

MINUTES
BOARD OF PUBLIC WORKS MEETING
April 4, 2005
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 Wysocki, City Engineer J.P. Walker, Alderman Chiovatero, Alderman Ament and Alderman Augustine.

Staff Present: Ray Grzys, Director of Streets & Utilities, Olofu Agbaji, City Planner, Mike Seefeldt, Division Engineer

Guests Present: Dennis Kasian, KASCO, Bob Williams, TDI Associates & Bill Honeyager, Honeyager Fields

OLD BUSINESS

ITEM 01-05 Approval of Minutes from the March 7th meeting.

Mayor Wysocki made a motion to approve the minutes.

JP Walker 2nd the motion.

Upon voting the motion passed unanimously.

NEW BUSINESS

ITEM 10-05 Development Agreement for KASCO PUD South Phase Condominiums

JP Walker: The requested action is to recommend to the Common Council approval of the Development Agreement subject to:

- Receipt of a recorded agreement between the Property Owner for KASCO and the Developer for the proposed Honeyager Fields Subdivision for construction public improvements of Howard Avenue; and
- Final review as to form by the City Attorney

The KASCO PUD South Phase Condominiums is a Condominium Development consisting of a combination of 2-unit and 4-unit condominiums and one single-family unit, on the north side of the development, resulting in a total of 67 units. The proposed Development will be located on approximately 18 acres between the Deer Creek Golf Course and the proposed Honeyager Fields Subdivision at the west end of Howard Avenue, east of Deer Creek. The Development is located within the MMSD Sewerage District and will be served with public wells and sanitary sewer systems.

Alderman Ament made a motion to recommend to the Council the Development Agreement for KASCO PUD South Phase Condominiums

Alderman Augustine 2nd the motion.

Alderman Ament: On Page 9 at the very top of the page, street lighting. There is no street lighting required at this time for this development. Is there a possibility that it will be required in the future?

JP Walker: I am not aware of any street lighting. That is standard language.

Alderman Ament: There is no reference to signal lights on Sunny Slope and Howard. Can a provision be made that the cost is to be shared by the developer at a later date if signal lights are needed? So the entire City is not responsible for the entire cost.

JP Walker: I will ask Ron Schildt about this and have it available for you by the Council meeting.

Alderman Ament: On Page 11 under Public Sites & Open Spaces in the other developer agreements, there is a statement that states the developer shall develop a condominium association. Is there some reason why we aren't requiring this developer to establish a condominium association or a homeowners association?

JP Walker: That is an error on my part. My question is whether the Property Owner, or the developer/builder are responsible for establishing the homeowners association? I will ask Mr. Dennis Kasian to respond.

Dennis Kasian: The actual builder of the condominiums establishes the homeowners association.

Alderman Ament: I would like to make sure it's in the Developer's Agreement, so there is no misunderstanding. On Page 12 - Item 4 there is reference to an attachment is that something we should be seeing, or just for engineering?

JP Walker: The property owner and Mr. Honeyager have put together an agreement, and I have not seen the recorded copy. As part of the Issue Paper, the Board's recommended approval is based on the City receiving a recorded copy of the agreement between Mr. Kasian and Mr. Honeyager.

Alderman Ament: Even if we approve it here, you're not going to approve it until you have had a chance to review the agreement, is that correct?

JP Walker: Yes, that is correct. The zoning permit will not be signed until we have that recorded copy in hand.

Alderman Ament: On page 16 – Item H it says “The breakdown will be the basis for determining special assessment for the properties on the north side of Howard Avenue. Where is that going to be located? Is the main going to be on the north or south side? I'm gauging by this that we will be requiring the homeowners on the north side to eventually hook up to this.

JP Walker: What we are referring to here is the sanitary sewer that has to be installed on Howard Avenue just west of Sunny Slope and going toward Mr. Kasians development. That will serve also Mr. Honeyager's proposed Honeyager Fields development. There are existing properties on the north side that are not on public sewer at this time. Those are the ones that we are referring to. By PSC regulations they will have 1 year in which to hook up after they are notified that it is available to them, and assessments will then be issued.

Alderman Chiovatero: Does this include water?

JP Walker: No. Water was already installed back in 1980's. The property owners already have water.

