge which is a connection charge that is allowed for sewer connections. Another way would be to have an independent agreement with these applicants like we did with the sewer connections with the Town of Brookfield where they would consent to pay the cost that the city would incur to get that service. We had an agreement with those customers and the charges were passed on to them as part of their connection. The other option would be a special charge for current services which is another statute that is similar to a special assessment against these property owners to recoup these expenses. You have 2 items before you under this issue. One is whether you want to pay those costs for legal review and engineering on their end and second if you do what would be the mechanism to make that happen. We have already come through with an ordinance change for the 2 groups of customers. The simplest thing to do to recoup the charges is to get an agreement with the individual customers.

Harenda: Do we want to have the agreement before we move forward with Muskego?

Blum: I don't know what the timeline is to move forward. Last time we had signed agreements with those property owners before we actually made a commitment to the Town of Brookfield.

Walker: The urgency expressed to me by the representative of the property owners is there is a need to sell the property to prevent the property owner from going into Title 19. He is in a nursing home and that is the reason they are trying to sell the property.

Dude: Are we talking about 5 parcels. What is the NTE price \$5,000?

Walker: We had estimated \$5,000. It may be less.

Dude: I don't see why the rest of the utility should pay this. The property owners should pay the charges.

Harenda: To go forward the City of Muskego is going to charge us to review this agreement and we don't have an agreement with the property owners to recoup the \$5,000. That is why I asked Mark if it is better to get the agreements first then approve it and move forward.

Dude: They want something, so I suggest the property owners sign an agreement.

Harenda: Can we base this on the Brookfield agreement?

Blum: Yes. I can revise the Town of Brookfield agreement with the Copenhill Drive residents.

Harenda: OK. We have a course on that. We will discuss the other issue on fee structure at a later date.

Dude: On the issue of charges, you have 87 other parcels that we will need to make a decision on, besides these 5 customers. I don't like the idea of the utility absorbing Muskego's charges without getting it back from the other 87 customers.

Harenda: Regarding equalizing the fee structures for the other customers that is the draft ordinance that the City Attorney sent us to review.

Dude: When we started out we were billing a little more than what Muskego was charging us and now Muskego is billing us \$2,000-\$3,000 a year more than what we are receiving from the customers. Ralph's memo lists 3 options to resolve things, but recommends option B that we direct charge the individuals what Muskego bills us, plus possibly an added fee for billing services. That seems to make sense. I don't know how much work is on the system. I am not trying to discriminate against these people, but I don't think the rest of the utility should have to absorb more charges for them. Some kind of charge for the amount you have to do is in order. Certainly I want to bill them as much as Muskego bills us.

Harenda: We don't have to do anything with regard to Muskego's agreement. We can do this internally?

Blum: My point is that I wanted to have an ordinance in place that authorizes us to make these charges. It has nothing to do with Muskego. It has to do with how we collect those charges. Our current ordinance just talks about one method of collection and doesn't recognize that we get sewer service from multiple providers. I want to make sure we have a pass through provision and an administrative expense provision which we are trying to do with this revised ordinance.

Dude: You still need a decision from us as to how we want to bill. I want to do that so we don't hold it up.

Harenda: We don't have this agendaized to change this ordinance. Is it OK to discuss this Mark?

Blum: I don't think the revised ordinance is specifically provided for here. From what I am hearing you do in fact want a method to recover these charges so we can move forward with that on a staff level.

Harenda: We can direct staff to present it at the next meeting, but I do agree Option B is acceptable.

Chipman: The Attorney asked if we talked to the PSC. While they don't technically regulate the sewer, if there was a complaint from somebody they could review it to make sure what we are doing is reasonable. That issue has come up in the past. We did talk to them directly and they consider this reasonable and acceptable in their eyes.

Wysocki: Thanks for doing that extra work.

Harenda: Ralph, basically what you presented and what Mark gave us in the draft ordinance would accomplish that and you can present it at the next meeting?

Chipman: Yes sir.

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

Harenda: This was discussed last week and we will come back when there are changes.

UT 11-09 Discussion and Possible action to make a recommendation to Council regarding the application of the New Berlin School District to amend the New Berlin Urban Sewer Service Area Boundary to include NB West HS

Harenda: We will discuss this with the other item on New Berlin West.

