

**MINUTES  
City of New Berlin  
Utility Committee Meeting  
Tuesday June 22, 2010**

Members Present: Alderman Harenda, Alderman Ament, Alderman Wysocki & Commissioner Jim Morrisey

Excused: Commissioner Bob Dude

Others Present: Rick Johnson (Utility Manager), Jim Hart (Utility Supervisor), Mayor Jack Chiovatero, City Attorney Mark Blum, Ralph Chipman (Finance Director), JP Walker (City Engineer) and Sue Hanley (Admin Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 5:00 p.m. with roll call and declared a quorum with all members present except Commissioner Dude who was excused.

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

**UT 01-10 Approval of Minutes from the May 25, 2010 Meeting**

Motion by Alderman Wysocki to approve the minutes from the May 25, 2010 meeting. Seconded by Commissioner Morrisey 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**

No action at this time.

**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 5:03 p.m. Seconded by Commissioner Morrisey. Roll call vote: Alderman Ament yes, Alderman Wysocki yes, Commissioner Morrisey yes, Alderman Harenda yes.

Motion by Alderman Wysocki to go into Open Session at 5:08 p.m. Seconded by Alderman Ament and upon voting the motion passed unanimously.

**Reconvene to Open Session**

**UT 25-09 Milwaukee Water Utility rate application, PSC contested case hearing – discussion and possible action**

No discussion in open session

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

Harenda: There was an issue with the setback requirements by the DNR and the location of an underground gas line and we were working with WE Energies on an alternative location.

Hart: ANR had an easement and WE Energies also had an easement and the Mayor signed an agreement with WE Energies this week for permission to build on this easement. We are in the final

design phase and will meet with WE Energies next week. We may have to do some additional engineering and reconfiguring the building from E to W to N to S, but it will all fit into that easement. We should know the time table on construction after we meet with our consultant next week. Last night we had a Signal Control Failure so several employees was out at the liftstation all night pumping by hand.

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

Blum: Our current agreement was signed in 1998 and expires in December 2013. The existing agreement provides for a 5 year term and two 5-year renewals. The amendment is for a base term and five 5-year renewals (a 30 year commitment). The amount of money is based upon their calculation of what would be owed in 2013 (\$30,662.60) which Ralph Chipman has verified. It would be an increase of 5% over the base license fee annually thereafter. The existing agreement has a provision that allows for a choice of either the 5% or the CPI adjusted renewal, which could be significantly higher during inflationary times. Even though they said it is exactly what you had before, it is for a longer period of time and there is only the 5% adjustment. My initial reaction is that if you want it exactly the same, write it exactly the same.

Wysocki: We have cell tower agreements at other locations. Are they similar?

Blum: We had a basic format that is being utilized, but you are dealing with different companies and they are not identical.

Wysocki: Is there federal legislation that impacts our continuing ability to collect these cell tower leases?

Blum: Unlike the existing situation with the cable companies there hasn't been a regulation on our cell tower leases. There is a change of the law that occurred last December that you are required to act on a new application or an extension application within a certain period of time or you would be required to take action or be in good faith under the terms of the federal statute.

Harenda: We will have Commissioner Dude look at this too and bring it up at our next meeting.

#### **NEW BUSINESS**

##### **Information Utility Payables, Monthly Financials**

No questions.

#### **UT 14-10 Impact Fee Review, Discussion and Possible Recommendations**

Harenda: I forwarded you a review by our financial advisers Ehlers with respect to impact fees and the changes on the state level. We are looking at the remaining accounts and what was collected and then maintaining or eliminating certain policies in the Sewer and Water Utilities.

Wysocki: It appears the potential work that could occur in Section 35 can be financed with sewer fees.

Blum: The actual study that was done for the current impact fees that you are levying anticipated a series of projects that included extension of utilities in Section 35 as being one of the items for which was one of the items that these fees would be collected.

Wysocki: There is also an indication under the policy decisions that we should discontinue citywide sewer impact fee collection. If that is the recommended policy, we should move forward and do that because the implications based on the analysis that Ehlers provided and to a certain extent what you talked to us about. We don't want to get into a position of collecting more than what we need. Have any future projects been identified that this money should be applied? I have not seen anything on the recently completed Smart Growth Master Plan which would require additional fees beside Section 35. Is your advice to recommend to Council to discontinue these sewer impact fees?

Blum: Yes and it would be helpful to this Committee if there are some recommendations going forward as to the anticipated use of what we do have. In the water case we have used the majority of it already for purposes of the regional benefits payment but for sewer there is quite a bit of money there.

Harenda: What can we use the money for?

Blum: Impact fees can only be used for Capital projects that are necessitated by new development. For example: When a new subdivision is put in and there is a need for over sizing or extension of a particular line. It is not to handle operations and maintenance or upkeep on existing infrastructure because of age and deterioration. We have a limited time to collect the fees and to use them. You could continue to collect fees but if you don't have a project to use them for you may run up against the deadline to turn them back to the property owner.

