

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday June 24, 2008

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

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor) Mayor Jack Chiovatero, City Attorney Mark Blum, JP Walker (City Engineer), Ralph Chipman (Accounting Manager), Bill Mielke (Ruekert & Mielke), Evan Zeppos (Zeppos & Associates) and Sue Hanley (Administrative Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 5:01 p.m. with roll call and declared a quorum with all members present.

UT D-08 Approval of Minutes from the May 27th meeting

Motion by Commissioner Morrissey to approve the minutes from the May 27th meeting. Seconded by Alderman Ament and upon voting the motion passed unanimously.

UT 05-08 Westward Manor Liftstation Status – Flood Damage Repair

Hart: With all of the amount of rainfall that we had, we had a liftstation on the end of Rogers Drive in Westward Manor that was flooded out. It happened 10 years ago when we had the rain and this was another significant rain and that area flooded. We tried sandbagging, pumping and doing what we could and it ended up flooding the drywell with about 1 foot of water and the generator house had 6" of water. We are in the process of talking to an engineering firm and want to move the liftstation further to the east where it would be out of the floodplain but leave the wet well there and have the pumps there, but put the controls further away so that this will not happen again.

Harenda: Jim contacted me about a week and a half ago with respect to this, and just looking at the engineering cost, it is \$30,000 or \$35,000?

Hart: The contract I believe was \$31,000. We will go through the design, see what our options are and then come back with any proposals to the Utility Committee.

Dude: You said that you would leave the pump there. Is that because the top of the well, if you changed everything, you would have to change where the well is too?

Hart: Actually this is a liftstation so it is called a wet well. That's where gravity feeds down into it from Roosevelt Drive, Rogers Drive and Westward, that is the low point in there. We would leave the pumps there, but the controls for the pumps would be about 150 yards away from it

Dude: I understand that, but you are telling me why you can't move the whole thing is because gravity, that's where it has to be?

Hart: yes, the wet well has to stay where it is right now.

Wysocki: What fund would we be taking this cost out of?

Hart: Right now, Scott Schulpus is looking through FEMA and we are also in contact with the insurance company and we might have a fund from a resolution back from when Larry Wilms was here that we can use some of the money from.

Wysocki: We are not sure at this point where the funds are coming from?

Hart: We are not sure, but we do have adequate funds.

Wysocki: Did we have any other problems at any other liftstations with flooding?

Hart: We did not have any other flooding at liftstations. We did have some back-ups in the City. Some were caused by flooding, just the water itself getting into people's basement, but we did have a couple in the Buena Park area where we had to pump out some manholes. We had one over at Woodshire but those were the two main ones. We did have a lot of infiltration again. I believe most of it was from sump pumps, which we talked about a few months ago.

Wysocki: What you are really doing is moving all of the electrical controls. These pumps are submerged, right, in that wet well?

Hart: Not right now. The dry well has all of the controls. That's what flooded out, that's what gave us the problem but we want to move the dry well, get different pumps and put them into the wet well, but the controls for those pumps will be moved further away.

Wysocki: So even if the wet well gets flooded, you will still be able to be pumping out.

Hart: Yes, with the new system that we want to bring in there. Right now, there is a dry well which looks like an elevator shaft going down about 30 feet. The controls are in that right now. Water was so high that it got through the door and flooded it out. We want to move the controls further away.

Wysocki: Did any of the backups that you talked about happen as a result of the flooding out of this liftstation?

Hart: No.

Wysocki: So we still have problems that we have to look at besides I & I?

Hart: In Buena Park and other areas, we feel that there are a lot of sump pumps hooked up to the sanitary sewer.

Wysocki: We will have to follow up on that because we have invested so much in Stormwater and Utility work that that shouldn't be happening.

Morrisey: What part would FEMA or Wisconsin Emergency Management pay if we do qualify, all or part of that cost?

Hart: I don't know right now. FEMA was supposed to come out today and look at the liftstation and when they got here they decided they didn't need to see it. They had enough damage in the City. Scott Schulpus from Emergency Government is running all of that and I don't have an answer for you.

Morrisey: This has only happened once before and that occurred in the flood of 1998?

Hart: Two times before, 1997 and 1998, whenever we had the 100 year rains 10 years ago and now this time.

Morrisey: I live in Buena Park and I had neighbors that again had about 6" of sewage, and most of it was clear water later on, it is better than the 3-4 feet in 1998, but we do need to address this, and stop this all together.

Dude: Last time I saw a balance sheet there was \$16 million in current assets and in the Utility working capital on the sanitary side so we certainly don't have a problem there. Even though it is an event that is only going to occur every 5x years, the point being, how much did you spend in overtime?

Hart: I believe \$26,000 from June 7th through June 11th.

