

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday January 22, 2008

Members Present: Alderman Harenda, Alderman Ament, Alderman Seidl, Commissioner Bob Dude and Commissioner Jim Morrissey

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor), Mayor Jack Chiovatero, City Attorney Mark Blum, Evan Zeppos (Zeppos and Associates), Steve Schultz (Ruekert & Mielke), Alderman Moore, JP Walker (City Engineer) and Sue Hanley (Office Coordinator Utilities & Streets)

Alderman Harenda called the meeting to order at 5:04 p.m. with roll call and declared a quorum with all members present except for Alderman Ament who was expected shortly.

UT K-07 Approval of Minutes from the December 4th meeting

Motion by Commissioner Morrissey to approve the minutes from the December 4th meeting. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT L-07 Approval of Minutes from the December 20th meeting

Motion by Commissioner Morrissey to approve the minutes from the December 20th meeting. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT 01-08 Appeal of Back Charges of a Sanitary Sewer Bill at 4609 S. Moorland Road

Alderman Ament arrived at 5:05 p.m.

Walker: Sewer and water was installed on Moorland Road in 2006. The procedure is notification is the inspection department notifies the Utility Department that the connection was made to the sanitary sewer system. The billing cycle change takes place on the availability charge to in this case a sanitary sewer charge to a property that is not served by municipal water. I had sent a letter to the Holtzman's based on information that I received from the Utility department that the Utility records indicated that the resident had not connected within the year required from receipt of their availability letter and the Holtzman's subsequently contacted me and said they did connect to the sewer in October of 2006. In your packet you have a sewer lateral report prepared by the inspection department for 4609 S. Moorland Road. He brought examples of a correctly annotated Sewer Lateral Report that indicated "Sewer Conversion from Septic". On the address in question, this was left blank and when it was received by the Utility department, they did have no indication that the property had hooked up. This error occurred when there was a transition period when the new plumbing inspector was hired. When the Utility department was made aware that there was an error in the billing, they sent a back charge and the Holtzman's are here to request an appeal.

Walker: Explained the difference of the amount charged for Sewer availability \$53.89 per quarter, that is now changed to unmetered sewer at \$162.06 per quarter. *(Note: This amount is correct of the Utility department charge. Discussion about a possible error later in the meeting was not included)*

Harenda: The resident did receive the service during this time period.

Morrissey: Does the City Inspector fill out the Sewer Lateral Report and if so, he failed to annotate that it was a Sewer Conversion from Septic and did not sign it.

Walker: This was when we transitioned to a new plumbing inspector and this was his first connection. There is substantial reasoning that he did not know the exact procedure.

Morrissey: He did not know that the note on the sewer lateral report triggered the change in billing.

Walker: Without that information, the Utility department does not know when a customer hooks up to the sewer.

Dude: What part of the 1st quarter were they connected?

Walker: They connected October 26, 2006.

Dude: They were connected for 3 1/3 quarters. They did receive the service; otherwise they would still be on septic.

Ament: I will not support the RAS. The error was not between the homeowner and the contractor, but between the City Plumbing Inspector and the Utility department. I understand how these things are occasionally missed, but that it was not due to any negligence or deception by the customer and I realize they got the service. In my normal businesses, if you let something go for a year and you miss it, I don't know how I would charge my customers. I think if there are any back charges, we should just go back to the day the error was noticed and charge from there.

Harenda: What is the precedence in the past on the sewer side or water side?

Johnson: We really have not had any issues in the past; I think it was a transition between our inspection department that caused this issue.

Harenda: Even on the water side?

Johnson: Even on the water side. It is inspected by the same person.

Dude: I am worried about precedence. We are not charging interest or penalties but the service was provided. Representing my customer base, I don't know why we would not be able to charge for the service. Ignorance of the law is no excuse. While we didn't catch it, we did provide the service. I guess I would explore pro-rata for the 1st quarter, but Counsel probably would say we are setting precedence.

Morrisey: We did make the mistake. If we have a meter reading mistake, do we let that go?

Johnson: If there is a water meter mistake such as an overcharge, it appears on a high/low report and we investigate what the issue is then the person can file a claim with the Public Service Commission to get that adjustment and we can prorate it.

Morrisey: If someone used more water than what we billed them, do we go back and charge them?

