

MINUTES
City of New Berlin
Utility Committee Meeting
Tuesday April 27, 2010

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

Excused: Commissioner Jim Morrissey

Others Present: Jim Hart (Utility Supervisor) JP Walker (City Engineer), Mayor Jack Chiovatero, City Attorney Mark Blum, Steve Schultz (Ruekert & Mielke) and Sue Hanley (Administrative Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 3:08 p.m. with roll call and declared a quorum with all members present.

Call meeting to order. Roll Call and Declaration of quorum and public notice

UT 01-10 Approval of Minutes from the March 23, 2010 Meeting

Motion by Alderman Wysocki to approve the minutes from the March 23, 2010 meeting. Seconded by Alderman Ament and upon voting the motion passed unanimously.

UT 07-09 Discussion regarding the procedures used to authorize the payments of costs and fees for utility consultants and contractors

Harenda: I am working on streamline some of the issues we had in the past and will try to have it finalized by the next meeting.

UT 20-09 Award of Construction Contract for Parkland Green Water Main Replacement Project

Hart: The requested action is to recommend to Council to award the construction contract for the Water Main Replacement Project for Parkland Green Subdivision to Mainline Sewer & Water, Inc., Wisconsin in the amount of \$1,389,184.35. Source of Funds Water Utility Account #107 included in the 2010 Approved CIP budget.

Rationale: To award a construction contract for the relay of the water mains, hydrants, valves and water services for the Parkland Green Subdivision to include patching the roadways with 3" of asphaltic concrete binder and 2" of asphaltic concrete surface course and restore all disturbed areas. Due to the age of the water mains, the Utility has had 28 water main repairs in this area. Roadway work is scheduled to start July 1, 2010, but the water system needs to be replaced first so the roadways can be replaced. Therefore, staff recommends awarding the construction contract to Mainline Sewer & Water, Inc., Wisconsin based on their proposal for construction service. Due to the time constraints that require this project to be completed by June 30, 2010 sequencing requiring two mainline crews and two lateral/service crews will be required in order to meet the project schedule, so as not to interfere with the curb and paving rehabilitation project that is scheduled to begin on the same streets on June 30, 2010.

Wysocki: We have utilized these people for other projects and there were a lot of change orders. I am sure that in the bid and the work up that the City Engineer, the Consultant and Jim Hart did, there shouldn't be any unknowns but if there is something that comes up of a major nature, that the Committee be made aware of it because the bid is substantially lower than even the 2nd place bid.

Hart: We will do that.

Dude: There are 6 bidders and the high bidder is 219% higher than the low bidder. Construction company initiated change orders shouldn't allow to make up for any mistakes they made in the bids.

Harenda: S.E.H. is our consultant and qualified the bids.

Hart: I did receive an email from Matt Stephan stating that they were qualified

Walker: For the record I would like to state that I have not been involved in the project except for coordination for the subsequent road rehabilitation project. I do want to address a concern. Typically when we approve contracts and bring them to a Committee and to Council, we add in contingency and inspection services.

Hart: We brought that earlier to you. There were 3 engineering firms that bid on the design and inspection work.

Harenda: S.E.H. was approved for inspection \$74,000 and design and administration \$103,100. That is not included in this amount.

Walker: That covers inspection services what about contingencies.? Typically it is 7 to 15%.

Harenda: What was the total amount set aside for this project?

Hart: \$2.5 million.

Walker: It is not an issue to have the approved funds. It is an issue to not have a "not to exceed" number for the contract.

Dude: Without contingencies we don't say how much can be spent on the project. I used to budget things without contingencies but if it was needed it was approved by the appropriate people.

Walker: Is this \$1.39 million considered by the Committee as a "not to exceed" number? Typically you see language in the contract that it is. Council will be looking for some controls in place.

Harenda: We have a motion on the table to approve contract for Mainline plus the contract that was previously approved for the design, inspection and administration to S.E.H. for \$177,100. If they went over they would have to come back for our approval.