Harenda: We can eliminate the sewer impact, but can reinstitute at a later date when this does occur.

Blum: that is correct. You can also do it on a regional basis. For example in Section 35 if you anticipated additional infrastructure needs because of a new development, that could be limited to that section and targeted to the those residents that benefitted from the collections.

Wysocki: Do you think it would be advisable to recommend to Council to eliminate the sewer impact collections?

Blum: The Finance Committee did make that recommendation and you could just say that you concur.

Wysocki: Is this on the Council Agenda?

Harenda: It says excluding Utility on the Council agenda.

Wysocki: I just don't want to delay this and we have been studying it. I would like to make a motion to Council. We do have fee balances in there for almost \$6.5 million. We have taken into consideration work to be done in Section 35 and SCADA improvements and I think at this point from the experts we have talked to we have sufficient funds for this items.

Motion by Alderman Wysocki to discontinue the citywide sewer impact fee collections. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Harenda: We used a significant portion of that money for City of Milwaukee water which benefitted the entire utility.

Blum: The reason is that your current usage number is significantly less than the amount you are authorized to pump under the contract so the additional capacity is to accommodate in part new development.

Harenda: Under the recommendation it says to determine appropriateness of existing fee collected citywide, projects identified in previous studies, determine if the zone impact fee of section 35 is desirable based on revenue collected per site and consider adopting or rescinding. Are we looking at this internally Rick or JP?

Johnson: We have no plans on furthering the water system at this time.

Wysocki: We do have a number of large areas within the water service area that are not on the water service. For example: Gatewood subdivision has sewer but rely on their own wells but in the future if they voted they wanted water, would that qualify as new and expansion rather than existing.

Blum: That would be new. The extension of a water main would be a capital expense and necessitated by development that occurred there for which money had been collected over time.

Wysocki: I think there are other pockets and my opinion is that this fee should still be collected. There are areas that on the horizon may need water service and legitimately these fees could be applied to that.

Blum: There is a time limitation to spend the money that was collected. The committee has to look at if you anticipate within that timeline that the public infrastructure would be installed. The timeframe is 10 years from collection.

Harenda: Who keeps the timeline of what money is collected and the date?

Chipman: We have detailed records of what was collected, the interest allocated and what we have spent it on, back to when the original ordinance was put in place in 1995. The balance at the end of last week: Water \$10,517 – basically what we collected this year. Sewer has the RCA fee of \$2.9 million and \$3.7 million for the impact fees. The max timeline to spend it is 10 years, but it ratchets back to 7 since there is a sliding scale. Something would almost have to be on the horizon now or shortly, otherwise you wouldn't have the time to spend it.

Harenda: Are you conveying that information to Rick so he knows we have a 3, 4, 5 years so we can plan them ahead of time? We have significant limitations as to how we can use this money. Rick and JP need to communicate back and forth if there are any projects coming up.

Chipman: Right. If they are not used we have to refund them.

Harenda: The consensus is to leave the existing collection cycle for water utility in place, and look at the existing funds to see if there is an appropriateness to utilize these funds.

Wysocki: Could we get a formal report specifically on the issue of water. I would like this reviewed in light of the Smart Growth Plan and if there is nothing on the horizon, we should not be collecting further.

Harenda: Ralph or Rick please give us a report and bring it back to the next meeting.

#### **UT 20-09 Discussion and possible action for Parkland Green Roadway Rehab**

Harenda: We have a previously approved project for the Water Utility to upgrade the infrastructure. In conjunction with that the engineering department has a project following to upgrade the roads by simply milling and overlaying glass grid. We ran into some issues in the last few weeks.

Walker: As the water relay project progresses we are seeing more and more deterioration of the existing roads out there to a point that it is beyond where we can rehabilitate the roads as we originally bid the project. We are at the point now that we have to do a full rehabilitation, that is taking out the existing pavement, repairing the base and bringing back in 5 new inches of pavement, but we do not have to put the glass grid in. The spreadsheet that I prepared shows the information from a quote I received from Capitol Pavers the contractor. The add-ons are almost \$800,000 but the credits brings it down to \$257,000 and with 15% contingency the amount is \$296,000 that we need to be added to the overall budget. My position as the City Engineer is that the damage has occurred because of the water main project and I believe the Utility should be providing those funds for the roadway project.

Harenda: What was the total cost of the roadway rehab project?

Walker: \$1.395 million. The glass grid contract was about \$500,000.

Harenda: So we are adding roughly \$300,000 on top of it. How much do we have for contingency for the water main project?

Harenda: I know we didn't put anything in for contingency. What was the difference from the amount that was bid out and the anticipated cost to the Utility?

Walker: I believe the bid amount was \$1.4 and the approved amount was \$1.7 million.

