

Minutes

SPECIAL BOARD OF PUBLIC WORKS MEETING

March 13, 2001

New Berlin City Hall Common Council Chambers, 3805 S. Casper Drive

Meeting was called to order at 6:02 p.m.

Members Present: Mayor Gatzke, City Engineer Jeff Chase, Alderman Patzer, Alderman Wysocki and Alderman Chiovatero

ITEM 08-01 Midwest Power Development Agreement

- Jeff Chase stated that on March 7, 2001 a draft of the 43 page Agreement was disseminated to the Mayor, Common Council and certain City staff. Since that time a number of changes have been made to the document to address concerns raised by the City Attorney and to assure consistency in nomenclature throughout the document. A revised Agreement with the changes highlighted in gray were disseminated to the board members. Mr. Chase went through the Agreement summarizing the changes.
- Alderman Wysocki asked for an explanation of the rolling water usage. Jeff Chase responded that the previous language in agreement didn't have a clarifier indicating that consumption is really based on any 12 month period measured at any point along the year, not just a calendar month period. For example, not just January through December, it could be May through April of the following year.
- Alderman Wysocki wanted to know who determines what the rolling period is and how it works; and, what triggers this because there is a right to cease delivery of water.
- Jeff Chase stated that they're continuously monitored and metered and this is intended to be more restrictive; so that it's not just a calendar year it's any period of time, any 12 month period of time, any 365 day period; they cannot exceed that amount.
- Alderman Wysocki stated there was a number of gray areas, specifically, the top of page 9 --" notice within 12 months of the effective date". He asks - if they are solely responsible only for the projects water well and transmission costs. Jeff affirms this. Wysocki states this is a significant change. Chase says he doesn't believe it is. Wysocki states he will bring up at a future point in the discussion.
- Wysocki asked if a number of the operating conditions are in the exhibit on conditional use, so why do they have to be put in here now. Chase states that some are redundant but were requested by one alderman and the City Attorney to stipulate some of the operating parameters in the plan of operation. You will see them in both the conditional use permit and the operating plan.
- Wysocki states that throughout the document, he made a legal assumption that exhibits which are referred to consistently throughout agreement, are incorporated within this. Jeff Chase affirms. Wysocki goes on to state that if conditional use permit (Exh. B) has these and more detail, the fact that you're putting these in now does not indicate any legal omissions or misconceptions we may have about the rest of the exhibits. Chase responds - not in his mind, this was done at the City Attorney's direction; although he does not want to speak for him. Jeff states Paul Reilly did review this document and is comfortable with it.

Motion by Mayor recommending council approval of development agreement for Midwest Power identified as Board of Public Works Item 08-01. Second by Alderman Chiovatero.

- Alderman Chiovatero states he's been very involved in this and felt it was necessary to request many of these changes so that there was no way it could be misinterpreted. Even though

conditional use exhibits were kept in agreement he felt having it in body of developer's agreement was necessary so there was no way around it. He is now confident all concerns were covered.

- Alderman Wysocki states he has quite a few questions and starts with Page 2, General Article #1, indicating their represents, covenants and recitations set forth in preamble are material to agreement therefore he suggests that on Page 2, after the whereas on January 8, 2001, he moves the following:

Motion by Alderman Wysocki to add the following to agreement: "Whereas, on January 22, 2001 the New Berlin Planning Commission recommended denial of a request by Midwest Power for a conditional use approval allowing for a gas turbines peaking facility to be constructed, operated and maintained on the property."

Jeff Chase seconds motion.

- Wysocki states preamble is attempt to give a date specific account of actions that were taken, specifically, that it was an action taken by the Planning Commission, it is in preamble -- is material to agreement and a very important "whereas".
- Jeff Chase states the intent of recitation is to identify under what steps and what authority the project is moving forward. What Plan Commission recommended to council didn't facilitate and wasn't part of the authority to move the project forward so he doesn't believe it is necessary.
- Wysocki states that the majority did not support this at the public hearing. Chase agrees, many things did not support it but his point is that what's incorporated in here are things that did support it, that led to the authority to move the project forward. There are many things you could site that didn't support the project but they are not relevant in identifying the authority and steps under which the project moves forward. Wysocki states he thinks it should be in there, that's his motion.
- Mayor reiterates that actions of Plan Commission was not material to this agreement. Alderman Wysocki states he will save his comments for later.

