

**MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday January 24, 2006**

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

Others Present: Ray Grzys (Director of Utilities & Streets), Mark Blum (City Attorney), JP Walker (City Engineer), and Sue Hanley (Office Coordinator Utilities & Streets)

Chairman Gallagher called the meeting to order at 5:00 p.m. declaring a quorum with all members present.

ITEM A-06 Approval of Minutes from October 25th meeting

Motion by Alderman Ament to approve the minutes from the October 25th meeting. Seconded by Alderman Harenda and upon voting the motion passed 4-0 with Commissioner Dude voting present since he was absent for the meeting.

ITEM UT 13-04 MMSD Settlement Agreement Update

City Attorney Mark Blum gave the Committee an update on the MMSD settlement agreement and said that in May 2004 the State of Wisconsin notified the City of New Berlin and 27 other communities that are tributary to the MMSD and contribute to flow that it planned to file a lawsuit seeking penalties and affirmative injunctive as a result of, in part, alleged violations of various water pollution control laws. In the agreement that was signed by the 28 communities, it stated that they must consent to perform I & I reduction and limit discharge into the system, support installing rain gauges around the system, and keep more detailed flow monitoring so that MMSD would have data for the future. He added that there is a settlement shield for the communities that as long as they are operating in a reasonable manner with no negligence and abide by the terms of the agreement, there will be no further legal action. This agreement now is in a period of public comment that is ongoing, after which the state reviews the agreement, and if approved it goes to the circuit court judge for approval. Attorney Blum stated that there is a concern with the revision to the existing discharge permit that the DNR is looking to amend and it is being reviewed at staff level.

Commissioner Morrissey said that the City has spent approximately \$16.6 million on this issue so far, and asked how much more was needed? Attorney Blum answered that the document does show how much each community has committed to the program, and New Berlin is already ahead of the curve by doing manhole cover sealing and monitoring and some of the other things that are required. Mr. Morrissey asked if we are currently meeting everything in the agreement? Attorney Blum said yes, that is my understanding.

ITEM UT 12-05 Diversion Agreement by Great Lakes Governors of Annex 2001

Attorney Blum said that the representatives of the Great Lakes states and the Canadian provinces in the Great Lakes Governors Annex 2001 have drafted an agreement, which was signed at the meeting here in Milwaukee. He continued that before it is adopted, the agreement has to go before each legislature and then on to the federal level and in Canada, so he anticipated it would take a lengthy time for this to be accomplished. He added that the good news was that New Berlin is a straddling community as mentioned in the agreement, and if passed, it looks favorable for us to get Lake Water for the rest of the service area.

Attorney Blum said that along with Mayor Chiovaturo, Director Grzys, Steve Schultz from Ruckert Mielke, he attended a meeting in Madison with the DNR, who recognized our effort with the radium issues, but because they are mandated by the EPA, they are not in a position to give New Berlin any dispensation in the project.

Alderman Gallagher discussed the Pleasant Prairie issue and asked why New Berlin cannot just ask for a permit, and why we need the Great Lakes Governors' approval to get the diversion? Attorney Blum replied that the Pleasant Prairie issue occurred before the last revision took place and was grandfathered in. He said that the issue was discussed with the DNR, but it is their view that we still need more than just a simple diversion request and that they need to follow the guidelines and constraints set by the EPA.

The Committee members agreed that they were irritated with the DNR changing their mind, especially after they were left with the distinct impression back in October when Steve Schultz presented an update, that we would get the diversion and relief from the radium standards. The Committee told the City Attorney that this issue needs to be brought up to our assembly people and senators, as well as the governor and state representatives. Commissioner Dude added that the politicians from Waukesha County need to talk to these people about how insane it is that the City has to spend that kind of money when we were cited as an example.

Alderman Harenda asked for a summary of this issue from Director Grzys or Attorney Blum to be sent to Senator Feingold, Representative Gundrum, Governor Doyle and other politicians to draft a resolution to the state and federal officials to get this discussion going quickly. Director Grzys said that in the meantime, staff is proceeding with radium removal project and that Steve Schultz from R & M is working on design work with construction scheduled to start in May.

ITEM UT 19-05 Request by Cingular to reconsider revising term of their original Communication Contract

Director Grzys said that he had received a phone call from Cingular who said they would like to revise their contract with the City over the next 4 years, with a 12-month termination fee to \$21,106.50 per year with no escalator clause. Commissioner Dude said that he saw no reason why we should not have an escalator clause and that a 3% increase per year seemed reasonable. Director Grzys replied that Cingular said that they were losing customers, and may have to terminate their contract. Alderman Gallagher said that he would hate to lose the annual fees that we now charge and noted that Cingular was on the top of the scale as compared to the other communication companies that have equipment on our towers.