JP Walker: On page 12, Paragraph 7 (in red type), has to do with the number of dwelling units that will be allowed for building permits prior to Farrell Drive being constructed. Farrell Drive is proposed in the Honeyager/Farrell development east of this proposed development. That would be the 2nd connection to Sunny Slope Road. Right now this development does not have a 2nd ingress/egress point, but if you look at the entire three development complex, Mr. Kasians development, the Honeyager Fields development and the Honeyager/Farrell development, then it all ties together. We then have the necessary ingress/egress points. Staff is concerned without having Farrell Drive constructed, that we have a long cul-de-sac when you consider Howard Avenue and the proposed Fohr Drive, in the Kasian development that stops at the eastern border. Staff was looking at the code changes that are coming forth through the Plan Commission. One of the issues we are looking at is a maximum of 25 units for a cul-de-sac. Mr. Kasian has a business decision that has to be made and by us having this tied to 16 units, it puts him in a Catch-22 basis. I have asked Mr. Kasian to state his case and let the Board decide on it. We believe that Staff should not make this decision. It is something that the Board should decide upon.

Dennis Kasian, 14300 West Howard Avenue: The 18 acres that we have in this development, is basically divided into 3 lots and when we sell, we sell either Lot 2, 3 or 4. We are not allowed to sell individual building pads. We have had a number of interested buyers over the last year, and every one of them has this situation to deal with. Right now, if this all goes through, we are looking at closing on Lot 2. Lot 2 is adjacent to the golf course. It has six 4-family buildings and one 2-unit building. In reality, I don't believe that 26 units can get built in one year or before Farrell Drive goes in. However, in the market place, financing and banking, when the buyer goes to the bank, and

says he wants to buy this lot and it's based on units. When the Developer's Agreement is shown to the developer it shows he is limited to only 16 units. That would negate any possible sale. Without the sale, we wouldn't be able to start construction of the infrastructure for the development. We install sanitary sewer on the center part of our property. We are the ones that have to get going first. In order for us to get going, we have to have more than the share of 16 units as currently stated in the Developer's Agreement.

Alderman Chiovatero: Are they going to put in the infrastructure along his street and up to Farrell property?

JP Walker: Mr. Kasian has to install sanitary sewer first, because that sanitary sewer brings it available to Mr. Honeyager for Honeyager Fields and for the Honeyager/Farrell development. Mr. Kasian and Mr. Honeyager have an agreement, which we are waiting to see the recorded copy of, that ties all the financial responsibilities together for a cost share for making the necessary public improvements on that eastern part of Howard Avenue. That agreement spells out all the responsibilities as far as those two speculators have in order to get the public improvements in and get City acceptance for the Board's approval. I have reviewed the draft of the agreement, the City Attorney has reviewed the draft and we are in agreement that it is a proper agreement as long as it gets recorded at the County and we receive that recorded copy. Then we are ready to let them start once we have Council approval on the Development Agreement.

Alderman Ament: Assuming this agreement follows through, do we have any idea when this agreement will be signed and recorded. If for some reason, it did not, are we not only violating our own code are we potentially creating a safety issue to the people in that issue, because the main reason we were restricting to 25 was at Plan Commission was for fire issues? Is there any reason to believe that this could become an issue? Would we be better off tabling this until the next meeting?

JP Walker: Our recommendation for approval to the Council is subject to receiving the recorded agreement. If we don't get the recorded agreement, Olofu will not sign the zoning permit. The City Attorney agrees with this.

Alderman Ament: So this is something that between now and when it gets to Council and this is resolved it's OK?

JP Walker: Yes, you had a very important question. Do we know when?

Dennis Kasian: We submitted the draft last week to the Planning Department.

Olofu Agbaji: We do have a copy of the comments from JP Walker and Greg Kessler and will give to Mr. Kasian for him to make corrections.

Alderman Chiovatero: Are there any changes other than just cleaning up some language?

Olofu Agbaji: Just cleaning up some language, making sure that everything we want is there.

