

**Minutes
Water Resource Management Utility Meeting
(Formerly Stormwater Utility)
New Berlin City Hall - Council Chambers
3805 S. Casper Drive
May 9, 2006**

Please note: Minutes are unofficial until approved by the Water Resource Management Utility (formerly Stormwater Committee) at their next regularly scheduled meeting.

Present: Alderman Harenda, Alderman Hopkins, Alderman Hegeman, Mayor Chiovatero and Commissioner Jim Kern

Others Present: Eric Nitschke (Division Engineer), Cathy Schwalbach (Project Engineer), J.P. Walker (City Engineer), City Attorney Mark Blum & Sue Hanley (Office Coordinator Utilities & Streets)

Meeting called to order at 4:50 pm by Alderman Harenda and declared a quorum with all members present.

SW 01-06 Minutes from April 11th Meeting

Motion by Alderman Hopkins to approve the amended minutes from the April 11th Water Resource Management Committee meeting. Seconded by Alderman Hegeman and upon voting the motion passed unanimously.

SW 05-06 Ditch Maintenance Enforcement and Effects on Drainage (*request to be removed from agenda*)

Eric said that a resident in the audience would like permission to address the Committee before we remove it from the agenda.

Motion by Mayor Chiovatero to remove this item from the table. Seconded by Alderman Hegeman and upon voting the motion passed unanimously.

Tom Flanagan of 5319 So. Andre Drive, a retired realtor who has lived in New Berlin for 30+ years expressed his concerns of overgrown ditches and trees in the ditches, especially around Grange Avenue and said that it is his understanding that it is the property owner's responsibility to maintain the ditches. He asked for an enforcement policy that gives the property owner a notice, and if they don't clean the ditch, the City would be able to cut the grass or trees and bill the property owner. He said that he would provide photos of several areas of concern.

Alderman Harenda said that the Committee is looking at the ditch maintenance enforcement issue. Eric said that based on the Committee's direction they will move forward with more educational resources to let the public know their responsibility of maintaining the ditches and keeping track of the residents blatantly ignoring their ditches. If that does not work, they will bring it back to the Committee and go from there.

Motion by Commissioner Kern to drop this item from the agenda. Seconded by Alderman Hegeman and upon voting the motion passed unanimously.

Alderman Harenda asked staff to bring this back to the Committee when they had additional information.

**Resident Request for Corrective Action Regarding Drainage Concerns
(Remove from table for report of status)**

Motion by Alderman Hopkins to remove this item from the table. Seconded by Commissioner Kern and upon voting the motion passed unanimously.

Alderman Harenda asked Mr. Eric Nitschke to report his findings after he and Alderman Ament, as well as the residents there had an opportunity to walk this area of concern. Mr. Nitschke discussed the 3 areas shown on a map and summarized the problems.

Area 1: Debris blocking cross culverts just south of Observatory Road and is a tributary of Poplar Creek. This appears to be the least of the problem areas. One of the property owners stated that he cleans the debris out of the two culverts in question on a yearly basis. Both culverts are on private property. In time the culverts will need to be replaced and the DNR will require Chapter 30 permits.

Area 2: There is culvert pipe that drains from the north to south side of National Avenue. The approximate size of the pipe is 15" – 18". The culvert extends approximately 200 feet to the north of National Avenue on private property. The culvert also extends approximately 500 feet to the southeast of National Avenue on private property. It was very apparent that the culvert was not flowing at full capacity. Water was standing over the top of pipe on the upstream end, and was only flowing at approximately 10% on the downstream end. In walking the site, sinkholes over the pipe were observed, but no manholes were observed. Also, the south end of the pipe appeared to run under a stand of mature trees. Because of the location of the culvert pipe, the entire pipe may need to be replaced. The residents along Lawnsdale Road feel that if the pipe is replaced, their drainage problems will be solved, as it used to drain properly. The County and private property owners will need to be involved in any work done in the area, and it will require a significant amount of funds to replace approximately 800 feet of culvert pipe, as well as cut trees, and gain access to the area. It is Staff's belief that replacing the culvert pipe will only partially solve private drainage issues, and that the real issue is in Area 3.

