

**MINUTES**  
**City of New Berlin**  
**Special Utility Committee Meeting**  
**Thursday August 14, 2008**

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

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor) Mayor Jack Chiovero, City Attorney Mark Blum, Greg Kessler (Director Community Development), Ralph Chipman (Accounting Manager), Bill Mielke and Steve Schultz (Ruekert & Mielke), Evan Zeppos (Zeppos & Associates) and Sue Hanley (Administrative Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 7:12 p.m. with roll call and declared a quorum with all members present.

**UT E-08 Approval of Minutes from the June 24th meeting**

Motion by Alderman Wysocki to approve the minutes from the June 24<sup>th</sup> meeting. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

**UT F-08 Approval of Minutes from the July 9<sup>th</sup> meeting**

Motion by Alderman Ament to approve the minutes from the July 9<sup>th</sup> meeting. Seconded by Alderman Wysocki and upon voting the motion passed unanimously.

**UT 12-04 Status on the Negotiations for the Purchase of water from the City of Milwaukee, City of Oak Creek and City of Racine and possible action to make a recommendation to Council concerning: specifically regarding the Intergovernmental Agreement with City of Milwaukee and the Contract Amendment Extending Existing Water Contract with the City of Milwaukee**

Harenda: You received the First Amendment to Agreement and the Intergovernmental Cooperation Agreement between the City of Milwaukee and the City of New Berlin. There have been some minor changes. We are here to discuss the agreement and possible recommendation to the Common council to action on the agreements. I asked staff for some information regarding costs to further upgrades to our infrastructure to achieve providing Lake Michigan water to the rest of the Utility, some peak issue questions, and cost comparison of acquisition of Lake Michigan water vs. filtration of radium compliance to meet EPA compliance. This discussion has stemmed from the first agreement approved in June 2003 to supply water to the eastern half of the Utility. This agreement is to provide water to existing customers.

Alderman Wysocki asked the negotiating team to update any changes in the IGA since the last version.

Chiovero: Both of the agreements are identical to the ones you have seen except for one change. These agreements were presented at the BPW of Milwaukee meeting where they discussed the value of water to the suburbs, social economic issues, transportation, housing, etc. The Milwaukee negotiation team was asked questions and after that Mr. Mielke and I answered questions and gave a presentation. We were cut off by Alderman Bauman who gave a couple of minutes of his views. At that time I told the Board of Public Works I don't want to be here, but we have a federal mandate for health and public safety. One of the other aldermen spoke up and said that the testimony I gave convinced him that New Berlin should not be blamed for the situation nor can we drastically change it. The other committee members spoke in favor of the agreement and it passed 4 to 1 with Alderman Bauman the no vote. The next day it went to the Finance Committee chaired by Alderman Murphy. During the testimony of the negotiation team Alderman Murphy interjected several times in support of our agreement and the reason why he supports it although he feels that Milwaukee could have got a better deal. Alderman Bauman gave his reasons and concerns about it and wanted to wait until the study was done and said New Berlin might have to pay a much higher cost up to \$10 million. He was able to convince the other aldermen that should be put on hold so they voted on it to put it on hold 4 to 1 with Alderman Murphy saying it should

move ahead. The negotiation team from Milwaukee, as well as several of the alderman and Mayor's office talked to me and asked what the next step would be for New Berlin. I said I would report back to the Committee and the Council and said I was trying to get contact the Chairman of the Utility Committee who is also the Council president, but it is my feeling they will call a special meeting to tell me to bid out the radium remediation. They said does that close the door? I said I think it does right now we are under a lot of pressure from the DNR and EPA to move this forward. I was given the direction if you didn't vote on the positive on this that we were going to go in another direction. Everybody disseminated out of the room. I stayed because I was very interested in seeing what would happen when the subject came up on the Council floor. In the meantime Alderman Murphy said he was not going to take it on the floor because he didn't feel there was enough reason to do that. As their meeting went on a lot of Alderman came up to me with concerns that they supported us but they weren't acting in the best interest of Milwaukee or New Berlin. Alderman Murphy said he was getting a lot of feedback from alderman asking him to put it up and he needed an idea for finance to put it back on the floor. He offered language from Alderman Bauman to say that Milwaukee can come into New Berlin, but New Berlin can solicit new business into Milwaukee nor offer any kind of incentives. I said, there is no way that our Council or Utility would agree with that. Alderman Murphy talked to their City Attorney and then brought up C of Article III. Both parties agree that neither party shall take any action to solicit businesses to relocate from the City of Milwaukee to the City of New Berlin, or the City of New Berlin to the City of Milwaukee; and he added *"the City of New Berlin further agrees that it shall not offer any economic incentives to any business to move from the City of Milwaukee to the City of New Berlin."* He told me this would get it off the floor and gets it moving, so I agreed to that knowing that we don't have any economic incentives that we offer. This got it back up on the floor, it passed and then they had discussion on the agreement which passed 9 to 3 with Alderman Bauman, Colfax, and Hines voting no. With that I felt we had a victory and I bring this forth to you today. That is the only change in the agreement. They were told in the meeting that this was what was negotiated, the language is firm, and if they change any part of the agreement, it would throw the agreement out and may never come fruition again.

Wysocki: Was it ever pointed out to the Aldermen of the City of Milwaukee that under the PSC rules they have a 25% surcharge that they are getting over and above their rates?

Chiovero: Yes.

Wysocki: Mr. Hines in his public press release made a statement referring to Cleveland that they got \$200,000 per year for 20 years. Did he realize they are getting close to \$500,000 per year from us for 20 years in that surcharge requirement?

Chiovero: The only comment I have on Mr. Hines press release 2 days ago is we don't know why he put that out and haven't had any explanation.

Wysocki: Did we ever make it a point to tell them that they were getting a substantial surcharge for providing water to us?

Chiovero: We had discussed that with the negotiation team. The discussion at the Council level said there was nothing we could do to solve their housing issues; we discussed the additional revenue going to the City as well as the IGA agreement.

Wysocki: He also said we never submitted studies regarding our housing and transportation. Did the Committee ever point out that Greg Kessler and I in the original agreement provided all of that information to them? Our future land use plan, transportation plan, we gave them all of that information in the original negotiations and information available.

Chiovero: I'm glad you cleared that up. I did not promise or say we were going to do any studies. It came out in the press release and surprised me. I was going to ask you if there was any promise in the original agreement that we would provide those studies.

Wysocki: There was and we did.

Chiovero: We could respond to this press release, but we didn't think it was worth responding to.

Wysocki: I want to be careful. Things are done but I just want to make sure that folks are aware there was a lot of commitment originally made and again I am uncomfortable of this individual not knowing there is a built in surcharge that they are going to get over the next 20 years \$10 million dollars.

Harenda: From the standpoint of the \$1.5 million which is above and beyond that, in the first agreement we didn't pay anything for it. We worked out an agreement, they were making significant profit margins within the existing contract and they are going to make much more in the amendment to the agreement. The concern I have is, the Mayor and I were in a room with current Milwaukee Council President Hines trying to work out an agreement and we discussed transportation or development. His comment was that they were looking for support, not financial support, you scratch our back we'll scratch yours. We are paying \$1.5 million plus a significant surcharge to them for that but the other concerning factor in his letter, when it refers to "our" most precious natural and economic resource, it is like they own the lake. That is scary that they think they own the lake water. They don't, it is public domain and we are in a position here, we are locking in a promise that everyone up here made when we acquired the first part of the Utility for Lake Michigan water. We were going to promise an improved and safe product, so we are meeting that promise. Mr. Hines makes reference that the money will serve as a one-time budget patch for this year only, but the remaining 19 years Milwaukee will give away its most powerful economic leverage tool without any benefit to the taxpayers. They are getting a significant benefit for the Utility which keeps the rates down for the City of Milwaukee which allows them to do other things. We don't have that ability here. He made another comment here that states there is nothing made toward transportation and housing. If they really want to make a regional economic cooperation, they can take the \$1.5 million and designate it for some specific need within the City. They are just putting it in the general fund to go ahead and balance their budget. I think we should work together and not work against each other.