Chipman: The original budget for this 2010 CIP project was \$2.5 million. When the bids came in they were closer to \$1.3 million. We added the engineering for the project \$177,000, and the \$96,000 for the 2

well abandonments for approximately \$1.66 million so we borrowed to \$1.7 million which was approved at the last meeting, so the amount available under this loan was about \$33,000. At that time we didn't know this additional cost was out there and we could have added this on. There are 3 options right now. 1. Add another note and borrow the \$300,000. 2. Delay Well #5 demolition. (\$93,000 in the CIP budget) and push it back to 2011, knock down contingency to 10%, knock down the meter budget, use the additional \$37,000 from the first borrowing and use cash on hand.

Harenda: I don't disagree the work needs to be done, but I would be skittish to delay the demolition of Well 5

Morrisey: The cost deferred would just be to demo the building.

Johnson: The well has been abandoned and plugged. No matter what we do with the building, as long as the well is abandoned that is not an issue with the DNR.

Ament: If we take from all of these accounts, what is the total?

Chipman: We would still be \$150,000 short. We would have to use cash on hand, but if want to borrow, it would make sense to borrow the full \$300,000. The difference maker is what do you want to do with Well #5 – that is the question as to whether we want to borrow or not. If you decide that it needs to be done this year, this it makes sense to borrow the other \$300,000 to cover this project. When we set up the budget, we assumed we would have to borrow the \$2.5 million, so we do have some breathing room since we only borrowed \$1.7 million.

Wysocki: I don't want to give the DNR or anybody else any thought that we are not following up with our commitments and I think we should move forward with those projects. I think it is more appropriate to do the additional borrowing at the \$300,000 since we had projected \$2.5 in the budget. I don't think we can put this project off, if you have walked the road in this subdivision you would see this road has to be done. Rick, did you take into consideration that this work would do this type of damage to the roads requiring this?

Johnson: When we 1st looked at the project and kept putting it off for a couple of years, over the 3 year period before we did it, the road deteriorated quite a bit. With all of the construction traffic, there has been a lot of damage and it is unforeseeable to predict that because of the large span of time.

Harenda: For JP to authorize the contracts, you need the funding source to pay for it, although you will have to come back at a later date with the figures.

Wysocki: I have a question for the City Attorney. This does change the original bid prepared for us by Capitol Paver; however I think in this instance, although he may have an inclination that this has to be rebid, I hope that he would agree that under the circumstances where work has begun, we are in an emergency situation.

Blum: In anticipation of that, if you look at the Council agenda for this evening, under the Utility committee I have prepared 2 scenarios. The 1st scenario is the cancellation of the balance of the existing contract with Capitol Pavers, that the work done so far would be paid and staff would have to rebid the project to complete the full rehabilitation. The 2nd option would be to declare an emergency pursuant to Wis. Stat Sec 62.15(1b) if you have a situation where there was damage done to public infrastructure and work needs to be done immediately you can declare an emergency and work can be authorized based on this. From what I understand, by the time you would prepare these new specs and send it out for bid and get a contractor in line, it is not likely for that work to be completed within this construction season. After finding of an emergency you would enter into an amendment of the contract as JP has laid out and cancel the balance of the contract with the fabric or glass grid that is not needed. Normally the finding of an emergency would have to be done at a Board of Public Works meeting, but we just found out about it yesterday afternoon. This group and the Council can make that finding.

The Committee discussed how this item needed to be recommended to Council and Attorney Blum advised how this motion needed to be stated based on the fact that the Committee agreed that they wanted to go ahead and amend the existing contract and agree that this is an emergency and make a

recommendation that the steps that he outlined in item B under the Utility Committee for the Council agenda was the direction they wanted to go. The concern was that the contractor has to start work July 6th. Attorney Blum asked the Finance Director if he was comfortable with the state of affairs. The project is pre-approved in the 2010 CIP project for \$2.5 million and the Finance Director agreed that he can prepare the note after the Committee and Council approval so that the project is not slowed down.

Motion by Alderman Wysocki to declare an emergency pursuant to Wis. Stat Sec 62.15(1b) concerning the condition of those roadways within the Parkland Green road rehabilitation project which are also part of the watermain relay for said project on the grounds that they have been damaged such that their condition requires an immediate full rehabilitation of said roads and that absent amendment of the existing paving contract, the reconstruction cannot be completed within this construction season; based on the existence of said emergency the existing paving contract with Capitol Pavers Inc. for said project shall be amended to increase the total project cost by \$296,000.00 to perform the services set forth in the City Engineer's cost estimate; and to amend the Road Fabrics Inc., contract to reduce the amount of glass grid to be used in the project accordingly and to recommend approval of borrowing \$300,000 from the Sewer Utility to the Water Utility for said project costs. Seconded by Alderman Ament and upon voting the motion passed unanimously.

Motion by Alderman Ament to adjourn at 6:00 p.m. Seconded by Commissioner Morrisey 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*