Motion fails 4-1 with Alderman Wysocki voting for and Mayor, Jeff Chase, Alderman Patzer and Alderman Chiovatero voting against.

- Wysocki states he has a major concern in Article 6, Page 14 regarding the private well guarantee. He would like to know if these changes are in the revised document. Jeff Chase affirms they are. Wysocki wants everyone clear that it does not change the following statement: "the preceding statements notwithstanding, if the City constructs the City water option and supplies other parties with water from the water well, comprising the city water option, then Midwest Power shall have no further well guarantee requirements under this agreement".
- What concerns Alderman Wysocki is that the City is considering using the proposed well. If that well makes any contribution to the City water supply, the City becomes totally liable for the private well guarantees. Wysocki was not sure if everyone was aware of this. All members state they are. Chase says this is not a change but has been consistent throughout the drafts.
- Wysocki goes on to ask if the agreement is talking about "City" utility as water supplier. Chase responds that the utility isn't specifically identified here, it's collectively the "City", which could at the City's option, include the utility but gives latitude/flexibility to identify how that asset is to be owned. However, if the City water option is selected Chase sees no reason why it would be owned, operated and maintained by anyone other than the water utility.
- Wysocki also concerned about the utility being separate and distinct from what's in this agreement. He states this agreement calls for the City of New Berlin to develop, build a well potentially under this option, and, if any portion of that water is given to any other user, like the utility itself or somebody else, then the private well guarantee becomes liable to the City. This is not what he has heard consistently throughout presentations. There's been no shared responsibility or at least a responsibility to Midwest Power to hold the guarantee in place.

- Jeff Chase states that the underlying premise on that particular portion of the agreement is to be consistent with how the City operates their other municipal wells. The City will own the facility. If the City chooses to supply multiple users with this facility, it is now a public well.
- Wysocki reiterates -- if it chooses to supply just one other person or entity, this guarantee now becomes solely that of the City owned facility.
- Mayor Gatzke states that the City goes in knowing full well. Wysocki reiterates he was not sure everyone knew this and wanted to make sure.
- Wysocki then questions capacity of the well. 1000 gal per minute as opposed to 450 gallons per minute. Chase states 450/minute is the maximum rate of delivery, which is consistent with what conversations have been throughout the draft agreements. Wysocki states we have a commitment to Midwest Power of 450 gallons per minute. Wysocki cites example of most recent well, #10--Tower #3 where the cost was \$1,225, 000 just for the well and tower. Their limit of \$1.2 million will not cover if we go with city water option.
- Jeff Chase states this is not true; that it will very likely cover costs. It won't cover IF the City wished to make something more out of this facility than just to serve Midwest Power. If that was the case, then we're talking about significant additional money for transmission back to the urbanized portion of the City, booster stations, etc.
- Wysocki states they have to have that to make the well functional. Chase says you need additional infrastructure only if you wish to supply the City's overall demands.
- Wysocki wants to know if there will be two wells out there. One that utility could possibly put out and one for this project. Chase says initially there will only be one well to serve Midwest Power and that the design of the well will ultimately be determined by a well siting study. This is one of several options that must be decided by March 31, 2001. In the future, if the City wants to serve the rest of the City or some other entity other than Midwest Power they would have additional costs. Wysocki states the well will be on their property, and this decision is to be made by March 31, 2001.
- Ald. Wysocki wants to know if the utility was asked about this. Mayor states that the utility manager was provided all documents. Wysocki wants to know what his response was. Mayor states his response indicated understanding of the document. Chase states the utility manager, under our operations structure, is not a part of these types of strategic project deliveries. For example, the well siting study - planning for well & water supply was done through the city engineer's office, not the utility operations manager.
- Wysocki still has questions about 1000 gallons per minute, and only needing 20%. Is 450 gallons/minute the maximum capacity they need? He also wants to know where the site is for the well. Chase states under city water option it will be in the new park.
- Wysocki speaks of Ruekert-Mielke report from October/2000 indicating it was cost prohibitive to put water transmission lines under I-43. Mayor states this would be covered by the Agreement. Wysocki states only allowed \$200,000 for transmission/piping, \$1.2 million was for well itself.
- Jeff Chase states he's not aware of any report that it was cost prohibitive. States he has a fairly good idea of range of costs, the preliminary figure being \$200,000 for this. Wysocki reiterates October Ruekert-Mielke report. Mayor states the amount committed by the developer is more than what's necessary and that they may be able to leverage additional facility with the available funds.
- Chase states it was a topic of conversation that perhaps the document be modified to increase the flexibility or range of capital improvements that we can spend the \$1.4 million on. In the event we can provide minimal facilities by agreement for something less than that amount we could then use any remaining funds, up to the \$1.4 million for other improvements that may benefit the City.
- Wysocki states he supported the utility motion for the additional money needed to do drilling out at the current site. If that's the site for this well, which is not a utility project, but a City project and option, then we better be reimbursed the \$40,000 - \$50,000 that we allocated in this agreement.
- Wysocki also mentions the number of references to costs as of the date of the agreement, specifically, there was a number of bills sent to Midwest Power in relation to this, \$12,500, will those be paid also or only bills subsequent to this agreement?