Dude: The work should be accomplished for this amount. If Jim comes back and says we bid for xyz and we found pdq out there, an underground waterfall we didn't know about, we have to come back for funds. My problem is by putting a contingency out there it implies that we are preauthorizing change orders.

Walker: We have to look at the timing element of the 2 projects. Can we afford to delay waiting for the approval of additional funds for an issue that would be slightly over the base bid. That may jeopardize the roadway project.

Dude: If we authorize 10% contingency before it is spent, does it have to come back to the Committee?

Walker: If it is a City led project, it would be Rick Johnson's responsibility as the Utility Manager.

Harenda: Let's approve what's on the table tonight. Rick can request any adjustments and show reasoning for it.

Dude: We could approve a contingency and send it to Council to approve, but make it clear to Rick that before he spends it he has to come back to the Committee. That would solve the timing element.

Harenda: If we approve a contingency at the Utility and Council, they don't have to come back to us for approvals. My stance is to approve this and if Rick needs money for a contingency, come back to the next meeting. The project is not going to be done before the next meeting anyway.

Hart: There were some issues with this contractor with the Milwaukee water project. Should we do it? It may be a good safeguard.

Harenda: Any type of change order has to go to the Consultant and to you or Rick for approval and then back to us. I will defer to what the Committee wants to do.

Hart: I asked the Engineer's Consultant and he stated there should not be any contingency.

Dude: I agree with that but I didn't have to go through all the hoops like we do.

Wysocki: The point JP made is do we want to include contingencies? The consultant said that we don't need to have contingencies. I would recommend when Rick gets back, raise the issue with him, bring it back to the Committee and we can take it to Council. This will be one of our first bids without a contingency. We had previously approved the inspection, design and administration but this was the bid amount and that's it and there were no contingencies. Maybe that is the better way to do things. JP, Rick and the Mayor can meet and discuss this and bring it back if need be.

Harenda: Basically contingencies are for unknowns.

Walker: That is the rule of thumb when you are working below grade.

Motion by Alderman Wysocki to recommend to Council to award the construction contract for the Water Main Replacement Project for Parkland Green Subdivision to Mainline Sewer & Water, inc., Wisconsin in the amount of \$1,389,184.35. Source of Funds Water Utility Account #107 included in the 2010 Approved CIP budget. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT 22-09 Request to Add 60 Acres of the Property Located at Approximately 19000 W. Lincoln Avenue into the New Berlin Urban Service Area

Harenda: An email was sent by JP to the consultant or the property owner telling them we were looking for some activity or that we would drop the items from the agenda.

Walker: I received a phone call from Jerry Geipel yesterday. He said that they are trying to retain services of an engineering consultant to do analysis of downstream monitoring. I said that is paramount. You cannot rely on a previous model that was done by somebody else. They are taking bids and quotes, but there are not many engineers that are willing to take on the task.

Harenda: They can resubmit the request if the Committee wants to drop it from the agenda.

Wysocki: I recommend that we drop it until the owner has the necessary information to bring it forward again. There is no prejudice involved.

Harenda: There are no issues regarding prejudice, there are no application fees processed. They can submit a written request at a later date correct?

Blum: At this point you have an incomplete application because they have not submitted all of the information that you need. I don't see a problem to drop it without prejudice as being incomplete.

Motion by Alderman Wysocki to drop item UT 22-09 as being an incomplete application without prejudice from the agenda. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

UT 23-09 Request to Add 60 Acres of the Property Located at Approximately 19000 W. Lincoln Avenue into the MMSD Current Sewer Service Area

Motion by Alderman Wysocki to drop item UT 23-09 as being an incomplete application without prejudice from the agenda. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Ament: Sue, please reference these old numbers when it comes back.

NEW BUSINESS

Information Utility Payables, Monthly Financials

Ament: What is the almost \$15,000 payment to the City of Muskego.

Hart: This is the quarterly payment to Muskego for the Linnie Lac sewer portion.

Dude: I would like a quarterly variance report to compare where the Utility is with regard to the budget.

