

**MINUTES**  
**BOARD OF PUBLIC WORKS MEETING**  
**August 21, 2006**  
**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 at 8:00 A. M.

Members Present: Mayor Jack Chiovero, City Engineer J.P. Walker, Alderman Ament, Alderman Augustine, Alderman Moore

Staff Present: Tammy Simonson, Civil Engineer, Greg Kessler, Director of Community Development, Nikki Jones, Manager of Planning Services, Mark Schroeder, Parks & Recreation Director

Guests Present: Gerry Klamrowski, Developer for Farrell Meadows Condominiums, Robert Bultman, Developer for Settlers Ridge Subdivision, Attorney Mark Blum, City Attorney

**ITEM 01-06 Approval of the minutes from the June 19<sup>th</sup> and June 27<sup>th</sup> (Special) Board of Public Works meetings.**

**Motion by Alderman Ament to approve the minutes.**

**Mayor Chiovero 2<sup>nd</sup> the motion.**

**Upon voting the motion passed unanimously.**

**ITEM 14-06 Approval of Ordinance to Amend Section 230-13 of the Municipal Code with Respect to the Issue of Maintenance of Medians**

JP Walker: The requested action is to recommend to the Common Council approval of the Ordinance to Amend Section 230-13 of the Municipal Code with respect to the Issue of Maintenance of Medians. On the back of the issue paper is the draft ordinance adding language to Section 230 - 13 which provides that the subdivision association for any subdivision in which the median is suited is responsible for the cost of the maintenance of the median and where a subdivision association has not been formed or is inactive, the actual cost incurred by the City to maintain the median will be a special charge of current services to each of the residents of the respective subdivision.

JP Walker made a motion to recommend approval of the ordinance to the Common Council.

Alderman Moore 2<sup>nd</sup> the motion.

Alderman Ament: On the second page, Section 1 the first sentence, does it really belong there?

Attorney Blum: The language that you are referring to is language that was in that ordinance before any modifications were made and the concern was that if there were public rights in the way adjacent to the roadways or stormwater easements that the individual would be responsible for both. This section was amended about a year ago being that there was debris and so forth on occasion in stormwater easements. The idea was that those persons living adjacent to those easements would to the extent practical meaning that unless there is a steep slope or something that would prevent someone from mowing those areas or keeping it clean that they would do so. So that change was made previously and there is no modification being made to that part as part of this ordinance change. The request that I had received was to deal with the other issue which was, what you do when you have a subdivision association which is really the owner of the right of way, how do you determine then who is responsible for the maintenance in that circumstance and that is what this change is intended to do.

Alderman Ament: How would that be charged, assuming that there is no association or its default or no longer active?

Attorney Blum: This is similar as a special assessment under the statutes except it doesn't require all the processes that a special assessment would. Basically, you are going to make a determination as to what the costs are, you are going to make a determination that the individual residents of the subdivision are collectively benefited by the work being done and

making those determinations and would charge back to those benefiting properties accordingly. The way this is written is that each of the properties in the subdivision would be responsible equally for the work that is being done. As opposed to trying to get into looking at relative lot sizes and if somebody for example has an acre and a half and somebody else has is 3 acres you don't charge the 3 acre parcel twice as much as the acre and a half person. You charge them all the same, at least the way this is written.

Alderman Moore: The first sentence of Section 1 ends with the word "mowed". It seems to be either cumbersome or unclear because the words were necessary. I'm wondering if it could be clarified by saying "and keep grass mowed in such areas unless designed to remain natural". Would that clarify that?

Attorney Blum: This was added based on rather extensive discussion that we had the last time this was changed basically to deal with the circumstance you are eluding to. In that if in fact for water quality purposes there was a certain type of tall grasses that was necessary for a particular storm water easement that you are obviously not going to mow that. That is why the word necessary was added kind of after the fact to try and accommodate that situation. I don't have a problem with what you are suggesting.

JP Walker: I have no issue with changing the wording.

Alderman Moore: Then I would like to have the wording changed to read "to keep grass mowed in such areas unless designed to remain natural."