Area 3: There is an old farm field ditch, running north to south along several private properties, which appears to have been filled in. The residents claim that the farmer filled it in some time ago, but there is no visible evidence of any recent grading in the area. It does appear that much of the ditch needs to be re-graded. The length of regrading would be at least 1200 feet. The ditch may also be considered a navigable waterway, and a DNR navigability determination should be completed prior to any work in the ditch. If DNR determines the ditch to be navigable, a Chapter 30 permit for any dredging work shall be required. He said he did contact the DNR who said that in an agricultural setting you can dredge a ditch and it will not be considered a navigable waterway, but if you develop the area and dredge the ditch it will be considered a navigable waterway and under the DNR jurisdiction. If the ditching system throughout the area is not maintained, the land will revert back to what its condition was prior to farming in the area. Even fixing the culvert under National Avenue will not solve the drainage issues in the area, if the ditches are not maintained on a regular basis. The cost for maintaining the ditches will be substantial, especially if part of the ditch system is considered navigable waterway. Any modifications to the system shall require a downstream analysis to ensure that there is not an adverse impact to the downstream conveyance system and residents. Staff feels that Area 3 is the largest contributor to the drainage problems for the residents in the area.

Mr. Nitschke said that it is Staff's belief that the area to the north is the biggest of the issues and whatever is done will require a significant amount of funding and a lot of coordination would have to be done. He said that there is also a private property issue, and the policy in the past has been that private property owners are responsible for private property issues. He cautioned that if a project was done in the area, an analysis of the downstream conditions would have to be completed, so that the residents downstream would not be adversely impacted by the stormwater project in the area. The goal would be to maintain the existing conditions, and not create flooding problems downstream. He said the watershed area is more than a quarter section in size, so it is a substantial area that is almost entirely a floodplain.

Commissioner Kern asked if we did do the culvert project, would it require annual maintenance. Mr. Nitschke said that downed trees and beaver dams would have to be cleared out, and also because of sediment load, the ditch would have to be cleaned out.

The Committee briefly discussed the estimated cost for the project. Mr. Nitschke said that a HEC-RAS analysis of the floodplain would have to be completed to analyze the cross sections, and was the responsibility of the property owners.

Alderman Hegeman asked what would happen if we did nothing. If we did nothing, Mr. Nitschke said that it would revert back to its original state before farming was done, before ditching was done, before the area was drained and probably would revert back to a marshy wetland with no farmland left and there would be more encroachment on residential areas.

Commissioner Kern asked what the chances were of getting help from the DNR. Mr. Nitschke said that they have cut grant funding at the state and local levels, and it would have to have a water quality component. He said the Army Corp of Engineers also have jurisdiction over these types of projects. He added that if you are dredging the ditches and piling the spoil piles and are not putting it into an actively farmed field, it is a good possibility that you are putting it in a wetland and that brings on Army Corp of Engineers and DNR requirements.

Alderman Harenda asked if we can clear out some trees and clean out some hot spots to improve the flow. Mr. Nitschke said that tree in the ditch will only be a problem once you open up the ditch to the north, as the conveyance system is wrapped around the tree like a stopper with a little draining out to the north and the south but much less than it used to be.

Alderman Harenda reminded the Committee that this is similar to item SW 11-06 and that Staff and the City Attorney are looking into getting into these private property drainage easements and the question of where the Utility wants to go with extending our authority. Mr. Nitschke noted that we have a 20 foot wide easement into various areas, but there is a gap. He said the problem is that if the ditch takes up half the easement, and it is difficult to access it with a machine, we would have to clear trees before working on it and pile spoils when we dredge it. He said that we would have to do something with the spoils eventually, because we can't keep piling them up over time. Mr. Nitschke said that this area is not in the Master Plan as a regional facility, but it is acting as a regional facility at this point.