Johnson: I haven't heard of that, but you would have to file a claim with the PSC because they set the rates with everything for the Utility, we just can't say we will give you the credit.

Morrisey: Asked Counsel for his opinion.

Blum: Be careful in the determination that you make to make sure you treat the same issues in the same manner. If you want to make this kind of adjustment and want to continue to do so going forward, then it would make sense to approve it. If you have some reluctance in that regard then unless you can distinguish this situation with others in the future you could be setting yourself up for the next customer saying that you gave it to this customer, why not me.

Seidl: Are there any other reports like this out there, or is this the only one?

Walker: This is the only one that was brought to my attention.

Morrisey: Have you checked over the other installations on Moorland.

Walker: We checked over the ones reported to me as not being connected.

Harenda: The homeowner would like to speak on this.

Steve Holtzman 4609 So. Moorland Road: This is a small concern over this whole thing. From our standpoint, we have paid the bills. In a letter dated March 6, 2006 from Mr. Walker, it says, "once connected to water and sanitary sewer, the quarterly Utility bill will be charged to you based on Water meter size and volume of water used. The sewer bill is based on the lateral charge of \$53.89 per quarter plus volume of water used." We thought we were not tied into the water, so \$53.89 is our bill and that is what we were paying all along. We didn't alert the City because we thought everything was just fine, although we thought it was pretty low, but we have never been tied to City sewer. I am not trying to get away with anything and if we used the service we will pay for the service. My concern was with the new inspector, you would think that someone would check his work, but there is also a matter of the impact fee of \$2204 that has not been paid. We received a threatening letter a year after we tied into the sewer that says we have 30 days to tie into the sewer, I am kind of offended by that. To make matters worse, it was addressed to my neighbor. My name, his house number. My main concern is to improve the process with the information that you send the citizens. Initially we were told we would be charged \$43,000 for sewer. It would seem very worthwhile to give citizens a schedule of payments in plain language. Nowhere in the information does it say what the fee would be if we don't tie into the water. My main mission here is to improve what is happening and improve the communication between the City and people like myself.

Walker: The letter Mr. Holtzman referred to was the letter to the residents on Moorland Road of the availability of the sewer sent in March 2006.

Harenda: He was referring to a threatening letter.

Walker: That letter was in October 2006 and it was reviewed by the City Attorney.

Holtzman: The language was that the Common Council of the City of New Berlin declares its intention to exercise its police power until section 66.0703, etc. – That kind of thing sets me back on my heels.

Harenda: That is part of the special assessment process that Council went through and approved. The letter that originally went out that once the elected body approved that, you had a year to hook up to the mains. The 2nd letter you received was sent out when we thought you had not hooked up to the system within the year period. It was a mistake on our part because it was not annotated correctly by the inspector for the Utility department to trigger the correct billing. I understand the confusion and we are always looking for better ways to communicate with the citizens. We have a service provided that we hooked up, but we missed the billing amount. How is that rate determined if you are not hooked up to water?

Johnson: The sewer rate, if you are not hooked up to water is just a flat rate of \$162.06 per quarter if you have a private well.

Dude: Unfortunately for our society, you have to be very legalese, so the term police power was used. We should practice customer service like any other organization, and I will take it upon myself to make sure that the letter that goes out is customer friendly. I still think we provided service. The example I can think of, is if you miss some income; the IRS will go back and charge you for that income plus interest. I am very sympathetic with your feeling about the process, but we still did provide the service and it would not be fair as I represent the other Utility customers to not collect for that service if I can do that. This is my company.

Holtzman: I am still in limbo as far as the impact fee. It's over \$2,000. I wasn't billed for it; I don't know when it was supposed to be paid.

Walker: I will have to check into this. Normally that is a function that comes out of the Utility department.

Johnson: It comes down through the Assessor's office and through Finance. Ralph would know how they charge for that.

Morrissey: Why would he be assessed an impact fee.

Johnson: Because of the footage of the main to be put in.

Harenda: It's an impact fee to pay for the infrastructure. Do you want to comment on this Mark?

Blum: This is a separate issue and not on the agenda.