**Upon voting the motion passed unanimously.**

**ITEM 15-06 Development Agreement for Settler's Ridge Subdivision**

**JP Walker: The requested action is to recommend to the Common Council approval of the Development Agreement subject to final review as to form by the City Attorney. Settler's Ridge Subdivision is a 15 lot Conservation Subdivision located on 75 acres west of Wehr Road. The proposed Development will be located outside the Ultimate MMSD Sewerage District and will be served with private wells and sanitary septic systems, and I so move.**

**Alderman Ament 2nd the motion.**

Alderman Moore: Have there been any changes made?

Robert Bultman: The plan is still the same as the original one; the walking trails are still in the plan.

Alderman Ament: Are these trails private for the subdivision and not public?

Robert Bultman: Yes, they are private and part of the subdivision, no mow walking trails, they will be grassy trails.

**Upon voting the motion passed unanimously.**

**ITEM 16-06 Development Agreement for Farrell Meadows Condominiums**

**JP Walker: The requested action is to recommend to the Common Council approval of the Development Agreement subject to final review as to form by the City Attorney. This proposed development is named Farrell Meadows Condominiums; it will consist of 28-Unit Duplex Condominiums developed on approximately 13.22 acres west of Sunny Slope Road, south of Honeyager Fields subdivision. This development is located within the current MMSD Sewerage District and will be served with municipal sewer and water supply systems, and I so move.**

**Mayor Chiovatero 2<sup>nd</sup> the motion.**

Alderman Ament: On page 13 under C-2, exterior of the entire building is complete including landscaping, unless winter conditions exist. What will happen if winter conditions exist, are they going to be given additional amount of time in the spring?

JP Walker: That's the intent; a good example would be the first two buildings that are being built as model buildings. Their actual start of construction will be this fall. The intent is to allow that landscaping to be completed as soon as weather permits the following spring.

Alderman Ament: Do you just monitor that?

JP Walker: Yes

Alderman Ament: The other question I had was on the last page, page 16, Item E which is about the possibility of needing signal lights on Howard and Sunny Slope the last sentence says October 31, 2010. Is that correct?

JP Walker: That is the standard language in all agreements.

Alderman Ament: So the intent is to keep it consistent with the other dates?

JP Walker: That is correct.

Alderman Augustine: Another question I have is, both of them talk about \$15,000 irrevocable letters of credit, does that mean there is going to be \$30,000 between the two?

JP Walker: That is correct.

Alderman Moore: Does this include side paths?

Gerry Klamrowski: No there are no side paths planned for this subdivision.

JP Walker: This has already been thru the Plan Commission approval process. It was never an item of discussion unless Greg Kessler has another opinion, I don't believe it's required.

Greg Kessler: From my recollection I don't believe that there were any side paths called for within the site and Plan Commission approved the site plan as such. Any modification that you would request would require us to go back to the Plan Commission at this time.

Alderman Ament: The preliminary plat has been approved?

Gerry Klamrowski: Yes, it has.

Alderman Ament: I don't know what we could do at this point, because they are conforming and they are consistent for the most part with the preliminary plat. I don't know how we could even if we wanted to take this back and make them redesign this project at this point.

Alderman Augustine: Is that \$15,000 a standard amount?

JP Walker: When we first started talking about this issue the Board made that level of commitment the actually amount that would be applied to each of the developments that would be cautionary in that potential plan. It's not an item that we have discussed other than the original amount that was set here at the Board.

**Upon voting the motion passed unanimously.**

**ITEM 17-06 Development Agreement for Villas of New Berlin Condominiums**

**JP Walker: The requested action is to recommend to the Common Council approval of the Development Agreement subject to final review as to form by the City Attorney. This proposed development is named Villas of New Berlin and is a 20-Unit Duplex Condominium development located on 8.78 acres west of Sunny Slope Road. The proposed Development is located in the current MMSD Sewerage District and will be served with municipal sewer and water supply systems, and I so move.**

**Alderman Ament 2<sup>nd</sup> the motion.**

Alderman Ament: On page 2, under Sequence of Development, Item F was added. "Building Permits for model buildings 9 & 10 only, (no occupancy permit until items D through N are completed)". I'm not sure but I don't recall that for this particular project we approved them to go ahead and build these in advance of having the infrastructure in. Was this part of when we were discussing the Honeyager and the Kasian and all those?