Information ACEC Best of State Award Winner: New Berlin Lake Michigan Water Diversion

This award was presented to our engineering consultant Ruekert & Mielke. A plaque was also presented to the Utility Department.

CLOSED SESSION

The basis for the item to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. More specifically

UT 25-09 Milwaukee Water Utility rate application PSC contested case hearing

Reconvene to Open Session

UT 08-10 Update, Discussion & Possible Actions on the Design & Construction on relocating the Westward Manor Liftstation

Hart: Steve Boll from Single Source said we will have the right to use the property on April 30th when the jurisdictional offer will go through and it will be documented at the County. Crispell Snyder gave us the preliminary plan and the specs yesterday and we are reviewing it. We decided to move the whole liftstation and the wet well further east out of the flooding. We will meet next week and hopefully have it built by the end of the year. Hopefully this year will be drier.

UT 09-10 Update, Discussion & Possible Actions on the Annual Water Diversion Usage Report to the WDNR

Harenda: There have been some items in the paper with regard to our annual report to the DNR on what we divert. We seem to get into situations where we meet our deadlines, we submit things, but then the DNR says it is not in the correct format or what we previously requested. We are the poster child for this annual report. It has never been done before. The raw data is all there, but sometimes it is not in the format that the DNR wants. It would have been nice for them to have submitted a form or database showing us how they wanted to see it. We are in the process of working with Ruekert & Mielke to put together a simple template that the Utility can use on an annual basis with respect to the requirements that were in the request and put the data in, send it to the DNR and they can post it.

Chiovatero: The DNR is under pressure because of the Waukesha diversion request. The environmental agencies and the City of Milwaukee have their issues because their application is going to all of the 8 states. There is a lot of critiquing going on. The first report we sent in had all of the information and was done with the help of one of the DNR representatives but it was not in the form that they felt could be posted on the website. We have to create a report that is easy for us to update on an annual basis. The 1st submission was due March 1st. It took them a month to review and they did not tell us where to send it. Eric Ebersberger said that he needs a copy sent to his. The 2nd report was sent certified mail and they reviewed it quicker but again they had some concerns which they stated in the letter. I talked to the DNR and said we don't have a City full of people to write reports. We have a Utility Manager who has all the numbers, but he does not have the manpower to create the formal reports. We had a meeting with Alderman Ament, Greg Kessler and the City Attorney to discuss this and we decided to hire a consultant that deals with these reports all the time so we contacted R & M who has been involved in our request.

Steve sent us a proposal and a draft copy of the report that needs to be in by Friday April 30th. Midwest Environmental has not returned any of my calls and I was upset that they sent the letter to us and the media. We sent everything that the DNR requested, but it was not in the format that they wanted.

Schultz: The appendix will include the Water Conservation Plan and other information that they requested. I used the exact words that they requested.

Chiovero: The draft includes of graphs and charts, I & I information and all the information requested.

Wysocki: We have a well documented all of the expenditures we did in I & I work but we also received an award from MMSD in 2003, and it is significant because we were only 1 of 2 communities that received it. That should be noted in here. Is this something we will require you to do every year?

Chiovero: I told Steve we needed a report that we could modify and send it forward.

Schultz: The tables that are attached are set up to be reusable and table 7-1 needs to be filled in with information that I received from Sue before this meeting.

Wysocki: Will our Utility Department and personnel have the ability to fill this report out?

Schultz: Yes. The hardest thing was to collect the data from the sewer monitoring program so next year the consultant you are using for that needs to be told this is required to be submitted by March 1st. These workbooks will be provided in an Excel format and the report in a Word document.

Dude: Why doesn't the DNR have a report that we can fill out? I hope this is passed on to Greg because they have more administrative personnel to get involved so we become self-sufficient. The Utility doesn't have a deep staff. Sue is the administration of 3 different departments. I think she is very capable of doing it, but she has a lot to do. I would like to see this copyrighted – property of the City of New Berlin, not to be used by the DNR for anyone else. We paid for it. The formatting is ours.

