

MINUTES
BOARD OF PUBLIC WORKS MEETING
April 20, 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 Chiovarero, John Graber, Alderman Moore, Alderman Ament and Alderman Seidl.

Staff Present: J. P. Walker, City Engineer, Ron Schildt, Transportation Engineer, Tammy Simonson, Transportation Senior Civil Engineer, Nicole Hewitt, Stormwater Engineer, Mark Blum, City Attorney

Guest: David Tapia – Bloom Companies

Privilege of the Floor:

After asking three times – there was no one wishing to speak at the Privilege of the Floor so Alderman Moore called the meeting to order.

OLD BUSINESS

ITEM 01-09 Approval of the Minutes from the March 16th, 2009 Board of Public Works Meeting.

Motion by Alderman Seidl to approve.
2nd by John Graber

Upon voting the motion approved unanimously.

ITEM 28-08 – Discussion on Calhoun Road Improvements and Direction from the Board of Public Works on making the Improvements (tabled)

Alderman Moore made the suggestion to move this item to coincide with Item 12-09 under New Business.

Each Board member agreed to move Item 28-08 to follow Item 12-09.

NEW BUSINESS

ITEM 11-09 Development Agreement for Public Improvements Associated with the Extensions of Deer Creek Parkway and Library Lane.

JP Walker stated that the Development Agreement is for the public improvements associated with extending Deer Creek Parkway to the northern property line and extending Library Lane from its current termination to the east to meet with Deer Creek Parkway. The original development, Deer Creek Homes, was foreclosed upon by Anchor Bank. The City has a vested interest in it because of a Letter of Credit in the amount of \$1,143,600. Through the efforts of the City Attorney, the City prevailed upon Anchor Bank to get the infrastructure installed either by us using the Letter of Credit or by other alternatives. Anchor Bank chose to follow a different alternative. They retained the services of Joseph T. Grasch under a corporation named ADPC Corporation which is directly associated with Anchor Bank. Mr. Grasch was available to answer questions.

Alderman Moore asked how the Developer mitigated the wetland issue.

Mr. Grascch stated that wetland was mitigated by paying a \$34,100 fee to a cranberry bank in northwestern Wisconsin, as approved by the WDNR. He stated that it was easier to mitigate because the wetland on-site is a man-made wetland due to drainage problems we had.

Alderman Moore asked where is the wetland located on the property?

Mr. Grascch responded that the majority of the 0.57 acres of wetland is in the northern portion of the Library Lane right-of-way and the southern portion of the property to the north owned by S&B Investments. According to the wetland determination, it is man-made wetland that formed within the last 5-7 years and the WDNR typically allows mitigation or has lesser standards for a man-made wetland. They tend to give a little more flexibility if it's their interpretation of man-made. The Chapter 30 Permit technically is not granted yet; we are within the 30-day notice period. The public has a chance to contest the Chapter 30 Permit, but we aren't anticipating any problems.

Alderman Moore stated that he noticed that street and pedestrian lighting will be installed. He asked what does the City have for requirements as far as light pollution, making sure the lights are downward facing, so that the light doesn't spread?

Ron Schildt responded that we have requirements in our Zoning Code that don't allow any of the light to go upwards; nothing goes above the horizontal lines. We use 15-foot and 23-foot light poles. The area of influence of a 23-foot pole is about a 90-foot radius around that pole. With a 15-foot pole, we have a 40-foot radius of influence.

Due to a glitch in the sound and video recording system the following minutes in italics are from written notes.

Mayor Chiovarero asked where will the development occur?

Mr. Grascch responded that Deer Creek is on the east side of the Parkway so development will be on the west side.

Mayor Chiovarero asked where will the sidepaths be located?

JP Walker answered along the west side of Deer Creek Parkway and on both sides of Library Lane.

Alderman Seidl asked if the road is completely Developer-driven?

JP Walker answered yes.

Alderman Ament asked in the revised Development Agreement, besides name changes, what's different?

Attorney Blum explained that this Development Agreement is a little different than the original Development Agreement because the land for the public right-of-way has already been dedicated to the City and the work will be completed in the existing City right of way, so the City will accept roads once they are completed and maintain it thereafter. The original Development Agreement will be replaced with the new Agreement.

Alderman Ament asked if the storm sewer plan will remain the same?

Nicole Hewitt answered yes.

Alderman Ament asked who maintains trash cans and benches?

Attorney Blum responded that it is part of overall City Center Plan and Development Association requirements.

Motion by Mayor Chiovatero to recommend to the Common Council the approval of Development Agreement for the Public Improvements Associated with the Extensions of Deer Creek Parkway and Library Lane.