JP Walker: This particular discussion is a request by the Developer. It is the same as in the previous Development Agreement. The reason why the Developer is requesting the models is because these are condo buildings and they are models for perspective buyers to see what the units look like. Both developments have requested two buildings to be built concurrently with the infrastructure. It is Staff's intent that infrastructure will not lag in this construction, similar to what was done at Hickory Hills and Crestview. We have discussed with the Developers that we expect the infrastructure to be constructed on a timely basis and we are willing to allow the models to go through.

Alderman Ament: Isn't it that particular issue that wasn't previously decided on this or even Farrell Meadow Condominiums. It seems to me that when we were discussing this it was approved as a separate item; this would be the appropriate place to make that decision.

JP Walker: It is a request by the Developer and the request is coming to the Board, so the Board has the right to make the decision.

**Upon voting the motion passed unanimously.**

**ITEM 18-06 Sidewalk, Side path and Trail Inspection and Maintenance Policy**

**JP Walker: The requested action is to recommend to Common Council to approve the Sidewalk, Side path and Trail Inspection and Maintenance Policy. The rationale behind this is that the City has more than 25 miles of sidewalks, side paths and trails varying in age and condition. We really don't have a maintenance policy. Staff has drafted the attached policy and is bringing the policy forth to the Board for discussion. If the Board desires to make changes, that's why it's here, and I so move.**

**Alderman Moore 2<sup>nd</sup> the motion.**

Alderman Ament: Basically what we are deciding here is whether we are going to require the abutting neighbors to be responsible or if the City or taxpayer is going to take the responsibility for inspection and maintenance of the sidewalks, side paths and trails. On the Requested Action Statement, however, under Financial Impact it just says that the City Engineer will annually request of the Board and the Council, the dollar amount. There are no projections. I would like to know what they are right now for the 25 miles that we have. I would also like to know what the projected costs are in the future when this is entirely built out. What is the cost is going to be to the taxpayers, cause once we do this, if we make this decision and require the taxpayers to pay for this then what is that cost going to be? We are going to place this on the budget and it won't go back, it's something that is going to be permanent. We need to know those numbers. I would like to know what the cost of policing these is going to be. The Police Department is going to have to somehow cover this either walking or biking through there. There is going to be additional costs. The maintenance itself with Park and Rec, if we go back to the Police Department part and we look at just the past couple years at Park and Rec at least a dozen of the meetings they have discussed Valley View and they can't police that with the funds that they have now. So adding the 25 miles of trails and eventually 75 miles of sidewalks and trails or more, I think that these are important items that we need to know to make these decisions. Also the other part of this that I am having a problem with is that we want to use the Roadway Maintenance Budget to inspect and maintain the trails. We have been hearing how the Roadway Maintenance is short. We have been increasing it substantially over the last five years that I have been up here. This last year it got to the point where we don't really have a Roadway Maintenance so we determined that we have to take the repaving out of there, and so we have lowered it down to \$500,000 and we are going to borrow money to do part of that Roadway Maintenance which was historically done through Roadway Maintenance and put it into the CIP. Now we are going to reach back into that and take money out of that, and we don't even know how much we are going to ask to be taken out of there, either currently or projected when this is all built out. Without those numbers I would have a problem with it, I would also suggest that we instruct the Finance Department to add a line item in the budget for this and not use Roadway Maintenance. That should be a separate item.

It's a little bit confusing when you look at the last page of this Requested Action Statement where it says Streets or Park and Rec Departments would maintain this. Who will maintain them? That should be clarified. We also need to realize the cost to Park and Rec. I don't like the idea that it's intermixed. I hate to see this buried within the budgets of two different departments and it would also be hard to make sure that this get's done. I was at the informal meeting that was held on Saturday by the Alternative Transportation Committee. It talked about unpaved trails would not have to be maintained, something else to consider as this goes on and we do get these cost estimates that the general consensus that they had and the expert that they had in there who designs trails all over the State, their suggestion and recommendation is that all wood chip trails get paved. That would be an added maintenance cost. Wood chip trails are not safe for bicycles and wheelchairs. They will be looking to have those paved, that will be an additional cost. It was discussed that some could be gravel, for bicyclists a certain type of gravel would be fine, but then what about wheelchairs or other such type of motorized equipment? In the end I would guess with any ADA problems that we could have, between that and the fact