Commissioner Dude said that when the contract comes up in March they would spend more than \$21,000 to remove their equipment from the tower. He added that if we don't put an escalator clause on this contract, the other communication companies will see this and negotiate to get the same deal.

Alderman Gallagher asked if there is a standard escalator clause? Director Grzys said that no, but most had a 5% escalator. Commissioner Dude said that we should offer a 5-year contract, with a 3% bump for the first 4 years, and no increase the last year to get this contract even with the other ones. Director Grzys said that he will relate this information to Cingular.

ITEM UT 01-06 Discussion & Possible action regarding Approved Offer from State of Wisconsin DOT for ROW adjacent to Well #10 site for Hwy 43 Expansion

Director Grzys said the DOT needs to acquire the land from the city adjacent to our Well #10. This acquisition is necessary as part of the I-43 Moorland Road interchange improvement. The packet of information contains an appraisal of the land to be acquired, which totals .38 acres. The appraised value is \$56,000 and that is the compensation they would be paying to the city.

Director Grzys said that City Assessor Paul Koller has reviewed the appraisal and believes it to be accurate. He said that this parcel of land will not interfere with Utilities operation of Well #10. The City has until February 17, 2006 to supply an alternative appraisal. City Assessor Paul Koller, City Attorney Mark Blum and the Director of Utilities and Streets Ray Grzys all recommend that the City consent to the acquisition by the State and to compensation of \$56,000 being provided.

Commissioner Morrissey excused himself since he is an employee of the DOT. Alderman Ament said it won't affect service of the well or any equipment needed to service the well? Director Grzys answered correct. Alderman Ament asked if the funds would go back into the City general fund or to Utility?

Director Grzys said he would check with Finance Director Mike Holzinger and include that in the information for Council. Commissioner Dude asked if the City would get a formal easement? Attorney Blum said that the DOT is receiving an easement from us, but there is a reservation for us to retain certain rights to go in and service the well. Commissioner Morrissey asked if there were any facilities or waterlines in the ditch? Director Grzys answered no.

Motion by Alderman Ament to recommend to Council approval of appraised value of \$56,000 to acquire .38 acres of City land identified by tax key # 1255-991-008 having a street address of 15454 West Rock Ridge Road, city of New Berlin. Seconded by Commissioner Dude and the motion carried 4-0 with Commissioner Morrissey abstaining.

ITEM UT 02-06 Approval of Resolution to modify Sewer and Water Special Assessment for property at 4675 S. Moorland Road

Alderman Gallagher asked if the resolution to modify the special assessment had any change in price? Director Grzys answered no since the total cost of the project went down since we are not installing the lateral to the lot. He added that the two lots are now one parcel. Commissioner Morrissey asked if the assessment would be different because it is now one lot? Attorney Blum said that there is no change to the water and sewer mains, just changing the laterals and they are paying for upsizing of the lateral. Alderman Gallagher asked if the increase from 1 ½" to 2" mean that it would be a commercial property? JP Walker said yes, possibly apartments. Commissioner Dude asked who would pay for the laterals if the properties were split later? Attorney Blum said that in the agreement the acknowledgement includes the statement that there will be an additional cost to them in the future. Director Grzys noted that in the rationale there will be a correction made in the first line to read "not " installed, prior to this item going to Council.

Motion by Alderman Ament to recommend to Council to approval Resolution #06-03 to modify Water and Sewer Special Assessment for property at 4675 South Moorland Road, Tax key #1240-987-001. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

ITEM UT 03-06 Discussion and possible legal action concerning City's Claim with SBC

City Attorney Mark Blum said that a letter was sent to SBC and that he received no response and the next step would be to start action against SBC and asked the Committee for direction. Director Grzys noted that Ms. Budnick from SBC did contact him this morning and tried to contact the locators from SM & P and SBC, and said that some of the people involved are no longer employed there. She said that she turned this issue over to her superiors and they are reviewing it to determine what action will be taken.

Motion by Commissioner Dude to give SBC a deadline of February 24th to respond favorably to our claim for reimbursement, and if not paid, this issue would be recommended to Council to start legal action. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Motion to adjourn at 6:02 p.m. by Alderman Ament. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Respectfully submitted,

Suzette Hanley - Office Coordinator, Utilities & Streets