

MINUTES
BOARD OF PUBLIC WORKS MEETING
February 19, 2009
New Berlin City Hall Common Council Chambers
3805 S Casper Drive

Please note: Minutes are unofficial until approved by the Board of Public Works at their next regular scheduled meeting.

The meeting was called to order by Alderman Moore at 8:03AM.

Members Present: Mayor Jack Chiovero, John Graber, Alderman Moore, Alderman Ament and Alderman Seidl.

Staff Present: J. P. Walker, City Engineer, Tammy Simonson, Transportation Senior Civil Engineer., Ron Schildt, Transportation Engineer, Greg Kessler, Director of Community Development, Alderman Wysocki.

Guests: Darrel Berry, Bloom Consultant
Dave Merrick / Small Road Partners, LLC.

Privilege of the Floor:

After seeing no one, Alderman Moore called the meeting to order.

OLD BUSINESS

Motion by Alderman Seidl to move Old Business to the end after the New Business.

2nd by John Graber.

Upon voting the motion approved unanimously.

NEW BUSINESS

ITEM 01-09 Approval of the Minutes from the December 15th, 2008 Board of Public Works Meeting.

John Graber made the motion to approve the minutes.

2nd by Mayor Chiovero.

Upon voting the motion passed unanimously.

ITEM 02-09 Kazi B. Syed, 4320 S. Moorland Rd / Release of Surety Instrument

JP Walker: In 2006 the Board and Common Council approved a Development Agreement for Mr. Syed to install a sanitary sewer main onto his private property in a utility easement from Moorland Road. Following construction of the sewer main, Mr. Syed chose the option of reducing his Surety Instrument after receiving approval from the City Engineer. The Surety Instrument was reduced to the 20% level in accordance with the Development Agreement in September 2007. In our Development Agreement boiler plate there is a two-year requirement where the Surety remains at the 20% level to insure workmanship and materials. This Surety is set to expire in September 2009. Mr. Syed has come forth with a letter dated December 30, 2008 requesting that the remaining \$16,100 of the escrowed funds be released in order for him to pay the remaining amount that he

owes to the contractor. His reason is to keep the small business from going out of business. Is the Board willing or not to waive that requirement of retaining the 20% Surety requirement of two years?

Alderman Seidl: Have you had a chance to inspect the work?

JP Walker: The work has been inspected and the Utility Department is operating the system.

Alderman Ament: Does this usually go to the Utility Committee for something like this?

JP Walker: No.

Alderman Ament: Are we setting a precedent here?

JP Walker: I think we are setting a precedent.

John Graber: Was there any discussion with Mr. Syed in relation to whether or not his contractor would accept partial payment?

JP Walker: I had no discussion with Mr. Syed except the call I received from him asking if I had received his letter.

Alderman Moore: I am also concerned about the precedent setting. But one also has to be concerned in this economy about the whole monetary thing and make sure that companies do survive. Has there been any discussion with the City Attorney or do you know of any situation where we could make sure that precedence would not apply as an example because of economic distress or that type of thing?

JP Walker: I have had no discussion with the City Attorney on this issue.

Mayor Chiovarero: Maybe there is something we can draw up that if there is an issue with this sewer pipe to Moorland Road that he would be responsible for the repairs. I would be OK with releasing this money considering the pipes have been there for 18 months and is operating well.

John Graber: The Developers Agreement talks about the guarantee of public infrastructure, which is the sanitary sewer. If we were to release some of this money, I still would want to keep the full two year guarantee for the public infrastructure. The main reason for holding the 20% guarantee is to see that there is no failure.

Alderman Ament: Why is the Developers Agreement set for 24 months rather than once the City is ready to accept the infrastructure that has been put in and it has been inspected and we are comfortable with it.

JP Walker: I believe the reasoning behind the two-year period is that if something is going to go wrong material-wise, it's going to happen within the first two years.

Alderman Ament: Have we ever had a situation where the City has inspected it and then within the 24 months something failed?