that some people might tip on their sides on their bikes, because it's too soft or part of it washed out due to rain that we could have an issue there or an additional liability problem. In here it also talks about trails and side paths that are marked with signage as recreational facilities will not have to have snow removal. I assume that means chips or gravel, but if they are paved with concrete or asphalt the former City Attorney said there is no distinction as to whether they are sidewalks, side paths or trails, they have to be maintained. So we would have to either maintain them. I don't have enough information here to make that decision. There are too many cost variables here that I think could affect any one of our decisions here. I think the decision here is who is going to be responsible for this, the taxpayers or abutting neighbors?

Mayor Chiovero: This is something that I hoped to get on the agenda several months ago and now the winter months are getting close. We do want to make sure that we identify these so we know what we have to take care of in the winter. This policy actually came from another City, it wasn't just re-invented here. The City Engineer went and researched other cities to see what their codes are and try to adapt it to ours. Obviously, we can make changes as we want. As far as making a separate item for sidewalk and side path repairs and so forth, currently this is in the street repair section of most municipalities. They don't have a separate sidewalk repair, it's just considered part of the maintenance. As far as costs for maintenance and inspection, I don't know what kind of costs would be incurred. Currently when it comes to being a paved sidewalk along the road, maybe it could be inspected while they are doing their PASER ratings. As far as wood chips or recreational paths, they would be inspected like other items of recreation are inspected by Park and Rec now. I don't know if the cost for repairs down the road is even a known factor at this time because when you put a sidewalk or side path in it should be in semi-permanently, say 25 to 40 years. If you are worried about the snowplowing or maintenance, that is one issue that we are trying to resolve with this policy. Currently right now Park and Rec does do that. The fact that they do it to a lot of areas that per ordinance we shouldn't be doing it, but we are and it was determined sometime ago that the Park and Rec Department got the instructions that they do it all. They made the decision on their own because it's easier for them. Nobody has had a problem with that. But now, talking basically National Avenue where most of those are businesses, some do maintain their own and then some don't. This is not perfect, doesn't fit everything that New Berlin wants right now and that's why it's here. Let's make it viable and acceptable to use as we want. As far as the wood chip trails and those types of trails, I did have a conversation with the City Attorney. I asked if we put signage up would that relieve some of the concerns that we aren't maintaining them during the winter months. He agreed, but then there was the underlying issue that he wasn't 100% sure that if we were tested on that possibly there would be some liability or not. As far as wood chips being wheelchair accessible, I don't think they are accessible to wheelchairs all over. It's a wood chip trail, if they want to use a trail there are other paved side paths or sidewalks or trails that they can use. It's hard to make every trail accessible to every person even though we try our hardest. I know with the ADA laws that may be hard to do. We are trying to see what other cities do, how they maintain them. I just don't want to make things more difficult than they need to be.

Alderman Ament: I don't want to do what we have done so many times in this community and that is jump off the diving board and then on the way down look to see if there is water in the pool. I would like to see these things all covered. I don't know how we could make a decision after all the discussions that we have had on the budget and Roadway Maintenance make a decision then to dip into that at a cost that we don't have any projections or numbers. We have the Police Department, Park and Rec. We have every department here saying that they can't do any more. Yet we are going to add this burden to them and they are going to be coming back to us and saying that they need more money. I don't know what the ADA implications are here, but I do know that we went through this with the former City Attorney and his opinion was you cannot mark a trail and say it's closed. You can do it but you're still liable. Then you go to a paved path that you are inviting people to use and then not maintain them. You are liable for that and then you also fall into the ADA compliance. Are you supplying them with the pathways that you designed for them. They have a right to use them if we are building them and especially if we are going to be taking on the maintenance. There are a lot of issues that maybe we can tweak out, but the reason I am mentioning them now is so they can be explored and Staff can come back with something that either addresses these or answers the questions. If they don't need to be changed so be it. We need to have those answers. The other thing that puzzled me is our current code does require abutting homeowners and businesses clear snow and ice from the sidewalk or side path. The homeowners if their driveway crosses a paved trail or a sidewalk and businesses apparently whether they do or not and also multi-family. Would that remain in effect with this? In that code it requires those people to maintain and clear the sidewalk or path within 24 hours of a snowfall or ice storm. It states further down that all other sidewalks and side paths not covered in the above code will be maintained by City Streets or Parks Departments on a priority basis and only be cleared after all streets have been cleared of snow and ice. Does that mean that we are requiring the homeowners and businesses to clear theirs in 24 hours but the City does not?