Chiovero: I think that press release wasn't directed at New Berlin, except that one notation where they talk about us, but was directed at the other communities and think it will scare the other communities, this is regional cooperation? I also supplied you with an editorial that came out that same afternoon that asks the same questions you're asking. We have had no feedback from Alderman Hine's office as to why. We did get a heads up that it was coming out. He basically said it wasn't against New Berlin. I think it was to the benefit of future negotiations and was not to kick New Berlin.

Wysocki: Mr. Mielke and City Attorney Blum, do you agree that was the only change in terms of the Intergovernmental Agreement since our last discussion on this.

Mielke: Yes, as far as I know.

Blum: Yes, that's correct.

Wysocki: What concerns me, if I read things correctly, if for any reason we decided this agreement was not acceptable to us; it would jeopardize the amendment because the amendment makes reference to this intergovernmental agreement as a necessary component of the finalization of the amendment.

Blum: I'm not sure I understand.

Wysocki: Integral to the amendment as far as a necessary component to complete the agreement as approved by the Milwaukee City Council. Within that agreement it references the intergovernmental cooperation agreement that has to be agreed to.

Blum: That is correct. Both need to be approved for this deal to go forward.

Dude: It is not the surcharge it is the total payment because if you know anything about economics, sales revenue minus variable cost equals contribution margin. Contribution Margin to what? Contribution margin to fixed cost and net profit. If you are not incurring any more fixed cost, which they are not, then all of your contribution margin goes to net profit. As the City of Milwaukee has capacity, piping and water for a billion gallons a day and they are only pumping 550 million gallons a day, all excess water they pump to us, with the exception of electricity is pure profit. So Alderman Hines doesn't understand his economics. Saying that, the taxpayers of Milwaukee are doing much better and the City of Milwaukee is making all kinds of money. The second issue, one thing that we did receive and I will reference a letter

from Carrie Lewis that she received from the PSC from them on January 18, 2008. One of the issues we've talked about here and is in the intergovernmental agreement is "the Regional Benefit Payment" of \$1.5 million. The concern we have had is that the \$1.5 million will be paid by the City this year from January 1, 2009 and December 31, 2009 and the City of New Berlin will be reimbursed by the Utility. This allows the \$1.5 million to stay with the City instead of the Utility and won't affect the PSC's rates. What happens in 20 years if they want a new "regional benefit payment". The letter from the PSC speaks to that point, "Given Milwaukee's long history in the Water utility business it already has the legal obligation to serve in regard to its existing suburban service. Any intergovernmental agreements for those areas cannot be made contingent on provision of the water. Intergovernmental agreements however can serve a role to the extent that Milwaukee is considering expanding its provision of water service to suburban communities. Once the Milwaukee Water Works provides retail or wholesale water service to that community or area, Milwaukee will have acquired an ongoing obligation to serve that expanded service area just as it has in its existing service areas." In the final paragraph it says, "Please be aware that where Milwaukee has already undertaken obligation to provide water service either retail or wholesale it may not subsequently limit that obligation by contract." In other words, one of the concerns we had was what happens in 20 years? Will they ask for another regional benefit payment? This language from the PSC is quite specific that they can't do that. They couldn't get the \$1.5 million if this was renewal on our first service area, but this is a new service area. Attorney Blum also sent us Supreme Court rulings that substantially say the same thing.

Harenda: It's also included in the IGA "It's further understood that any additional Regional Benefit Payments will not be a requirement of any future continuation of water service to the Expanded Lake Water Service Area..." which includes both sides of the Utility, but it is only as good as the paper it is written on. The Public Service Commission is our watchdog.

Dude: They regulate the money. The reality is the Regional Benefit Payment can only be paid once. The last time we negotiated with Milwaukee, Alderman Murphy had staffers spend the first hour at the Utility Committee that Ted (Wysocki) and I were at insulting us. This time he is our champion and the other ones that were on our side are in the slammer now.

Chiovatero: He wasn't always our champion, in the beginning he wasn't.

Dude: To me the intergovernmental gets down to one thing and that is item C in Article III. The \$1.5 million is out there but the other piece has to do with, "Both parties agree that neither party shall take any action to solicit businesses to relocate from the City of Milwaukee to the City of New Berlin, or the City of New Berlin to the City of Milwaukee; and the City of New Berlin further agrees it shall not offer any economic incentives to any business to move from the City of Milwaukee to the City of New Berlin." Do we do this? We've said no. The question is, do we need to and do we want to? I'm on another subcommittee the Smart Growth Plan and one of the questions I asked the City Planner to do for me is how much growth we need each year to keep our budgets even. I have a feeling that the answer especially with you guys having a 2% ceiling that you can raise budgets by, we don't need a whole lot of growth to stay even. Taxes are never going to go down to zero. I've been in this Community 25 years and my taxes have been \$4500 to \$5000 in that range for 25 years. I'm happy with that. Would I like it to be nothing? Of course, but let's be realistic. So my point is, it is a slap in the face, it is another insult, but the reality is, why do we care. We don't give money to businesses coming in, we don't have to they come in anywhere, and by the way do I want anymore in. One does ask how much development do we need and if we aren't doing it anyway, what are we giving up? This is the only piece that I see other than the economic piece that means anything in the intergovernmental.

Harenda: We talked about discussions if we set up a potential TIFF district or redevelopment in the older industrial park or some other area of the City that we want to put a TIFF in potentially for developmental projects, would that qualify as economic incentive to businesses that we are trying to, not solicit but set up a district within the City to bring business in. Would that bar us from this tool in the future?

Blum: First, realize to this only applies to the service area and the expanded service area for in the agreement so with respect to other potential areas where there might be development outside this bounds, this would not apply. To your question directly as to whether the City would be in position to make economic incentives, I think to understand why Milwaukee wants this; it is helpful to understand the dramatic difference in the way they deal with TIFF districts in the City of Milwaukee. They frequently will

have a TIFF district for a unique piece of property and as part of that there may be incentives provided to the developer. I can count on one hand the number of TIFF districts that we've had and it has always been to provide for public infrastructure not direct payments to a particular developer. To answer your question, can we have a TIFF district say in the industrial park for example, based on past experience that would usually be for the purpose of doing roads or stormwater improvements, things that relate to direct public infrastructure. As I interpret this agreement if you were to decide to do such a TIFF district, I don't believe it would violate the terms of this because you are not making a payment for the benefit of a particular developer or business that may decide to move to your industrial park. Because it is dealing with the overall public good, the development of public infrastructure I think we can distinguish that and that would be a significant difference in analyzing that situation.

Ament: I understand what Attorney Blum just said, I'm just wondering, you said outside the service area wouldn't really apply, the only thing is those words really don't say that, it says "the City of New Berlin further agrees it shall not offer any economic incentives to any business to move from the City of Milwaukee to the City of New Berlin." Are you saying that because it is part of this agreement but in here it just says City to City.

