

**MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday February 28, 2006**

Members Present: Alderman Gallagher, Alderman Ament and Commissioner Jim Morrissey

Excused: Alderman Harenda and Commissioner Bob Dude

Others Present: Ray Grzys (Director of Utilities & Streets), Mark Blum (City Attorney), Steve Schultz (Ruekert & Mielke), & Sue Hanley (Office Coordinator Utilities & Streets)

Chairman Gallagher called the meeting to order at 5:00 p.m. declaring a quorum with 3 members present. Alderman Harenda and Commissioner Dude were excused.

ITEM UT A-06 Approval of minutes from January 24th meeting

Motion by Alderman Ament to approve minutes from January 24th meeting. Seconded by Commissioner Morrissey and upon voting the motion passed unanimously.

ITEM UT 12-04B Update on Radium Compliance Consent Order issue

Steve Schultz from Ruekert and Mielke provided a PowerPoint presentation "Where Does the City Sit with Regard to Meeting the Radium Consent Order?"

He informed the Committee of what was accomplished so far:

- Milwaukee Water obtained for the east side of the service area
- Sandstone well over on radium at Greenridge is not needed
- Radium study submitted in 2003- options reviewed and costs, plan still valid
- Design underway for Wells 3, 5 and 7

Next steps include:

- Submitting application to State for Diversion as a Straddling Community
- Continue discussion with Milwaukee on possible water to the west
- Also need to push forward with design of HMO facilities. Wells 5 and 7 will be treated at Well 7, Well 3 will have a separate treatment facility.
- Need answers no later than end April for Milwaukee water decision or treatment decision will be needed.
- Deadline December 2006 – possible fines

Mr. Schultz said that the diversion request is being prepared and this should go to the state in mid-March. If this goes is accepted, an amendment and agreement will be needed with Milwaukee to get water to the west side. He said that by the end of April the City will need an answer or will need to bid out on the HMO facilities and direct purchase treatment equipment so that it is ready when the bid is awarded. He stated that we have asked for state drinking water loan for reduced interest rates. Mr. Schultz said it is still a 2-step path and we have spoken to the Governor's office to take it to the other Great Lakes Governors to sign off on and they said they would do so in a positive manner.

Mr. Schultz said the final issue is if we don't meet the December 8, 2006 deadline the DNR would turn it over to the Department of Justice and they would put it into their process, but he felt as long as we are giving a good faith effort they would probably give us some latitude, but there is no guarantee.

Alderman Ament asked if the schedule for submittal of plans and specifications for the treatment system and the projected date had been given to the DNR per their letter of February 6th? Mr. Schultz said he had talked to Theera Ratarasarn from the DNR, who acknowledged our December 2nd letter. He added that the February 6th letter was a form letter, and most communities did not meet these dates. Alderman Ament's concern was whether or not New Berlin would be given any latitude from the DNR? Mr. Schultz replied that the DNR acknowledges that we fall under the major exception rule for straddling communities who have a line going through it and all of their sewage return to the basin. Mr. Schultz said that EPA is the controlling agency, so the DNR's hands are tied a little, but he felt they would help us if they could.

Alderman Gallagher said that the City's long term goal is to get Lake Michigan water for the entire service area. Steve Schultz said that we are trying to minimize the investments on the radium compliance issue.

Alderman Ament asked if about half of the Utility service area is on Milwaukee water? Mr. Schultz said yes, he was waiting for the exact number. Alderman Ament asked if there was any way to take the bad wells offline and still meet our water needs? Mr. Schultz answered that had been looked at and explained the different wells, but said unfortunately the high use wells have radium, and the limestone wells don't pump enough water.

Commissioner Morrissey asked what was the timeline to shift gears and bring water to the west side if all 8 Great Lakes Governors sign and Milwaukee is agreeable to supply water? Mr. Schultz said that on the New Berlin side, it is relatively simple and it would be a matter of replacing pumps, and opening valves, but it may mean a water main size increase on the Milwaukee side. He said it could be substantially on the way by December if not completed by then. Commissioner Morrissey asked if we order the equipment, can we sell it if it is not needed? Mr. Schultz said that the equipment is customized to a certain extent, and when talking to suppliers, they said that we would pay for what had been completed on the order.

ITEM UT 04-06 Water Conservation Issue related to Annex 2001

Steve Schultz provided a PowerPoint presentation "Why is Everyone Talking About Conservation? He said that the newspapers have indicated a water crisis and that people interpret that as running out of water, but it is the water quality, not quantity that is the problem. Mr. Schultz indicated that conservation helps, with sprinkling bans, education, rate structure, fixtures, using best practices, gaining diversion approval, reduce loss and waste, and being a good neighbor to other communities who share the same aquifer.

Mr. Schultz said that the City of New Berlin has done well with watering and outside use restrictions, private well restrictions, education with MMSD and state plumbing code requirements. He added that more can be done with stricter penalties and enforcement of outside water use, public education, working with industry to minimize use, evaluating the rate structure with the PSC, investigating the recharge options, and monitoring SEWRPC State-of-the-art reports.

Alderman Ament asked what sprinkling restrictions are in place? Director Grzys said that this is currently a voluntary year round program of watering on even/odd days depending on your address. He said that there is no policy or any fines, but that we have had success by asking people to comply with the schedule. Commissioner Morrissey asked where this information is posted? Director Grzys said that it is placed in the Utility billing, on the cable channel, website and newsletter.

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

Attorney Blum said at the last meeting, the Utility Committee asked him to communicate our concern to SBC which he did. He said that he had received a call from Ms. Budnik from SBC in response, questioning what the reference number for the locates were. Attorney Blum said that he told her that SBC is responsible for the locates, and it is not our concern, but he contracted Steve Schultz from R & M for the information which he then supplied SBC. Attorney Blum said Ruckert & Mielke also said there had been a walk through done at the time onsite with SBC, and the representative said that the markings looked like the paint and markings that SBC crews used, not a contractor. Ms. Budnik said that now that they have the information they would be fully evaluating the claim. Attorney Blum said he felt that this was a stall tactic and that SBC would try to turn it around to be someone else's fault, and he recommended proceeding with legal action.

Alderman Gallagher asked if the damages amounted to about \$55,000 and asked if our legal cost would be minimal? Attorney Blum said the amount was \$55,143.73 and that if it goes into litigation it seems pretty straight forward, but that the bigger issue was trying to affix who was responsible for mismarkings and track down the people who did the locates. He said that Ruckert and Mielke had good records and that his game plan was to file the claim and see what kind of response we would receive, then make a motion for a summary judgement, which a judge can decide without sending it to a jury.

Alderman Gallagher asked if there needed to be a special motion? Alderman Ament said that in the January minutes there had been a motion by Commissioner Dude that passed unanimously, 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. The consensus of the Committee was to forward this item to Council.

ITEM UT 05-06 Discuss Council Approved Resolution 06-06

Alderman Gallagher said that this item was placed on the agenda by Alderman Harenda to let the Commissioners know what Council had approved.

Commissioner Morrissey commended Alderman Harenda and was more optimistic now. Alderman Ament said that he agreed with Alderman Harenda that it is a good idea to have the steps we have taken in writing and coming from the Council. Commissioner Morrissey asked if we can involve the federal senators and representatives?

Attorney Blum said this was to be sent from the City Clerk's office to the state senators and congressmen.

Motion to adjourn at 5:51 p.m. by Alderman Ament. Seconded by Commissioner Jim Morrissey and upon voting the motion passed unanimously.

Respectfully submitted,

Suzette Hanley - Office Coordinator, Utilities & Streets