JP Walker: That's exactly what that means. The streets come first and the sidewalks are a secondary priority based exactly on what you just read. The section of the Policy that quotes in Municipal Code 230-2 on Snow Removal, it is stated verbatim from our Municipal Code. In a residential area, if the driveway crosses the sidewalk, it is the property owner's responsibility to clear the snow and ice. For commercial and multi-family areas, they are responsible and they have a 24 hour window in which to get the sidewalks cleared. The City should be able to do it, if you make it 24 hours

after the streets are cleared. I don't have a problem with that. But if we have on-going snow and it takes longer to clear the streets in the areas that the city has responsibility for now clearing snow and ice from, sidewalks will be second.

Alderman Ament: I certainly couldn't support this as written, I would like to see those questions answered or addressed within this proposal the next time around.

Alderman Moore: One thing we have to be careful with is what our objectives here are, and we have something in front of us that maybe needs to be tweaked but we need to attack this in a positive way rather than try to put road blocks in the way. It's important to see how we can move forward, we can always find out these other items as we go along, lets not delay this. Some of the discussion here deals with a code that has already been enacted. 230-2 is already on the books and as indicated here for our purposes to note that it's something the City has already approved. One sentence that I see is the one that talks about the sidewalks being cleared on a priority basis. If there is some particular change that needs to be done with that sentence, let's do it. I have a couple of questions. I need some definitions, do we have any sidewalks per say in the City.

JP Walker: I was under the opinion that we have side paths. I swear I was told, but I cannot find it, that there was an ordinance that said we have side paths, they are not called sidewalks, but I can't find it. I was told that by a historian that was with the City of New Berlin for 30 years.

Alderman Moore: I can see that there may be a possibility to have the definition of sidewalks so that we know what the definition is as we continue to put in side paths. I don't think we want to police any sidewalks to make sure that bicycles aren't being used on them, that's somewhat inappropriate. It may be wise to leave the definition in unless we want to say "New Berlin will not make sidewalks, they will be either side paths or trails".

JP Walker: I believe both terms are stated in our Municipal Code and that is why it is included in this policy because both terms are used elsewhere in the code. What we tried to do with the definitions is to define the particular infrastructure component by its use. We specifically state a sidewalk will strictly be used by pedestrians, where as a side path can be used by other wheeled equipment as well.

Alderman Moore: Sidewalk here as defined does not include wheelchair users, joggers which would be logical for a sidewalk. It seems to me that maybe we should just add a second sentence after sidewalk to state that New Berlin shall create side paths and trails and has no plan to make sidewalks or something like that. I would hate to create something where we do not allow multiple use of the sidewalk.

JP Walker: I am going to have to differ in my opinion of that. As I stated before because we use both terms sidewalk and side path in our Municipal Code, we need to use it here as part of the inspection and maintenance policy. If you want to change other portions of the Municipal Code and eliminate the word sidewalk that's a different issue, but as far as what is required for this Policy we have to make sure that we are using the same terminology that is used elsewhere in the code.

Alderman Moore: The second thing I have is the definition of side path; I wonder if because it says a path way within a highway right-of-way and sidewalk as a portion of a street or highway, should it include the word street? Should it include the word street, so it would state "a pathway within a street or highway or right-of-way". Is there a difference between a street and highway in this case?

JP Walker: I don't think there is.

Alderman Moore: So the word street doesn't have to be there.

JP Walker; To me all streets are within the right of way, so is that redundant?

Alderman Moore: I'm talking about the word highway, are all streets highways?

Mayor Chiovero: I wouldn't consider a side street a highway.

Alderman Moore: I wonder if we shouldn't add the word street there. A path way within a street or a highway.

