

MINUTES
City of New Berlin
Utility Committee Meeting
Wednesday August 31, 2005

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

Others Present: Ray Grzys (Director of Utilities & Streets), J.P. Walker (City Engineer), Larry Wilms (Division Engineer), Mark Blum (City Attorney), and Sue Hanley (Office Coordinator Utilities & Streets)

Alderman Gallagher called the meeting to order at 5:00 pm declaring a quorum with all members present.

Item UT 04-04 Request by KASCO for Additional Compensation for Oversized & Thicker Wall Sanitary Sewer Pipes

Director Grzys requested that this item be tabled since some of the figures provided by Kasco were incorrect.

Motion by Alderman Gallagher to table Item UT 04-04. Seconded by Alderman Harenda and upon voting the motion passed unanimously.

Alderman Gallagher asked the Committee and the audience if there was any objection of changing the order of the items in the agenda since UT 13-05 affects the impact of the other item. No objections.

ITEM UT 13-05 Review of Special Assessment Policy

Alderman Gallagher said that special assessments are always a problem and very painful. He said that individuals can't afford to pay for this, and when talking with staff and the Mayor, they concluded the part of the problem was the assumption that properties will be developed. He added that residents have to fork out money that they cannot afford and this puts a burden of the cost on current property owners. Alderman Gallagher said that it was his opinion that the Utility should pay for installing the water and sewer lines up front, and they recoup the money later as the properties are developed.

Alderman Harenda expressed concerned that if the Utility pays for it up front, can we recoup the money.

Attorney Blum stated that he was not sure how the current impact fees are calculated. He said that there were a couple of options available including where there are laterals and undeveloped property we could have a deferred special assessment that will allow to levy assessment for the cost once the property is developed, but in this case, as he understands, there is a extension necessary for this main, and you are not really offering service to the property right now, but are oversizing this main to provide this service down the way. What would probably have to be done is determine what the oversizing costs are, those are necessary because of the expected development in the future, and when the developer comes in, we would have to do a special assessment of those areas to recoup those additional costs that you may be incurring right now. Another option would be to adjust impact fees but that is usually done on a citywide basis, he didn't know if they are divided into districts to calculate something like this. The 3rd option was a special charge methodology in addition to the special assessment policy. He added that what is absent right now is the means for assessing vacant land with a deferred special assessment. He said that for these charges, he would assume that you can designate the areas that will be served by this oversizing to anticipate what will be collected and this can be done under the current policy. He said that state law does dictate your special assessment methodology, and requires a fair and reasonable allocation of the costs to the properties benefited. There in lies the problem, since the main you are putting in benefits the properties currently on the assessment role, but you are oversizing it to anticipate other properties that will be benefiting from the extension of the main in the future. He said that the process set forth in the statutes, does not contemplate that type of situation. Attorney Blum said that the City is restricted in terms of the process, public hearings and what you go through to approve a special assessment is dictated by state law, but in terms of how you put together the mix of calculations of square footage,

property value or linear value, you just have to provide a reasonable and fair charge equivalent to the benefits afforded.

Alderman Harenda asked if the special assessment policy is changed in the future will this affect assessments in the past? Attorney Blum responded that the Council deemed the past assessments as fair and reasonable, and that is the standard. He said there will always be properties or circumstances that don't fit with the policy.

Commissioner Dude said that these parcels are not normal in terms of size and suggested that the Committee isolate the assessment, calculate what the resident should pay for their portion, and defer the other parts until the property is developed. He said that there is a certain amount when water and sewer comes in that customer must pay. He added that we don't want to force someone to develop the land.

Larry Wilms said that the City of Plover did a 2-tier assessment about 10 years ago with the front areas and the rear areas. Attorney Blum said that he would research this.

Commissioner Dude suggested that, for example, if a property is assessment for \$30,000, but the normal amount to hook up to water and sewer is \$10,000, the other \$20,000 comes into play when it is divided out, with a lien on the property. If the property is rezoned and sold to a developer, the City would then get the money. Alderman Harenda asked if that \$20,000 is hanging out there, does it get recalculated again when the property is developed? Attorney Blum said that there are a couple of options, based on the number of lots, lot size, etc and it may have to be recalculated. Alderman Harenda asked if this property is not developed for 20 years, would the City just recoup the \$20,000 or would it be with interest? Attorney Blum said that will have to be decided, and that we can put in that the levy will carry interest from the day of assessment. Alderman Harenda asked if we can enforce the lien? Attorney Blum answered yes, the assessment is against the land, but because it is deferred, you may never see the money if it is not developed or divided, so it is a gamble. Alderman Gallagher said that it is a risk the Utility needs to take, not the property owner. Commissioner Dude said that he agreed that it is a gamble for the property owners, but also for the Utility. Alderman Ament agreed with Alderman Gallagher, that the property owners did not ask for this in the first place, and that the Utility should take the gamble. He added that it would be different if it was their idea for water or septic issues, then they should pay. Jim Morrissey agreed with Alderman Ament, but said he did not want the Utility to be a bank and hold the money.

Alderman Gallagher asked Larry Wilms how many more of these areas were there in the City such as the issue on Moorland Road? Mr. Wilms answered yes, there were quite a few areas, including Buena Park that has sewer but not water, and other isolated islands. Alderman Harenda asked if we are required to upsize the main? Mr. Wilms answered it is like taking a trip with only 4 tires, that staff is making an educated judgment according to the adopted use plan.

