

MINUTES
City of New Berlin
Special Utility Committee Meeting
Wednesday May 20, 2009

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

Others Present: Rick Johnson (Utility Manager), Mayor Jack Chiovatero, City Attorney Mark Blum, Steve Schultz (Ruekert & Mielke), Bob Pulliam (New Berlin School District), and Sue Hanley (Administrative Supervisor Utilities & Streets)

Alderman Harenda called the meeting to order at 6:17 p.m. with roll call and declared a quorum with all members present.

OLD BUSINESS

UT C-09 Approval of Minutes from the April 28th meeting

Motion by Alderman Wysocki to approve the minutes from the April 28th meeting. Seconded by Alderman Ament and upon voting the motion passed unanimously.

UT 06-09 Discussion regarding the authorization of fees for the City's consultants in negotiating with the City of Milwaukee

And

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

Harenda: I asked Rick for copies of contracts for the diversion, filtration, consulting, meetings with the DNR and Milwaukee water negotiations and my concern was what invoices were attached to which contract, and in some situations from what I received, we didn't have contracts for some of the ongoing operations and we were paying as we go on a T & M basis. I had one issue personally, for any work done we should have contracts are bid out appropriately and in place, have a NTE number and if situations do change then we can address those as they come up. Apparently some of the things were authorized in closed session and we only authorized 2 things in open session which is our normal policy. We can make recommendations and consensus approvals but any formal actions or authorizations of expenditures have to be done formally in open session. We spent a lot of money on this issue, including when we negotiated for Milwaukee water on the eastern half of the utility and now working on the remainder of the utility, from engineering to construction to negotiations to payment to the City of Milwaukee for potential services in the future of \$1.5 million. It is difficult to track what expenditures are linked to what contract, not pay as we go.

Wysocki: Whatever transpires as a result of this I would assume we will have in place a methodology to identify costs to specific activities, authorize those with a not to exceed (NTE) cost so that if it is more it can come back to the committee for further recommendations. I think we should be operating that way and in open session we authorize this in open session so that staff is comfortable with the costs associated with the directive that we may be given.

Harenda: In one issue we authorized a consultant to assist with negotiations. We initially authorized \$15,000 and then authorized another \$10,000 for the consulting work, but we spent another \$30,000 without being aware of it in addition to other expenditures being spent without being tied to a specific contract. How are we going to control that in the future? I have conveyed my concerns to staff. If we have a need in the city and it is budgeted for, we should have a contract and hopefully that contract is bid out, if not, have a good reason for that. I can see putting money away from contingency but these are ongoing discussions. I asked for copies of the invoices but have not received them. Do we need to formalize a policy on this? We also need to look at how things are happening in closed session. Apparently I am being told that all of this was authorized in closed session but we have no documentation of that.

Dude: I think there are 2 issues. The Utility does a very good job of budgeting and I have been a part of it for the past few years and put in about 20 hours a year into it. There is a variance report put out every month and I look at both the negative and positive. The Finance department Ralph and Mike do a very good job of tracking expenses. We only break out consulting in one or two areas, we don't have much detail on the budget, there is something behind it, but it is one line item. You could break it out to be more detailed and specific. Secondly, I have not seen a copy of those variance reports come to the Committee until we get involved in next year's budget each year. In the many years that I was involved in corporations, I produced a monthly variance and on our various finance committees we talked about it. If you have a negative variance someplace you can find out why and discuss. That's the reporting issue.

The second area is what is the authorization process? There are 2 sides, don't micro-manage too much versus if you don't micromanage you may get these unfavorable variances. Jim and Rick have done an excellent job in keeping the increases less than 5% over the years for water and on the sewer side better than that. It gets down to who can authorize what and in what kind of conditions and I don't know what your internal process is.

Harenda: We have 2 aldermen who worked on the purchasing policy and the procedures used to authorize payments of costs and fees for consultants and contractors could be used by any committee. Every time we authorize for construction, we put 5, 10, 15 or 20% for contingencies and we never hear anything back on whether we tapped into the contingencies for these projects. It would be nice if we received a spreadsheet on an annual basis of what the total costs of the projects were. If they have to exceed the contingency, they have to come back to us for approval. The contingency is there if they need it or for emergency purposes and that is why we put it there. What level should it be set at? I don't want to micromanage but I want to get a handle on what's going on and set up a procedure. When we have a contract and they exceed it, it has to come back to us for approval and explained why. If it comes back under budget, come back to us and let us know that we saved money. It has been difficult to tie everything together regarding the Milwaukee water/diversion issue since we have items dealing with diversion request, construction for pump stations, radium compliance, etc. It should be simplified so everyone understands it.