2nd by John Graber

Upon voting the motion passed unanimously.

ITEM 12-09 Calhoun Road Design Alternative 2009-A

JP Walker presented his interpretation of the Requested Action Statement from Aldermen Ament and Seidl for Alternative 2009-A.

Ron Schildt stated that Waukesha County will be re-looking at their CIP requests later this year. Currently, it is unknown when they will be reconstructing the Cleveland Avenue intersection at Calhoun Road.

Alderman Ament asked if the Lincoln Avenue project will include the pedestrian crossing from the parking lot to north?

JP Walker responded that the crossing will be part of Calhoun Road design.

Alderman Ament asked if the bike lanes will be similar to City Center?

Ron Schildt responded that at right turn lanes either the bike lane stops in the area of right turn lanes or the right turn lane is positioned to the right of the bike lane.

Alderman Moore asked if Alternative 2009-A is significantly different than Alternative 1-A which was vetoed last fall?

Attorney Blum responded that it is for the Board to decide. The rule is that the veto stands for the term of the Mayor (third Tuesday in April). To be materially different there has to be more than a minor alteration made.

Alderman Moore ruled that Alternative 2009-A is not significantly different than Alternative 1-A.

ITEM 28-08 Discussion on Calhoun Road Improvements and Direction from the Board of Public Works on making the Improvements (Tabled)

Mayor Chiovatero made the motion to take off the table.

Alderman Moore 2nd the motion.

Upon voting the motion passed 3 to 2 with Aldermen Ament & Seidl voting no.

Alderman Moore stated that there has been a suggestion that Calhoun Road should have a cross section similar to Lincoln Avenue which was approved by the Common Council.

John Graber asked what was the average daily traffic (ADT) on Lincoln Avenue as compared to Calhoun Road?

JP Walker indicated that the Lincoln Avenue ADT was 5,300 vehicles per day (vpd) and Calhoun Road was 12,800 vpd just north of Cleveland Avenue, 13,500 vpd just north of Lincoln Avenue and 14,100 vpd near Fullerton Avenue.

Mayor Chiovaturo state that he has reservations about building this with future conversion to 4 lanes undivided.

Alderman Seidl asked why would two 20-foot lanes, similar to Lincoln Avenue, be needed?

Alderman Ament responded that Lincoln Avenue is wider because of truck maneuvering. This won't happen on Calhoun Road.

Alderman Moore stated that another suggestion that he had heard is to rehabilitate Calhoun Road by repaving which could add 5 years to allow time for the Council to reach a design agreement.

Alderman Seidl asked isn't that Alternative 2009-A?

JP Walker stated that it is similar, but does not include storm water work. It would cost about \$500,000 - \$600,000 with GlasGrid.

Mayor Chiovaturo stated that this is a temporary fix and result in wasted costs.

Alderman Ament asked in Alternative 2008-A where does the storm water go and how is it handled?

JP Walker responded that Alternative 2008-A included storm sewer and Bio-swales. In all of the alternatives considered to date, we have never gotten beyond the 60% level in design. The consultant has not completed all of the details associated with routing of storm water.

Alderman Ament asked what about the Luterbach building location for a storm water pond?

JP Walker stated that the cost to purchase that land for a storm water management facility was too expensive for the City. There will not be a significant increase in impervious surface on Calhoun Road to require a pond. Existing gravel shoulders are considered as impervious surfaces.

Alderman Ament asked why are we considering storm water south of railroad tracks?

JP Walker answered that we need to manage storm water, right now it is not being managed.

Alderman Moore asked with two 20-foot lanes can we mark a bike lane in the auxiliary lane?

Ron Schildt responded yes.

Alderman Seidl indicated that he would like to see something on paper, regarding the industrial park cross section with sidepaths except in the frontage road area.

Alderman Moore stated that his objective is to get this done in some way so that we can move forward. He asked Staff to do that.

John Graber stated that it seems that there are two diametrically opposed positions here. One being for two lanes and one being for four lanes and they are obviously very different in the impact and cost involved in doing the project. The alternatives usually discussed are to do nothing and then a bunch of other alternatives are considered. The do nothing alternative is not really feasible or practical. Anything that we do to Calhoun Road is not going to be what the road is ultimately going to look like, whether 10 or 20 years from now. If we just

overlayed Calhoun Road to give us a decent riding surface, it is not going to fix the problems that we have but it will give more time to see what is going to happen on Cleveland Avenue and what is going to happen at I-94. I don't know what the lifetime of that is, but it's going to be at least 5 years.