JP Walker pointed out that the County is going to do some improvements on Moorland Road, so that if the City is going to do this work, we need to have it done prior to that. He added the Council's approval of the special assessments on Moorland Rd is contingent upon a resolution of the special assessments. Alderman Gallagher agreed that the project needs to be done quickly, but suggested a subcommittee or ad hoc committee to review the Special Assessment policy. He added that he doesn't feel right to put the burden on the property owners.

Attorney Blum said the question is that you have an assessment against a piece of land and also a deferred assessment on the same piece of land, and that is not the norm. Attorney Blum stated the issue he wants to look at and is concerned about is the enforceability.

Motion by Alderman Harenda to review the proposal for indefinite deferrals by the City Attorney and staff for their consideration. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Alderman Harenda asked if the Committee can form a subcommittee based on the agenda items? Alderman Gallagher said he agrees that they need to form a subcommittee and asked the City Attorney if they can do that at this time. Attorney Blum said that the agenda says review of the assessment policy and certainly part of that is would be coming up with a mechanism to review, and he would be

comfortable with setting up a Committee for that particulate topic. Alderman Gallagher said that he would discuss this after the meeting with the Mayor and some committee members and what type of committee that should be formed.

**ITEM UT 51-02A Discussion and Possible Action of Assessment of Moorland Road
Water & Sewer Project**

Alderman Gallagher stated that the Committee was not going to take action on this item tonight, but get some input from staff and the City Attorney. He asked if Director Grzys if they should set up another special Utility Committee meeting? Director Grzys said that the next meeting was September 27th, but if it was requested, he would set up another meeting. Alderman Gallagher suggested that they sit back a few days and then decide.

JP Walker let's look at the scenario of what happens if we have to cancel the contract and rebid it. Right now the contract is set up that covers both water main and sanitary sewer installation. If the decisions is made not to put in sewer, that will affect the water main project. There is always the potential that you will have significantly different bids come in. He added that a decision has to be made by the end of September; we will have to take action on this contract one-way or the other. Alderman Gallagher said that he believes this contract should go through and will go through. Alderman Harenda asked if we don't take action and cancel the contract and have to go through this action again will we be looking at any damages would have to be paid to the contractor? JP Walker said that is a question for the City Attorney, but as long as we get it done within the 75-day period. Attorney Blum said that the specification for the proposal that was put out for bid specifically contained a condition that we will only go through with it, if fact there was approval of the special assessment. Larry Wilms stated that he did not specifically about that provision, but he said he knew they told them about the special assessment and that we would be able to hold the contract bid open for 75 days. Attorney Blum said that we made the decision at Council level, but we have not issued a notice to proceed because the conditions haven't been satisfied, he said he believes it would be difficult for the contractor to contend that they have incurred damages because they had no rights to proceed with the contract until that 75 days have lapsed anyway. He added that he did not see a mobilization or materials cost since we have not issued a notice to proceed with the contractor. He added that the problem is in the event if you modify the project significantly, it may have to be rebid.

Alderman Harenda asked if we start over from scratch would there would be a 3-year delay again? Mr. Wilms said no, because you have completed plans that have been approved it would be a matter of putting it back on the market and make some minor adjustments to the schedules in the contract documents. He added that if there are no major changes in the formulation of the distribution of costs of the special assessment, it would be a matter of plugging in new numbers. Director Grzys said that the County will begin its project on Moorland south of Greenfield in 2006 and north of Greenfield in 2007. We should not abandon this program since this water main is needed for the south side to loop the area due to the changes made when the City of Milwaukee Water went online.

Commissioner Dude asked if we looked at the last special assessment square footage or frontage and used it as a baseline. Attorney Blum said that the problem with each one of these we have the same mix of factors, but we come up with different percentage weights for them in the formula, because we look at the project as a whole and say it is unfair to look at it one way or another. I don't think you can actually say there is a standard methodology for the assessment that we used in the past that would be useful in the future. He continued that the City utilizes a mix of factors and weight them differently depending on the circumstances, that is when a reasonable determination is made by the Council, based on the Engineering report. Attorney Blum said that it really should be looked on a project-to-project basis, not based on what we did in the past. He said that he was not prepared to say that how your policy made by changed in the future, that it would invalidate what decisions you made in the past, since each project is different.

Alderman Ament asked if we didn't get this in the 75 days, would we be able to extend the contract? Mr. Wilms said that is a tough question, and he did not know how the contractor would react. He said that they could approach them, that he hoped they could resolve what we needed to do. Alderman Ament said that he has had government contracts himself, and if they asked him to extend it 2 weeks to a month,

I wouldn't want to take a chance on rebidding. Mr. Morrisey said that weather may be a factor with the cold weather coming up, and the price of gasoline rising. Commissioner Dude asked if the 75 days in the contract is in there for our protection? Mr. Dude are saying 75 days upon determination of a special assessment, he asked Alderman Gallagher if this could be taken back to Council and change the wording and still go ahead with the project, isn't the Utility assuming all the risk? Attorney Blum said that you can modify the approval to delete the condition, in which case the City is obligated within that 75 days to notify on receipt to go ahead with the project. Commissioner Dude said that he is suggesting that he modify the motion at Council, so it will not screw up the contract.

Director Grzys handed out a report with the balance of the RCA and impact fees showing there was money put aside for this project in 2004. He said that he talked to Finance, and if there is additional capital needed, they could be used out of the RCA funds.

Motion to table Item 51-02A by Alderman Gallagher. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Motion to adjourn at 6:11 p.m. by Alderman Harenda. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Respectfully submitted,

Suzette Hanley - Office Coordinator, Utilities & Streets