Ament: The biggest problem I had is what we approved primarily in open session is not the number we ended up with in the final bill. The key thing is, who authorized this? It should be authorized by this committee and the council. I have copies of invoices of what it is for, but there is not a lot of detail in them and it is hard to weed through them. The main issue was what did we approve and how much. I remember approval for \$5,000 and \$10,000. In an email from the Mayor he recalled 2 approvals, one at \$10,000 and \$15,000. Assuming he is correct, but the total of the invoices is \$47,937. We know some of the reasons it was a little blurry from closed session and our negotiations and how it was done at the time for the reasons that we had but I still don't have an answer who authorized the extra amount. I agree with Bob that staff has done a good job of budgeting and when I ask for information I get copies. Who authorized the payment, not who signed the invoice. We don't want to micromanage, but we are supposed to make policies and decide what the costs are and the costs are not what we were told. I can't find anywhere where we authorized it in open session. The invoices from Zeppos include times for William Mielke, Steve Schultz and Bea Knox. I have not been able to connect the dots as to why our consultant was being paid and we were paying our subcontractor that had time on them for the original consultant. I thought we had a set amount we told him not to exceed.

Chiovero: The paperwork I just handed out from R & M shows the amendments and original contracts for the subject matter, plus minutes from meetings. Ruckert & Mielke would not have proceeded if they did not have the authorization. I know we had the discussion that some of these were moved forward because of the sensitivity through closed session. If there should have been a motion made outside to continue on, I guess I would relate that back to the Chairman to see if he can recall why we didn't make it.

Harenda: I never authorized this and I never authorized this in closed session. I traded emails back with you in March. Only 2 items were authorized in open session, the rest were never authorized.

Chiovero: The discussion was done. Bill and Steve were under the impression that they could continue on. I am not blaming you as the chair as to why they weren't brought into open session. These were items of discussion in closed session to continue on, I think Mr. Zeppos was here, and I think everyone

had the same feeling that they had the approval to move forward. What probably happened because of the sensitivity, consensus was given to continue and that's how these approvals were made.

Harenda: The consensus to continue on negotiations had no bearing on authorizing additional expenditures without having the knowledge that we were going to spend the money. That was never agreed upon in closed session. We authorized an amendment February 2007 for \$15,000 and February 21st we did the same thing in open session. The other ones we never authorized. We had a lot of discussions regarding negotiations and we gave feedback but I don't remember saying to keep going. Where is the transparency? I can't track the invoices; I can't crosscheck what was spent.

Chiovatero: I don't know why you don't have these copies. I gave the copies for my assistant to copy. She made 2 copies and I only have 1, but the other one I assume went in your mailbox. I have another copy if you want. Bill and Steve are here to discuss what they thought happened in these approvals. If you remember we had 2 proposals and the other was still over what we spent with Zeppos.

Harenda: That was just for discussion when we were looking at a consultant. One was going to charge us \$10,000; one was going to charge \$60,000. We never said \$60,000 was going to be a NTE amount.

Chiovatero: I agree with you on that, but I had the impression that they had the authorization to go on.

Harenda: I would like to know how to handle this from open and closed session. We are allowed to authorize consensus to expend utility money without formally authorizing these contracts. The way I read it in the League of Municipalities, we are supposed to make actions in open session. We paid R& M for this and I am just trying to clarify this issue.

Ament: I heard the phrase "people were under the impression." There should be no impression, it should be clear. I am not questioning that they put in the time; my question is who authorized it? What is the amount we actually approved? I don't have any paper trail of what amounts were authorized. The way I read the League of Municipalities article, even in closed session there are supposed to be minutes. They can be kept under wraps and sealed, but there are supposed to be minutes. That way we can go back and look at them. Who authorized the amount and said go ahead. Did someone here authorize it without our approval or did the consultant just go ahead assuming he was supposed to do it.

Mielke: I did put together some information at the request of the city. We do have written contracts and authorization for \$85,000 of the work. I agree with the aldermen as they got into the sensitive side of the negotiations and the Utility committee had repeated meetings to talk about where we were at and what needed to be done politically. We came to those meetings. If you look at the agendas for about 4-5 meetings, it was to review the negotiation strategy for extension of contract with Ruckert & Mielke for Lake Michigan water public relations consultants proposal and discussion of negotiation strategy. I left those meetings with copious notes with clear direction of what the committee wanted us to do. I agree we did not have a signed contract, but we continued on the same time and material basis. Hopefully there is an agreement by all parties that we left those closed meetings with a clear and decisive direction. You told us what you wanted us to do and how you wanted us to do it. There were some discussion with Zeppos--he would be talking with our office, conferring with us. That is his time talking with us putting together a project plan, putting together as we addressed whether it was a political or engineering issue to advance to Milwaukee as part of the negotiations.