Blum: It does say City to City but it is in the context of the overall agreement which is referring to a particular service area. For example, what we decide to do with respect to utility service beyond the bounds of this, again this agreement does not control that except to the extent that it specifically refers to that, and in this context to draw the parallel, I believe again these limitations are talking about in the area where we are being provided service because outside of that, there is no consideration given to us to make such a promise to go beyond those bounds. So legally I don't know how it would have an affect outside of the bounds of the agreement.

Harenda: A lot of these TIFF districts and economic incentives are set up for cities that are in redevelopment phases. They're basically older urbanized cities that need to bring in new business or structures in. Say in 30 or 40 years down the road and we have built up the City and need to redevelop the older industrial park and we need to offer incentives to be competitive to other cities in the area, does that bar us?

Blum: The agreement is for a period of 20 years. If the anticipation that you would provide a direct economic incentive to a particular business in the industrial park in that time period, yes it would preclude that. In my understanding in the history of New Berlin whenever we have done TIFF districts which is usually a mechanism by which some kind of payment like that would be done, it is for public infrastructure. If there is a contemplation that you may want to have a TIFF district to provide a payment to improve property or do environment remediation or anything that directly benefits a particular property then you need to look at this a little differently. Looking at the history of how we have applied such districts, we haven't done it that way in the past.

Harenda: But you are saying the sunset date on this would be 20 years.

Blum: It is a limitation of a 20 year period within this particular jurisdiction. Your comment was may we bring in businesses if was from another municipality beyond the City of Milwaukee, of course there would be no limit to that either.

Harenda: You are saying the agreement is only good for 20 years, and the language that Bob had reference before was that we wouldn't have to pay another regional benefit payment for continuing service. This piece of paper will be null and void in 20 years.

Dude: The language I quote was the PSC though.

Harenda: Do you feel comfortable with the Public Service Commission as our watchdog and protector that we won't get abused in 20 years and they will say we want \$20 million.

Blum: Commissioner Dude made 2 points. One is that PSC ruling that I sent you a copy of and some Wisconsin Supreme Court cases. They are old, but the bottom line is that there is a consistent proposition in them that once there is a service area established, that it cannot be withdrawn subsequent to the offering of that service. For example, was an area in Wauwatosa back near the turn of the century

whether there could be an expansion in the area and withdraw of service otherwise and the case clearly came down to say once it was there it cannot be withdrawn. The PSC is saying the same thing I think based on that same rationale and those cases. Independent of the contractual agreement once the service is being provided, there is other justification beyond the bounds of what we have here that require them to continue to serve. Granted you are going to pay whatever rates the PSC terms are appropriate at that time but in terms of asking for an additional payment and setting up new terms in that regard, the law is pretty clear about that, it could not happen.

Harenda: The second question was could they jack up the wholesale rate?

Blum: It is being reviewed by PSC. The PSC looks if there a direct relationship for the amount being charged and the cost of the service being provided. If there isn't, the PSC is not going to allow that and we would have rights to raise an issue with the PSC if there was an attempt to do that.

Chiovatero: These exact comments were discussed during the talk about this language. I brought up the same questions, if it was inside or outside of this area, and they were under the impression it was the area covered in the agreement which is the additional service area. There was one thing we tried to get in there and it would have been "direct" incentives, but when talking to the City Attorney, it was too late to change that language, but everything else that you are talking about right now was discussed. I think there was a pretty good understanding of what area fell under this agreement.

Ament: It says in here both parties agree that neither party shall take any action to solicit businesses to relocate and that makes sense, but when you read that second part, it further agrees it shall not offer any economic incentives to any businesses to move from the City of Milwaukee to the City of New Berlin, but it doesn't say they can't do that. I don't think it is a deal breaker, but it is a concern.

Chiovatero: I think your concern is legitimate and that was discussed but since we had no economic incentives to give back, it was a mute point. The issue is that if a company A comes to New Berlin and wants to relocate here, there is nothing to stop them from relocating. We did not solicit them. They don't want us to go into Milwaukee to solicit companies to move out here. Hey Miller Brewery, we have Lake Michigan Water, why don't you move out here. That's what they were referring to.

Ament: I agree with that. Once that happens, they have the option of offering economic incentives, but we do not. It's not a major thing, but it is a concern. On page 2 Article III, "*Both parties agree to abide by the Code of Ethics adopted by the Milwaukee 7 on November 29, 2006...*" We were discussing a lot of this in closed session, but a lot of people out there may have the same questions and I will save them a phone call and email. What exactly does that mean?

Mielke: The M7 group has set up a Code of Ethics by which they believe with their cooperation that they will abide by with all of the parties that are in the M7 area and it deals with how you will deal with each other for economic growth for the region. I had delivered a copy of the Code of Ethics to the Committee. How do you work with other, including the poaching issue. None of the communities that are in the 7 Counties in the M7 won't go and try to get a business from one of the other parties in the M7. If a business in Milwaukee contacts New Berlin with no effort of yours, you can talk with them and certainly entertain getting them a site. The M7 says you must put Milwaukee on notice that you are talking with that industry, so that is part of the Code of Ethics, the same if somebody with New Berlin was talking with Milwaukee, Milwaukee would have to notify you it was happening. If out of area people are coming in, if you hear in the newspaper that Milwaukee is talking with some industry down in Kentucky, they have provisions here that they don't want you to try to approach that industry. It is the same for Milwaukee if you get a lead from out of state, they wouldn't jump on that. It tells everybody what they are doing and trying to get everybody to work as a unit to try to get business in one way or another and support that business and not trip over ourselves to fight over it so that nobody lands that business for the region.

Ament: Thank you. On page 3 under B, "*Both parties agree to hold an annual meeting with designees of both communities...*" What happens if that doesn't happen? Is this something automatically set up at certain dates or months?

Chiovatero: That could be either Mayor Barrett and myself get together or designees. I brought up that point that Mayor Barrett has a huge staff that does a lot of that stuff. I could send Greg (Kessler) down

there and talk to their Director of Community Development. Is there something that says we will meet on December 1<sup>st</sup> of each year? No, there isn't, it is more of a goodwill thing. We have agreed during discussion of businesses moving in and out of Milwaukee and New Berlin, we would have open discussions at that time.

Ament: So if the meeting doesn't happen, it's not on a set schedule...

Chiovatero: If the meeting doesn't happen, it is not a breach of contract.

Ament: I just want to make a point of the one time payment. It is hard to separate the agreement and the IGA. Page 2, under B. *"The regional Benefits Payment reflects the value of Milwaukee water to existing customers and a pre-payment that reflects the value of Milwaukee for potential future connections, within the Expanded Lake Water Service Area..."* When I read that again on the 1<sup>st</sup> page of the Agreement under 5<sup>th</sup> Whereas, "existing customers and the value of Milwaukee water for potential future connections..." and my concern has been related to the \$1.5 million dollars. They arrived at the figure not because of anything with our current sewer service area or Utility service area, but things outside of it per the map that is in the 1<sup>st</sup> Amendment to the Agreement. I will get back into that when we get to the Agreement itself and I think it has to do with the \$1.5 million and I don't know where to divide this off.

Dude: On reading that it says, *"It is further understood that additional Regional Benefit Payments will not be a requirement for any future continuation of water service to the Expanded lake Water Service Area..."* What they are saying is what the Public Service Commission said to them. They can't do it again for these areas.

