

**Minutes**  
**Water Resource Management Utility Meeting**  
(Formerly Stormwater Utility)  
**February 10, 2009**

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

Present: Alderman Ken Harenda, Alderman John Hopkins, Commissioner Jim Kern, Mayor Jack Chiovatero

Excused: Alderman Bill Moore

Others Present: Nicole Hewitt (Division Engineer), Cathy Schwalbach (Stormwater Engineer), JP Walker (City Engineer), Chuck Trevorow (Stormwater Supervisor), Alderman Wysocki, City Attorney Mark Blum & Sue Hanley (Administrative Supervisor Utilities & Streets)

Meeting called to order at 4:46pm by Alderman Harenda. Roll call and declared a quorum with all members present except for Alderman Moore who is excused.

**Old Business**

**SW 01-09                      Minutes from January 13, 2009 Meeting**

Motion by Alderman Hopkins to approve the minutes from the January 13th Water Resource Management Committee meeting. Seconded by Mayor Chiovatero and upon voting the motion passed unanimously.

**SW    04-09                      Approve Survey Work for Drainage Issue at 3185 Sunny Slope Road**

Harenda: Staff was asked at the last meeting for additional backup material.

Schwalbach: The packet includes the original issue paper from Alderman Wysocki, an area map showing the Leary property on Sunny Slope Road, background information describing the Leary's concern about the properties around them being built higher. Staff researched and found the bank did replace the curbing along the north property line with curb stops which are open and allowed the water to drain directly down. That had been a condition on the building permit, so our Code Compliance specialist sent an order to replace that and it was completed. After that the Leary's contacted staff with further concerns.

She summarized the bank property: Lincoln State Bank originally developed in 1990, now Harris bank. Prior to that property was bowling alley. City records show that Lincoln State Bank came to the City for a building permit in 1989. There was not a requirement for a storm water plan or storm water detention since the development was not increasing impervious area. The practice of City staff was still to check the drainage impact of development to make sure that it was not increasing storm water runoff to a downstream property. Records that we found included the topography from 1964 when the previous development, a bowling alley, was in existence on this property. The 1964 topography showed that drainage came off the bowling alley property and ran north onto the Leary property.

City Staff required that the bank development slope as much of the eastern portion of the driveway as possible toward Sunny Slope Road by installing a 6-inch inverted crown in the driveway. During construction, the builder proposed an alternative to install curbing along the north side of that driveway area instead. Both methods would carry the runoff toward Sunny Slope Road. The curbing alternative was accepted by Staff and believed that with the curbing, less water would flow to the Leary property to the North than had flowed prior to the bank development.

When Harris Bank took over the Lincoln State Bank building approximately one year ago, there was no increase in impervious surfaces. Because the site conditions remained the same, there were no new requirements for storm water detention.

Waterford Square Condominiums developed in approximately 1993 is just north of the Leary Property at 3185 S. Sunny Slope Road. City records show that there were storm water calculations submitted and detention was designed as a series of retention ponds and a storm sewer system with inlets to capture all the runoff from the development and from off-site drainage coming onto the development. No part of Waterford Square was proposed to drain toward the Leary property.

There were two inlets installed adjacent to the North property line of the Leary residence. Staff walked through the area with permission from Mr. and Mrs. Leary to verify the existence of these inlets and found them to be in the vicinity of the location indicated on the plans and verified the inlet elevations by comparing the as-builts of the system to the plans. They were found to be set at the proper elevations. Actual ground elevations around the inlets and along the north lot line of the Leary property were still in question. Staff could not determine without having accurate survey elevations whether or not the drainage was effectively getting to these inlets.

In August, 2008, Justin Johnson, McClure Engineering, met with City Staff on behalf of Mr. and Mrs. Leary. Staff answered his questions and shared the information regarding the adjacent properties. Staff shared with him their observations and that the ground elevations around the inlets and along the North lot line of the Leary property may not be such that drainage can get to the inlets. In October, 2008, Mr. Johnson met again with City Staff and had created a plan for storm sewer installation on the Harris Bank property.

Alderman Wysocki recently contacted City staff to request the City direct and pay for survey work on the Leary property to verify the grades within that property. This is the request currently before the Committee.

Staff has recommended against the City paying for the survey work since a City structure is not in issue, and that a precedent would be created for the City to verify property grades to address stormwater issues around the City. This would be extremely burdensome for the Utility budget.