UT 12-09 Discussion on conveyance of Information between the Mayor's Office and members of the Utility Committee, on operations as well as policy actions that impact the City of New Berlin Water & Sewer Utility

Ament: this was discussed at the special meeting. I want to be sure that whatever information the Mayor gets, it was particularly centered around the Milwaukee Water issue but it relates to the rest of them, that we are kept in the loop; especially the Chair and he can let us know what is going on.

Wysocki: The Council will approve billing payments tonight and that includes Sewer and Water. I think this Committee should see those bills. It is just one component of our fiscal management. That is already being printed. Tonight the Council approves the expenditures, but I don't think the majority of the Council feels it is their responsibility to review the sewer and water bills. I think it is our responsibility if you think it is necessary. Perhaps you and the Mayor could talk about this and the monthly or quarterly review of our budget in terms of percentages. I would like to see that.

Harenda: I was planning to bring forth a couple of ideas we discussed at the last meeting as well as some of the points you raised. I think the Mayor and I can put together a few ideas.

Dude: As far as I know in conversation with Rick, there are variance reports produced on a monthly basis and given the timing of our meeting late in the month, for instance tonight there would be no reason that we couldn't see the expenditures for April which would be closed. Ralph or Rick could present this at the start of each meeting and you could look at year-to-date actual budget variance by line item, both the revenue and expense side. It is much more than important approving paying X or paying Y. What are you doing according to your plan? If things aren't going to plan, what can you do about it? Conversation about the amount of consulting dollars would have popped out somewhere along the line, because I know the budget didn't have that amount of funds. There were a lot of twists and turns on the Milwaukee Water project that were hard to follow.

Harenda: I will put something together and talk to the Mayor.

UT 01-09 New Berlin School District Request – Sewer Extension to New Berlin West High School

Harenda: We do have a closed session scheduled. We have representatives of the school district and their and our engineers if you have any specific questions to address.

Wysocki: I want to make sure the school district understands that we had a previous engineering study that cautioned us about the adverse impact that the previous plan would have on our utility collection conveyance systems. The 2nd study has provided a different way of using the system at a much reduced rate because the capacities on your end will be held to an obvious 24/7/365 situation; however I would still want in the agreement who is potentially liable if things don't work as the engineers say they will. I want to make sure the right people have responsibility in the event that something happens and they are responsible for defense and payment of costs.

Ament: I agree with that. It also has a bearing of what we do in the future if another application of this type comes along. I think we need to have our ducks in a row up front, otherwise as much as I see the need and as much as it could save taxpayers, our responsibility is to the utility customers and I want to make sure they are protected both financially and preventing bad stuff from going into their basement.

Wysocki: I have heard numerous times that Calhoun road is being tossed around as a political divide. That's not the case. Calhoun road was an engineering dividing line between the New Berlin Sewer Utility and the Poplar Creek Sewer service area. It was an engineering line so that if you build east of the line you build your conveyance and collection systems to handle the developments that would occur within that area and if you build west of the line, the Poplar Creek utility was to handle that area. When we decided as a community not to have that area any longer as a separate sewer service area, we had 2 obligations. We had to end the contract and revise our Master Plan in terms of land use to realize that area had to be handled with onsite septic systems. It never was intended that the New Berlin sewer service area would handle that. We built it differently. I just wanted to make that clear. It is not a political divide, it was an engineering divide.

Harenda: We have 3 actions that encompass this request from the school district. One is the agreement that we discussed at our meeting last week. We also have a request to revise the amendment and change the sewer service area boundary. The Council is looking for a recommendation from the Utility Committee. The school district has made a request to amend the current sewer service area to include New Berlin West from the ultimate sewer service area. It has to go through the political process, not just our body, but MMSD, SEWRPC and the DNR. The discussion and consensus that was made with the school district was to handle all 3 of these at once at the Utility and make a recommendation to the Common Council with all 3 items together.

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 regarding negotiation strategy for a sanitary sewer easement and a developer's agreement for a private sewer main to serve New Berlin West H.S.

And 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:

Discussion regarding DNR enforcement of the radium consent order

Motion by Alderman Wysocki to go into closed session at 5:40 p.m. Seconded by Commissioner Dude. Roll call vote: Ament – yes, Dude – yes, Morrissey – yes, Wysocki – yes, Harenda – yes.

Motion by Commissioner Morrissey to go into open session at 6:36 p.m. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Reconvene to Open Session

Possible action and discussion on sanitary sewer easement and a developer's agreement for a private sewer main to serve New Berlin West High School.

Possible action and discussion on DNR enforcement of the radium consent order.

Motion by Alderman Ament to adjourn at 6:37 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*