Ament: I agree. It is obvious from the articles and press releases that I've read that they arrived at \$1.5 million dollars not just based on expansion within the service area, but areas that we included now in this map, south and west of the areas not in the original agreement that we're amending and we are adding this Intergovernmental Cooperation Agreement. Is that part of the reason they came up with the \$1.5 million dollars is because of those areas. It does also refer to Appendix B1 which is the map. It doesn't mean they wouldn't ask for some money or even that amount but reading between the lines and we weren't involved in the negotiations and what was all said.

Harenda: I have been getting a lot of calls, because it is including areas that are outside of the current sewer service area, but into the ultimate sewer service area and people are now thinking they are going to get water and that will push sewer to the southwest corner of the City. This committee, I know you guys can speak for yourself, did not authorize the use of that map in the agreement. The negotiating committee can explain how that got put into this agreement. We were told along the way we couldn't yank the map out and make changes because it would make waves and concerns. Alderman Ament's concern is that we are paying \$1.5 million because of those areas in the ultimate sewer service area and thinking if we would have pulled back that line, which probably has made Alderman Bauman more comfortable that we are not trying to push sewers out for development. We basically got what we want to. We got the areas mostly commercial and industrial built out already. We are looking for health and safety reasons like the Mayor has pointed out. This map has created a concern for myself specifically that is my district as well as other concerns in the City and that was never authorized by this Committee. The Mayor and the negotiating committee can explain how this map got interjected into this. When we talk about the regional cooperation and the IGA and utilizing New Berlin's assets and Milwaukee's assets to the benefit of the people in the region. Because we benefit from Milwaukee and I think the aldermen of Milwaukee state that and we understand that and we are willing to work with them, but the money part got interjected which leaves a bad taste in our mouth as well as the M7 language the Code of Ethics. The only concern I have with M7 is that we haven't had any say, we aren't part of M7, it is a private entity, we aren't affiliated and haven't been involved in anything and that really didn't offer us much assistance on the whole negotiation from going back 2 or 3 years until today. We offered that language and the City of Milwaukee interjected that we aren't allowed to offer economic incentives which tilts the balance in their favor which I understand where Alderman Murphy was going with that. I wanted to put that out because it is a concern to me and I have something later on the agenda to deal with the boundary issues that we brought up at the Common Council meeting.

Ament: Those are very good points and they piggyback on what I said. If that is the case in reading between the lines and we generally up here feel it is part of that cost. The current customers are paying

for that. The money has come out of the reserves for infrastructure and they're paying for it to expand the area beyond the current utility. As a Utility commissioner I don't think that's fair to them that they are taking their infrastructure reserves and putting it toward this for development outside of the utility. There were a couple of things said in the Press Release from Alderman Hines. I know they don't own the lake, but if Arizona wanted to pipe the water down there, they can't do it, unless they go through Milwaukee or somebody. The land is there that they own and they have to allow somebody to go through it and that's where they hold us over a barrel. Don't forget there is treatment involved, we are not just taking a straw and drawing it out. They are bringing it out, they paid for infrastructure of their own, a treatment plant and some upgrades recently in the millions, so we are getting something for this deal, but if you look at the original agreement and the original negotiating team, you have to admit it was harder to get Milwaukee water across 124<sup>th</sup> street in the first place, but they managed to do it by using the Master Plan and our current sewer service area to show them we were not going to use their water as they say 'give them the bullet' to take anything away from them. I understand their concern and some of their costs, but if you look at the first agreement where there is no one time payment to now there's \$1.5, you've got to ask why is it different? If we insisted on staying within the current Utility service area, why do we have that \$1.5 million? There may be some other factors, you've got to ask yourself that question which is the first thing that came to my mind when we starting talking about a one-time payment. The numbers went from one end of the scale to the other and eventually came into \$1.5 million. The only difference I see is the service area that we proposed to them, which is altogether different from what we were initially led to believe was going to be in there by a map provided by Ruekert & Mielke in 2005. Utility people received it on 6/15/05 and it specifically does not include those areas. Those areas say no water service contemplated. You can also go back to the original agreement and if you look on the back page which refers to Appendix B which basically follows the same map we got from R & M in 2005, so in 2003 and 2005 these are the maps that we were given. These are what we thought were the service areas then at the last minute about a month ago; we were given a map that follows the sewer service areas, which by the way we never got any input on that as well. We were given the same story then. If you try to change it, it will cause problems. MMSD already approved it. If this had gone to Plan Commission and eventually Council for approval of these maps, and it would have gone a different way, then we would have had no argument. We never had a shot at these until about a month ago when I asked about that map, I was told in closed session if you try to change that, you throw the whole deal out because it has to go back to Milwaukee, you are stuck with that map.

Dude: One of the things I used to do when I did intelligence briefs in the Navy, I would always close my briefs with, "one for the good guys". It is very wrong to under estimate your enemy but it is also can be very wrong to over estimate your enemy or the person you are negotiating against. A classic would be when a Libya PT boat docked behind another Libya PT boat and sunk it with a torpedo because they screwed up. Let's refer to the one Dave that you mentioned earlier about them soliciting business from New Berlin. These are the same people that told Buy Seasons that they can stick it, and thereby created a new building and a thousand jobs in New Berlin from Buy Seasons. If that's the best they can do, why are we worried about the City of Milwaukee. Secondly, looking at all these things as we read between the lines; since we did the last negotiation 5 years ago, we have not heard about this at all. They have pretty short memories and other things to deal with, so I recognize you can look here and here, "Frankly Scarlet...", they aren't that good. Thirdly I will disagree with one thing you said totally, the \$1.5 million did not come from looking at the map and looking at the line. We worked that out like all negotiations and we went back and forth. It's like making sausage. They aren't that good. If Willie Hines wants to bring in a consultant to say what that is worth, I feel sorry for the City of Waukesha. That's their problem. They are now going to establish what that's worth, but when they got that number, it came out of negotiations for what we were willing to pay and what did they want. They had no clue. They didn't know what this was worth. Why are they looking at it now? Because they have budget problems, because they have pensions and healthcare and they need money and they know with all of the talk about Great Lakes pact that they have an asset. They didn't know that 5 years ago. They got smart. Don't over estimate these people, they're not that good.

Ament: I agree that maybe some of them aren't, just like you could do with any Council or any Board. Some do their homework better than others, but according to the article in the Daily Reporter, someone was concerned and it was apparently Bauman and he is still opposed to this. And in that article it says according the Milwaukee Department of City Development Report, "the 175 developable acres in the proposed service area and the 88 acres zoned for industrial could generate 5,668 jobs if developed." Maybe we were successful at pulling the wool over their eyes, but this guy got it and he understood it. I

didn't make it up, it is a quote from the article and it came from the Milwaukee Department of City Development so somebody is that good and somebody was trying to warn them. When you put this all together, that was their concern and you can't help but look at it and say why is this different and why are we paying a one-time fee now when we didn't then and why back then were they not opposed to this based on loss of 5,668 jobs and 88 acres zoned industrial land. I will agree with you that some of them are not that bright, but some of them are.

Morrisey: Under the guise of regional cooperation, I think it is unfortunate that the City of Milwaukee is extracting a \$1.5 million payment out of us in exchange for providing for us something that really shouldn't be any more than what is in the amendment to the agreement to provide water that was negotiated several years ago. Respectfully Dave I don't think anybody looked at the map and decided they would charge us \$1.5 million. I think they decided they could charge us \$1.5 million because they could and I think they should be ashamed of themselves.