Harenda: Regarding the first \$15,000, I reviewed the June 12 & 27th, July 25th and August 27th minutes and saw no formal authorization by the committee. It was apparently authorized and signed by the Mayor July 25th, and that was your submittal for the change order. Amendment #1 for \$15,000 was approved in open session on February 27th. Amendment #2 for \$10,000 was signed and authorized by the Mayor and there was no discussion of it at the July or August Utility meetings. Amendment #3 for \$20,000 was executed on October 9th and authorized by the Mayor. Nothing in the Utility minutes for September or October for authorization on that. The last amendment for \$25,000 that was signed and authorized in February 2008, that was approved in our February 26th minutes in open session. Why would we authorize only 2 of these, but not the other 3? I understand what you presented here, it aligned with what was spent, but it doesn't add up to what was authorized and the process that should have been in place. I don't say it was fully R & M's fault. You were asked to do the work apparently because your contracts were authorized by the Mayor, but only 2 of the 5 were authorized formally in open session by the

committee. My recollection is that we gave direction, but it wasn't an open checkbook and the money being expended was previously approved and if we reached that amount and we were going to exceed the amount that was previous approved, we would authorize additional funding.

Ament: I still would like someone to tell me who authorized those last 3 amounts. I am not questioning it was done. It makes it difficult for us to make policy and decisions if we aren't aware of the cost.

Harenda: Amendment 1 and the last amendment was formally approved in open session (\$40,000) Commissioner Dude mentioned the monthly variance reports and the communication has improved with Steve Schultz with work on the diversion and he has informed me if we are exceeding the price and if additional work is needed. I also have received calls from the Mayor. I want to hear a formal opinion from the City Attorney of what we are supposed to be doing in Closed Session.

Blum: You referred to some memo from the League of Wisconsin Municipalities and I am not sure of the one you are referring to, but I am sure that it said that you are only able to go into closed session for the agendaized item and then discuss whatever the issues are related to that item. If you take any action in closed session that does have to be documented. You do have to then reflect any motions that were adopted authorizing any action in the closed session, otherwise you wait until you go into open session and take action on the issue at that time. Motions typically are not done in closed session, except for going in and coming out and the actual action item is done when you go into open session. In my history here in New Berlin, I have never seen a motion in closed session that has dealt with a substantive matter.

Harenda: If we are authorizing additional expenditures the motion should have been made formally in open session to approve that.

Blum: That would normally be the procedure.

Harenda: What about the statement made by the League that we are supposed to be keeping minutes within closed session?

Blum: There is a difference of opinion with respect to that. If there are any motions they have to be agendaized and reflected in the minutes. Do you take minutes reflecting the general discussion? The issue there is whether those minutes are accessible to someone who might make a demand for it and whether that is appropriate public policy.

Dude: Let me speak about going forward. In normal contracts, you go out and do a formalized procedure and typically take the lowest qualified bidder. Consultants are different because you are trying to establish a rapport and essentially form a team and it is difficult to constantly look over your shoulder and shake hands with the person at the same time. From my experience, you do that with a NTE or put them on capitated situation where they get paid so much for a period of time. If they go over that amount in their time, too bad for them. In this case, we had some consultants we needed for technical information and we needed some for the negotiations. In addition to the variance reports, Ralph could give you a year to date update. You may also want to develop a policy to use a written change order that needs to be approved by the Committee and/or the Mayor. I am sure the consultants would have no problem giving you a written change order before they moved on. I think we certainly have received the services and we did what we wanted to accomplish.

Harenda: We put budgetary money aside and we might have made different decisions back then, do we need to have certain people do things for us, contracting, consulting and everything. It's like I want to build you a new wing for your house. I'll do the services, but by the end of the job you ended up paying \$50,000 more, but you never approved it--you would be a little offended by that. I would like to have some formalized policy and can work with the Finance department to track our projects, getting an update, not every meeting, but for example the Calhoun Road and North Lane Water Main project. If Rick exceeds the dollar amount and contingency, he has to come back to the Committee for additional funds. If he doesn't exceed the dollar amount at the end of the project, he can give us a short spreadsheet, this is what we spent, we tapped the contingencies, here is why or we got it done under budget.

Ament: If I had a project at my business and gave authorization for someone to do something and the price was double, the first thing I am going to ask is who told you to go ahead with that? I can't fix the problem unless I know what went wrong. I would still like to know who authorized the extra expenses.

Chiovatero: As far as project controls go, Mike Holzinger gets the amount assigned to the account. Mike or the department can tell you what is open on that project. The process is there.

Harenda: I am looking to formalize that process. Reports are given, the information is updated quarterly, annually or at the end of the project.

Chiovatero: That is already done, but the report is not given to you formally and that can be done by saying we now want reports given to us on an "X" basis, quarterly, midway through the project, etc.

Morrisey: I would like to get report from active construction and consulting contracts at least quarterly, but preferably monthly. I would also like to add the \$85,000 that was spent, the process of negotiating the water and with the DNR was a long drawn out process. I don't think there was any money we wouldn't have spent. I would like the reports though and that would let us know what we are spending.