Harenda: Does the Waterford Square Condominiums have a developer's agreement with respect to that?

Schwalbach: The developer's agreement called out the maintenance requirements of the owners of the condo association for their facilities.

Harenda: Is the survey work required to determine if the elevations are correct flowing into those inverts?

Hewitt: I don't believe spot elevations are a requirement.

JP Walker agreed they were not a requirement.

Harenda: The intent was when the infrastructure was put in place for water to flow in that direction to the outlets.

Hewitt: Correct.

Harenda: Who checks on that?

Hewitt: Prior to building permits, they verify grades in the area by field visits or elevations through contour maps to tell people where their buildings can go and such.

Harenda: Does staff verify everything was done correctly or as approved?

Walker: We have a recertification requirement to check grades along property lines to make sure draining is not impacted. When Waterford Square was built, I don't know if it was a requirement. The elevations of the structures themselves were verified as shown on the as-builts. Between the structures I have no record as to what is verified.

Harenda: Currently we are verifying everything is correctly in place?

Walker: Yes, that is recertification which is a requirement now.

Kern: Were there any problems prior to April 2008 reported by the Leary's?

Schwalbach: They said they had expressed concern before, but we found no records of this.

John Leary 3185 Sunny Slope Road: I have lived in the property for 33 years. We had a meeting with the City Engineers May 2008 and they said our property had to be delineated. Doug Davis said the water is supposed to flow from National go across the bank's property onto our property and drain to the storm sewer in the front of our yard on Sunny Slope. The back catch basin was never meant for our property.

Schwalbach: My conversations with Doug have been that there are 2 catch basins, the one near Sunny Slope Road and the one in the back. We inspected both of them.

Mr. Leary: The catch basin in the back is over a foot higher than our property. There is a berm that the bank put up so the water from that catch basin wouldn't come back into our property. Are you aware of that?

Schwalbach: I am aware that the inlet in that catch basin in the rear of your property is higher than the pipe which is lower which is where the water flows to and that is the elevation you want to be concerned with.

Mr. Leary: Doug Davis said the water was supposed to come off the bank cross our property all the way to Sunny Slope without running in our basement. The water is sitting in our backyard and they flagged us as a wetland.

Hewitt: The reason for the delineation is that part of your property is showing up on the County's 2005 Land Use Map done by SEWRPC. They have a symbol that shows the possibility of wetlands less than ¼ acre.

Harendra: There is a requirement in our code if a property comes up for potential development to have the property's wetland delineated. It says there may or not be wetlands but only going through the delineation process do we affirm that.

Mr. Leary: We had our property sold last year in March to someone who was going to put up a business and they told us we were wetlands, which we did not know about. The guy said you can't build over wetlands, so everything is off now. I don't know what we are supposed to do. Who lets this bank run all of their water on our property and if it is not stopped it will become a wetlands. The bank's downspouts run underneath the asphalt onto our property and the downspouts from Waterford Square. I have pictures. *(Note: the photos showed the curbing not the downspouts)* You can't run your downspouts off the roof and underneath the ground and onto our property, it is illegal.

Hewitt: This is the first we have heard about downspouts being directed at the property.

Harendra: This is not referenced in any of the reports. It is against the code to advance downspouts onto your property.

Kern: Is that something you can verify?

Hopkins: They can go out and verify this.

Mr. Leary: The wetland specialist said if you don't stop the water coming off of the bank without the water draining, this property is a wetland and is useless. It is commercial property. Who would want to buy this property?

Hopkins: Did you say the water from Waterford Square also drains to your property?

Mr. Leary: They have berms up and there is nowhere for the water to go. The downspouts go underground and go onto our property too off their roofs.

Kern: Do you have an exit point that you can see the water draining from the bank and condos onto your property?

Mr. Leary: The curb that was put in is only a half a curb that goes along the side of our garage. It is open in the back 30-40 feet. The water from National comes straight across their property, their downspouts are coming onto our property and it is flooding into our backyard. The curb is useless. They put a curb up about 10 years ago and they plowed it into our yard and it is still sitting there. They put up a new curb last year to shut us up but it is open in the back. Doug Davis said the water from National will come across the bank's property.