Ament: In my business, we sometimes miss a charge. If we found out about it a year later, I would not bill him and would do what I could to make sure it doesn't happen again and I would notify my customer that they were billed in error and that from here on out, this is what the charge would be. I would not feel comfortable telling my customer that he has to back pay me from a mistake that was made approximately a year ago by my people on my forms, on my orders. The fact that we would expect him to know and calculate this, I would like to know how many calculate their tax bills and break it down to make sure the exact amounts are paid and correct. I think most people don't do that. When you get that bill from the Utility and you have different letters telling you different things, I would assume they have everything under control. This isn't a blame game, just a matter of what is the appropriate thing to do as a Utility to our customers and how we treat them. Maybe my experience in my own business has a big role in this but I would notify him of the error and I would change it. I'm sure it has happened in my company more than once and I would go to whoever made the mistake to make sure this doesn't happen again and that would be the end of it.

Morrisey: I would agree if it was my company and coming out of my back pocket, it is the citizens Utility and is a little different. But this is different, it is a public utility. Mr. Holtzman made a couple of comments on a schedule of payments, what is due when and how much. I think we need to take that criticism forward. Next time we have a special assessment to hook people up, we need to treat our customers better. We need to send them a packet of information explaining the process and what kind of bills they can expect. Rick, in the future I think we need to communicate that. Make sure you go back through all of these forms and make sure that there are no mistakes.

Dude: I am responsible for other people that are essentially stockholders as opposed to if I'm a one man show I can then make those kinds of decisions. I can't do that in good conscience.

Morrisey: I just want to make sure you go back Rick to all of these forms to make sure we have all of this taken care of. We obviously had a new employee and who made a mistake and make sure there are no more out there that 5 years from now we don't find anybody out there; I would feel very uncomfortable about that.

Johnson: We don't get the forms until the final inspection is done from the Inspection department. That is when the Utility receives them. We don't know when anything is hooked up to any other residence until we get that form from the inspection department. When it comes down to us, we can check it.

Morrisey: I would like the form a little more user friendly and make the form a little more clear.

Seidl: We made the initial mistake and then waited a year to catch it. I can see going back to October 2007 when we found the mistake and charge from there, but I can't see going back a whole year.

Harenda: We are a revenue neutral organization; we are not here to make a profit. I agree we have made some mistakes, and Mr. Morrisey pointed out some things we want to improve in the future. I can't support waiving the entire amount, but perhaps some of it. We do have a trigger, after a year if the customer does not hook up we do send a nasty letter out. I agree we could work on the language of the letter since sometimes it may be a mistake on our part, but it catches it after that year period. There shouldn't be any more of these because we should have a list of all of the properties that should be hooked within a year period and if they are not current customers, we should catch that now and this is the only one that fell through the cracks correct.

Johnson: Yes.

Dude: Mark, if we would in fact pro rate some of this, are there enough extenuating circumstances so that we are not making an ongoing precedent.

Blum: The question is, if you pro rate this, what are the facts that lead you to conclude that and on what basis will you be prorating this. If you can distinguish circumstances here that justify a prorating and if those same circumstances present themselves in the future, you better do that in the same way. I don't think I understand the justification would be for the proration but that is a policy decision for you to make.

Dude: We were dumb, we screwed up.

Blum: That is policy and I won't go into that.

Harenda: When we worked on waiving fees in the past we set a parameter that is giving credit back for a period of time.

Ament: If we are not comfortable waiving the fee because they received the service, why are we comfortable waiving part of the fee. We need to decide whether we want to charge them the fee or not. We should either take it from the day they were noticed there was an error or go back and bill them for the whole back charge.

Harenda: An example of this was a discussion about a year ago in the same Moorland Road corridor with an individual who put in a new mound system and we offered some credit on that. It was a policy decision and we worked through that to come up with some way in the future if this happens. The mound case could occur in the future, but this is something that slipped through in the cracks and shouldn't happen again.

Ament: I would be totally consistent because we made the error in the notification. If you break this down to a private company and I took my own money and tossing it away, but if I were a manager or the board of directors, I would be very careful. I realize you are drawing a distinction that this is a public entity, but it still has the same affect, you are still calling them customers and providing them service at a charge and I don't think it is that much dissimilar. I would not support this back charge either way.

Dude: I would also suggest prorating the 1st quarter. The dollar amount would then be \$396.51. My rationale here is because of the confusion and errors on this part and the troubles, it is worth something. It is 3 2/3 quarter, we are not charging for the month of hookup.