JP Walker: I have done a great deal of thinking about this because it is a complicated issue. There are a lot of factors that go into play here. I have to also look at the business side of it and I understand where Mr. Kasian is coming from. I believe that a similar situation would apply to Mr. Honeyager for Honeyager Fields. I don't think it would be in the City's or Board's best interest to put some unnecessary restraints on the number of units for either development because they are so intertwined. We have to make sure that decisions that we make towards Mr. Kasian's development do not affect Mr. Honeyager's development, because they are intertwined. I would like to make a recommendation and I understand that Mr. Kasian's decision is based on the sale of the six 4-unit condominium buildings (24 units), and Mr. Honeyager has 8 single-family units. I don't think this will put any risks on the City. I believe that we should recommend 32 units instead of 16. This is a decision that Staff should not be making. It should be made at the Board level.

Alderman Chiovatero: In this case, I am very concerned that KASCO puts in all of the infrastructure and all the sewer and will be limited to selling his lots. Seems like there is a builder interested in buying it and if he can't sell it then the land will just be sitting there, and I don't think that's a good idea.

Mayor Wysocki: I have a couple comments. What was the logic for the original 16-unit limit?

JP Walker: It had to do with what the Plan Commission has changed in its Zoning Code. If you look at Howard Avenue and then the proposed roads in the development, essentially you have a long cul-de-sac. Those that are connected with the Plan Commission are struggling with that issue right now. The Plan Commission has in their Zoning Code changes that a cul-de-sac can not serve any more than 25 units. That was that the reasoning behind ours, because there are nine existing buildings on Howard Avenue right now.

Mayor Wysocki: The developer will assume responsibilities under this Developer's Agreement. As you go through these various sections, you will see eventually that it does talk about the developer's responsibilities. He will be bound and obligated by this Agreement. So, I feel that this should be very clear as to what is required. It is very important that this last link be done correctly. On Page 11 under the Public Sites paragraph we should have the phrase "that these fees are in addition to any connection fees required by the City of New Berlin prior to individual permits being issued". I do think, if I understood correctly, the Plan Commission did not put the 16-dwelling unit limit on there. Again this is something that I think is in the internal operations relative to our recommendations to the Council relative to the Developer's Agreement. I tend to agree that 24 units are acceptable in view of the sale of parcels. The Farrell Drive extension, is critical. I would like to add three subject to's when this goes to Council.

- Subject to a final review and recommendation of potential cost contributions for signal lights installed at Howard Avenue and Sunny Slope Road
- There should be a required establishment of a Condo Association Agreement
- Subject to all other recorded agreements, specifically Exhibit A.

I would offer these as an amendment to the motion.

Alderman Chiovero: Does the 24 units work with you, Mr. Kasian?

Dennis Kasian: Yes

Alderman Chiovero: Would that be including sharing the development with Mr. Honeyager.

JP Walker: Yes that would be including sharing with Mr. Honeyager, that's why I suggested 32.

Dennis Kasian: My understanding is that in my agreement it would be 24. When Mr. Honeyager comes before you with his agreement, you're looking at authorizing him 8 units.

Mayor Wysocki: But that is separate, for this agreement it's only 24.

Alderman Chiovero: But it also ties it in with Honeyager Fields.

Mayor Wysocki: I understand the implications.

Alderman Chiovero: I was thinking about this being tied in with the Farrell project. That was my concern, not to hold up this project, if Mr. Honeyager and Mr. Kasian can work with the 24 between the two; I know it's first in.

Mayor Wysocki: Mr. Honeyager would have a second agreement with the 8, is that correct JP?

JP Walker: Yes. Mr. Honeyager has to have a developer's agreement for his development. Whether or not we need to clarify it a little more, that 24 units applies to this development, there will be a future development that adds 8 additional units.

Alderman Chiovero: Should we cross out "and the proposed Honeyager Fields single family development"?

JP Walker: I believe we have to, because the second agreement will pertain strictly to Honeyager Fields.

Olofu Agbaji: That will be OK. I also have finalized the review for the CSM so that it can be sent back. That should be coming back for signatures to the city. Honeyager is also involved with Farrell tied into that development together so that can go forward.

Alderman Chiovero: My concern is that KASCO is going to be putting in all of the infrastructure and if he has a buyer or developer for this land it will help move this project forward.

JP Walker: Mr. Kasian is putting in the infrastructure for his development; Mr. Honeyager is putting in the infrastructure on Howard Avenue, Mr. Kasian is cost sharing.