Alderman Harenda asked if the work in Observatory Heights by FEMA, will that help or hurt these properties. Mr. Nitschke said the survey work that was approved by the Committee to hopefully pull some of the properties out of the floodplain may be impacted by whatever happens here, and by increasing the flow through this area it may hurt them.

Commissioner Kern asked if this would be a possible Capital Improvement projects in the future. Mr. Nitschke said that we have a City full of CIP projects, and that this may qualify, but he reminded the Committee that we already have a approved master plan that has a large list of capital improvement projects that are incorporated in a well conceived plan. He said this would have to be looked at very closely since there are a lot of projects already into the system, and you would have to bump something else to include this.

Alderman Harenda said that there are issues in this area that we have to look at, as far as what the Utility will do and what the private property owners are required to do for maintenance. Mr. Nitschke said that he will look into the code or what the requirements are for farmers to maintain their ditches in their farm fields. Alderman Hegeman asked if the ditches are dredged by the property owners, will it improve the flow, or is it too difficult and if so, did he encourage that? Mr. Nitschke said that the direction given to Staff by this Committee has been so far that all issues on private property are the responsibility of the homeowners, especially as far back as this is from right of way and that is what we pass onto private property owners.

There were several residents that addressed the Committee.

Sal Proite, 18000 W. National Avenue, corner of Lawnsdale and National, and said that he lived on his home for many years and that the property has been in his family's name since 1846 and said that something has to be done about the drainage problem in the area. He said that his property is not on a hill and the water flows into it from all areas and he thinks dredging will help now, but the pipes are clogged.

Brian Teclaw, 18300 W Lawnsdale discussed the problem at length. He thanked Alderman Ament and Eric for coming out and invited the rest of the Committee to come out. He showed on the map one particular culvert that would provide immediate relief and pointed out that area. He said they also would be willing to invest some time to clean out the culvert and they understand it was a large area.

Alderman Harenda asked if there could be a cost analysis on ditching in Areas 1, 2 and 3 and the cost for culvert pipes. Mr. Nitschke said that Staff could do. Alderman Harenda also wanted Staff to research responsibility on these aging systems that we have here and in other parts of the system.

Ken Washburn, 17900 W National said there are drain tiles underneath his property that are quite old, and if they collapse it will cause major flooding over Lawnsdale Road. He said that something has to be done.

Alderman Harenda asked Staff to put some numbers together and asked what the policy of the County was and if they would contribute to the project. Mr. Nitschke said that they would check into it.

Sal Proite added that in 1982 the County said they were going to reroute and straighten Lawnsdale Road and also brought it back in 1996. He asked what became of the project and he saw the plan.

Alderman Harenda asked Staff to check on future and past plans for Lawnsdale Road. He said it will be used to redirect traffic when they do the Racine Avenue corridor.

Motion to table Item SW 07-06 by Alderman Hegeman. Seconded by Commissioner Kern and upon voting the motion passed unanimously.

SW 10-06 Woelfel Drainage Easement Discussion (tabled)

Not discussed. Remains on the table

SW 19-05 Approval of Stormwater Utility Updated Five-Year Plan (tabled)

Not discussed. Remains on the table

SW 11-06 Discussion of Woodland Drive Resident Request

Mr. Nitschke said that this was a request from a resident to clean out the cross culvert and the area in the City's right-of-way. He informed the Committee that the Street crews had cleaned out the cross culvert and also adjacent areas in the right-of-way and put the new street sweeper to good use the week after our last meeting. He said that staff looked at the Homeowner Association's responsibility and what the City's responsibility was in the public easement. Mr. Nitschke said that he found the June 12, 1997 Declaration of Restriction for Woodshire 3 from the Homeowner's Association and read item 17. *The Plat establishes preservation requirements, site/landscape easements, and drainage easements throughout Woodshire Three. Lots 154-159 have rear yard Tree Preservation Easements identified on the plat from and which must be maintained. Lots 159-161, 163-164, 145-148 and 152-153 all have wetland easements identified on the Plat which must be maintained. Furthermore, there are many lot line drainage easement areas which shall be maintained clean, clear and free of any obstructions or barriers of any kind. Any obstructions may be removed by any public utility or by the City. Should it become necessary for the City to maintain those easements, the City may assess a special charge as described in Paragraph A19.* It was staff's opinion that this document says it is the Homeowner's responsibility to