Harenda: The request is Steve & Kelly Holtzman at 4609 S. Moorland Road wish to appeal to the Committee back charges that they received on their sanitary sewer bill. The back charges resulted from a communication error between the Inspection Department and the Utility Department resulted in Utility records not accurately reflecting that 4609 Moorland Road had connected to the sanitary sewer on October 26, 2006. Because of the error by the City, Mr. & Mrs. Holtzman are appealing a back charge of \$432.68. The motion is to waive the back charge?

Dude: The motion is to pro rate the 1st quarter and make the amount \$396.51.

Harenda: Motion by Commissioner Dude. Seconded by Commissioner Morrissey.

Ament: I think we are making a bad situation worse. In the future we are not going to back charge somebody for service they got; we are only back charging them for part of it because we feel bad. Could you explain it again to me Bob?

Dude: I'm suggesting that because of the confusion surrounded with the whole situation, wherein the Holtzman's certainly got service and the Utility deserves getting paid for that service; however, because of the bad information and confusion, therefore they had to spend their time and money to bring this to our attention, I am picking up on what Mrs. Holtzman asked in her letter in October 2007, Kelly asked "if there is any prorated amount for the initial quarterly charge since you were not connected for the full three months." What she was told was we don't have the ability to prorate. Our billing process does not allow that, but I am willing to, in my rationale going forward, I want to see the Utility customers get their revenue, but on the other hand when we make mistakes, there could be a penalty for it. I am willing to make that point.

Ament: I am even more concerned than I was before. We would be not charging them for a full quarter, we charge everyone for a full quarter do we not?

Johnson: Yes.

Ament: We would have to change that and be even more inconsistent. Then everyone else could come in here and say I was only hooked up for a month of that quarter, we should prorate it and we would have to redo our whole system. Maybe an alternative would be for the Holtzman's to back bill us for all of the pain in the neck they have for \$432.68, but for the services they rendered to us pointing out the mistakes that we made. I think that is even a worse situation to go back and start prorating I think we would open up more a can of worms.

Dude: The difference between the amounts was a month of the charge. If that is a problem, I will withdraw the motion.

Harenda: It is still a policy decision that would set a precedence.

Ament: It would be a policy decision. If we are going to prorate for part of the quarter, we would have to do that for anybody that requested it. That would be a worse precedent. Because we made an error, we are not going to charge you for a whole quarter. Would we not be creating a situation where everybody else, especially on Moorland could say, I wasn't hooked up for a whole quarter either, I was hooked up for a month. I should get mine prorated.

Blum: I think I go back to a comment I made before regarding this whole precedent thing. When you have somebody with a similar set of circumstances that comes before you the next time, be prepared to apply the same reasoning and credit or rationale to that situation as well. At some point you can't split the baby in half, you have to make a decision one way or the other unless you come up with a legitimate explanation of whether there should be a proration. Simply to do it because of the efforts that this person had to deal with this situation, I'm not sure you can quantify for purposes of creating a proration.

At this point, Mr. Holtzman said that he did not think it was worth the time and effort and was willing to pay the bill. He just wanted to make sure that this would not happen to anybody else. He made an official withdraw of his appeal.

Mr. Dude withdrew his motion. The Committee thanked the Holtzman's for bringing this to their attention.

CLOSED SESSION

The basis for the items to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (e)

Discussion and possible action to enter into closed session pursuant to Wis. Stat Sec. 19.85(1)(e)
Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

More specifically:

- ◆ Discussion concerning Bargaining for the Purchase of water from the City of Milwaukee, City of Oak Creek and City of Racine.

Motion to go into Closed Session at 5:54 p.m. by Alderman Ament. Seconded by Alderman Seidl. Roll call vote: Alderman Ament yes, Commissioner Morrissey yes, Alderman Harenda yes, Alderman Seidl.

Harenda: Mr. Dude stepped out but we do have a quorum.

Motion to go into Open Session at 6:32 p.m. by Alderman Seidl. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Reconvene to Open Session

UT 12-04

-Status on Milwaukee Water Negotiations

-Status on Governor's Office & WDNR approval on Lake Michigan Water for remaining half of Water Utility Service Area

-Status of Infrastructure and Distribution of Lake Michigan Water to Utility customers west of the Subcontinental divide

UT 08-06

Radium Compliance Wells 3, 5, and 7

Harenda: We have been holding these bids open for 120 days and we have to take some type of action by what date?