Wysocki: Common Council every 2 weeks approves the payments by each of the Utilities. It may be appropriate that you guys receive them too. Those kinds of reports are available for the Council and you guys should receive them as well. I agree with you Jim a variance report is an excellent management tool in continually reviewing budgets. The Mayor receives them from the City quarterly, I received them monthly. It is not micromanaging--it is just ensuring things are going as planned and if they are not you want to fix it. I am not saying we need them monthly, but they are available and we should receive them. At the next budget period, like Mr. Dude said, we should look at more clearly defining a particular category.

Harenda: I like the idea of monthly reports on active projects.

Dude: I know Ralph and Mike produce monthly variance reports, and you can see the budget and actual figures on a year to date basis. The other report is a project report, particularly CIP and other projects when you have approved a certain amount of dollars plus some contingencies and you can track the project thru completion. You could ask Ralph to report on these at the beginning of the meeting. The Finance people here are very good.

Harenda: With the Zeppos situation, we didn't have the information on a monthly basis or even our negotiation process for Milwaukee water and the DNR. The dollars amounts are adding up and we haven't started construction yet.

Wysocki: Based on the documents I was given, the authorization for these payments was made by the Mayor and from what I heard from him is that his view is that he was authorized in closed session to do it. I wasn't here at the time.

Mielke: We had the initial signed contract between the City and us and the Utility Committee decided you needed some PR, lobbyist and high power ability to address the City of Milwaukee. You reviewed a couple of them and you selected Zeppos and Associates. You wanted Zeppos hired but you asked Ruckert & Mielke to hire Zeppos and you would tell him what he needs to do. I did that as a favor to you guys without any mark up and brought Zeppos to every one of the meetings because I wanted him to get his direction from you and then I gave him instructions to keep me apprised where he was at and bill me at least monthly to see what the costs were. If you bring in another contractor that you ask an existing contractor to carry for you, hindsight says we could have used more clarity for those issues and it probably would have been better to directly contract him with you.

Harenda: It like when you use any subcontractor, you are still billing us directly. We authorize a certain amount of money for a subcontractor within your contract and these were not formally approved and while I don't remember authorizing additional expenditures, it wasn't an open checkbook.

Mielke: You told me to hire Zeppos and I said give me a starting fee. I brought in amendment 2 for approval and getting Zeppos online and now you are saying it wasn't authorized. I was given clear direction to go and do that. I didn't do that on my own volition.

Harenda: I remember in closed session initially authorizing an expenditure to bring Zeppos to assist you and us on the negotiations. There was a dollar amount set then and we authorized an additional expenditure. I don't remember authorizing 3 additional expenditures on top of that. I talked to all of the aldermen and commissioners here and it is a gray area. In the future we need to make this as transparent and clear as possible for us and you. I am not blaming you for it.

Mielke: We like clarity and we will provide you with whatever breakdowns you need.

Harenda: I will take the comments for the change order policy and put something together in conjunction with Mike and Finance and what we are doing already. Rick sends the invoices and contracts to Finance anyway and they are tracked individually so it should be a simple spreadsheet that is printed out and we authorize the contracts. The variance reports can be emailed to us if they want to save on paper. I don't like being in the dark. I guess Alderman Wysocki pointed out what his observations were. One other issue on this item. At a Committee of the Whole meeting on April 14, 2009 we made a motion to hold back \$11,935.95 which is invoice 57694. There was another part that we paid for the SCADA system. The concern I had and a few others was what it was for and what was it linked to. As long as it is clarified we can authorize payment of this bill at our meeting next week.

Schultz: The description on the invoice reads "Milwaukee Water Final Phase". The work covered by the invoice includes preparation of the bidding documents for the lake water pumping station upgrades and reservoir pumping upgrades for radium compliance. It also includes bidding period activities and SCADA programs and designs, and work on procuring equipment. This is work done under the contract that was approved for the study, design, final design phase and bidding of the improvements that are going to be done at the pumping stations upon diversion approval and procurement of the equipment outside that contract by Rick Johnson to procure the motors. Also the SCADA that was approved and the construction and post-construction that has not yet been approved because we haven't awarded the contract officially.

Harenda: This is the contract we awarded to you last year. Is there any way the coding or the referencing to work being done for what it is for?

Schultz: That description I read you is on the front page of the invoice.

Harenda: We were billing under different things going forth with the negotiations, but it is all for the same thing, but what accounts are they coming out of?

Schultz: Once we send your invoices here, I don't know how it is dealt with, a lot of times it is assigned an account number.

Harenda: I can check with that internally to make sure which invoice goes with what contract.

Schultz: Under future invoices, I can list what contract it is covered under and the approved date.

Harenda: I would be more comfortable with that. It was tied into the overall discussion.

Chiovero: Do you have to do a formal approval?

