

Minutes
Water Resource Management Utility Meeting
(Formerly Stormwater Utility)
March 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 Bill Moore, Alderman John Hopkins, Commissioner Jim Kern, Mayor Jack Chiovero

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

Meeting called to order at 4:45 pm by Alderman Harenda. Roll call and declared a quorum with all members present.

Old Business

SW 01-09 Minutes from February 10, 2009 Meeting

Nicole Hewitt asked that on page 3 of the minutes that the photos Mr. Leary referred to include a note to say they were of the curbing. Sue Hanley has made this correction and it is posted on the website.

Motion by Alderman Hopkins to approve the minutes from the February 10th Water Resource Management Committee meeting with the change noted. Seconded by Commissioner Kern and upon voting the motion passed 4-0 with Alderman Moore voting present.

SW 03-09 FEMA Utility Reimbursement for June Flooding Expenses

Harenda: Scott Schulpus the Director of Emergency Government sent a letter to the Committee that said the final grant fund payment from the storm events that began on June 6, 2008 had been received from FEMA in the amount of \$111,394.41 and this amount was credited to the WRM Federal Grant Account.

Schwalbach: Staff is putting together a group of drainage list projects that can be bid out to help bring the drainage list down so there aren't so many people waiting. We will be bringing that back for approval hopefully next month.

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

Schwalbach: Nicole, myself and our Code Compliance specialist Corliss Tischer visited the Leary property and the properties around it to look for drainage pipes as Mr. Leary had mentioned. There is a downspout coming off the bank property and looked to be traveling under the bank driveway and directed onto the Digger's Hotline property immediately west of the bank. We don't know exactly where the lot lines are, but it was falling on the Digger's Hotline property. When someone's property is encroaching onto someone else's property, the City does not have jurisdiction and it is normally handled between the property owners. We did try to evaluate if the pipe was violating the City Code which requires a 10 foot setback, but did not know how old the pipe was and how long it has been there. The Code requirement was put in place in 2005 and only affects pipes installed after 2005. It did not look like the pipe was installed after that and we couldn't prove it has been. We did not believe they were doing anything against City Code.

Moore: Was Digger's Hotline informed of this pipe?

Schwalbach: No. If we are dealing with a property owner on something, we will inform them. The Digger's Hotline property we believe was part of the bank property in the past and it may have been done when they were one property, but later developed separately.

Moore: This will be taken care of between the property owners and you will inform Digger's Hotline. If it was done after 2005, this pipe would be in violation of the Digger's Hotline property but not the Leary property.

Schwalbach: Correct. We could not ascertain if it was in violation of the Leary property because we didn't know where the property line was.

Moore: It doesn't appear drainage goes to the Leary property from the pipe?

Schwalbach: It is possible that it does. The drainage does go downhill toward the Leary property. That would not be a violation. Water runs downhill and it must be allowed to run downhill.

Moore: Is it a problem if it is from a pipe that is too close?

Schwalbach: We would have to know for sure that it was installed after 2005.

Chiovatero: Do we know where this pipe originates and if it is connected?

Hewitt: There is a downspout that goes underground by the drive-thru and it appears that is where it is coming from but the times we have been out here there have been leaves in the end of it and the leaves are still there. I wasn't out there today when it was raining, but after several rains the same leaves were still there so I do not know if there is flow coming out of that pipe. It might be a sump drain too.

Moore: Or it might be frozen.

Hewitt: It could be frozen. The leaves were not jammed in there.

Chiovatero: Wouldn't the easiest fix be to ask the bank to disconnect the downspout?

Schwalbach: We can not require them to disconnect that unless they tell us it has been installed after 2005 and we know it is in violation of our code.

Harenda: Can we take the position that this is in violation and have them prove otherwise? We have that before sending out the letter to take corrective action.

Schwalbach: I would like Attorney Blum to answer that.

Blum: My first suggestion would be to check for the development application when the drive-thru was put through which we would have had to approve at the city level and we would have the date of construction and that is most likely when the drainpipe was installed. You could send a letter saying this pipe would violate current city code; however, we are trying to ascertain where the source is and when it was constructed and ask them to respond to that. I would not accuse them of a violation unless we have the facts to support that.

Moore: It would seem to violate the spirit of the agreement where there was a curb put in to keep water from flowing from the bank to the Leary property would it not?

Blum: Assuming that is where the flow is coming from, I think it is a slippery slope to try to get into the spirit of the agreement. We can look at the terms that were required and hold those parties of the agreement to the standard. I think it would be helpful to look at the plans when the driveway was constructed and what was approved at that time and if this went beyond the bounds of what was approved.

Moore: If you are putting up a curb to keep flowage from going on nearby property but put a pipe underneath or retain a pipe that was there, you are violating your objectives.

Blum: I think we came back and asked them to extend that curbing because of that issue. I don't know if the downspout was taken into consideration as part of that review. We need to look at the plans and the date.

Hewitt: The plans for the driveway area were approved in 1995. None of these pipes were on the drawings.

Moore: Does that mean they were installed after that point?

Hewitt: Not necessarily.

Blum: I am just guessing if they were not on the City approved plans they were constructed sometime later. If they were and if it is contrary to plans, we have another issue. Those may or not be part of the drainage plans we approved so it may or not have been an issue that was dealt with and therefore something we can be concerned about as far as now having to do enforcement action.