JP Walker: I'm not aware of any that have occurred.

Alderman Ament: I think this sets a precedent and I'm not sure the reason we would be given for waiving this is a good reason.

Mayor Chiovarero made the motion to defer for legal opinion.

John Graber 2nd the motion.

John Graber: It appears that the contractor has not been paid for \$14,000 worth of the work. I would ask that in the legal opinion, what happens if he files a lien on that, since it's our sewer and he hasn't been paid, what liability would the City incur?

JP Walker: We have not received the lien waiver from the Developer. We normally don't receive that until the two-year period is up, for that very reason. The Developer has not dedicated the infrastructure to the City. The system is operational and the Utility is maintaining it and inspecting it to make sure it's operating, but officially it has not been officially dedicated to the City.

Alderman Ament: I think that we should defer it if for no other reason than to get all the aspects from the City Attorney and from Staff as to the potential pitfalls of doing this, give them some time to look this over.

Upon voting the motion to defer the motion passed unanimously.

ITEM 03-09 Approval of Development Agreement for the United Heartland Office Building at 15200 W. Small Road.

JP Walker: The Development Agreement for the Irgens Development at 15200 W. Small Road covers moving an existing temporary cul-de-sac, extending a water main to the new temporary cul-de-sac location and constructing two storm water management basins. There have been multiple discussions with the neighborhood. Alderman Harenda is the Alderman of the District and has been part of those discussions.

Alderman Ament: On page 2 of the Developer's Agreement under Paragraph 2, Item C Building Permit, that was added, is that something that we should amend our Developers Agreement so that it is standard?

JP Walker: It's not added, it was moved from after Restoration and Record Drawings because the Developer is requesting that the building be concurrent with the construction of the public improvements. Section 2 is the Sequence of Development, so we tried to list all the items in the actual sequence that the Developer is requesting the work to be done.

Alderman Ament: On the first page and the last page, it identifies the Developer as Small Road Partners, LLC but on the back the signature is from Irgens. Is that because since they are the manager of this development, they would be the ones signing it?

Dave Merrick: Small Road Partners, LLC will be the owner of the project but the managing member of that LLC is Irgens Development Partners, LLC. From a legal perspective, Small Road Partners, LLC is the entity.

Alderman Moore: If Small Road Partners, LLC is the entity and the signer is the manager of Small Road Partners, LLC, shouldn't the manager of Small Road Partners, LLC be signing this?

Dave Merrick: The managing member of Small Road Partners, LLC is Irgens Development Partners, LLC, which would be the signing entity; it's just a layer of LLC's. Technically, the president or the managing member of Small Road Partners, LLC is Mark Irgens.

Alderman Ament: I realize this went through the Plan Commission but I am still concerned about the amount of trees that are going to be leveled here. Is this a case where they are going to be doing any replanting on this parcel or are they going to be paying a fee? What is going to be the process for the tree replacement?

Dave Merrick: We have submitted a Landscape Plan for the improved areas. We have worked with Greg Kessler and Staff in preparing the Plan and will pay a tree replacement fee for the trees that we cannot replace.

Alderman Ament: On the first page of the Staff Report under Item 1.B.4 it talks about the sidepath or sidewalk between Stonefire Pizza and the cul-de-sac. Was that required in the approval for this?

Dave Merrick: I believe it was a condition of approval from the Plan Commission.

Alderman Moore: If there is a future movement of the temporary cul-de-sac either by making Small Road go all the way through or by changing Small Road and putting the cul-de-sac at a different location, who's responsibility is it to do that change?

JP Walker: The discussion that we have had with the Developer and the neighbors is that it would be tied to future development. There was discussion with the neighbors about where to locate the cul-de-sac. The location shown on the plans is acceptable to the Developer and the neighbors as a temporary location. We looked at a more permanent location further east that would clearly separate residential traffic from commercial or industrial traffic, but could not achieve a consensus from the neighbors.