Harenda: The motion at COW read, "Motion amended by Alderman Harenda to remove invoice #57694 in the amount of \$11,935.95 due to Ruekert & Mielke and pay the balance and that amount (\$11,935.95) come back to the next council meeting.." My intent was to discuss it.

Chiovero: Will it be on the next check run?

Harenda: I will ask Sue or Mike to make sure it is handled.

UT 05-07 Water Conservation Measures
Possible Discussion & Action on Sprinkler Ordinance

Harenda: I emailed you a copy of the ordinance that the City Attorney put together with regard to Water Conservation issues which is tied to water sprinkling. You also should have received from Sue information as to what we currently do with our conservation schedule regarding lawn sprinkling. Even number addresses water on even numbered days, odd number addresses water on odd numbered days, light hand watering of gardens and flowers is allowed and permits are given for new lawns. It is more of a voluntary schedule. The only time we have an all out sprinkling ban is for when we have drought issues like we did several years ago and Rick has the authority to do that. We are trying to formalize with regard to what is happening around the country and one effort would be to institute an ordinance on sprinkling, in conjunction with what we have been doing on a voluntary basis--even/odd--and formalizing that as a requirement. The only information that needs to be added is the time element. You don't want to water during the day because of the higher evaporation rate. There are studies as to how often you need to sprinkle--once a week may be sufficient depending on the conditions. This will be tied to our water conservation packet and is timely, since the summer season is here. The enforcement element is generic, but we can revise that if there are problems.

Wysocki: We instituted this back before it was popular--the water conservation odd/even days process--several years ago. I am concerned about the time frame. Some experts say it is better to water in the morning, some in the evening.

Harenda: The hours put in the draft can be changed. We can keep it as odd and even addresses or to allow sprinkling from 8 p.m. to 6 a.m. the next day. The concern originally was the peak issue between 5 - 8pm and if everyone comes home and turns the sprinklers on we have a supply issue.

Wysocki: I think I misread it and thought it said you can only water between 5 – 8 p.m. Several years ago Rick and I sat at the control panel and saw the tanks going down from the computer. It's an even day, I have an even address, does that mean I can only water on even days between 5-8 pm?

Johnson: I believe that was set up so that you can only sprinkle between 5 and 9 the way it was set up the first time. There are a few issues if you pick a time, say 5-9pm. There is nobody here that will enforce this unless you have someone do it and have some type of fine. Our biggest draws are from 6-8 am and from 4:30 – 7:00 pm when everybody comes home. If there is nobody there to patrol it, they will just do it.

Wysocki: When we had our well systems that was a big thing. Now with Milwaukee water coming in, will you have the same amount of drawdown and the same concern of not having the water available?

Johnson: We will still have the same amount of draw. I don't believe we will have as much a concern as if we would just have groundwater.

Harenda: It is not just availability, it is water conservation.

Morrissey: There is an issue of the cap and if we go over the cap it will be a lot of money.

Johnson: To hit that cap you will have a lot of issues.

Wysocki: I don't know the timeframe is that important. It may be so constricting it will be difficult to enforce and for some people that is not a convenient time, and not all of us have automatic sprinkling.

Harenda: It is following up on the voluntary band odd/even and we are trying to get away from sprinkling during the day because of the high evaporation and loss of water.

Dude: It is voluntary, so you need to present it so that the average person finds it realistic. Obviously you don't want to sprinkle in the heat of the day, but you don't want to have it so late so people leave their sprinklers on all night. They won't get up at midnight and turn it off. I am supportive of time, but I would make it between 6-10 and most people would think it is realistic and still keep it off the peak times.

Wysocki: Aren't you creating a peak time when you do this?

Johnson: A lot of these communities working on the conservation plan are in conjunction with the rates on how much you are charging per thousand. If the rate scale is done at a different tier, some of the communities have \$2 per thousand up to a different tier at \$7 per thousand, so people won't use it as much.

Wysocki: Limiting the time it may cause a peak at 5pm.

Johnson: Over the past 2 years, people have watered less and water usage is down 5.3%

Wysocki: I think when we initiated the odd/even schedule, it has helped cut down on the usage.

Harenda: You could set up sprinkling between 6-10pm or if you say the only time you can't sprinkle is 6am – 6pm.

Chiovatero: Why don't you say you can sprinkle between 5pm and 7am but no more than 4 continuous hours. The lawn experts I talked to say you shouldn't water at night because it will rot, but you think that letting it soak in would be better. By putting in more than 4 continuous hours, it may help.

Ament: I agree with Alderman Wysocki, it may cause an artificial peak. I think just keeping the even/odd schedule to make it simple and easier to control. Rick said it would not be as big of a concern when Milwaukee water goes on line for the entire service areas. At the end of the water use restriction it says for irrigation of crops, if you are going to put hours on it that would be an issue. Is that only for an emergency called by the utility manager?