Hopkins: I had not heard any of this prior to tonight. Can staff verify where the water is coming from Harris Bank and Waterford Square?

Schwalbach: We looked at the Harris Bank property and did not see water coming from Waterford Square. Looking at the plans Waterford Square was designed to handle all of its own runoff and it goes into their pond. The 1964 topography shows the water from Beacon Bowl which was there before the bank had been running on the Leary property and that is currently what is happening.

Mr. Leary: The water would go into the Young Blue farm but the farm was lower than Waterford Square which is all built up.

Hewitt: That is why they were directed to install the inlets.

Mr. Leary: There is only one. The one in the back was never for us. I have it from Doug Davis. The water was supposed to come all the way across our property to Sunny Slope. How is it not going to stop in my basement? That curb is a joke. Why didn't they take the curb to the end across the whole property because you were afraid you were going to flood the fiber optics building back there because that is the lowest spot?

Harenda: The curb should be going more to the west or to the east?

Mr. Leary: The curb is on the south property line.

Harenda: The old topographical map shows you are at a higher elevation than the old Beacon Bowl and the Waterford Apartment Condos are at a lower elevation than your property. You are stating that was built up.

Mr. Leary: The curb stops and is open all the way to the back and is about 4 feet higher than our property.

Hewitt: I don't believe the building in the back is the bank's property.

Mr. Leary: The building was built when Beacon Bowl was there.

Schwalbach: If you look on your close-up map, you can see their lot line ends and the Leary property continues. Their curbing was only required on the Harris Bank property because they could only install it their own property and it does not go onto the adjacent property so it stops on their lot line.

Kern: What is different with the bank? No elevation has changed with the bank and Beacon Bowl right?

Schwalbach: I checked the inspection files for the Beacon Bowl and Harris Bank building elevations. The Beacon Bowl was actually higher than the Harris Bank. The way grading was done, the impression was that it was higher because it was brought closer to the Leary property where the elevations were higher, that may be the change. That doesn't mean water drains differently though.

Mr. Leary: The Bowl was farther out on National, they had a big backyard on the bowl and the grade wasn't straight down it was more level.

Harenda: The issue we have is the Utility hasn't gone on private property in the past to do survey work or any type of stormwater construction unless it has been worked out previously, for example Kelly Lakes. This sounds like it has something to do with private development. Some things might have been missed. Does the City have any authority to go back at private development if there is some responsibility here that they are adding flow to the Leary property or does that fall onto the private property owner to follow up on that?

Attorney Blum: The issue is whether they are in compliance with the original approvals that they received at the time they built or if they are violating any existing City stormwater ordinances. Assuming answers to both questions is no, the City would not have authority to require the bank to change their grading.

Harenda: The property owner says that potentially there are some pipes flowing onto his property.

Attorney Blum: If there is a pipe that is directed at their property that would be an issue under our code.

Harenda: Nicole or Cathy did you see anything like that?

Hewitt: This is the first that we have heard of the downspouts. We will look into this as it is a code violation.

Hopkins: Can we check to see whether there is water coming from Waterford Square?

Schwalbach: We can double check that however; it is hard to see elevations visually when they are close.

Harenda: Through your research you have looked that the prior agreements and commitments made by the developers have complied with the city code at the time they were approved?

Hewitt: From the information that we have, yes. The only thing that was outstanding was the inlets on the Waterford Square property, the grates look like they are 1 – 1 ½ feet below the surrounding grades that either a

swale was possibly filled in or not, we don't know because we don't know what the grades are out there. We don't know if it is functioning the way it is supposed to.

Kern: Would that potentially be a violation by Waterford Square?

Attorney Blum: I don't know if we have a detailed grading plan that shows what the elevations were supposed to be. Assuming we did and we can compare it with what is actually there now, it is possible there could be a violation.

Hewitt: We have a grading plan for the area. The question that still remains is can the Leary property drain to those inlets?

Attorney Blum: I assume those grates were put there to deal with stormwater on Waterford, not the Leary's.

Hewitt: My understanding is they are there to pick up drainage coming across there because when they built they were blocking the drainage. Those inlets were built to pick up the drainage.

Attorney Blum: The elevations were set based upon the topography of the Leary property.

Hewitt: Correct, from the information they had at the time. The question is whether the elevations now on the Leary property can still drain to those inlets.

Attorney Blum: Mr. Leary have you done any grading on your property?