Alderman Moore: My question is if there is a change to this in the future either by removing this temporary cul-de-sac and putting Small Road through or by changing the direction of Small Road or putting a permanent cul-de-sac in another location, whose responsibility monetarily is it?

JP Walker: If further development occurs along Small Road resulting in a permanent change to Small Road, the developer(s) would pay for that. If Council looks at the Small Road issue and decides that Small Road should be opened, then that's a Council decision; that's the City making that change which would require Council approval of additional funding.

Alderman Moore: What about a permanent location in a different location?

JP Walker: That would be tied to future development. If the Council were to make a decision to permanently locate a cul-de-sac without a development coming through then that would be on the shoulders of the Council to make the decision about funding.

Alderman Moore: The reason that I bring it up now is to make sure that there shouldn't be any item in here that says that this development is responsible for any future changes.

JP Walker: They are responsible for their development and that is the emphasis for this Agreement.

John Graber: Where will the water main be extended? You indicated that it would stop short of the cul-de-sac. My concern is that we are not requiring the Developer to run the water main to the exterior limit of the development, namely the east property line. So if at some time in the future when development would occur somebody else is going to have to build 150' of water main rather than this Developer.

JP Walker: That's correct and the reason this Developer can't do it is because of the location of the temporary cul-de-sac.

John Graber: Couldn't they put it underneath, just extend it to the exterior boundary of the development, which is something that we have typically done? Have the plans been approved by approving agencies for construction?

JP Walker: No, it has not.

John Graber: Who would plow the street between the new cul-de-sac and the proposed driveway entrance to the project?

JP Walker: That will be a snow storage area. That's not going to be plowed.

John Graber: It appears that the access is coming off of Moorland Road.

JP Walker: That's correct, the only access to this Development is from the west. There is no access from the east.

John Graber: At what point does the City quit plowing the street?

JP Walker: At the driveway. A portion of Small Road will be shaped like a hammerhead, and we are using part of the driveway as part of the hammerhead. This has all been reviewed by the Streets Department.

Alderman Moore: I don't see the same line on our diagram as shown on the screen that indicates the end of the road which I assume is just on the Moorland side of the fire hydrant.

JP Walker: Yes, that is correct.

John Graber: On page 9, Paragraph 6, Acceptance of Maintenance Surety, Paragraph IX.C.1.B should be VIII.C.1.B.

Mayor Chiovatero made the motion to approve the Development Agreement for the United Heartland Office Building at 15200 W. Small Road.

John Graber 2nd the motion, with the friendly amendment that it is recommended to Council for approval of the Development Agreement.

Upon voting the motion passed unanimously.

ITEM 04-09 Approval of Change Order No. 2 for the redesign of Glendale Drive.

Ron Schildt: Glendale Drive was started as a design project in 2007 and was originally proposed for construction in 2008. Following the preliminary design, the cost estimate that was included in the New Berlin Industrial Park Redevelopment Plan was less than the cost estimate prepared by the Consultant because of the size of the storm sewer and additional work that was required. For budgetary reasons Staff has moved the planned construction year to 2011. Because of some of the changes that have happened along the way and the additional meetings that are required, the Consultant has requested a change order. Those changes and/or additions to the contract are spelled out in Items 1 thru 4 in the Staff Report. The first two items include an additional Public Informational Meeting and also a meeting with the Community Development Authority. The third item is for the outfall that is required at Deer Creek. The fourth item is for adding terrace swales and yard drains to the Plans. Adding all those items up results in a Change Order for \$16,395. The originally approved design budget was \$284,900. The approved contract with contingencies was not to exceed \$136,962 which left \$147,938 in that account. This Change Order is for approximately 11% of the remaining approved funds.

John Graber: Is ABB agreeable to granting an easement at no expense to the City?

Ron Schildt: We haven't done any negotiations with them. The Consultant has met with them onsite and shown them what is proposed. They have met with the WDNR and had them look at the design to see if the outfall structure is permissible.