Dude: It would be nice to not have a Regional Benefit Payment. But in reality, you have to make choices and they aren't always perfect. In my opinion you have 2 choices. You can get water from Lake Michigan or we can do something about our 5 picocure problem with radium and the EPA. Water from the City of Oak Creek cost \$7 million front end, they also have a surcharge and would have to spend internal dollars to fix up their system, much more than the City of Milwaukee has to, which we don't have to pay for in addition to many miles of pipeline. The vibes I got were they frankly weren't interested. The City of Racine was very interested - unfortunately between us and Racine no one else gets water and the cost to run the pipe would be \$20 million. If all of the other communities between us jumped on, maybe it would get better in the year 2025. Unfortunately the EPA doesn't give us that long. Radium would cost \$4,151,190 compared to what we have to pay in the Regional Benefit of \$1.5 million. That is not all savings because we have to pay \$673,500 to upgrade our system. Long term we should have savings of about \$7,195,000 just on our electricity, chemicals, hazmat, well rehabs, etc. On the other hand you are going to have to pay the City of Milwaukee \$10,648,800. If you take the \$7,195,000 savings off the \$10,648,800 we are in the hole \$3,453,800. There are other savings that are going to happen here, but that balanced against \$3-4 million capital savings kind of wipes it out. That is not at present value numbers, but the numbers wouldn't change a whole lot. We can't do Racine, we can't do Oak Creek - it's City of Milwaukee versus Radium cleanup. You do not want to negotiate with the EPA and their henchmen the DNR. This year they say the problem is 5 picocures. Next year it could be 4, 5 years from now it could be minus 6. You have no, no, no negotiating power with the EPA or DNR at all and they don't care. We ran into that with the Butler garter snake. They put a hold on it for 3 years. We ran into that with the Butler garter snake at the City Center. They took away 17 of the 40 acres and they bankrupted 2 nice developers. I don't want to negotiate with those people ever. So your only reality is to get away from the DNR and the EPA. We don't want to clean up a mess now and then come back later and do it again and again. We want Lake Michigan water and among the 3 communities, this is the best financial deal.

Harenda: Overall it is a cost savings and there is more stability long term. Any promises the DNR make, it is only good for as long as they complete this statement. We have dealt with it before with this Utility and they pulled the carpet from underneath us.

Ament: I agree with Commissioner Dude on that one. I don't like the fact that we have to pay the \$1.5 million but when you look at the overall cost and the future of water supply, I still think it is a good deal. Do I think it would be better if we used the proper map? Yes, but I think this is the best long term solution and this is how we looked at it in 2002 and 2003 with the original agreement. Alderman Harenda is correct. We saw the DNR do an about face already on us with a change of administration. You don't know what they are going to do with the picocures over the next 20 years. You can make the argument that is not unsafe and I believe it is not, the point is we are under an order to reduce that and therefore from a financial standpoint and financial fines, if we didn't have a problem with getting Lake Michigan water via Milwaukee, Racine or Oak Creek, we could start getting fines at any time. The fact that we are going to Lake Michigan instead of the deep aquifers, we are taking one of the straws out of the glass. Regionally we are being more responsible. As far as Milwaukee doing whatever they did, that is their job to get as much out of us as they can and our job is to not pay them any more than we have to. I don't have any problem with the cost based on the larger picture that we have to come up with a solution.

Harenda: It has been the goal of this committee for the last 5+ years to work toward this moment. It is good for the region and good for the environment. We are pulling our straws out of the deep aquifer which benefits the outlying areas and limits the amount of pollutants that are being discharged.

Wysocki: It has been a long time and it goes back to the first efforts we made in 2003. We want to do the best for the City and the primary effort is for health and safety.

Harenda: It has been reported that we have a surplus in the Water Utility. There is no surplus. The money would have to be borrowed, probably from the surplus in the Sewer Utility, but it would have to be paid back. It is overall most cost effective going with the City of Milwaukee than the other communities. The Mayor and I were very impressed with the City of Racine and they were willing to work with us and maybe in the future it would be more cost effective. I understand the position that the City of Milwaukee and the Common Council feels. Alderman Bauman looking out for his constituents and his concerns but the lake is not the City of Milwaukee's. The Great Lakes Compact is protecting that resource today and in the future. If we can't learn to work together on these things and we are nitpicking over dollar amounts instead of working on benefiting the region in general, we won't be any better off 20 years from now. I do want to comment that Alderman Zelinski and Alderman Murphy worked with the Mayor and I to work toward bringing this resource to our Utility customers so I want to bring credit where it is due. I do have some concerns on the map and some of the language but we can take it up with the Common Council.

Motion by Alderman Wysocki to recommend to the Common Council to approve the Intergovernmental Cooperation Agreement with the City of Milwaukee. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

**- Contract Amendment Extending Existing Water Contract with the City of Milwaukee**

Harenda: there have been changes since the last meeting.

Mielke: We went through this agreement at the July 9<sup>th</sup> meeting. The first change that you asked for:

1. #6 Excessive demand charges clarifications on page 3. See addition of Appendix C.
2. #6 Water main breaks and fire were already included. Paragraph (c) was added to include "an act of God or other catastrophic event beyond the reasonable control of New Berlin if Milwaukee is notified by New Berlin within 48 hours of the act of God or catastrophic event." We have 4 hours to respond to this.
3. #14 originally written only Milwaukee would decide to put in new mains, reinforcements and the amount of water. "If New Berlin begins to approach the maximum flow rate, New Berlin may request additional capacity from Milwaukee."
4. #14 – The Allocation formula was set up for Milwaukee to tell the City what portion of the upgrades to increase the capacity to the area. Added was that rate review would be done by the PSC under Wisconsin Statutes.
5. #15 (b) Change: Everybody will pay these costs except for work identified under Paragraph II (f)1 of this Agreement as being the responsibility of New Berlin and except for costs determined under Paragraph 14 of the First Amendment to be the responsibility of New Berlin. That was a change where we said *determined* could be either PSC or Milwaukee, that it could be one or the other.

Mielke: We were fairly successful in getting these changes done. You had a question on the cost. The political climate has changed and the area you requested the change for was west of the subcontinental divide and there really wasn't authority for that to be allowed until the Great Lakes Compact was put in place. They sought that as an opportunity to get some payment for the benefit that they give you. They came to the table with a surcharge on the existing rate. Somebody brought up that the rate is already surcharged. There is a surcharge built into the rate for wholesale customers. You have rate protection in a group with Brown Deer, Greendale, Shorewood, Wauwatosa, West Allis, Milwaukee County, Butler, Menomonee Falls, Mequon and New Berlin. What they asked for was a 15% surcharge for the western side for the existing water customers which was a little over \$2 million dollars. We said we are looking at very little growth and taking care of our existing customers. Some of the early structures with the

agreements were to give them a lower one time payment and then payments forever for new growth if it came. We went round and round with the Utility Committee and had legal constraints because of the fact that you are making the payment to the City of Milwaukee so you were barred from impact fees, special assessments, because we couldn't put the nexus as to why are you asking that charge. We then talked about other structuring over paying a sum of money over an extended period of time, and we talked about a one-time payment to prevent Milwaukee from coming back for another kick of the cat. We worked off the PSC decision if you can get your entire service area in, that area becomes protected forever and is an insurance policy and we used the map we were using from Day 1. We went round and round and came up with \$1.5 million as the number. We looked at Cleveland and if you applied their formula to us, it would be about \$2 million. We thought the \$1.5 was reasonable and I think you did too to get things closed. The map has been the same for a long time. That is the MMSD ultimate sewer service area map that was used for the Lake Michigan water study in 2000 and approved by the Utility Committee in 2001. That is the same map that was in the negotiations. When we did the diversion request from the DNR we used it, when we put together the negotiation strategies with Milwaukee, they already had those maps because they had copies of all the diversion requests. It had one amendment from your early reports from 2005 for the school area and that was the only change since that time. The Mayor did ask about the service area and I did send you a memo on this. At the last Utility Committee, we were trying to bring insurance to the City so that Milwaukee would not have any more kick of the cat on decision for land use, additional payments or withholding service with this put in place and now any decision on how you work inside those boundaries will be a New Berlin policy.