Mr. Leary: No. It is the same as it was 33 years ago. I was told the back catch basin was never for our property.

Attorney Blum: I don't know what Doug's comments were as to the point of those when it was approved. We will look at the maps. In the absence of any documentation showing there is an inconsistency between what was built and what was approved, we don't have a basis to go after either the bank or Waterford Square.

Mayor Chiovero: Does the backyard ever dry out in the summer?

Mr. Leary: I hired a wetland lady to do soil samples and she said the water is in the land and it is never going to dry out. That's why I haven't been cutting it because I get stuck with the tractor.

Mayor Chiovero: Did the wetland's person identify it as wetlands or see any plants or soils that dictate wetlands?

Mr. Leary: There are wetlands plants and because there is no place for the water to drain.

Harenda: Staff please check into the downspouts and grates to see if these are contributing factors.

Mayor Chiovero: I don't know why we would have installed the rear grates if it didn't serve a purpose.

Hewitt: There is another property back there that has a parking lot that comes back and they installed a berm. There are quite a few things going on in that back corner with that inlet and the other inlet.

Kern: Are there problems with any other residences on Sunny Slope?

Hewitt: No. Their property is basically surrounded by development now.

Harenda: Is that common when inlets are put in place to take care of the sheet flow coming across the Leary property that would have flowed onto the Waterford property?

Hewitt: Yes, because they cannot block drainage. If the water has historically flown that way we don't change the way it is flowing.

Harenda: How do we verify this on the developments in the future?

Attorney Blum: That is why we do recertifications now and require the developer to bring in a survey that is certified to say these are the elevations to compare that with the approved plan and verify that is the case. It sounds like

they established these inlets based upon dealing with the flow off the Leary property and I don't know what kind of survey information existed that it was based on when they made the determination where the inlets should be.

Harenda: These inlets were put into place by Waterford Square. Shouldn't it be their responsibility to certify that they are working correctly?

Attorney Blum: That was not required at the time.

Hewitt: There are as-builts of the inlets. We have verified the inlets are at the correct elevation within the tolerance of the approved plan.

Harenda: It was their plan.

Hewitt: Correct.

Harenda: For example, if a retention pond put in 30 years ago and a Homeowner's association is no longer in place to take care of the maintenance who is responsible instead of the City taking over. How do we recertify old properties? Do we have any authority to look at these situations?

Attorney Blum: It would depend on when you are talking about but it is difficult to answer a general hypothetical like that because the requirements have changed over time. I worked with Eric Nitschke (former Stormwater Engineer) developing a maintenance agreement for the purpose of identifying the responsibility for maintaining the ponds in the example you gave and we also put in that the developer, then the homeowner's association, and if the association is not functional, it is the responsibility for the individual property owners within the development on a pro-rata basis. That gets recorded so the information is in the hands of people that buy those lots of what the responsibilities are. At that time, the feeling was if we identified the elevations of the grades and we verified that, it should be sufficient because everything should follow. It is difficult now to look back to determine what was being reviewed, but in terms of compliance we can only hold them to the requirements at the time and what our existing stormwater ordinances provide for.

Harenda: But they are still responsible for the structures now correct?

Attorney Blum: Right. Assuming they were built as they were directed to be built it is difficult to go back and say you have to change that. I think the bigger issue is whether the grade around those is sufficient to direct the water where to go. If we had a detailed topographical survey to show the elevations in enough spots to compare it to the existing condition there may be an issue there, but we are talking hypotheticals at this point.

Chiovero: I imagine when they set those inlets they did based on topography of the Leary property or I wonder if they were put in for any future grading to be done on the Leary property.

Hewitt: They were set at elevations so that the Leary property could drain, at least one of the inlets. I am not sure about what he was talking about the other inlet but we will check into that. We have as-built record of those inlet elevations. What happens on other properties is that the grading gets down, everything is checked and sometimes landscapers come and fill in little swales. Things happen over time. The question is whether or not it is the same condition it was when it was approved or built.

Harenda: That falls back to the responsibility of the property owner. I have the same problem with residents in my district who argue over their survey maps. Mine says this, yours says that. The consensus of the committee is to have staff go out there and look at the issue of the downspouts.

Hopkins: You may want to check with Doug Davis to see what he remembers about this.