Dude: The other thing that is hard to quantify is what does that mean to the folks out there and hopefully nothing bubbled up, but right there you are talking about a 10% return. It is not that we have to run out and borrow money to do something, we are going to turn a current asset into a long term asset and it

seems like if this has been hit before, the probability is that we will get another 100 year rain in the next 5 years, that's the way it seems to work. So I guess I would support this.

Ament: We are not looking at any land acquisition. This would all be done on our property?

Hart: Yes. We have a 60 foot easement that runs down Rogers all the way to the liftstation site now and we would move the generator house and all of the controls back up toward the A & R pipeline easement. We contacted Planning and we will have to go through the Plan Commission but we won't need to acquire any land.

Wysocki: Are you looking for a motion or is there anything we need to take action on?

Harenda: In the past we executed motions to authorize staff to get contracts. We're bypassing the regular bidding process; we are dealing with Crispell Snyder since we are trying to expedite this. If possible, email the Committee with the account number that you will be taking the funds out of. It sounds like we may get reimbursed by FEMA or the insurance company, but we do have the cash to cover this.

Motion by Alderman Harenda to authorize staff to proceed with the redesign and relocation of the Westward Manor liftstation, not to exceed \$35,000. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT 03-08 Request for the City to Reconsider a Condition that was added for Vacating an Old Force Main Utility Easement

Walker: In your packet you have a memo from June 10th summarizing the information Alderman Harenda had requested at the last Utility Committee meeting, which shows what and who paid for routing the sanitary sewer down Spruce Road and across the former Tesch property that we purchased. I listed the steps we went through. We paid \$35,285 to Mr. Kassian for the routing down Spruce Road and paid \$56,137 for acquisition of the former Tesch property.

Dude: I guess I got confused on your memo. The 3rd paragraph from the bottom it says we paid an additional \$14,997.50 to the \$35,285, isn't that all part of the same project?

Walker: it is all part of the same project but you have to look at the numbers. It was very confusing going through it. There was a motion to pay the Reeseman bid which was \$27,147, half of the design cost (\$1250) and the oversizing cost of \$6888 and if you add the \$14,997.50 to it, that is how you arrive at the \$50,262.50.

Dude: That's what was paid to them. There was a check dated 12/28/05 for \$50,262.50.

Walker: I stand corrected. You are correct.

Dude: Then I go to his letter of June 2, 2008 which says that it is false and not true and says the City paid \$35,285, but in reality we paid \$50,262.50. If your letter is correct, then his letter of June 2nd can't be correct or something is wrong. I have a question for the City Attorney on this. We abandoned this line, is that correct?

Blum: My understanding is that physically it has been abandoned. It is no longer in use. Now legally has it been abandoned? That's the issue that is before you right now.

Dude: I would assume the reason he is interested in this is because he has built on top of it and we have an easement underneath it. Theoretically we could rip up the houses or condemn it again.

Blum: I don't want to speculate on his motives but if I were looking at it and if I were involved in developing the property, I would imagine it would have impact on financing and an impact with respect to the development approvals based on those restrictions.

Dude: Therefore if in fact, that is why he wanted it, from my perspective if we, and if JP says we are never going to build a sewer there, all I see is potentially some sort of liability, because if for some

strange reason the earth would jump up and some kid were to hit his head on that pipe, that is kind of our pipe and our problem. Therefore if we own it, even though it is not being used, we have potentially a legal liability because the pipe is down there that we put down there.

Blum: Right and I think that's why I have asked for a release document for any transfer that would occur. My concern would be that right now at least arguably we have control of at least what takes places over the surface. If in fact that control no longer exists and there would be some excavation and the pipe is hit and some damage were to flow to someone as a result of that, I don't want to be dealing with a lawsuit at that point. If it is going back to him he takes it as is where is.

Dude: As a citizen member I am not excited for having a domain unless there is a need like we exercised earlier with the Tesch property. We did condemn it for eminent domain because we needed it. In the case of this we have said we don't need it because we abandoned it. Unless the City Engineer tells me what I have just said is not correct, I don't know why we want to retain liability over something we don't need. Secondly if there was a market for this thing I would say let's go out and get market value, but you are telling me that there is no market for abandoned easement rights so my suggestion would be if we are not going to use it and you tell me we have a liability, I am saying we sell the thing for one dollar and I do make that motion.

Attorney Blum told the Chairman that you already have action by the Committee and Council with respect to this identifying what you are looking for in return and part of the motion be to recommend the Council rescind that and make the new offer Mr. Dude is suggesting.

Morrisey: Since most of this occurred prior to my being on the Committee, can I have some history of what has transpired?