Johnson: That was set up for people that have their own private source of watering crops. When I put a restriction on water sprinkling, it is for the utility customers only and has nothing to do with private wells.

Ament: If the Utility manager says we have a water shortage, that water can't be used for irrigation of crops. If someone is using municipal water to irrigate crops, are they going to be on odd/even or are they only going to be restricted if the utility manager claims there is an emergency?

Johnson: There is no farm land on the city's wells as far as I know.

Blum: This provides for sprinkling for lawns, gardens, premises, washing vehicles, filling pools, bulk water purchases or installing new lawns. You are only going to be able to do this between 5-8 pm on even/odd number days only if the utility manager has declared the rules in effect. He has the provision to say that any water use for irrigation of crops and commercial car washes can be included. Irrigation of crops is not included in the original definition; however, you can do a restriction across the board for those doing irrigation and commercial car washes.

Ament: If we don't have any farms that are on the Utility.

Johnson: There is no one on the utility for irrigation of farmland. If we stayed on the groundwater system you would draw down the system so that the city municipal wells could pump water.

Ament: My suggestion is that particular part could be removed. Under enforcement and penalty, it says the utility may refer the matter to the police department who could issue a citation for each offense. Do we really want the police department going out?

Harenda: The police department is the law enforcement body of the city. I don't think you want the utility crews going out and writing tickets.

Blum: If you are going to have citations written you can only do it through the police department unless you designate certain employees in the city to issue citations.

Ament: If the water utility determines someone is watering illegally, they can tell the police department.

Johnson: I believe in Waukesha, if their utility crews find someone watering illegally during the day they can use a write up slip that was approved at Council that goes to the police department and they mail them out.

Ament: I think the time limit would be impossible to enforce. I think you can remove the farm land issue. If the idea is to conserve water and prevent any emergency situations, it would seem much less likely with the Milwaukee water unless something went wrong with the system. Were you talking about having a tiered system so after so many gallons are used in a month or quarter, rates per gallon would go up?

Johnson: Waukesha and others have gone to that system. The more you use the more you pay.

Ament: That would seem to be much more of an incentive to do this on a tiered system than saying you can only sprinkle 5-8pm, and people turn in on, fall asleep and the water police write a ticket.

Dude: I like the idea of not watering between 6am and 6pm because it is not in your best interest to do that because you will use more water and get less. But, I would rather see the whole conservation package. We have agreed to get to a goal by 2020 to reduce usage by 10% per person. I think this can be put in a package with inverted rates, and other things, as you know Clear Water Wisconsin will have something to say about it. They just did that to the Waukesha Utility. If you have an inverted rate structure, you are trying to maximize conservation in using water and if you don't, you will pay more. We are going to conserve, and here is a way to do it, by not watering in the heat of the day, your water will go a lot farther. It is part of this goal. The other easy one is to pay money for new toilets. I would like to see this as part of a package and we as a committee need to develop a conservation and public relations structure.

Wysocki: Do we have a sense of urgency and a time to do this? If you think this is a critical component.

Harenda: Bringing the whole package is not a bad idea. The idea a few years ago was just to formalize the voluntary restrictions. We can always add to this in the future.

Ament: I would suggest this is the way to do it. If the DNR says it is not strong enough, we can add to it.

Morrisey: I support the ban between 6 am – 6 pm. It is difficult for working people to have a restricted time. My wife is a horticulturist and said it is better to water in the morning. I think we should continue the hand watering of gardens and perennials and issuing special permits for lawns.

Wysocki: I would be against any timeframes. We have been very successful with the odd/even days; it is restrictive enough with this. You may be creating an artificial timeframe.

Dude: I don't know what the DNR is going to say, but I have not heard that this needs to be in place before we hear from them. I would prefer to table this until it is part of a bigger package that we can sell. I think odd/even should be formalized. I would rather have that than some of the things I heard on the committee like you can never clean off your driveway or deck, or the kids can only play with water toys for an hour. If you think this is restrictive, stand by. I would rather make a package out of it.

Harenda: We already have a conservation plan in place, but we are just trying to formalize it into a document that is presentable and meet the requirements the DNR will eventually get around to. The feedback was helpful, if you have any additional comments please let Bob or I know.

UT 12-04 Milwaukee Water Expansion - Status of the state's review of the diversion application and the status of the DNR's enforcement of the radium consent order

Harenda: We are still waiting approval from the DNR.

UT 05-08 Westward Manor Lift Station Reconstruction- Recommend to Council the adoption of A Relocation order for the acquisition of property rights for a new sanitary sewer lift station at Geipel property (Tax key # 1167-999)

Harenda: We are waiting for additional information on this from Jim Hart.

UT 09-08 Milwaukee Water and Rate Case Requirements

Harenda: Nothing new on this item. The PSC is still waiting on DNR approval.