JP Walker responded that Staff has estimated 3 – 4 years with just a simple overlay. With GlasGrid it might last 6 – 8 years. However, GlasGrid doubles the cost. It would cost \$311,000 without GlasGrid and between \$500,000 and \$600,000 with GlasGrid. The concerns he has with the overlay that is suggested are that the cracks are going to come through the new pavement within one year, especially with semi traffic. By adding GlasGrid we can extend the life, as was done on Lincoln Avenue from Jacobs Ridge to Springdale Road. It is now approaching 6 years since Glasgrid was installed on Lincoln Avenue and yes, there are cracks out there that have been sealed, but it's no where near what it would be if it was just a simple overlay. If there is consideration for this type of rehab, he strongly suggested that you consider GlasGrid for added protection.

Alderman Seidl stated that just redoing the road without addressing the storm water issues will result in having the same mess in a couple years. I still think we need to address storm water along with it.

Alderman Moore stated that without handling the storm water issues, if we get a huge rain and we get similar flooding conditions as have been experienced in the past, the businesses are not going to be happy.

John Graber stated that if the storm water improvements are done that would then not have to be significantly altered or a lot of extra money spent later on should the ultimate decision be to go to four lanes that is something that could be included now to help out that situation. He is concerned that some of these things may be just interim measures if the 4-lane road does eventually happen and that money is wasted.

Alderman Moore asked if there is any objection to having Staff present the concept similar to the Lincoln Avenue cross section at the next Board meeting?

Alderman Seidl asked that it be limited to existing plans and tweak them like you did with Alternative 2009-A.

JP Walker stated that he will use Alternative 2008-A plans and mark them up with his interpretation as to what he heard from the Board similar to that which was done for Alternative 2009-A.

**Alderman Seidl made the motion to table.
2nd by John Graber.**

Upon voting the motion passed 4 -1 with Alderman Ament voting no.

Item 13-09 Award of A Real Estate Acquisition Services Contract to Single Source, Inc. for Lincoln Avenue Right-of-Way Acquisitions.

JP Walker provided the professional services agreement and a revised proposal from Single Source, Inc. for \$71,000, which includes \$33,250 for negotiations and acquisitions, \$36,750 for appraisal services and \$1,000 for a sales study. \$511,700 was approved in the 2009 CIP Account 04251100 63014 C2009, so only a portion of those available funds is being used for the professional services. The rest of that funding will be available for any land acquisition that would be needed.

Mayor Chiovero made the motion to recommend to Council the approval of the awarding of a Real Estate Acquisition Services Contract to *Single Source, Inc.*, for the Lincoln Avenue Project in a not to exceed amount of \$71,000.00. Source of funds is the 2009 CIP Account 04251100 63014 C2009.

John Graber 2nd the motion.

Alderman Ament mentioned that on the back side of the Staff Report it refers to eminent domain. He asked are we looking at taking some of land or is this strictly negotiating for a price?

Attorney Blum responded that whenever you are doing land acquisition where the City is initiating it, the term “eminent domain” is used. You will be using some of the initial paperwork, the same notices and so forth, but you will be getting an acknowledgement at that time of a negotiated resolution as opposed to a jurisdictional offer and an actual taking. The first steps are the same.

Alderman Ament stated we aren't doing any actual taking then?

Attorney Blum stated that you will have to come back and approve a jurisdictional offer to be issued and the only time that would be the case is if the Council would decide to go ahead and do that if you weren't able to get the consent of the property owners that would be involved.

Alderman Ament stated that this is identifying *Single Source, Inc.* proposal, but it's not identifying others.

JP Walker responded that this is part of the team that was selected for the Lincoln Avenue design. *Single Source* is the firm that has been doing this work for us for a period of years and they were the ones under consideration for the project team.

Upon voting the motion passed unanimously.

ITEM 14-09 124th Street Relocation Order

JP Walker indicated that this is the recommendation for approval of the Relocation Order for the 124th Street project and the portion of Grange Avenue that needs to be reconstructed. Attached is the preliminary plat along with the description of the properties that have to be considered. Two New Berlin properties where right-of-way acquisition is required are located on Grange Avenue were shown on the preliminary plat. There are no properties on 124th Street in New Berlin where there is a need to acquire additional right-of-way. Hales Corners and Greenfield have also been acquiring right-of-way in their jurisdictions, so that this project can be Bid in 2010.

Mayor Chiovatero made the motion to recommend to the Common Council the approval of the Relocation Order for 124th Street from Grange Avenue to Cold Spring Road including a portion of Grange Avenue from St. Mary's Drive to the centerline of South 124th Street.

John Graber 2nd the motion.