Walker: There was a liftstation on the corner of Spruce Road and Crimson. The force main from that liftstation went across the land owned by Mr. Kassian which is now his golf course, and made its way over to Harcove Drive where we have an interceptor that runs along Deer Creek. The abandonment of that liftstation following the construction of the gravity system down Spruce Road that allows the abandonment of the force mains no longer in use and according to Utility staff it was abandoned in place.

Morrisey: And we have absolutely no future need for this whatsoever?

Walker: I am not aware of any need for that system at all.

Morrisey: At the time we basically split the cost with the developer here and we paid for some of the oversizing of the pipe and for thicker walls because it was placed deeper.

Walker: Correct.

Morrisey: That is what the \$50,262.50 was for.

Walker: Correct.

Harenda: That is how I read it. When the Utility acquired the Tesch property, there were a couple of alternatives proposed by the developer and there were some other costs that our staff recommended.

Morrisey: Why did we purchase the Tesch property?

Walker: The legal Counsel at that time said that we cannot force the developer to route sewer across a property that he does not own. So we had to purchase the Tesch property and require that route go down Spruce Road to Howard Avenue be constructed.

Morrisey: OK.

Harenda: From what I remember, the benefit to the Utility was that we were going to take one of the liftstations out of service. There were costs associated with it. My concern is that if we are looking at

possibly selling easements back in the future, I don't know if there was a market for it that was a good point that Commissioner Dude raised.

Ament: Unfortunately this case because of the way it unfolded is a little different than most easements that we look at. You need to remember that this was a developer driven project. There would be no sewer down Spruce or around there if it wasn't for the developments south of there. The City originally agreed apparently with the developer's design on the eastern part of his property and the City determined that they needed to take a different route for whatever reason. I don't know if we were ever clear on why because the City's engineer's documents show that we could have abandoned that liftstation either way. Did I read that correctly?

Walker: With the original route that Mr. Kassian had proposed we still would have abandoned that liftstation.

Ament: So the City benefited either way. We would have abandoned the liftstation either way. The purchase of the Tesch property and the cost to put in that sewer, he didn't put the whole sewer line in, it is only partially in. So he didn't have to pay that difference that he would have had to pay, but seeing as the Utility or the City paid for that property and the City owns it, I don't know how based on the original motion which was \$91,285 which included the \$56,000 for the property. I don't know how we could charge him for property that he doesn't own. We made that decision so we purchased it. However that said I'm still convinced the City has an obligation or the Utility to recover the \$35,285 for the installation as the City would not have had to pay for the installation of the eastern route on his property or the one that we are abandoning. So either way he should be paying for that, we should not. There is some cost sharing that was involved in the initial amount, design work and things like that, I am comfortable with paying for because we required him to redesign it; however, I am not going to support the one dollar. I would support it if the change was from \$91,285 to \$35,285 and it would also require removing some of the language that talks about the purchase of the property. I can't support this for one dollar. I would like to remind everyone how many times I was reminded that we are supposed to protect the shareholders, stockholders in the Utility and I don't think we are doing that by giving this away when we did not create the situation. Utility could have with the route that the developer wanted originally, abandon the liftstation and would not have to pay anything for the installation. It would have been dedicated back to the City. I can't support it. I have a list of other reasons and a history but I think we pretty much wrapped all of that up. I am not going to support the one dollar. I would support the \$35,285.

Walker: Perhaps I can interject something that may be lost on the Committee. Mr. Kassian did not need that gravity system on Spruce Road or his proposed route to serve his development. He already had that with a gravity sewer that was installed 2000, 2002 across his golf course. This was a City requirement that his original proposed route to allow the abandonment of the liftstation to take place was not acceptable to staff. That is why the Spruce Road route across the Tesch property was required. There were costs incurred by the developer in addition to what he would have paid for the original proposed route and that is what he had recouped the costs on.

Dude: I want to compliment Dave on looking after my favorite people, the stockholders in the Utility; however in this case I still go back to the one dollar because I think the Utility was already rewarded by some dollar amount. I think less than Mr. Kassian speaks of in his letter, but we did get a contribution of at least \$37,000 that we would not have received otherwise. Secondly my recollection is that what JP says is correct, it was our staff, specifically Engineer Larry Wilms who was very vociferous in making this move. We pushed him to do this. He did not have to do this. He already had something approved by the Council. We said, we don't care about that we want it this way and yes we did pay some money toward it but we also got some money from him too. I view this as the stockholders already received \$35,000 from him so I will settle for one more dollar.

Wysocki: A lot of this was preplanning going back to the 70's, this original easement route. This was a better solution, that is why we insisted on having the current route. I would also support the motion.

Morrisey: Did the developer incur more costs as a result of our 2nd option? When initially we approved the route for sewer and then we changed it to cross the Tesch property, did he incur the cost or did we cover that?