Ament: The map we were given that was part of the original agreement is completely different than the map that we are presently using which is the sewer service area map. If the negotiating team and anybody else thought it was a good idea to change it, we should have seen it. *He passed around maps showing the line in the original agreement.* In 2005 I requested from the Utility Director Ray Grzys, I got a map from R & M that was virtually identical from the one in 2003 and the original agreement. There is no way we would have known that we were going to change that map, otherwise I would have said something about it. If I had known you were going to use this map of the sewer service area, this map is not consistent with even the 1973 map. In the 70's there was a map but if you recall in 1998, the Mayor wanted to extend the MMSD service area map. There was specific action in 1998 and they put some of the sewer service area map into the ultimate service area and left it there. That was done by official action of the Council. How these maps are changing without us knowing about it is what troubles me. If these maps came back and the Council changed them, I have no argument. This was changed without any Council approval. When we get to the water deal, in an official map with the City of Milwaukee and an official map from Ruckert and Mielke showing one thing and last month we get a different map showing the sewer service area, this is our entire service area for Utilities. We were told time and again that we make policy. The Plan Commission never saw these changes nor did the Council. There are some people in Milwaukee saw it. The press release that came out on July 30<sup>th</sup> from New Berlin said that the agreement will be in effect for 20 years with water supplied through existing New Berlin water mains and pumping stations. New Berlin's western third largely undeveloped land that is not served by City water and sewer system is not a part of this plan and will not receive Lake Michigan water and will retain its rural character. Look at the map and that is absolutely not true. If you look at the GBMP which is part of our Master Plan it specifically spells out that no sewers will go to those areas and now we have included water in it beside. The GBMP says the western half of New Berlin is the planning frontier of the City and public sanitary sewer area will not extend into this area. It is even environmentally friendly. This map is the major stumbling block. Either the map changes in this agreement or the 2 requested actions that Alderman Harendra brought are not approved and they get through a veto, I will not support this. I would suggest someone having a special council meeting and get this passed before. I have some questions regarding the additional charges for excessive demand, if this map gets approved how it is, I don't know how we won't go over 6.5 million MGD. In peak times, like in 2001 we had a drought and I think we were using 10 million gallons a day for awhile where we had to stop lawn watering. If you went to 10 million gallons per day that could be as high as \$50,000 every hour. We need to go back to the original map that we were all let to believe was the proper map and also increase our reserves and storage capacity. These additional costs will be beneficial. We also need to look at some watering restrictions when we have low rain months to protect us from being hit with \$50,000 per hour from Milwaukee. I think the reserves we have are good for about 2 days. Item 14 it reads that Milwaukee has no obligation to grant additional capacity. They could say no or say they will give it to you at a certain cost.

Mielke: If we request additional capacity and they have capital costs that they would incur to reinforce a main you will get some allocation of that cost. The PSC language is that they would not charge it all to you if some other community benefits from it.

Ament: New Berlin agrees to pay its proportionate share and again I want to go back to the MMSD issue. It does not define how they would charge it; would they divide it by communities? Is there anything in here that would leave us open for them to charge us on assessed value?

Mielke: No. Proportionate share means cost of service so they have to show if you ask for 2 million a gallon more per day peak flow, and they build a pipe with 8 million, you would get about 25% of the pipe.

Morrisey: If we do ask for additional capacity the IGA is still in effect so our one time payment has already been covered.

Dude: The 6.5 million gallons a day is not a punitive situation. Milwaukee has the piping to support that, but if we go over that amount their pipes could break so they are not doing that to punish us. Secondly we will have to look at our wells, some of them probably won't be closed down so we have some reserves and look at our towers, which store I think 4 million gallons. One of the things we have to do is go in for a rate request. We will put these costs in and put a conservation plan in place. A subcommittee is working on some conservation ideas. Waukesha has put a plan out and we may put out some incentives for people to switch from pre 1994 toilets maybe the Utility will have a fund available to pay for some of these things. If we want more water I don't have a problem with paying for some of the infrastructure. Regarding the line on the map for the people west of Calhoun, just because you are included in the area where you can get water, doesn't mean that you will. If you don't want it, fine, frankly, I don't want to give you water because it cost too much money to install a pipe out there for 100 people. Economically it doesn't do anything for utility. There is no intention to run water west of Calhoun end of story. It would have to come out of the Utility and then go to Council. Some day they might want it because their water and sewer may go bad.

Harenda: Commissioner Dude, myself and staff are putting together a conservation plan, but we shouldn't have a capacity problem correct? If we start creeping up, we should know there is a problem long before and we would pay for the infrastructure to get the water to us. You are comfortable with what we have here.

Mielke: We are comfortable with where you are at if you properly manage your water system. You will have to reset up your computerized controls and SCADA system to monitor your peaks to utilize your full storage to keep the peaks down. There will be some years before you get near that, but you will find out in a short period of time how your water conservation program is working and tweak that as necessary and pick a course of action from there.

Morrisey: In your opinion with some strategy we are probably good for the next 20 years with conservation, storage and some other things.

Mielke: You guys asked me how much will they charge us for what they build in Milwaukee County. That was an unanswered question, so what we asked them to run a model and tell us what was the most capacity they could give us without harming your system. At 6.5 million they start to pull the Milwaukee County customers into non-compliance pressure-wise. They asked if they could put something in the agreement to keep us honest and make sure there is some pain if you go over that. They have long term plans to reinforce the area all the way down here because they will be adding customers east of the County line and when that happens, you will be given new numbers and bigger numbers if reinforcement goes into those areas as a bonus when it is available.

Wysocki: Will this in any way change the way we do rate requests?

Mielke: No. You have a wholesale rate set by the Public Service Commission. Everything else you do here. You make the rate applications based on that.

Wysocki: Once it actually is approved and everyone is on the system, does this agreement change any of the water availability charge of \$7.50?

Johnson: All of the charges will be the same. If you are not hooked up to water and have sewer, the water availability charge will remain at \$7.50 per quarter.

Wysocki: I would like to refer to the City of Milwaukee letter sent to the Public Service Commission on August 1<sup>st</sup>. Has Milwaukee received any comments on the IGA to the best of your knowledge?

Blum: I have not heard of any.

Wysocki: I understand that this requires Public Service Commission approval.

Blum: It does and it has to be approved at the DNR as well.

Mielke: I talked to Chairman Harenda and we submitted the contract to the DNR and told them it was the draft contract currently under consideration by the Utility Committee and the Council and asked them to give us your comments ASAP.

Wysocki: Does that approval from the DNR required to get the water or to establish that we are in compliance with the standards.

Mielke: Its to help establish under the current statutes that they just passed under the Wisconsin legislation ratifying the compact for them to say this is compliant and we can go forward.

Wysocki: We can show we are in compliance with the radium?

Mielke: Exactly. They will approve it and then ask how quick we will be in compliance and turn off our wells.

Wysocki: You don't have any concerns that this raising red flags for the PSC or DNR?

