

**MINUTES**  
**BOARD OF PUBLIC WORKS MEETING**  
**June 7, 2004**  
**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: City Engineer J.P. Walker, Alderman Chiovatero, Alderman Ament and Mayor Wysocki  
Alderman Augustine was excused

Staff Present: Greg Kessler, Director of Community Development, Ron Schildt, Division Engineer, Ray Grzys, Director of Streets & Utilities,

Guests Present: Bob Zoelle, United Financial Group

**OLD BUSINESS**

**ITEM 01-04                    APPROVAL OF MINUTES**

**Motion was made by Mayor Wysocki to approve the April 5, 2004 minutes. Seconded by Alderman Ament. Upon voting, motion passes unanimously.**

**NEW BUSINESS**

**ITEM 11-04     Computer Take Back Campaign (WI CTBC)**

Ray Grzys – Due to circumstances, the presenter will not be able to be here, we need to table this until next month.

**Motion made by Alderman Chiovatero to table until the next meeting.**

**Mayor Wysocki: 2<sup>nd</sup> the motion.**

**Upon voting, the motion passed unanimously**

**NEW BUSINESS**

**ITEM 12-04     Development Agreement for Park Central Subdivision**

JP Walker: Recommend to Common Council to approve the Development Agreement subject to final review as to form by the City Attorney.

Alderman Chiovatero 2<sup>nd</sup> the recommendation.

JP Walker: This Developers Agreement is for Park Central Subdivision (formerly known as National Manor Subdivision). This is a 33 lot single-family subdivision on the Southern half of the development.

Alderman Chiovatero: Page 12 under Deed Restrictions, #B states to the North, I think that should be to the West.

Bob Zoelle: Yes, it should be west.

JP Walker: Stated that he would make that correction.

Alderman Chiovatero: Who will take care of the detention ponds?

JP Walker: The Homeowners Association will own all of the 4 ponds.

Bob Zoelle: Not exactly, there are two ponds that will be on the single-family portion of the site; those two will be under Homeowners Association. We will maintain the other two.

JP Walker: Mr. Zoelle and a number of his representatives have had a number of meetings with the neighboring subdivisions and their residents, all of the issues have been satisfied.

Bob Zoelle: Alderman Chiovero had an opportunity to sit down with several of the most recent meetings. There was one issue regarding the outlet three, which is the retention basin that is closest to the existing subdivision to the east and there was a concern from the neighbors that this would always remain a retention basin. It will be on the final plat showing that this will always remain a retention basin.

Alderman Ament: I assume all the stormwater issues have been addressed. Should the Homeowners Association Agreement be in this or is it in the original approval of this development?

JP Walker: That would be under Stormwater Management, Section VI.

Alderman Ament: This says that it will be taken care of with the Homeowners Association, which apparently has been taken care of.

Bob Zoelle: It will be through the sale of the lots.

Alderman Chiovero: I did not see anything about how the Homeowners Association will be set up, when do we determine when there is an official Homeowners Association and when will the developer be relieved of their responsibility.

JP Walker: That's not normally covered in the Developer's Agreement.

Bob Zoelle: The City states that we won't be responsible once all the land is sold. We as the owner/developer don't want to be responsible for the land that we don't own, so to protect ourselves the Homeowners Association was created and at the time of sale everyone will know that there is a Homeowners Association.

Alderman Chiovero: What defines a Homeowners Association and when it is decided that it goes into effect?

Mayor Wysocki: The subdivision itself has a list of agreements when it's recorded and I believe that's where that is done.

Bob Zoelle: On the final plat, at JP's suggestion, which I think, is a good idea, people are asked to escrow monies away to contribute and to start some responsibility.

Mayor Wysocki: In the recording of the subdivision is where each subdivision lists it's individual responsibilities or items perhaps such as architectural control, all those types of things. You would record in the final plat that responsibility.

Alderman Chiovero: It hasn't worked. I thought we were going to come up with something here that says the developer is not relieved of any of those responsibilities until the Homeowners accept it.

Alderman Ament: I thought that it was spelled out in the Developers Agreement that the Homeowners Association had to be in place before the City signed off on it.