Alderman Seidl asked whether or not the property owners have been notified?

JP Walker stated that to date the property owners have not been notified, that's part of the services that will be needed.

Alderman Seidl stated that both of these properties have a pretty significant front yard, and asked what are we doing with this?

JP Walker responded that for lack of a better term we are equalizing the front property line of those two parcels with those that are adjacent to them. For some reason the property line for these two parcels is to the center line of Grange Avenue. When Grange Avenue was constructed the proper right-of-way was not dedicated to the City.

Alderman Seidl stated that in essence we aren't actually taking something away from them.

Attorney Blum stated that the Relocation Order is the first step in the eminent domain process where the Council will decide if there is a public necessity to have the right-of-way lands acquired for public purposes. Chapter 32 of the State Statutes requires that you make that finding, so in essence that is what you are doing at this point. Once that happens and you say yes there is a public necessity, a rights pamphlet will be provided to the property owners indicating what the City is desiring to do and what their rights are under the law.

Alderman Seidl asked if we are taking any more of their yard.

Attorney Blum stated that technically, if title shows that their property line goes to the center of Grange Avenue you are, but it is not changing their current structure.

Mayor Chiovero stated that he did not think that they aren't going to see any physical changes.

Attorney Blum stated that if this roadway has been used for public purposes even though it's not a title statement, by use of that road we have acquired it anyway. This should be done as part of this process.

JP Walker stated that part of the design of 124th Street and Grange Avenue is the lowering of the hill at the intersection, so there will be grading along all the properties from St. Mary's Drive to the east. So there will be changes that they will witness out there.

Alderman Seidl stated that he knows the people that just recently bought one of the properties and wants to make sure that what is exactly going on is explained to them. He asked if it is appropriate that he vote on this issue since he knows the residents.

Attorney Blum stated that simply having a familiarity with them is not justification to recuse yourself.

Alderman Seidl indicated that he would be a lot more comfortable with this issue if a discussion had been held with the property owners and he felt that they would be blindsided if he were to approve it.

Attorney Blum stated that from a legal standpoint, the elected side of the City needs to decide that if there is a necessity to acquire those lands in the first place, and that needs to happen before there can be any conversations with the property owners under the eminent domain requirements. If you don't decide that it's necessary to do this in the first place, the next step in having that conversation can't take place. Whenever you do eminent domain you are reimbursing the property owner for the fair market value of whatever you are acquiring. It's a matter of whether it's done on a consensus of a voluntary basis. If any property owner doesn't agree, there are options for the property owners under those circumstances.

Upon voting the motion passed unanimously with Alderman Seidl recusing himself.

ITEM 15-09 City Clearing Snow and Ice from Sidepaths

Alderman Moore made a motion that the Board of Public Works recommends to the Common Council that all sidepaths in the City be cleared of ice and snow by the City.

The motion failed due to a lack of a second.

ITEM 16-09 Reduced Clearing of Snow and Ice from Sidepaths by the City

Alderman Moore made a motion that all sidepaths in the City be cleared of ice and snow by the City, except where a sidepath abuts the rear or side property line of a single-family home and does not cross a driveway or walkway to that home.

The motion failed due to a lack of a second.

ITEM 17-09 Communication on I-43 & Racine Avenue Interchange Project

Alderman Moore asked that this communication be included in the agenda because he wanted to make sure that everyone was aware of the Common Council's action and that the City will not have a sidepath on one side nor a multi-use path on the other side of the bridge and the extensions thereof at Racine Avenue & I-43.

JP Walker indicated that Mr. Phil Bain at the WisDOT stated in his 11/03/08 letter that the sidewalk and multi-use path will not be part of the project but grading for the multi-use path will be done at no cost to the City. If there was future consideration by the City to have that multi-use path be constructed, it would at that time be total cost to the City.

Alderman Moore stated that the City would have only paid 20% of the total cost for the sidepath on one side, which would have been about \$7,000. The multi-use trail on the other side would have been fully paid for by WisDOT and all we would have had to do is repair it in the future. He asked are there many sidepaths or trails that require in the first five or ten years?

JP Walker responded that he is not aware of any hard surface trails that have required maintenance in the first 5 or 10 years. Typically when you look at hard surface trails, you are looking at blow out areas or areas where the pavement was somehow compromised. A trail could be installed for many years, maybe decades, before any repairs would be needed. He could not give an estimate on how much maintenance would be needed, but believed it would be minimal.

Motion by Alderman Seidl to adjourn.

2nd by John Graber.

Upon voting the motion to adjourn passed unanimously.

The meeting was adjourned at 10:46 AM.