Mayor Wysocki: On page 15-Item E, to the best of your knowledge JP, was that the final agreement relative to the City of New Berlin paying the Property Owner \$35,285.00 for the alternate sanitary sewer route?

JP Walker: That is correct.

Mayor Wysocki: Item F, again keep in mind property owners and successors are the signees so we are talking about potential relatives here. It says, "Shall have the option to construct the terrace within the right-of-way, a 6' to 8' golf cart path that would be within the public right-of-way." Do we have any concerns about the construction of a 6' to 8' path being in our right-of-way relative to other items that we might want to possibly put in the path? For example, later on if cable need to be put in the right-of-way, does the City of New Berlin hold responsibility for replacing the asphalt if it has to be torn up?

JP Walker: The asphalt path is the responsibility of the Condominium Association and future owners.

Mayor Wysocki: I would like a sentence in there that states that any necessary public construction that is within the right-of-way is the developer, successor or future owners responsibility to reconstruct that path. Exhibit A will be attached before Council action.

JP Walker: That is correct.

Mayor Wysocki: I make a motion to amend as stated with the three items as stated before:

- Subject to a final review and recommendation of potential cost contributions for signal lights installed at Howard Avenue and Sunny Slope Road
- There should be a required establishment of a Condo Association Agreement
- Subject to all other recorded agreements, specifically Exhibit A
- Subject to change from 16 to 24 units

Alderman Ament 2nd the motion.

Upon voting the motion passed unanimously.

Alderman Chiovero: Back to the original motion, the motion to go through as amended.

Upon voting the motion passed unanimously.

ITEM 11-05 Developers Agreement for Hickory Hills Condominiums

JP Walker: The requested action is to recommend to the Council approval of the Development Agreement subject to:

- The Developer receiving County approvals for public improvements along Beloit Road; and
- Final review as to form by the City Attorney.

Hickory Hills Condominiums is a condominium Development consisting of 104 units located on approximately 22.5 acres north of Beloit Road located between I-43 and the North Oak Estates Subdivision. The Development is located within of the MMSD Sewerage District and will be served with public wells and sanitary sewer systems.

Alderman Chiovatero: My first question would be on page 2-Item F – Building permits for buildings #24 and #25 only. Are these for models?

JP Walker: Yes, that is correct.

Mayor Wysocki: On page 16 – Item H, It indicates that due to rezoning the properties there is an increase sewerage flow from the Development that will require an upgrade to the existing sanitary sewer system. To what extent and how far that upgrade is needed?

Ray Grzys: No, I don't have that information at this time.

JP Walker: We had some discussion with the Utility Director and Larry Wilms of the Engineering Staff. I don't recall the details. There were some calculations done, but I don't have a recall on the exact numbers.

Mayor Wysocki: My only concern is that the sewer system in that area is a recent installation through that area.

Bob Williams: My understanding is that the pump at the lift station needs to be tweaked a little bit, changed to increase the capacity of the lift station. There are no piping changes that are necessary.

Mayor Wysocki: I would like to have it verified by our Utility Director indicating that the only increase required upgrade to the existing sewer system is at the lift station.

Alderman Chiovatero: Where is the lift station located?

JP Walker: It is by Tumbleweed, Gravity flow goes to the west, and is on the east side of Moorland Road. Flow from the lift station goes back towards Grange Avenue, but the gravity system goes to the lift station on Beloit Road, east of Tumbleweed.

Mayor Wysocki: To clarify this, any incremental increase in any cost will be the responsibility of this development, is that correct?

JP Walker: Not only this development, but Motion Wellness.

Mayor Wysocki: There are no costs to Utility users, is that correct?

JP Walker: Yes that is correct.

Alderman Chiovatero: Weren't these lines oversized already and the time of the Westridge development?

Mayor Wysocki: On page 13 – Item # 6, was added so that would allow for an orderly process, and the developer is aware of this?

JP Walker: Yes.

Alderman Ament: On page 16 – Item H, Do we need to reword that, especially the part that says the developer will be responsible for his proportionate incremental share of the required upgrade?

Mayor Wysocki: There were other developers along the way that had to pay more. Just want to make sure it's the developers share not the City Utility users.

Alderman Ament: If the propeller has to be changed, shouldn't that just be the responsibility of the developer?