JP Walker: Yes, we can, to keep it consistent.

Alderman Moore: If you have a designated bike trail along the side of the road, how is that defined in here, is that a side path?

JP Walker: If it is in the right-of-way it is considered a side path. If it's outside the right-of-way in an easement area it's considered a trail. It can be separated from the road by a terrace and still be with the right of way; it would be considered a side path.

Alderman Moore: I understand that, so that means both a bike trail along the road and bike trail or side path separated by a terrace are under the same definition, is that right?

JP Walker: If they are within the right-of-way. A trail is outside the right-of-way.

Alderman Moore: I'm talking about a bike path that is separated from the road by a white lane, so it's still a side path whether it is terraced or not.

JP Walker: Correct

Alderman Moore: So we go back to the definition in the code. This could mean that people could be required to clean out the side path that is in the road.

JP Walker: If it's connected with the actual pavement of the road that will be done by the Streets Department. If there is a terrace area that separates that part of the path from the roadway then that's the area they would be required to maintain if the driveway crosses the path.

Alderman Moore: I'm wondering if we shouldn't add the definition of a separated side path and put the word separated in the third line, where it says, vehicle access driveway crosses; and then possibly add the word separate. Is it necessary or is it too obvious that they won't have to do that.

Attorney Blum: This is a maintenance policy and it's intended to maintain and deal with existing sidewalks, side paths and trails. This is not, as I understand it, a recommendation to change 230-2 or get into the issues of how you define side paths, sidewalks or trails. It seems to me the discussion that you are having this morning really broadens what's been brought before you. All this is intended to do is to give some directions and uniformity as to how there is maintenance performed on the existing sidewalks, side paths and trails. The question that you are posing indicates that there is difficulty in deciding what a sidewalk is, what's a side path and what's a trail. In the Developers Handbook you will see different specifications in regards to width and how those types of facility are built. If you go back to 230-2 which I think is where your question stepped off from that there really isn't a good definition in the ordinance of the kind of things that we are talking about here, whether it's a sidewalk on an arterial, or it's on a collector street, or whether it's in the right-of-way or not. Some of these are definitions just based on common practices and so forth aside from what's actually been stated. I think to come back to your original question, how is a resident supposed to look at 230-2 and decide whether they have the responsibility of clearing snow or not. I think that a sidewalk that crosses their driveway whatever the proximity is or what kind of street it is, the assumption would be that they are responsible for that. But there isn't a whole lot of guidance in terms of definitions in this to answer that question. Again, I'm not sure that was the focus of what was brought before you.

Alderman Moore: I wanted to make sure that it was clear that they would only have to clear a terraced sidewalk or side path and wanted to make sure that this is understood with this.

Attorney Blum: If you want to say that we can certainly look at a modification to 230-2 to clarify that.

Alderman Moore: I'm not saying that we have to. I'm just making sure that we imply it that way and that it's understood and we don't need to change it unless it is necessary to change it.

Attorney Blum: Is there a situation where you don't want to require someone to clear the snow, in that case maybe we should further specify that.

Mayor Chiovatero: The side paths going down Greenfield Avenue. I think a lot of discussion is coming up on whether or not we need to maintain them or use them as just a recreational side path during the winter months? Is it possible to put together a map of all our city side paths and trails and mark them as such and would that be legally binding and that we recognize this particular facility as a trail or a side path and follow certain maintenance and clearing wording to that effect.

Attorney Blum: We could certainly do that. To go back to the comment you made you would ask whether in fact we have a responsibility to clearing snow on all sidewalks, side paths and trails. My answer would be in one other community that our office represents is looked at just trails as being separately defined. They are different in the way they are

constructed. They designate them as recreational trails and they don't snowplow them during the winter months. I know what the definition says in the policy, but I'm not sure what that means. It appears to me like sidewalks are used specifically for pedestrians and side paths can be used for other things. But, when you walk up to one how do you know what it is? It's pretty clear under the law that municipalities are required to clear the snow from sidewalks. I think you can designate asphalt trails and not clear them during the winter time. Unless you can be very specific when you consider anything to be a trail as opposed to a sidewalk, the law is that you are supposed to remove snow in the winter time from sidewalks.