Blum: I don't know what program you are using to create the report. I assume it is word or excel. I don't know what there would be in uniqueness of the report or how it is laid out that we would be able to copyright. I am not a copyright lawyer so I would have to do some research. It would seem to me that there wouldn't be anything unique about the manner in which it is formatted to allow it to be copyrighted.

Dude: I don't want them using it for any customer like the City of Waukesha or anybody else.

Blum: I understand that fact that we are the first to do it and it is unique in that sense but is it unique because of its formatting or is there something unique about the substance itself.

Ament: The letter from the DNR says that they specifically spelled out in a letter dated March 30th what we were supposed to have ready. April 6th they are telling us that still haven't submitted it. I understand we did send the information, but the DNR did not like the way it was presented to them. We spent a great deal of money already trying to get this behind us. Can we get Eric Ebersberger or some representative from his office to come here and state what they want? All we are trying to do is get it done. They held up the process in the first place by doing a 180 on us $\frac{3}{4}$ of the way through the last time we tried to resolve the problem. It would be nice to have them on record telling us exactly what they want. It appears that is what they did in this letter dated April 15th. He indicates on March 30th he sent us this information. Are we at a point where we need a full time Director back in Utility? I also see we have staffing issues. I don't have a big problem with the \$4100 if this will resolve it. My concern is that in a month or two there will be some other problem and we will be dealing with environmentalists, the DNR and the newspaper and all the issues that keep coming back. We have been bending over backward for these people. Is this going to satisfy them?

Schultz: Obviously I can't promise what the DNR is going to do but their April 15th letter was very plain and I followed their language to a "T" For them to come back now and request additional information, I don't know how they could do that.

Ament: This letter from Midwest Environmental Advocates, apparently they are not responding to his calls. Is there a reason why we care what they think? Do they have influence with the DNR?

Chiovatero: Do we care what they think? No. They are the ones that put us through all of the hoops during the diversion request. They have complimented us publicly several times on our work with the diversion and yet they are turning around with this letter. I think our concern is with the DNR. Mr. Ebersberger said that he would never come to a meeting. He said you have to report the numbers in a format readable to anyone that picks up the report and reads it. The 1st letter we got in March told us to work Dino Tisoris from the DNR, which Rick did. Dino said we had the information and to send it in. The issue was the DNR didn't like the format. I am going to assume when they accept the report it is done and I will get a letter from Eric that says you are completed.

Ament: These environmentalists serve a purpose and make sure everything is covered but if they are going to sit on the side and throw us a compliment on one sideline and rip us apart on the other, then they should come here and tell us what they want. I am not criticizing anybody, but this is becoming more about people wanting us to spend money than actually delivering a good product to our customers. If somebody had spelled out what was needed from the beginning, the whole process could have moved along much faster. If these people or the DNR who are throwing rocks over the fence and we can't see who they are or who they are aiming at should come and tell us what they expect and what they are going to try to influence on the other side so we can help them accomplish it without spending more money to get where they want us to go.

Chiovatero: Ed Glatfelter from Midwest Environmentalists helped us write the last letter that we submitted to approve our application. They are throwing up a flag because I don't think they want Waukesha to get water.

Ament: This whole issue is something that could be easily avoidable. We are trying to do the right thing and follow the rules. We are in a pinball machine and everyone is knocking us around for their benefit. They need to tell us exactly what they want so we can do it

Wysocki: I also have a problem with the Midwest Advocate's letter. On the letter dated April 9th they said they were in receipt of the WDNR's March 30th letter finding the City of New Berlin in noncompliance with the terms of its the Water Supply Service Area Plan and Diversion Approval issued on May 21, 2009. On the letter that the DNR sent to the Mayor on March 30th, there is no copy listed to this group. How did they get a copy? The DNR did not let you know that they sent you a copy. This letter slams the City and says the March 1st submission we are "deficient in so many important respects, especially given New Berlin's gross delay in meeting its prior commitments under the approval." It states the Wisconsin DNR is doing its job. It is well documented that we have done so much to make this compliance work; we even spent money looking at cleaning our own well system as a separate option. I would like Midwest Advocates to tell us what they want face to face. Why is the DNR copying correspondence with them and not letting you know?