JP Walker: That is his proportionate share.

Alderman Chiovatero made the motion.

Alderman Augustine 2nd the motion.

Upon voting the motion passed unanimously.

ITEM 12-05 Development Agreement for Crestview Place 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. Crestview Place Condominiums is a Condominium Development consisting of 20 two-family condominiums units located on approximately 7.6 acres north of National Avenue and east of Observatory Drive. The Development is located within the MMSD Sewerage District and will be served with public wells and sanitary sewer systems.

JP Walker made the motion.

Alderman Chiovatero 2nd the motion.

Alderman Ament: On page 7- When we were originally dealing with this at Plan Commission, one of the issues that kept on coming back were storm water issues and I just want to make sure that Eric Nitschke has all the storm water issues nailed down. Is this development was going to share in the underground storage facility.

JP Walker: No, it is not.

Alderman Ament: Their storm water pond is strictly on their property?

JP Walker: I believe everything is contained on site. You need to look at paragraph 5 on page 6, and then paragraph 6 on page 7, as you indicated. There are two things tied together. There is a proposed commercial development on the south side of Crestview Place that will have storm water issues that will flow into this development. All the storm water management will be contained on this development.

Alderman Ament: Once both these developments are located, the pond will be sufficient to handle it all?

JP Walker: That is my understanding.

Bob Williams: The issue was how we discharged the water from the ponds. We have two ponds on this site that contain all the storm water. The outflow from this pond goes through Malone Park and the question was whether or not the existing storm sewer in Malone Park would handle this discharge. We videotaped that entire length of storm sewer and proved that the sewer was in good shape and could handle that all.

Alderman Ament: Will this just pass through the underground facility in Malone Park?

Bob Williams: It just passes through Malone Park. There a storm sewer that goes underneath some of the soccer fields and ball diamonds. It discharges into a small swale in the park. It doesn't go into the park's retention system at all.

Alderman Ament: Just wanted to make sure we are covered here.

Mayor Wysocki: On page 2- item F – quick reason why?

JP Walker: These are models and that is why no occupancy permits will be issued.

Mayor Wysocki: Then no occupancy will be granted because they will be used as models?

JP Walker: That is correct.

Alderman Chiovatero: Are we comfortable with the way it is worded.

JP Walker: I am comfortable with it as well as the City Attorney.

Mayor Wysocki: This project will have it's internal road system as a private road system. It won't be City roads and on page 9, relative to the inspection, any and all inspections that we will be doing will be compensated and expensed to the developer, is that correct?

JP Walker: That is correct.

Alderman Chiovatero: This is a private road and has to be approved by the City Engineer. Are you comfortable with that?

JP Walker: One of the requirements in the Development Handbook states that although it is a private road it still has to comply with our standards and our approval before it's built, so I am very comfortable with that. The reason why we have this requirement in our development agreements is more for the residents then it is for the developer, because even though they are private roads, the residents still will drive on them and they have to have the same standards.

Upon voting the motion passed unanimously.

ITEM 13-05 Revised Cold Spring Road Relocation Order / Plat Changes

JP Walker: This is the second revision to the Relocation Order based on land acquisition requirements that occurred. The recommended action is to recommend to Common Council to adopt the revised Resolution #05-14, "Declaration of Public Necessity and Relocation Order to Reconstruct Cold Spring Road in City of New Berlin" pursuant to Sections 62.22 (1) & (1m) and Subsection 32.05 (1) of the Wisconsin Statutes. This issue has to do with changes to the right-of-way acquisition associated with Parcel #1, which is the first parcel on the northeast corner of Sunny Slope Road and Cold Spring Road. We are actually through with negotiations with the property owner taking less area then what was originally requested in the original relocation order.

Alderman Chiovatero: Is that a request from the property owner, or just a result of the road construction?

JP Walker: It was a request from the property owner and it was settled through negotiations. Staff made sure we have the necessary room that we need to put in the public infrastructure plus private infrastructure that have to be relocated and all has been accounted for.

Alderman Chiovatero: Is this the last issue that we have to deal with?

JP Walker: The next Issue Paper deals with that.

Mayor Wysocki made a motion to recommend to Common Council to adopt the revised Resolution #05-14.

Alderman Chiovatero 2nd the motion.