Hewitt: We have had many conversations with Doug.

Kern: In fairness to the Leary's we should do a thorough review and ensure the bank and condo development are in compliance with what they should have been in compliance with when their properties were built.

Attorney Blum: Based upon the information we have now, they are in compliance with what was approved. The issue before the Committee is do you want to pay for a survey to find out if the surrounding property is graded as provided for in that plan. That would provide additional information to make a decision. The question is whether

the City should pay for that or the Leary's need to do, and if there is a violation we will cross that bridge or they can pursue it civilly. Right now, we don't have any evidence of non-compliance or we would be pursuing that right now.

Harenda: Direct staff to look at the downspouts and make sure everything is in compliance and report back to us.

## **NEW BUSINESS**

### **SW 05-09 Approval of Intergovernmental Agreement for Public Education Program Required by WPDES Permit**

Schwalbach: This is for the Public Education Program required by our WPDES Permit. We are in a group permit instead of an individual permit and went together with other municipalities in the Root River Watershed to save some of our permit costs. To go forward we need to sign an IGA with the other municipalities. The Town of Bristol has taken the lead as our fiscal agent and has signed a contract with the Root Pike Win Group. The rest of the municipalities need to sign an IGA and will be paying the Town of Bristol who will collect the funds and pay the fee. There was one minor change to include each one of the municipalities will be listed under the indemnification separately at the request of Attorney Blum.

The implementation schedule was explained. Root Pike Win has started public perception survey, putting together rain garden workshops, one of which New Berlin will be hosting. The DNR representative who oversees our permit is a member of the Committee and attends the meetings and has approved in writing to fulfill the requirement of our permit. Program costs are based on the size of the community have been budgeted.

Harenda: We are a member of the Root River Win Group?

Schwalbach: We are a member of the Root River Group who is contracting the Root Pike Watershed Initiative network who is a non-profit organization active in the Root River Watershed, is familiar with doing these programs and is already doing public education, media work and training and have been doing it for about 8 years.

Harenda: What type of input do we have? We have a third party doing this.

Schwalbach: There is an advisory committee which I am on and we meet regularly to oversee the work that Root Pike Win is doing and to give input, guide the work, and make sure the DNR is involved and approves.

Harenda: The contract with the DNR has been approved by the City Attorney.

Schwalbach: Correct.

Kern: Is this a 2 year agreement?

Schwalbach: Yes.

Harenda: Why the Town of Bristol. They seem like the smallest community.

Schwalbach: They are. Root Pike Win asked for volunteers and they were willing.

Kern: Do they get a cost break?

Schwalbach: I believe it is a \$200 administrative fee for the year.

Harenda: As these things come forth, it doesn't have to be at a meeting, just pass along to the Committee members what we are getting out of this as a plan is implemented.

Schwalbach: I will update you quarterly.

Kern: Do any communities choose not to be part of this that could be part of this or is this every potential one?

Schwalbach: I believe all of the members of the original Root Pike group have joined; there may have been one that pulled out to do their own program. The risk is that the burden of the program is on your own shoulders. We have had a few additional municipalities to join in where Root Pike Win was aware of another group in the watershed and no one had a problem with that because the expenses are shared and we have more communities working together on this.

Harenda: Will the cost increase over the years?

Schwalbach: Next year's cost has an increase of about \$200. After that we will reevaluate.

Harenda: The updates will help us determine if this is applicable to what we are trying to accomplish. If we need to pull out in future years if it is going in another direction, we have the ability to do so.

Schwalbach: There is a clause that says if we are not happy with the program, we can pull out with notice.

Motion by Alderman Hopkins to request the Common Council to approve the Intergovernmental Agreement with the Town of Bristol, representing the 17 municipalities of the Southeast Wisconsin Clean Water Network, as fiscal agent in the cooperative implementation of the Information and Education Program required by their WPDES permits. Source of Funds: WRM Utility Promotions/Education Account # 70710710.54350 in the amount of \$3,150. Seconded by Commissioner Kern and upon voting the motion passed unanimously.

Motion to adjourn at 5:35 p.m. by Commissioner Kern. Seconded by Mayor Chiovatero and upon voting the motion passed unanimously

*Please Note: Minutes are not official until approved by the Committee  
Respectfully submitted by Sue Hanley, Administrative Supervisor Utilities & Streets*