Alderman Ament: We went through this rather extensively back in 2001 or 2002 when the issue first came up with our former City Attorney. The difference is a sidewalk is specifically for walking, side paths can be for more uses, but for reasons of maintenance there is no difference. Whether it's paved, for maintenance reasons there is no difference, which is why the code says sidewalks/paved side paths. If we don't maintain it and the City can ignore it, we are still liable for it. Where do the trails fit it as part of the maintenance? If they are unpaved then you don't maintain them, but if they are paved do they fall under the same category because they are paved and then the next thing is who maintains and pays for it? Does it make sense like we have on National Avenue to clear the sidewalk up to the homes along there and then stop and then go back on the sidewalk on the other side of the house?

Alderman Moore: Can we change the definitions or are they somewhere else in policy that would have to be changing a lot of different things.

Attorney Blum: You reference in 230-2 to sidewalks, and side paths and trails. If you are going to start changing those I would suggest you would put some kind of definitional section in an ordinance somewhere, so that is identified. If you are going to change what you are going to call sidewalks, side paths and trails that probably should be defined someplace. I know there are references in the Developers Handbook. If you are going to change that it should be done by an ordinance.

Alderman Moore: In order to more well define the word trail if we said "a pathway within a public access easement that is not a side path or sidewalk or is not within a highway or street right of way"; would that be the same as the rest of the ordinances and would it then clarify the word trail.

Attorney Blum: It doesn't for me, because you are relying on the definitions of sidewalks and side paths.

Alderman Moore: The reason I said that is because a highway right-of-way is in fact a public access easement, right?

Attorney Blum: Yes, assuming you use the right-of-way as part of your definition.

Alderman Moore: That's why it seems to me that saying "a trail is a pathway within a public access easement" could include sidewalks and side paths, right?

Attorney Blum: To me what would make more sense would be to step back and either define the sidewalk/side paths and trail by what they do or you define them as how they are constructed or where you find them. The definition should include those three things. Right now we have some of that in the Developers Handbook, a little bit by reference in the ordinance and so if you want to decide paved and unpaved is your distinction, fine. If you want to decide a trail is 10 feet wide so you have a two-way bicycle access and a sidewalk is 5 or 6 feet wide you could do that, etc. You can define things by different distinctions.

Alderman Moore: You are saying that there should be some additional clarity or changes in the definitions. If that is correct would that be appropriate that we should send this back to you and Staff to converse to clarify?

Attorney Blum: No because this is meant to deal with maintenance only. It wasn't meant to deal with the definitional aspects. That is a separate question. The only reason you have differences is if you have differences in applications based on a distinction. You can't walk up to a specific trail or sidewalk and know what the difference is.

Alderman Moore: Are you suggesting that this is acceptable to move ahead with or are you suggesting that because of certain lack of clarity the maintenance part should not be moved ahead.

Attorney Blum: I think you are bordering on policy questions, that's not for me to decide. All I understood this to be is how the Park and Rec Department and Streets people know how they are to maintain what we already have. If that's the case this does that, at least from a legal standpoint.

Mark Schroeder: I will respond to the comments I heard earlier from Alderman Ament about the policy that we have in place. Previous administrations on National Avenue and Greenfield Avenue gave our Department direction to take care of cleaning the whole distance. It was based on the efficiency of clearing operations, do a section per the ordinance then you would leave one not cleared and rely on the home or business owner to do that, so it was felt that was the way the Council would like us to proceed with that. The problem with that is even more than manpower, what about new development that comes in? There are other areas of the City where there are sidewalks where realistically the owner of that particular business called us up and asked how come you don't clear the snow in front of our business. I don't have a real good answer. With budgetary issues we really need to take a look at that. I think that's why we need a consistent policy. We are not following the ordinance that we have in place right now; I think we should definitely take a look at doing that. The way I look at this right now when you talk about trails you are probably talking about trails, for the most part, in public parks. There may be a few instances other than that but most cases the trails are in parks. We take care of those, we replace wood chips and gravel wherever needed. That is being taken care of out of the Parks maintenance budget, so I don't see that as being an impact to the Roadway Maintenance budget as much as it falls within the Parks budget. As far as ADA, my knowledge is that not every trail that you install in a community has to be paved. If we have a winter time use for a building in a park, we would then pave it for users to get there. We don't have to make every trail paved in a park, just make trails so that wheelchair bound individuals can use paved trails, but not every trail in a park has to be paved.