Greg Kessler: We have had problems in the past, but that is with property owners over time. The Homeowners Association articles and by-laws have to be submitted to us at the time of final plat submittal because that's in our Subdivision Ordinance. Our Subdivision Ordinance states when you turn in the final plat you have to submit to us the Homeowner Association documents, otherwise if we don't go through the preliminary plat phase and the Developers Agreement how does the developer know what the homeowners association is supposed to do or maintain?

Alderman Ament: Normally we see that at the staff report level at Plan Commission, is that correct?

Greg Kessler: You will see that at the final plat, you won't see it at the preliminary plat because Engineering hasn't done their detailed review of the construction drawings. Under Chapter 236 of State law a preliminary plat is not conceptual but not yet detailed enough to start moving dirt. There are specific detailed requirements in Chapter 236. Once we go through the preliminary plat process is when the developer submits to us the construction drawings based on that preliminary plat layout. Then we do the detailed reviews. That's when we start crafting the Developer's Agreement and start putting in the details necessary for maintenance of that subdivision. At that point, after the Developers Agreement is approved, that's when the developer creates the Homeowners Association, that's when the property packets for each of the lots are put together, and that's when they have to disclose the Homeowners Association requirements. The Homeowners Association does not know what to do until we get to the final plat because we don't know what to tell them to do, until we start reviewing the construction drawings.

Alderman Chiovatero: We are having problems just getting them off the ground. I'm looking for something that says they have to have a Homeowners Association and what defines a Homeowners Association, because even in the subdivision directly to the east of this I get multiple calls a year because there isn't a Homeowners Association. I've talked to the developer, Thomson, and he said that they sent a letter to everybody and their hands are washed of it. I don't know where that comes in to play. I think it should be in the Developer's Agreement.

Mayor Wysocki: First of all, we recently did a lot of work on expanding our Developer's Agreement or getting to the type of detail that we are talking about. On page 7, C1 ownership, we make it very clear that this is a live document throughout this entire process that the responsibilities for all aspects, particularly in regards to the drainage easements and detentions become the responsibility of the developers, heirs, successors and future owners. That's as strong as you can get legally.

JP Walker: At the bottom of page 8 of this Developers Agreement it states that "the final plat for Park Central Subdivision shall not be approved or executed by the CITY until all of the following items have been submitted, reviewed and written City approval given. The list is on page 9 of the Developer's Agreement. I'm not opposed to adding a paragraph referring to a Homeowners Association being required.

Alderman Chiovatero: Maybe that's where it could go. I need something here that says the developer agrees with the City that they are responsible for a formation of the Homeowners Association. It might be as simple as another form at the closing that tells the homeowner about the Homeowners Association and that they agree to follow the by-laws of the Homeowners Association. This way the City can go in the subdivision and enforce it. There has been a change in the shape and size of detention pond in outlet three, I have not yet seen this, and there has been some configuration in the shape of the street, I have not seen the changes.

Bob Zoelle: I thought they were at the last meeting; we had our landscape designer there that showed the configuration of the pond. The title search will show that there is a Homeowners Association in place and once there is money involved at the time of purchase for the Association, I guarantee someone will take charge and say "OK, we are going to have to have officers in our association"

Alderman Ament: Greg, don't we now have that somewhere in the staff reports where it shows about a Homeowners Association should be formed or something to that effect.

Greg Kessler: Can't relate to a specific phrase in the staff report. Our Subdivision Ordinance 235 does require a Homeowners Association be in place. MMSD now requires in Chapter 13, that the developer supply a detailed maintenance plan for detention ponds

JP Walker: Yes that is correct. In our approval process they are required to submit to us their example of the storm water management plan. That plan has to receive our approval even before it goes to the MMSD and we have not had one that has been rejected by MMSD once we have approved it. In there it does require annual reporting of events that will occur, such as natural burns that are required. It's all spelled out in the management plans. We go as far as to provide examples of an acceptable plan to the applicants and then they take those and tweak them to their specific issues.

Alderman Chiovatero: Who is going to do this on a yearly basis?