keep this area free and clear of restrictions. Paragraph 19 says that the City may ensure compliance by taking action and levying charges against the Association or owner. Mr. Nitschke pointed out the area on the map and the cross culvert that the street crews cleaned up and explained that this was a heavily wooded area. He said that the other item that was directed by the Committee was the question of what our responsibility was in the public drainage easement that is in place. He said that it was Staff's opinion that due to the Declaration of Restriction that is in place, it is the Homeowner's Association that must keep the area free and clear of debris and obstructions to the drainage system.

Alderman Hopkins said that he visited the Ebenoch and Bauer properties after the City did the work and they were very pleased with the work that the City did and the speed which it was done. Obviously there is still the problem to the south.

Alderman Harenda asked if any of this information was relayed to Mr. Ebenoch and Mr. Bauer. Mr. Nitschke said no, that Staff is trying to locate the Homeowner's Association and contact them.

Alderman Harenda said that in older subdivisions, if they do not have an active board, the residents will have to be notified by sending letters informing them that some of the responsibility does fall on them, letting them know what we have done and letting them know the direction the Utility will go because we can't afford it.

Mr. Nitschke cautioned that this was probably just the tip of the iceberg and that with WPDS Permit and requiring maintenance of ponds, ditches and bioretention swales and different best management practices that developers are putting in to meet their water quality and quantity requirements. We are held responsible by the DNR to ensure that the maintenance is being done and if it is not, that we are enforcing the maintenance of these facilities. It is an unfunded mandate by the DNR for us to keep track of how the Homeowner's Association is doing with their best management practice and how they are maintaining it. We need to bring the Homeowner's Associations into the fold.

Alderman Hegeman asked if there was a letter developed yet. Mr. Nitschke said the letter is the easy part; the question is what direction that you want us to go to ensure the people are maintaining these systems. He said our code enforcement officer is extremely busy and to add this component of keeping things clear and free of debris, tracking letters, etc. would be an entirely different system to develop. Alderman Hegeman asked if we had codes and ordinances in place to require this so that we can send out letters. Mr. Nitschke said that yes we have codes and ordinances in place that require people not to adversely impact drainage for adjacent property owners, and this documentation here from the Homeowner's Association gives us the authority to do this. He said that if we can't find the association we can send letters to residents, but his question is are we are going to have to send letters to everyone Citywide in the future. He also said that Staff does not have the time and manpower to send out letters, deal with the phone calls, establish a database and to enforce the maintenance problems.

Alderman Hopkins said this is in his district and it is a problem to people outside Woodshire and he said he prefers sending letters and asking for volunteer cooperation as it is affecting homes outside Woodshire. Mayor Chiovarero said that if the association has been dissolved, we would have to talk to all 34 homes in this area to see if anyone is or was a board member and that it is the responsibility of all 34 homes anyway since it is in their declaration and restrictions. Mr. Nitschke said that they have not contacted the homeowners yet and they were waiting for direction from the Committee.

Alderman Harenda said that we need to set up a policy and procedure to follow through with voluntary compliances, sending out letters, and find some way to track this as a test case. Mr. Nitschke asked if the Committee wanted to see the letter they had drafted. Alderman Harenda said not necessarily the letter, but the whole process should be brought before the Committee as to how we are going to track this, as this sets a precedent. Mr. Nitschke said that he had tasked a former intern with locating all the best management ponds in the City and it was 4 pages long with ponds alone, not including some of the other items such as bioretention swales. He said it will be very detailed and there are a lot of items they have to address. Alderman Harenda asked Staff to communicate to these 3 gentlemen what we have done, and what we plan to do.