Johnson: The 7th of February.

Harenda: We don't have another Utility Committee meeting until February 26th. We can always have a special meeting before then. We could leave those open and possibly take action by the 7th. If we don't take action, the bids are automatically are thrown out or we can formally deny the bids at a later date and can rebid if necessary.

Blum: Your ability to accept the bids expires on the 7th; you need to exercise your decision by that date. While this committee could have a special meeting, you would have to have a Council meeting also to accept those bids under the recommendation from this committee.

Harenda: We have bids that are open on the table. We could deny now, take action on them, or leave them sit and have a special meeting.

Ament: How many days does that give us if we had to have a special meeting?

Harenda: 2 ½ weeks. Our main goal is to acquire Lake Michigan water. This is a fall back position. Things are moving in a good direction, unless you want to take action on this today.

Dude: In terms of compliance with the DNR and moving towards the goal, are we going to have to decide in addition to negotiations for Lake Michigan water, should we also rebid the project to be in compliance with the DNR?

Blum: I think you followed that rationale last time and the logic still applies. The thing that you can rely upon is that if you keep that option open and if things do not go well in terms of acquisition to Lake Michigan water, you have a viable alternative to turn to in a prompt and efficient timeline.

Dude: I don't think any of us feel the negotiations will be completed by early February, so I make a motion to let these bids expire and then take new bids to keep our oar in the water.

Blum: I think if you do that you need to reject the bids.

Dude: I would like to make a motion to reject the bids and rebid the project.

Harenda: Rick, how long will it take to put the bid packages out again?

Johnson: The last time we rebid it took us 2 weeks to put together, then the bidding process and awarding it.

Ament: What is usually the timeline of them returning the bids?

Schulz: State law requires 3 weeks from the first ad before you can open them and we have to have a week to get it to the paper. After it gets printed, whatever the next publication date it will go in and 3 weeks after that or you can set that time however long you want.

Ament: So you are looking at roughly a 1-2 months.

Dude: Last time it was over 4 months.

Schultz: That was for holding, once they were opened. This is just the bidding process where the contractors come in and pick up the books and the plans. State law requires you advertise one week apart twice and then wait another 7 days before you open them. That is the minimum. You can stretch that out.

Dude: How far?

Schultz: We've done it 3 months.

Ament: If we reject these all now, and we start that process over, how long will we be in the same position we are in now.

Schultz: You could stretch it out 5 months.

Harenda: I can go along with what Commissioner Dude said to reject the bids and attach the motion to initiate Staff to initiate the process and the bids will come back later next month and then you have 120 days from that point on out. I would like to direct staff to initiate the bid packages to come back the middle to end of February and you hold the bids open until whenever.

Ament: We don't have to be so specific in the motion, because if we do we are kind of handcuffing ourselves. I think if we direct staff to start the bidding process, that should be sufficient.

Schultz: That would be fine.

Motion by Commissioner Dude to reject all bids that were received for construction for Filter Building Additions to Pump Stations No. 3 and 7 and request Staff to initiate rebidding. Seconded by Alderman Ament. Upon voting the motion passed unanimously.

UT 04-07 Update & Status on MMSD 2020 Plan – Impact to City of New Berlin

Alderman Harenda: We are taking verbatim minutes that Sue spent a great deal of time, which is much appreciated, with a cover letter which I will try to put together with Staff and send to the DNR, SEWRPC and MMSD. I will copy everyone on that when it goes out.

UT 05-07 Water Conservation Measures – Current & Future Objectives

Alderman Harenda: Commissioner Dude and I will get together with Alderman Moore and discuss this item and hopefully bring something to the Utility soon. Again, anything regarding rate adjustments will still have to go in front of the Public Service Commission so you are looking at a number of months to adjust that.

Motion by Alderman Seidl to adjourn at 6:42 p.m. Seconded by Commissioner Morrissey and upon voting the motion passed unanimously.

Privilege of the Floor – There was no one in the audience who wished to speak.

Please Note: Minutes are not official until approved by the Committee

Respectfully submitted,

Suzette Hanley - Office Coordinator, Utilities & Streets