UT 01-09 New Berlin School District Request – Sewer Extension to New Berlin West High School

Not discussed

UT 02-09 Request to Amend Inter-Municipal Agreement between New Berlin & Muskego to Increase Number of Sewer Connections in Linnie Lac Sanitary Sewer District (deferred)

Johnson: JP and Ralph are working on the financial part of it to make the rates the same as Muskego is charging New Berlin.

Blum: We are going to draft the ordinance, they are going to receive it and review it. The NTE \$5,000 is for their engineering and legal review.

Harenda: Wouldn't they build that into our fees?

Blum: I don't think they want to charge the rest of their customers, just us, and I don't know if they are going to do a different rate structure for that issue.

Ament: Why aren't the applicants that want this extension paying that fee? Why are the rest of the Utility customers paying for this?

Harenda: Mark, you are going to put the agreements together, they are going to charge us \$5,000 review it. What would be the way to recoup the money?

Blum: You would have to have an agreement with these customers that you are going to serve and divide the bill into 5 properties.

Ament: I don't know why the utility customers would have to pay for it.

Dude: The other issue is that it is not a break even right now. There was a motion many years ago that we were going to charge as much to the people getting the sewer; I am talking about the other 87. We are losing about \$2,000 a year. To get that paid, we have to go back to MMSD.

Blum: I drafted an ordinance to do that and sent it to Ralph and it is under review right now.

Dude: Can you build any fees that we have to pay, this \$5,000 NTE to Muskego into the rates?

Blum: We put a provision in the draft to cover our costs internally to handle the billing, but that number wasn't intended to deal with the issue you are dealing with now. You could probably do is say that in the course of your agreement with Muskego or perhaps we can add to the ordinance a connection fee. We have a connection fee ordinance now, but it is for impact fee purposes. There is another statute under which that you can charge a connection fee and that could be toward that.

Dude: Could we take the fees we pay to Muskego, divide by 5 and make that the connection fee?

Blum: At the time that they would connect yes.

Wysocki: Aren't some of these non-assessable costs according to our assessment procedures?

Blum: We are not special assessing them. This would be a connection fee you could be determining over and above that. You are not specially assessing them for these charges.

Harenda: Can we?

Blum: I am talking about an ordinance with respect to the rates. You would be acknowledging the actual rate that we are paying to Muskego which might be a different rate that we are paying MMSD otherwise that could be charged.

Wysocki: There are projects that we have non-assessable costs when we put systems in.

Blum: Because of the 2 tiered rate structure we are dealing with different rates from Muskego than we had from MMSD, that is where it got complicated and the fact that they want to charge this additional fee for their internal review to service these people.

Wysocki: Is Ruekert & Mielke putting this together or our guys?

Johnson: JP and Ralph are putting this together.

Wysocki: They are going to charge us \$5,000 to review.

Blum: The email exchange was the following. We (Muskego) want some reimbursement for expenses for reviewing your contract and the proposed engineering. We asked how much? They said NTE \$5,000.

Harenda: JP wants us to authorize this amount to pay to the City of Muskego otherwise there is no authorization to proceed. Is there any way we can make a side agreement with these customers that are looking to hook up to put them on the tab for this before we authorize anything?

Blum: You could enter into a separate connection agreement or put it as part of this ordinance. We did that in the sewer situation with the Town of Brookfield sanitary system when we said to the customers whatever charges we would receive to facilitate that from the Town of Brookfield, you will be responsible for.

Harenda: The connection fee would just be for these customers, not the rest of the customers.

Blum: The connection fee would just be for those customers served by an independent provider which would be in this case Muskego. Anything under the normal MMSD through our own Utility would not.

Wysocki: Is there anything in the original agreement to cover future extensions?

Blum: We put a cap on the number.

Wysocki: We are still under that number.

Blum: They want to identify these specific ones. I would have to look at it, but I don't recall any.

Wysocki: I thought there was something in there that we made a contingency for because there was a specific number that we had in the agreement and I thought it said that Muskego would provide that service with no additional cost. Any more than that number would be a different thing.

Harenda: Mark please look at that agreement. Ralph and JP will bring something forth. I don't want to move forward with this until the Utility has it worked out.

Johnson: I believe there were 3 different options that they talked about. I don't have the details.

Harenda: Let's wait until we have that information.

UT 08-09 Amendments Regional Water Quality Management Plan

Harenda: Alderman Wysocki asked to put this on the agenda for informational purposes.

Wysocki: I didn't know what was amended in the Water Quality Management Plan.

Harenda: It was the sewer service area. This is for Buy Seasons and the other parcel.

Ament: The one parcel just west where the house is no longer there and maybe one other piece.

Harenda: In the formalized process it was approved by SEWRPC and the DNR and this body. This is amending the county's jurisdiction over that.

Wysocki: It is consistent with our most current urban service area. Nothing more?

Chiovatero: From my understanding no.