Mayor Chiovero said he was under the impression that these 3 gentlemen's concerns were taken care of. Mr. Nitschke said their initial concerns were handled, but not the overall problem. Mayor Chiovero said that we need a policy for ponds as far as defunct Homeowner's Associations go.

Motion to table SW 11-06 by Alderman Hopkins. Seconded by Alderman Hegeman and upon voting the motion passed unanimously.

Communication: Greg Kessler, Director of Water Resource Management Utility
1. Development and Permit Process
2. National Flood Insurance Program (NFIP)

Alderman Harenda said these items were given to the Committee to provide information that Greg Kessler picked up from the National Conference. He stated that Mr. Kessler is the City's Flood Plain Administrator. Questions could be addressed to Staff at any time.

SW 12-06 Construction Update of Drainage List Projects

Mr. Nitschke said that Staff wanted to give the Committee a copy of the 2006 Drainage List of over 80 residents, and also included is a separate project list such as clean up of capital improvement projects, roadway project areas and general projects that the Street crews know of in their inspections around town. He noted that the Street Department has less manpower than in 2000 when the Utility was established, with 3 less personnel now and they do not have the manpower to complete more than the project list, and about 40-50 items on the drainage list this year. He said that an operator will also have to be used for the Stormwater sweeper to meet WPDS requirements which creates a void of 4 people instead of 3. There may also be someone else that may retire later this year bringing the total to 5.

SW 13-06 Resident Request for Drainage List Reprioritization

Mr. Nitschke said that Staff received a request from the owner of the land on Stigler and Cleveland Avenue for the Greek Orthodox Church and the ditching project, and they are currently 82 out of 86 projects on the drainage list. They are requesting to be moved up the drainage list. He said that moving the resident forward would require a reprioritization of the drainage list, and also would move other residents who have been waiting for work further down the list. Mr. Nitschke said that on the website it does list the prioritization process, and now Staff is looking for direction from the Committee. He said that the request comes in saying that the drainage off of Stigler is creating wetlands and prohibiting them from developing the area as they would like to. Mr. Nitschke said that the Engineer working for the church said the wetlands have emerged since the WE Energies Gas substation was built and also from inadequate ditching along Stigler Road. Mr. Nitschke said that staff agrees there needs to be reditching done; however the drainage is not creating structural flooding problems. He added the majority of the flow comes from the top of the hill on the residents own property, and it is prioritized as it should be on the drainage list.

Alderman Hopkins said that it would be opening up a can of worms if we granted this request, as many residents have been waiting a few years. He agreed this problem is not causing structural damage; therefore he would not be in favor of reprioritizing the list. The rest of the Committee agreed that this is a fair way of prioritizing the projects and the list should remain the same.

Mr. Nitschke said that Staff has been asked many times before to reprioritize the list, but this is the first formal request to bring before the Committee. Alderman Harenda asked if WE Energies does the trenching will it help the problem. Mr. Nitschke said that remains to be seen whether it will remove the wetlands from the church property.

Mayor Chiovero said he agreed with Staff's assessment and that it seems that the WE Energies substation caused the problem and they should go ahead with their part of the cleanup. Mr. Nitschke

said that it has been Staff's policy for private property owners to be responsible and that they should work it out with WE Energies and that they have been informed of this.

Motion by Alderman Hopkins to deny the request by the resident to reprioritize the drainage list based on our policy, as well as the policy that has been restated tonight by Eric Nitschke. Seconded by Alderman Hegeman and upon voting the motion passed unanimously.

Motion to adjourn by Commissioner Kern at 6:34 p.m. Seconded by Alderman Hopkins and upon voting the motion passed unanimously.

Respectfully submitted, Sue Hanley, Office Coordinator Utilities and Streets