Mielke: None at all.

Morrisey: The agreement with the PSC will only be for the 1<sup>st</sup> Amendment not the IGA?

Mielke: The PSC will look at the IGA to make sure it doesn't interfere with the PSC's governing of the Milwaukee Utility and that will be as far as it goes.

Wysocki: Are you comfortable with the schedule you gave us on peak use and daily use? How did you arrive at the fact that average use will go up every year but peak use will be going down for 10-12 years.

Schultz: I developed those figures. Currently the SE Wisconsin Planning Commission is nearing completion of their regional water supply plan. They looked at all 72 utilities in the 7 county area, compared the regional land use plan to water use, how areas are going to develop, how water will be provided, historic use and projected future usages consistent with the regional planning effort. Those water plans also put in some minor assumptions on water conservation and its effects knowing the states were mandating it. The conservation efforts assumed a reduction of between 5-10% for average day uses, such as toilets and low use fixtures. It assumed a more aggressive reduction for the peak flows and that is where the rate making, the sprinkling restrictions, etc. have there greatest impacts. We used the assumptions on average use and there is a higher assumption there. SEWRPC developed a model based on information throughout the country and Canada as to what could be expected for conservation and it is quite low versus some other areas of the country that are more arid and it is a reasonable expectation.

Wysocki: Thank you for your expertise. One of my concerns is we instituted some odd/even watering in 2001 so I don't know more we can do. We aren't going to force people to change toilets, but in new construction we can require that or it is required already?

Schultz: It is required by the state.

Wysocki: Based on prior experience, the fact that over a period of 10-12 years, it seems counterintuitive to reduce the peak capacity when average use is still going up.

Schultz: I did send a letter to the DNR August 4, 2006 when we were looking at this issue to operate the system and maximize the use of storage and in 2000 your peak day pumpage was 4.6 million, in 2001 it was 6.8 million, in 2002 it was 6.3, 2003 it was 6.5, 2004 it was 4.9, 2005 it was 5.6 and 2007 it was well below 6. We have at least 5 years of historic declines. The per capita water usage is actually going down. A lot of it is attributed just to the media talking about water conservation.

Wysocki: I'm still not clear and fiscally not comfortable in an emergency situation using our wells. I thought for besides the safety and health issues, will we have to look at an ancillary program for maintaining these wells for the future which cuts into our cost savings?

Harenda: I thought the wells would be kept around until we saw if we had any issues the intent was to take our wells off line permanently.

Schultz: Our recommendation and calculations assuming the storage structures are only 75% full and of that 75% there is a usable amount of storage, so that is knocked down roughly in half, so we have about 4 million gallons of storage between water towers and in ground reservoirs. We are recommending converting the reservoirs to dump and pump mode where you would fill them at night so when your water use comes up into the day you would probably leave the water in the reservoirs only a day or two and pump it out at night and make sure it is refilled in the morning, but that water would be available for use when people turn their sprinklers on when it goes over the 6.5 GPD. Typically a high usage time is 4 hours long and is usually up 1.75 in the studies we've done times the normal usage and you can meet that with your current storage. However, what we are recommending until you get your controls dialed in perfectly that you keep a few of the larger wells available so that you don't kick in those peaks. It is our belief that in a year or two a couple of hot summers, you are going to know if you need those wells or not and there may be a decision point then, we only need the well for a little bit, should we add another cell of storage maybe at Rogers Drive or Well #7 both of which were designed for additional storage to be put there. The numbers say it will work and we can set up the controls that it will work.

Harenda: Initially we were told that we can't blend Lake Michigan water with our well water.

Schultz: There is no statutory or code requirement that says you can't do that.

Wysocki: I know we were told on occasions you can't blend.

Morrisey: I think I asked if we could purchase water from 2 different cities and we were told that we can't.

Ament: One of the reasons we were given is that Milwaukee is selling us a specific product and a quality of product. If we start blending it there is an issue. They didn't want to blend something that is not correct and they would be partially responsible for the product.

Schultz: From a water quality standpoint? The chemicals that Milwaukee adds to their water are chloramines which is chlorine plus ammonia. The ammonia locks the chlorine up so it has a longer life while its in the water. They also add a polyphosphate similar to the polyphosphate you are adding in your wells to sequester iron and to coat your pipes to prevent any lead or copper from leaching. There is really no quality issues using those wells associated with adding that water to their water. We will have to get DNR approval. Menomonee Falls has been permitted to operate that way. They haven't had to but they certainly can blend their well water with their lake water and have approval for that.

Wysocki: What is the basic cost, ballpark to maintain a well in a standby capacity of 5 or 6 years to keep it available as identified in our agreement when it is needed?

Schultz: You have to look at which well it is. Rick Johnson has some wells specifically Well #9 and #10 that he has to do regular scheduled treatments on to keep bacterial growth down in them and keep water flowing freely in the well. His estimate of the cost every 3-5 years are on the sheets. Those deeper wells do not have those same kind of experiences. You are going to be required if you keep the wells to run

them once a month to make sure the pumps are working. That is a minimal cost. That will reduce the wear and tear on the pumps so that you don't have to replace them as often as you do now.

Wysocki: My concern would be that the wells don't have radium content.

Schultz: That is correct. Wells 8 and 9 pump to a common source, the Valley View facility by the elevated tower. Those are blended wells, when they run together they are in compliance with radium. Well #10 pumps directly into the system located at Westridge below the water tower there. That is radium compliant. Well #2 is a shallow compliant well. Those are the 4 we would look at delaying abandonment initially.

Wysocki: Will Rick have the capacity using SCADA to integrate all of this. Is there manual requirement if we have the need for one of these wells to come online or technically through the SCADA system?

Schultz: Through the SCADA system he should be able to remotely turn the wells on. The question is if he is exercising these wells for 10 minutes a month does he want to put the small quantity of water in the reservoir or put it in the ditch. There would be some labor involved in putting it in the ditch.

Dude: We have to put some conservation methods in place, there is the ability to use some incentives to encourage people to replace their toilets and showers if we budget same and if we don't get our conservation we could put maybe pay something toward that. While there is not an issue now, we can look at more storage capacity, keep the non radium wells online and use the pump and dump method. Since we have gone to City of Milwaukee water to the eastern part of the City, I have not heard one complaint about the water – people like it. Secondly if you use 3 bags of 40 lb Morton Salt 6 times a year at \$5.79, you are going to save \$104.22 plus inflation and 720 lbs of salt taken down the stairs. There are some savings for the customers using City of Milwaukee water. You are going to save money on salt, but pay a little more on the water bill.

Schultz: You will also save money taking the water softener out since they use 40 gallons per regeneration and you multiply that times 7,000 homes a couple times a week. That is a lot of water.

Ament: I read an article about 2 communities in Illinois that were concerned about water not being used from the deep wells in Waukesha and having that treated and put in the Fox River it could affect their resort communities that depend on Waukesha for their water in the Fox River. We have a different situation than Waukesha especially as a straddling community. Do we have any possibilities that someone through the compact would have an affect on the final outcome? Could they stop it?

Mielke: Having sat on the bill drafting committee, I don't see how they could. You have to have a no net loss to Lake Michigan. Lake Michigan water will come over to the west side, you will sell it to your customers, they use it and it goes into the MMSD sewers and goes back. We will have to account for it on a yearly basis, but as long as there is return flow you are satisfying the Lake Michigan Great Lakes side and there is no net loss from the west side, you are satisfying them also.