Alderman Ament: On the resolution itself – item 4. Is this the usual language for this type of resolution?

JP Walker: I will confer with the City Attorney on this.

Mayor Wysocki: I believe the City Attorney said that it is a required paragraph that has to be in these types of acquisitions even if it is at the property owners request. We can bring this up at Council.

JP Walker: The exhibit that is attached for the Board shows the area to be revised. The actual Relocation Order as amended will be attached to the issue paper that goes to the Council packets. The Council will see the amended Relocation Order.

Upon voting the motion passes unanimously.

ITEM 14-05 Status Update for the Cold Spring Road Reconstruction Project

JP Walker: I'm happy to report that the design is complete, land acquisition is completed, the project was advertised on March 31st and will again be in the paper on this Thursday, April 7th. Bid Opening will be April 20th, BPW approval will take place on May 2nd, Council Approval on May 10th, Award of Contract on May 11th, WE Energies Electrical & Gas Relocates are due to be completed by the end of May, a pre-construction meeting will be held during the week of May 16th, a Citizen Information Meeting will be held during the week of May 23rd. Start of construction will be on or about June 1st and substantial completion will be October 15th. We have received all our commitment papers from our consulting team on land acquisition. The commitment papers will be made part of the contract and spells out exactly what are our consultant indicated to the residents that the City is committing to doing in regard to saving certain trees and taking down certain trees, widening driveways, etc. The contractor will get a copy of this, our contracted inspector will have a copy of this and Mel Corley in addition to myself will have a copy of those commitment papers.

Alderman Ament: This schedule means that the road itself will be done by October 15th, anything like landscaping might possibly not be completed.

JP Walker: Our goal is to have the road itself completed before school starts in September.

Alderman Chiovero: With a June 1st start, school doesn't get out until the middle of the month.

JP Walker: Only off road type of items will be taken care of before school is out. The pavement itself will not be torn up until after school is out.

Alderman Chiovero: What is the time of actual road reconstruction.

JP Walker: Our goal is to have all the pavement and possibly the striping done by September 1st. The contractor will be made aware that they better be prepared to work hard on this project, because we want it done before school starts, barring any bad weather.

Alderman Chiovero: I am concerned about the subdivisions and the residents that only have Cold Spring Road as an exit.

JP Walker: Notices were sent out to all the property owners along Cold Spring Road about three weeks ago, indicating that access will be maintained at all times, for local traffic only. So, 127th Street does not have an alternative route to go. Access will also be maintained for them also.

Alderman Chiovero: Could we block some of those other exits off to prevent people that have an alternative exit from using Cold Spring Road?

JP Walker: We could run into a Fire & Police Departments safety issues if we do that.

JP Walker: There were questions from the residents about the speed tables. We have also sent out flyers to the Cold Spring Residents explaining what they are.

ITEM 15-05 Transferring the Tess Corners Creek Pond to the Storm Water Committee

Alderman Chiovero: Recommend that the Board approve the transfer of jurisdiction over the approved funds for the Tess Corners Creek Pond from the Board of Public Works to the Storm Water Committee.

Alderman Chiovero made the motion.

Mayor Wysocki 2nd the motion

Alderman Ament: How much is in the fund for the Tess Corners Creek Pond project?

JP Walker: Just over \$1.6 million

Alderman Ament: Will those funds be used for this through storm water or is this something that will be done as developments start in that area? Will the City do it and then get the money back from the developer?

JP Walker: That's why we are requesting the jurisdiction be sent to the Stormwater Committee. They will then make the recommendations for the use of those funds and then it will go to Council for approval. The way it stands right now is the City will work with the developers as they come forth in that area. This pond will be developer driven. It has some permit deadlines that are in place. This pond is to be built in accordance with the existing Chapter 30 permit and has to be built before the spring of 2008.

Alderman Ament: This is money that would have come out of Storm Water Utility anyway?

JP Walker: That is correct. The reason it is here at the Board is because we were in a joint partnership with the City of Muskego. They do not have a Storm Water Utility. They were handling it at their Board so the decision was previously made to handle it through our Board also.

Upon voting the motion passed unanimously.

Mayor Wysocki made a motion to adjourn.

Alderman Ament 2nd the motion.

The meeting was adjourned at 9:15 AM.