John Graber: Is \$4,250.00 for Item #3 a fixed figure?

Ron Schildt: Yes.

John Graber: They will need to perform title searches and stake monuments. I assume that's just staking the new property line. Why can't they just bill that to the City as a direct project expense and we pay it without paying their overhead? I don't recall us ever staking new property lines as part of a development.

Ron Schildt: It's not really placing monuments, its placing stakes as to where the existing right-of-way line is and where the new easement line is for purchase of the right-of-way.

Alderman Seidl made the motion to recommend to the Common Council to approve the amendment of the Design Contract with Ruekert-Mielke for Glendale Drive to include additional changes to the Scope of Work listed in Change Order No. 2 in the amount of \$16,395. Funds to come from Glendale Drive CIP Account (04251100 63013 C2007).

John Graber 2nd the motion.

Upon voting the motion passed unanimously.

ITEM 05-09 Approval of the Redesign of Lincoln Avenue

Tammy Simonson: Item 05-09 is a request to the Board of Public Works to request to the Council the approval of the redesign of Lincoln Avenue from Calhoun Road to Moorland Road. In November of 2007 we had our second public informational meeting in which eight property owners were in attendance. We had individualized discussions with each of the property owners. No written comments were received, only verbal ones. I have included a CD in your packet which includes the plans and the pre-final cost estimate.

Alderman Seidl: Why the 20' wide traffic lanes?

Tammy Simonson: That's part of the design concept in the Industrial Park Revitalization Plan. The City's Developer's Handbook includes that width for industrial streets allowing for wider turning lanes for trucks should they have to turn into the properties.

Alderman Seidl: And the rest of the roads in the Industrial Park are 20' wide lanes as well?

Tammy Simonson: That's correct.

John Graber made the motion to approve the redesign of Lincoln Avenue.

Alderman Seidl 2nd the motion.

Upon voting the motion passed unanimously.

ITEM 06-09 Approval of the Lincoln Avenue Relocation Order

Tammy Simonson: Item 06-09 is a recommendation to the Common Council for the approval of the Relocation Order of Lincoln Avenue from Calhoun Road to Moorland Road. Funding for the right-of-way acquisition is in the amount of \$511,700 which was approved in the 2009 CIP budget. No new outright purchase of right-of-way is required. We will only be needing TLE's (Temporary Limited Easements) and PLE's (Permanent Limited Easements). The TLE's amount to 3.06 acres and the PLE's amount to 4.16 acres.

Alderman Ament: There is a spotted area on the map; is that part of the storm water area on either side of the road?

Darrel Berry: On the Preliminary Plat the dotted areas are indicating TLE's. They are grading easements that are necessary for construction for slopes and bio-retention swales. The areas that have the dashed diagonal lines

in addition to the spots indicate PLE's. That is property that will be used for construction of the bio-retention swales. Ownership will remain with the property owner, but the City will have the rights to access that property for purposes of maintaining or cleaning of the swales.

Alderman Ament: North of Lincoln, there has been some work done on 170th Street for the drainage along both sides of the road but especially on the east side. It only shows that we are going about 100' north on 170th Street. Is that going to blend in with the existing road?

Darrel Berry: The reconstruction of Lincoln Avenue includes the reconstruction of the intersection at 170th Street. We are going a couple 100' feet north and south of Lincoln Avenue to reconstruct the intersection and then blend it back into the existing road.

Alderman Ament: I'm talking about the drainage, the storm water section. We did substantial work on 170th Street. Is there any additional blending from what we will be done when Lincoln is done for the storm water?

Darrel Berry: Yes, it is shown on the previous plan set.

Alderman Ament: This does not include any work in the intersection or along the frontage road along Calhoun Road is that correct?

Darrel Berry: We are taper transitioning the wider road for Lincoln Avenue back into the existing road just east of the frontage roads.

Alderman Ament: Am I correct in thinking that every one of the 11 proposals that came through for Calhoun Road that the intersection was essentially the same?