Alderman Moore: Would you like us to tweak this or move ahead with it as written.

Attorney Blum: The ultimate decision on that is yours. From a legal standpoint we can go with what we have here.

Mark Schroeder: I think the side path snow removal ordinance as written is very clear. What we are going to do through the Park and Rec Commission is discuss this so we have one in place.

Alderman Moore: Does this maintenance policy improve things for you?

Mark Schroeder: A lot of this describes things that I wouldn't get involved in such as mud jacking of sidewalks, etc.

JP Walker: I would like to answer some of Alderman Ament's questions that were stated earlier. This policy was set up to establish not only the maintenance procedures but the inspection as well. What will come from the inspection procedure will be an annual request for actual repair costs. To project right now what the current costs are, I don't know if there are any current costs because we haven't been maintaining the sidewalks and what the future costs will be will vary on an annual basis, similar to what we do on our Roadway Maintenance forecasting. We base it on actual inspections and we set up a three year window of opportunity. I see this as being the same type of situation based on the severity of the required maintenance, based on the inspection ratings. We will establish a program of whatever repairs are needed and we will set up a priority basis similar as to what we do with Roadway Maintenance. I don't see that it will be a constant number; it will vary and will be our responsibility to establish the program that we present to the Board for future considerations.

Alderman Ament: When we project Roadway Maintenance we are basing it on something. Where would we do this every year, you are talking inspections, you must be able to estimate what it is going to cost for inspection people to do this each year. The cost of the snow removal alone, there must be some type of projections as to what this will cost us. I don't know how we can be expected to throw that into the Roadway Maintenance budget, without having any idea what it's going to do to the Roadway Maintenance budget. How do we know how much comes out of the Roadway Maintenance budget? That is why I think this should be a separate line item in the budget. We could leave the Roadway Maintenance budget as it is.

JP Walker: I agree it should be a separate line item by itself. I think we have to use good judgment the first year and set an amount and then each subsequent year after that it would be based on actual inspections. Now I believe what Staff is indicating as far as inspections goes, we are talking about PASER evaluations for Roadways every odd number year, inspection for sidewalks and side paths would be in the even years. It will be done by Staff just as the Roadway Maintenance Inspections are done by Staff.

Mayor Chiovarero: Can these be done at the same time as the roads are being done? As far as keeping it separated, I can see the concern, I partially agree with it, but partially means we are splitting hairs. We don't know what the sidewalks are going to cost us. As a City we are expected to maintain facilities, whether it's a sidewalk, street or whatever. Last winter Mark did an analysis on how much it is costing us to plow all the sidewalks we do now and it was at \$5,500, which I thought was rather low. Down the road if it turns out that the costs have to be tracked separately then we do it at that time. A lot of good questions have been brought up and they should be looked at and answered. The only issue that I have is that I would like to see this done before or close to when the snow flies this year. Why are we doing businesses

on National Avenue? Within reason if you are going down the sidewalk and you have a 75 foot area why go around it, just do it. Greenfield Avenue is more difficult, that would have to be looked at. There are businesses that do it without a problem. I would like the City Attorney if we were to mark certain paths on a City wide map that's available to the public to show what a side path is and what's a trail and signage if that would be acceptable and legal.

**JP Walker: Made a motion to table this issue.**

**Alderman Ament 2<sup>nd</sup> the issue.**

Alderman Moore: The words between November 1<sup>st</sup> and April 15<sup>th</sup>, does that mean we won't clean the snow away if it falls before or after those dates.

Mayor Chiovero: Those are just some dates that we picked.

Alderman Moore: How about saying trails and side paths that are marked as recreation trails will not have snow removal?

Upon voting the motion passed with Alderman Moore opposed.

It was recognized by all Board members that they received the communications from Greg Kessler and JP Walker

**JP Walker made a motion to adjourn.**

**Alderman Ament 2<sup>nd</sup> the motion.**

**Upon voting the motion passed unanimously.**

**Adjourned at 9:30 A. M.**