JP Walker: The Homeowners Association is required to.

Alderman Ament: That's why I feel somewhere it is important that it is documented so somewhere down the road they realize it has to be done. It doesn't have to go in great detail but it should be somewhere, preferably in the Developer's Agreement, but should state that the Homeowners Association is formed and running by the time he signs off on this.

Greg Kessler: I would agree with that. Often times we get caught up, sometimes we need to say things explicitly, even though we have complete authority and control over managing and enforcing code compliance and all of that, for these issues. I just think it's better that we explicitly state what we mean.

Alderman Chiovatero: I know in discussions particular to this subdivision with JP about these detention ponds and who's going to maintain them. We talked about putting in an ordinance that we put on certain properties annual tax bills so that portion of it would go to stormwater maintenance. I think it's inevitable that down the road the City is going to have to maintain these, because 10 years from now there will be a subdivision and here's a pond that is in bad shape and I get a call from one of the residences that the pond is disgusting and it needs to be maintained. The City will go out and look at it and say yes, it has to be dredged or whatever and I go back to this person, and they state that they have no idea of a Homeowners Association. We need to have something even if it's just a line, in writing that the developer will be sure to make the residents aware that when they buy their property they are members of a Homeowners Association and there are monies taken out and they will be used for whatever maintenance is required.

Bob Zoelle: Just to make you aware, final approval will be contingent on a Homeowners Association being in place before the final plat will be approved and the sales can be made.

Alderman Chiovatero: It's always been that way, but on the Homeowners say they don't know that they were in a Homeowners Association. There was an agreement with the developers and the neighbors that they would put in some landscaping, buffering. I feel confident that UFG will follow through with that but that should be something that should be in the Developer's Agreement.

Bob Zoelle: Our landscape contractor is meeting this week with the four neighbors that are affected by this. We are far exceeding anything the ordinance requires.

Greg Kessler: I know when I spoke to the neighbors they stated that there was that agreement with the developer. I would appreciate that it was put into the Developer's Agreement. Lets put as much language in as many places as we can to show that this is properly recorded.

Alderman Chiovatero: Bob and the UFG group have bent over backwards to work with the neighbors.

JP Walker: We have two weeks before we go to Council. Greg and I will work with the City Attorney on wording and I can e-mail what we have come up with.

Alderman Chiovatero: I'm fine with that; I don't want to hold this up any longer.

Mayor Wysocki: I would prefer a Special Board of Public Works meeting rather than by e-mail. Under Storm Water, Item #6, it carries through because it goes beyond just the subdivision proof of an association. Also on page 14 under Special Conditions we specifically added Item E. We even further incorporated the maintenance agreement.

Alderman Chiovatero: I understand that we can't control beyond original owners, because there are original owners that say they aren't aware of what is going on.

Mayor Wysocki: In this one there has to be easements to allow us to get to the storm water facilities for purposes of maintenance.

Alderman Chiovatero: If there is any chance that the Homeowners Association can take the bull by the horns and run with it, the City is going to be much happier.

Mayor Wysocki: That's why we added the maintenance agreement to this Developer's Agreement.

Alderman Chiovatero: JP & Greg can set something up and we can have a special meeting to look at what they have set up.

Alderman Ament: There has been a name change; I assume that is just for the subdivision, there have been no ownership changes of any kind.

Bob Zoelle: No, that is just a subdivision name change.

Alderman Ament: In listening to the Mayor and reading this I'm beginning to wonder if these homeowners associations are even something that is necessary and maybe they are even more confusing for the individual land owners, maybe not initially but 5, 10 or 20 years down the road. If it's 40 years from now and the pond has to be cleaned out the Homeowners Association won't be involved. The City is going to have to tell them they are going to have to help pay for the cleanup or there will be a lien placed on their property. I'm beginning to wonder if the Homeowners Association is making it more confusing because the people that own the property 10 or 20 years from now won't know what the restrictions are.

Alderman Chiovatero: This Agreement is only for the developer and the City. It has nothing to do with the homeowners.