Ament: That's where we are different than Waukesha.

Mielke: Much.

Ament: My concern would have been that they don't really particularly care what happens in New Berlin because we don't send it to the Fox River but one of their legislators might see this as some kind of precedent.

Blum: We talked about this before, the hypotheticals. We can't anticipate when someone may or may not decide try to litigate. Based on the status of the law we believe that kind of scenario is very unlikely.

Ament: That is what I was looking for. There was mention regarding the map if those people don't want it they won't get it. That's not necessarily true because you can talk to the people on Howard, Moorland and Grange and ask them what happens when a developer develops and you are between the sewer and water and their development you don't have a choice. The New Berlin urban service area maps that are being proposed at the Council level. If this was approved with this map and we pass that and it held, and

a developer wanted it in an area designated as being available by MMSD and Milwaukee and we agreed to it, does the New Berlin urban service area map have any power over that. Where would we sit if we said no?

Blum: There are a great deal of variables in the scenario you just outlined the first of which, I've talked to Alderman Harenda regarding what he is proposing and what he is proposing and what is ultimately enacted. The point is I am making assumptions based on what he has identified as a potential action and establishment of that boundary. My understanding of that is we have an ultimate planning boundary as set through MMSD. We have a 2<sup>nd</sup> boundary within that which is the area actually being served. This urban service area boundary would be an internal New Berlin control establishing regarding of where the MMSD boundary is, it is an internal boundary that we are saying beyond this point we do not anticipate or plan on having any utility service extended. That is my understanding of how the various layers would relate. The urban service area boundary would not necessarily change the MMSD boundary but be an internal control before we would get to an application to change that boundary saying that we would have to look at that first. My only concern is that right now you have an MMSD planning boundary and to change from being within that planning boundary and moving it into the area actually being served at least as the law currently stands would require a majority vote of Common council to make a request to SEWRPC and MMSD ultimately to make that transition take place. One of the proposals that Alderman Harenda has made is to go to simple majority vote requirement to change the rules of the level of approval that's necessary then to move a property from the planning area to the service area and knowing how litigious our society is, someone could raise the issue while I brought my property thinking it would be a simple majority to make that change, you changed those rules to make it something more than that. Is it possible that someone could raise the issue based upon the way it is currently proposed? Yes it is possible. Having said that if we're are talking about setting a super majority requirement through this urban service boundary to the area west of that planning area line which is really the balance of the City up through your western border, there is no expectation on anyone's part living in that area because of the fact the planning area does not extend that far. There is no expectation of it being serviced anywhere in the near future and if you establish an urban service area boundary and say this is the limit of where we would want to go I think you would have a very good chance of enforcing that and you would not be required to advance that line further to the west. The distinction is the boundary of the current planning area; I think you could be very successful with establishing your urban service boundary there and not permitting further expansion of the utility west from there. The area east of the current planning area there is at least an argument of that area to be advanced and I'm do not want to comment on that, but that is a potential. I think there is more of a legal question there than west of the planning area boundary.

Harenda: What is the timetable if these two agreements due pass. It still has to go the DNR and the Public Service Commission with the amount of \$459,000 to execute the needed upgrades to the infrastructure.

Johnson: It is going to take about 6 weeks to order the pumps and motors and to get it designed to do the bypass I would say about 3 months. It all depends on the market for contractors too.

Harenda: How long will it take to hear back from the PSC or the DNR?

Mielke: They are very anxious to put this issue to bed so I am not anticipating any delay at the agencies.

Ament: They are already aware of what is going on.

Mielke: they have been following your activities for about 2 years now.

Blum: If you look at when Milwaukee asked for the PSC letter that they received in January to start with, a relatively short turnaround there, I don't see we shouldn't expect a short turnaround for this issue. The DNR is looking at our radium issue so there is incentive from their standpoint to see this addressed very quickly.

Wysocki: Just for the record. Matching up the amendment to the original agreement are there any potential conflicts?

Blum: Do I see an issue with respect to interpretation that the amendment now makes it more difficult to interpret the 1<sup>st</sup> agreement or conflicts with since there are inconsistent terms, no I don't see that.

Wysocki: Does Mr. Zeppos agree with that?

Zeppos: That's a legal question. I assure you that I have been trying to pay attention. I thought less was more tonight from me.

Blum: I think there is interest from both our side and the Milwaukee side that there are not conflicts. Their City attorney's office reviewed it, I've reviewed it. I can't tell you that we are all infallible and we haven't missed something but we have scrutinized it very carefully and I am satisfied that it is not in conflict.

Ament: Could you make sure you get something to all the Alderman that you would encourage them to get a tape or DVD. I think it would help once it gets to Council to answer a lot of the questions they have or their constituents have.

Harenda: Everything that you have received tonight will be given to the Alderman and I will ask the City Clerk to copy the meeting on DVD for the aldermen that weren't in attendance. If these agreements do past, when will we go for a rate increase and what percentage would it be?

Chipman: I will be talking to Mr. Dude next week and looking at the budget. It will probably take about 3 months to get the paperwork to the PSC and do the public hearing so we would be on the same track as they would be getting that online. Based on the dollar amount that Milwaukee gave us and our budget preliminarily, we are looking at roughly an 18% increase. The average house in New Berlin uses about 15,000 gallons per quarter. They would go from \$62.33 per quarter to \$73.55 per quarter, about \$11.00 a quarter. That is a preliminary look at what we are talking about.

Harenda: These increases are based on what period of time for the payoff of the infrastructure costs. Is this piggybacked off the original rate we did awhile back for the original infrastructure for the eastern half of the Utility?

Chipman: We will have to look at how much we will be spending or borrowing to get the infrastructure. I don't believe it will be a major thing and it will be paid off over a period of time so it will not have a significant impact right away.

Harenda: We are still looking at the sewer utility for borrowing the funds?

Chipman: If we need to right.

Harenda: We talked about the well system and that will be a discussion at future Utility meetings.

Wysocki: I would like to thank Mark Blum from being here, we interrupted his vacation and thanks to the bargaining committee for the effort they went through. Now Rick Johnson can do his thing.

Motion by Commissioner Dude to recommend to the Common Council to approve the First Amendment to Agreement between the City of Milwaukee and the City of New Berlin for the Purchase of Water at Wholesale. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously.

## **NEW BUSINESS**

### **UT 07-08      New Berlin Urban Service Area Boundary (*discussion*)**

Harenda: At the last Council meeting on Tuesday night I proposed solidifying the boundaries where we want sewer and water in the City of New Berlin. Working with Staff, the City Attorney and Greg Kessler we are looking to adopt a Water and Sewer Urban Service Area Boundary map which was the terminology that Greg Kessler came up with. It has been referred to the Planning Commission. They have 30-60 days to review this and report back to the Common Council. I will also put it on a future Utility Committee agenda to keep you apprised what is going on to calm the fears of people that we are going

to push sewers or water to the far reaches to the west side of the City. As well as an accompanying RAS to put basically a road block in place that if we try to deviate and go outside those boundaries it will require a  $\frac{3}{4}$  vote majority to do that. We need that in place so that if some particular reasons that sewer and water had to be placed in that area for some natural disaster, health and safety reasons and those future aldermen look good and hard about that decision. That will be discussed in the future.

Morrisey: Can you copy Commissioner Dude and I on that?

Harenda: Yes.

Motion by Alderman Wysocki to adjourn at 9:43 p.m. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously.

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

Respectfully submitted,  
Suzette Hanley – Administrative Supervisor, Utilities & Streets