Chiovatero: I have said some pretty strong words to these people and they have not responded. This group has been bird dogging the DNR for information and applications involving lake water. I think a lot of people feel the same way you do. They have not been returning my calls, whereas previously they had.

Dude: I would like to have them come here face-to-face with at least a month's notice. I think the letter is insulting and the DNR is dumping this to them. Before you go on radio or TV. and insult someone, you should have the opportunity to respond to the letter.

Harenda: I agree with all that has said and take offense to the letter. The concern I have is that they say we are not compliant but in the letters from the DNR it says we are deficient in our submittals. I hope we don't get notice of violation and we are back where we were a year ago.

Chiovatero: I said the Utility Committee is worried about monetary fines and Eric said they are not looking for fines; they just want a report in a format that can be easily read.

Ament: They weren't looking for fines last time either but they held a club over our head for \$45,000. They aren't looking for it now but I guarantee you they will be down the road. We have our City Attorney

and Ruekert & Mielke and contracts to comply and they turn around and stuff this on us. If their goal is to satisfy environmental groups, they should just get out of the way and let us do that directly.

Harenda: I would like the City Attorney to review everything that has been submitted to the DNR with regard to the diversion application to make sure all submittals have been in compliance. We had issues last year and had emails from staff saying everything was done, but it wasn't. When Steve submits his report to the DNR certified mail to everyone, hopefully receive some documentation back from Eric stating everything is fine. The only thing left that we will have to do with regard to the diversion is to do the annual report every year for the next 20 years.

Chiovero: Please review the attached draft. Steve please give a copy to the City Attorney to review.

Ament: What kind of verification will we receive from the DNR?

Chiovero: Certified mail receipt.

Harenda: They could turn around a month from now and write a letter and say we are deficient. Please copy all of the Committee members when you have the completed copy.

Motion by Alderman Harenda to approve contract to Ruekert & Mielke for \$4,100 to complete the DNR's Water Diversion Usage Report with respect to our annual water diversion request for the Utility. Seconded by Alderman Wysocki and upon voting the motion passed unanimously.

UT 10-10 Discussion & Possible Action on the AT&T Cellular Tower Lease Agreement

Blum: I received repeated emails and phone calls from Black Dot Wireless representing AT&T and the most recent includes a lease extension term sheet and a boiler plate amendment to the lease agreement. The representation that was made was that this would be the same revenue with the same escalation provision and term. I gave the same response to them that I always do that you want to see someone in front of you to ask questions of regarding the issue and they said they are in California but asked that this information be submitted to the Committee.

Dude: Their base rent on the current contract is \$30,662.60 and they will then at the end of this term take that number x 5% for the 1st year under the new contract?

Blum: The escalations would be 5% and the escalation annually would be an additional 5%.

Dude: The next day I want to see \$32,195.73.

Blum: They want this initialed and returned to them. I said I want to see the actual lease extension agreement with the actual numbers because we had a bait and switch in the past then we will consider it.

Dude: As far as the renewal terms, if we get 5% to infinity I don't have a problem with it but these are middle men we are dealing with and they are trying to make a profit.

Blum: I will report back to them.

CLOSED SESSION

The basis for the item to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. More specifically:

UT 25-09 Milwaukee Water Utility rate application PSC contested case hearing

Motion by Alderman Ament to go into closed session at 4:21 p.m. Seconded by Commissioner Dude. Roll call vote: Alderman Ament yes, Commissioner Dude yes, Alderman Wysocki yes, Alderman Harenda yes.

Motion by Alderman Ament to go into open session at 4:48 p.m. Seconded by Alderman Wysocki and upon voting the motion passed unanimously.

Reconvene to Open Session

Motion by Alderman Ament to adjourn at 4:48 p.m. Seconded by Commissioner Dude 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*