Schulz: The only reason I know about it is that I had a question from the State in context with our diversion negotiations because the 2 areas are identical and that amendment had not been released and they looked at the map and said it does not jive with what SEWRPC had on their website, but a couple of days later it popped up on their website and it contained 2 areas, 3 parcels that were amended. What we submitted to the state is consistent to your sewer service area which includes those 3 parcels.

Wysocki: SEWRPC, the state and everyone is on the same page.

Harenda: The other parcel is on Beloit Road by the Industrial Park.

Ament: You said 3, but it is showing approved by the Common Council September 23, 2008 and the minutes say 5915 S Moorland Road and 16415 W. Beloit. I don't see a 3rd one.

Schulz: The parcel on Beloit Road was initially 2 parcels but it was combined into one L shaped area.

Ament: That might be the one on Moorland Road. It is showing 2 tax keys. The Buy Seasons at one time was 2 separate parcels

Schulz: You are correct.

Harenda: There are 2 parcels. We approved for development the building they have today. They also purchased the option of the land directly to the south for further expansion. We can drop this from the agenda.

NEW BUSINESS

UT 10-09 Award construction contract for Calhoun Road and North Lane Water Main Extensions

Johnson: This is for the water main extension on Calhoun Road between Victor and Ryerson and a small section that will connect Greenridge subdivision to North Lane. This was approved in the 2009 CIP budget. Bids were taken out. The engineering part was estimated at \$173,800. Low bid was UPI Underground Pipeline Construction in New Berlin amount of \$170,435.00 with an additional \$17,043.50 for legal and administrative costs, inspection services and contingencies for a total project cost not to exceed \$187,478.50. Source of Funds: Water Utility Account 90-173430

Dude: I see a budgeted item of \$231,000 for Calhoun Road and \$32,000 for North Lane which is \$75,000 under your budget or you saved 28.72%

Johnson: That is how the bidding came in from \$170,000 to \$300,000.

Dude: This would be a good project to show what the contingency fees are and to track these like we had talked about earlier.

Johnson: Sometimes with the construction projects you get billings twice, other times more often.

Dude: I think your first estimate must have been much higher. The economy has a lot to do with that. It is a New Berlin contractor too.

Ament: We are authorizing \$187,478.50 and if they go over...

Johnson: We will bring in a change order.

Ament: If it goes over \$187,478.50 it comes back here for us to authorize it.

Johnson: Yes. The project is pretty straight forward. There should not be any contingencies.

Motion by Commissioner Dude to recommend to Common Council to approve the award of construction contract for the Calhoun Road and North Lane Water Main Extensions to the lowest responsive and responsible bidder, UPI Construction of New Berlin, in the amount of \$170,435.00 with an additional \$17,043.50 for legal and administrative costs, inspection services and contingencies for a total project cost not to exceed \$187,478.50 Source of Funds: Water Utility Account 90-173430. Seconded by Commissioner Morrisey and upon voting the motion passed unanimously.

UT 11-09 Discussion and Possible action to make a recommendation to Council regarding the application of the New Berlin School District to amend the New Berlin Urban Sewer Service Area Boundary to include NB West HS

Harenda: This was referred to us by Common Council. As you are aware we adopted the new boundaries for the New Berlin service area. We would have to amend those boundaries to include the New Berlin West facility. That follows a parallel path with SEWRPC and the adjustments of the ultimate sewer service area. In our ordinance the Council is looking for a recommendation from us as well as the other issue of negotiations. The intention is to bundle that together as we make the referrals forward.

UT 12-09 Discussion on conveyance of Information between the Mayor's Office and members of the Utility Committee, on operations as well as policy actions that impact the City of New Berlin Water & Sewer Utility

Motion by Commissioner Morrisey to go into closed session at 8:12 p.m. Seconded by Alderman Ament. Roll call vote: Ament – yes, Dude – yes, Morrisey – yes, Wysocki – yes, Harenda - yes

CLOSED SESSION

The basis for the items to be discussed in Closed Session is as enumerated in Wisconsin Statute Section 19.85(1) (e) Discussion and possible action to enter into closed session pursuant to Wis. Stat Sec. 19.85(1) (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. More specifically:

Discussion regarding negotiation strategy for a sanitary sewer easement and a developer's agreement for a private sewer main to serve New Berlin West H.S.

and 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:

Discussion regarding DNR enforcement of the radium consent order

Motion by Alderman Wysocki to go into open session at 9:28 p.m. Seconded by Commissioner Dude and upon voting the motion passed unanimously.

Reconvene to Open Session

Possible action and discussion on sanitary sewer easement and a developer's agreement for a private sewer main to serve New Berlin West High School.

Possible action and discussion on DNR enforcement of the radium consent order.

Adjourn

Privilege of the Floor

Motion by Alderman Wysocki to adjourn at 9:28 p.m. Seconded by Alderman Ament 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*