JP Walker: The two projects were kept separate and there was a match line. The match line located just east of the frontage road for this project is the intended match line with Calhoun Road. Whatever happens on Calhoun Road is separate and will be part of that project.

Alderman Moore: We have had some significant discussions in the past in relation to drainage from Cleveland Avenue to the north. Can I assume that much of this project is to take care of that water that has been a problem coming north from Cleveland Avenue?

Darrel Berry: The drainage design was done by a sub-consultant to us and the drainage design for this project is picking up the drainage in the immediate area of Lincoln Avenue north and south, with a little bit coming down the side roads and a little bit coming down the railroad tracks.

Alderman Moore: So there is not a significant amount of water that's coming from the south? Is that correct?

Darrel Berry: Yes, that's correct. Cleveland Avenue is being handled outside of this project.

Tammy Simonson: The majority of the water that comes off of Cleveland Avenue is going to be handled by the Glendale Road project. All the Industrial Park roadways are going to be looked at individually for what storm water is coming into the area for each roadway.

JP Walker: We have a scheduled hearing on April 15th before a representative of the Office of Commissioner of Railroads, and that is to talk about the improvements that the Union Pacific Railroad Company will have to do on the railroad crossing that is shown on the plans; it's east of 170th Street. It is similar to what was just done on Calhoun Road. We were under the understanding that it is the railroad's responsibility to handle everything within their right-of-way. We have since learned from Greg Behr, who is a representative of WisDOT that our understanding is not correct. Mr. Behr indicated that the railroad is responsible for one foot outside of the rails. Our City Attorney believes that they still need to be responsible for the pavement within their right-of-way and

we are pursuing that. We don't have that decision back yet. But the same thing could apply for Lincoln Avenue. We had meetings with WisDOT and there are specific requirements that have to be made about blending the new pavement into the rail crossing and Darrel is very much aware of that. That has been part of the requirements and since this project is going to be funded partially by Federal funds, we have to meet the requirements of WisDOT on specific railroad crossing needs.

Alderman Ament made the motion to recommend to Common Council to approve the Relocation Order of Lincoln Avenue from Calhoun Road to Moorland Road.

Alderman Seidl 2nd the motion.

Alderman Moore: Could you just explain the term relocation?

JP Walker: Relocation doesn't necessarily mean something is going to be relocated, but it's the acquiring of additional public lands. Whether it's, in this case TLE's or PLE's and maybe not fees simple purchase, but that could also be included on given projects.

John Graber: It's a statutory type of language that in order to acquire right-of-way, especially if there are any objections from the property owners, that a Relocation Order be on file and approved and the necessary interests are acquired in conformance with that approved plan.

Upon voting the motion passed unanimously.

OLD BUSINESS

ITEM 28-08 Discussion on Calhoun Road Improvements and Direction from the Board of Public Works on making the improvements.

John Graber made the motion to table.

Mayor Chiovero 2nd the motion.

Alderman Seidl: We have had lengthy discussions at the Council. Something needs to be done with Calhoun Road, therefore I am not going to support the tabling.

Upon voting the motion passed 4 to 1 with Alderman Seidl opposed.

ITEM 29-08 Amendment to the City of New Berlin Sidewalk and Trail Inspection and Maintenance Policy.

Alderman Ament: I brought this issue to the Council in December which has already been acted on at the Council level. I would think if we were going to discuss some other changes that we would have a separate requested action statement. I think we need to take this off the agenda.

Mayor Chiovero: Considering that this was acted on at a Council level and was not referred back to this Board, I think the only appropriate motion would be to remove this from the agenda.

Mayor Chiovero made the motion to remove this item from the agenda.

John Graber 2nd the motion.

Upon voting the motion passed unanimously.

Alderman Seidl made the motion to adjourn.

John Graber 2nd the motion.

Upon voting the motion passes unanimously.

The meeting was adjourned at 9:20AM