Walker: We covered that difference in cost with the payment that we made, excavating deeper and oversized pipe cost.

Harenda: Larry was very adamant on requiring the developer to go that direction, but the way I understand it the developer actually paid a little more money out of his own pocket that he never recouped with this new direction.

Walker: I can't answer that but the developer is here.

Mr. Kassian: Thank you for spending some time on this. I did send a letter to the aldermen. We did in fact spend \$50,000 of our own money in addition to the \$30,000 that we got from the City for that route to alleviate that liftstation. Just to step back, the numbers I said \$35,000 and we were paid \$50,000. The confusion was, at one period we were just talking about the section that went up to Spruce Road to alleviate the liftstation, but the whole project that went down to Harcove, we used bigger pipe through the whole area brought it up to \$50,000. That is where the difference was. We were talking about different phases of the projects. It cost us some \$80,000 to put that sewer in, we got \$30,000 from the City and paid \$50,000 from our own pocket.

Harenda: Why wasn't this vacation taken care of during the overall development when the sewers were put in place and the liftstation was taken off line? Do you always take care of this after the fact? In the future if we have a large scale easement vacation we might tie it into the overall project and if there is a cost, we want to make sure the developer is aware of this prior to the project coming forth.

Walker: I think the proper procedure would be to complete the entire abandonment including the vacation of the easement at the same time. It just wasn't done.

Morrissey: Have we ever done this before in the City.

Blum: This is an unusual set of circumstances. Usually when we get an easement it is a perpetual easement, we expect the line to be there or we never would have incurred the expense to do it in the first place. We don't usually go in with the anticipation that it will be abandoned at some point in the future, although that is certain a possibility. I don't recall this happening previously.

Morrissey: Have we ever abandoned an easement and turned it back to the property owner?

Walker: We have abandoned right of way, but I am not aware of any easements.

Morrissey: Do you know of any precedent statewide for abandoning an easement with a pipe in it and returning it to the owner for a dollar or some consideration?

Blum: You would have to look at the underlying agreements that got you to point of installing the improvement in the first place. I am aware of something in general that is a standard policy that I could point you to.

Dude: Call to question.

Harenda: Do we have to vote on this? He just called a question.

Blum: Yes you do and that motion has been made.

Harenda: Commissioner Dude calls a question. Passes 4 to 1 with Alderman Ament voting no.

Motion by Commissioner Dude to recommend to Council to rescind the previous approval of terms and to sell the rights to the abandoned force main on Spruce Road and in its place to recommend that the Force Main on Spruce Road be sold for one dollar (\$1.00) along with a release as to the City's liability for the remaining abandoned in place force main. Seconded by Alderman Wysocki and upon voting the motion passed 4 to 1 with Alderman Ament voting no.

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 Racine and City of Oak Creek
- ◆ Discussion regarding negotiations relative to ownership and costs for the Poplar Creek Interceptor

Ament: Do we need to go into closed session for discussion regarding negotiations relative to ownership and costs for the Poplar Creek Interceptor?

Harenda: There is potential that we may need to get into negotiations and I would prefer to keep that in house. It may lead to other actions down the road.

Ament: We also have it on the agenda twice.

Harenda: We have it as an action item coming out of open session. We also have it as UT 06-08.

Ament: My concern is if someone calls the question before we ask all the residents type questions, we may not get a chance to discuss it properly other than in closed session. I think those people have a right to know what they are talking about. I am going to be opposed to the closed session on this issue. I don't see any reason for it.

Motion to go into Closed Session at 5:36 p.m. by Alderman Wysocki. Seconded by Commissioner Morrissey. Roll call vote: Alderman Ament no, Commissioner Morrissey yes, Alderman Harenda yes, Alderman Wysocki yes, Commissioner Dude yes.

Motion to go into Open Session at 6:24 p.m. by Alderman Wysocki. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Reconvene to Open Session

Harenda: No action to be taken out of closed session.

UT 12-04 Status on Milwaukee Water Negotiations

Status on Governor's Office and WDNR approval on Lake Michigan Water for Remaining half of the Water Utility Service area

Harenda: No action at this time.

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

Harenda: No action at this time.

UT 05-07 Water Conservation Measures –Potential Rate Adjustments

Harenda: I handed out a draft ordinance regarding dealing with sprinkling and water conservation methods that the City Attorney put together. This is just a starting point. Read it and plan to discuss it more in detail at the next Utility Committee meeting and I will have some additional documentation with respect to that. We may be able to put something in effect on top of what we have in place, so I welcome your comments on that.

Motion by Alderman Wysocki to adjourn at 6:48 p.m. Seconded by Commissioner Dude 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 – Administrative Supervisor, Utilities & Streets