- Chase says there are provisions for the appropriate costs to be covered by Midwest Power through a letter of authority, which was part of initial project review. There's separate accounting and separate tracking of those costs. The well siting study that the City is doing is an independent study, initially conceived and unrelated to the Midwest Power project.
- Wysocki reiterates, that this was for the utility. Chase affirms, but it was not related to this agreement. Wysocki argues that the site for this agreement refers to a water option. Chase says it just so happens that the city park is one of the areas the City is exploring for future water needs, and that the park was identified years ago as a potential site for our facility.
- Wysocki wants to confirm the commitment of \$55,000 for fire training facility (Page 19 of agreement). He is not aware of building any new facility but to build one comparable he thinks would cost at least one-half million dollars. This figure does not take into account the additional building needed for classroom and storage space. Fire Station #1 used for that as part of active training that goes on. Wants to know if \$55,000 will cover costs.
- Wysocki states that a lot of responsibility/authority put into City Engineer, he will make a lot of the decisions--well impact claims, financial guarantees etc. He wanted to know if this is normal with other development agreements. Chase responded yes, and that the bottom line authority is vested in the council.
- Wysocki refers to a portion of the agreement that states the city engineer shall have authority to employ a consultant. Wysocki feels that dollars spent need to go to council. Chase states those dollars are Midwest Power's dollars. Wysocki states this would be a city owned well that will service one client. Chase states that's one option, to be elected by March 31. Wysocki still concerned about language that if the utility uses well, we need to recognize that in Article 6 we take on the well guarantee. Chase states there is no differentiation between the city and city utility, the differentiation is the number of users on that well. If it's solely supplying Midwest Power it's their nickel to administer well guarantee program; if the city chooses to serve entities other than Midwest Power it's the City's nickel to administer well guarantee program.
- Wysocki questions that if we choose city water option and only Midwest Power it's still City owned? Chase affirms -- under that election.
- Regarding the Fire Training Facility -- Alderman Chiovatero states he asked several times if \$55,000 was going to cover, and he was told several times that it would. It may not cover site reclamation, where the current one is at.
- Mayor states it's irresponsible to indicate that the cost to build a similar facility would be 1/2 million dollars. He also checked cost to rebuild a facility of the same capacity or better for training of fire fighters and \$55,000 was an adequate amount to rebuild facility.
- Wysocki states he was here when the last facility was built and it cost \$375,000 at that time. Facility needed natural gas hookup, propane gas hookup, meet DNR responsibilities- catch basin pit. Just that building alone is \$175,000 so please don't address my comments as irresponsible. This is based on his knowledge when that project was going on.

Motion passes 4 -1 with Mayor, Jeff Chase, Alderman Patzer, Alderman Chiovatero voting for and Alderman Wysocki voting against.

Motion to adjourn by Mayor Gatzke. Second by Jeff Chase.

Meeting adjourned at 6:40 p.m.