Mayor Wysocki: I don't want to take out any wording that is already in the Agreement regarding heirs and future owners. Typically subdivision ordinances are for that subdivision not something the City requires.

Bob Zoelle: This will show up in the title search. At the time of the sale it will show that there is a subdivision-developer agreement. We will try to set this up at time of sale that there is money set aside to join the Association and we will through our legal to set up some type of yearly maintenance contribution by each land owner. They will have personal input and they will be concerned then with what takes place here.

Mayor Wysocki: That is new and something that is part of what we are doing. We are putting a higher standard of requirements through the Developer's Agreement to the individual property owners, whether they are first time buyers, or tenth time buyer.

Bob Zoelle: We are ultimately on the hook until a Homeowners Association is set up to take the responsibility of the single-family section to take over the maintenance. We aren't going anywhere.

Alderman Chiovatero; This pond will have annual maintenance. Who is going to coordinate that? I just want something put together to get the City out of this.

JP Walker: The last sentence on page 14 under section E states: the Agreement is binding upon all subsequent owners of lands within the Park Central Subdivision.

Mayor Wysocki: We can ask the City Attorney to draw up a phrase that will cover the Homeowners Association issue in the Developers Agreement. We should meet within the next week to discuss this.

Alderman Chiovatero: I would like to get this solved here so we don't have to have this discussion when it goes to the Council.

Greg Kessler: The first thing is in terms of storm water management and planning and maintenance. From the day that MMSD adopted Chapter 13 forward the City can't get out of it completely.

Mayor Wysocki: We should have another meeting, possibly next Monday, June 14<sup>th</sup>.

**Alderman Chiovatero made a motion to defer this issue until the June 14<sup>th</sup> Special Board of Public Works meeting.**

**Mayor Wysocki 2<sup>nd</sup> the motion**

**Upon voting, the motion passed unanimously.**

**ITEM 13-04                    2004 Roadway Maintenance Update**

JP Walker: I'm going to ask Ron Schildt, Transportation Engineer to head up this discussion

Ron Schildt: This is actually just four printouts from the power point presentation that we had back in April.

Alderman Ament: The fourth sheet is what is actually going to be done or only as far as the funds will take us? What is the possibility of getting Lynette Lane completed?

JP Walker: We are going to make every effort to get it repaired. However it depends on what is left in the road maintenance budget when we are done with the major repairs on Grange Avenue.

Alderman Chiovero: Is it true that Cold Spring Road is not going to be done this year?

JP Walker: Portions will be done, once we get through the land acquisition phase. We are hoping to get started on the stormwater facilities. There are two facilities that are off road that we will need to concentrate on.

Alderman Chiovero: How are the land acquisitions going?

JP Walker: We have to get the road Relocation Order to the Board in July. That's our goal for both Cold Spring Road & Wall Street. Once the Relocation Order has Council approval, land acquisition can start.

Alderman Ament: Lynette Lane especially by the bottom of the hill is in very bad condition.

JP Walker: We are aware of the problem. The reason I can't be more specific is that we have to know where the funds are. We will make every effort to get it repaired.

Mayor Wysocki: Just a reminder to everyone, there has been a 25% increase to maintenance. It will eventually be up to about \$1.2 million. Is that correct Ron?

Ron Schildt: Yes, once we got to an annual \$1.2 million budget, we can maintain that level for several years.

Ray Grzys: We are going to make every effort to get the streets done that are on the plan. Grange and Sunny Slope are first on our list. Another one is in the Forest View Subdivision.

Discussion was then concluded.

**ITEM 14-04                    Prior year Board Activities**

JP Walker: Summarized the number of issues that were taken care of during 2003. One item that was not approved was an agreement with WE Energies to take care of the streetlights.

Alderman Chiovero: Thank you for all the information.

Alderman Ament: Complimented Ray and the Streets Department to their quick response to some items that he had called to their attention.

Mayor Wysocki: Encouraged the Alderman to come to the Employee Recognition Dinner in October.

Discussion was then concluded.

**Motion to adjourn was made by Mayor Wysocki.  
JP Walker 2<sup>nd</sup> the motion.**

**Adjourned at 9:10AM**