Harenda: It looks like the parking lot has been repaved since 1995 and it could have been added at a later date.

Blum: The first step is to send that letter asking for permission.

Schwalbach: Checking around the north side along the condos there were several downspouts, none of them looked to be close enough to the lot line except for one that looked to be about 8-10 feet from the lot line. The drainage coming from that pipe; however, ran directly into a swale (see photo) that runs along south of the condo property and heads east toward Sunny Slope Road. The water that comes from the downspouts gets caught in the swale. We didn't know exactly where that pipe was, not knowing where the lot line was there and when that was installed.

Kern: That area of the swale does not abut the Leary property?

Schwalbach: The swale itself was within a few feet of the Leary property. All of the downspouts were a minimum of 10 feet, most of them setback at least 20 feet and there was just one that may possibly be somewhere around 10.

Kern: All of that flows to Sunny Slope?

Schwalbach: Yes.

Moore: In the 3 photos it appears that all of these show a swale that is north of the affected property. It looks like at the northwest corner of the Leary property there may be some drainage out of the wetland into the swale.

Hewitt: In the 1963 aerial photo when the Beacon Bowl was on the property, it appears there is a swale on the Leary property that runs north to about the middle of the property that corresponds with that the old topo map that shows the swale. In the 1990 aerial photo it does not appear to be in existence and perhaps it is starting to get overgrown or accumulate drainage there. The 1995 aerial shows the whole back portion is a wild area, whether it is a wetland or not, it is an unmowed area.

Chiovero: Didn't the Leary's say that because it was wet that they quit cutting it?

Hewitt: Correct.

Chiovero: The topo from 1964 showed the drainage coming off National Avenue and goes toward the Leary property and looks like it continued on toward where the Waterford Square property is now.

Hewitt: Correct. We have a topo of Waterford Square and that shows the swale.

Chiovero: It appears the Leary property was always a flow through and now it looks like it is being diverted to the swale on Waterford Square and then pushed down to Sunny Slope.

Hewitt: That would be the intent.

Moore: The 1964 topo shows the Leary property accepting flowage from the south to the north that would mean he should expect some wetness there. On the 2nd topo, if water that was draining farthest to the north and is now directed back to the swale does that possibly raise his water table to create more of a wetland in his property?

Hewitt: The drainage that comes off the Leary property would use the swale to get out. There is not blocked drainage, it is not trying to go through the Waterford Square property it is trying to follow that swale.

Moore: But in the 1964 topo shows how it continues to the north.

Hewitt: There would not be an increased flow to the Leary property; it would be directed into the swale.

Moore: Because the swale is there and it is no longer going north does that raise the water table for the Leary property.

Hewitt: No.

Harenda: You are saying the water that is cascading over the Leary property and moving north flows into the swale and migrates to the east toward Sunny Slope. There is no berm or raised area between the northern property and the Leary property.

Hewitt: There are bermed areas to prevent the flow from Waterford Square to come back onto the Leary property.

Harenda: That wasn't there years ago. Water just flowed across the Leary property to the north. Now water comes off the Waterford Square into the swale and it goes east. Water from the Leary property going to the north now cannot get to that area and flows into the back half of his property.

Moore: Not necessarily flow back, but raises the water table because it is sitting there and cannot flow out.

Hewitt: I don't think the increased flow into the swale itself would increase the water table on the Leary property.

Kern: If you go back to the 1963 aerial there was a swale that flowed all the way up to the drainage easement. When you go to 1990 it looks like it disappeared. If you no longer have a swale, water is going to just stay put. He lost his swale to the north and water is trapped in the back of his property.

Hewitt: That is one thing that is possibly happening. There appeared to be a swale that ran through that does not appear to be out there any more.

Chiovatero: Could it have silted in or filled in?

Hewitt: I don't know.

Chiovatero: I am looking at the 1998 survey from Technical Engineering Consultant and somebody went onto their property and did a topo. The flow goes to the southeast corner of the Leary property, but there was one area that was down where the swale used to be, but yet the inlet elevations are still lower than that. The water should be flowing to the inlet.

Hewitt: That was why we suggested that they have a survey done to see what could be done to get the flow directed toward the swale.

Chiovatero: The original request was for us to do a survey for them. What would the survey do?

Hewitt: They asked us to give them suggestions and we had talked with their engineer and our last suggestion was that they get additional topo out there to see if could indeed flow to that swale.

Chiovatero: If we can prove it can't flow to the swale, it would be up to the property owner to regrade.

Hewitt: Correct.

Chiovatero: Everything we have shows it flows to the swale or through the property unless something has changed on the property. We did see a change on the property from 1964 to 1990.

Harenda: City Attorney made a suggestion that staff send a letter to the bank to try to access what was done there. My suggestion is to write a letter to the Leary's and tell them what we did find. They can do their own survey if the numbers are off. It is between the 2 property owners to decide to correct action unless they can show there was something that the city missed. I think we have covered our bases. Do we want to have this to come back to the committee or send a letter to the bank to collect additional information as to when the pipe was put in?

Hopkins: I think it would be fair to the Leary's to send a letter to the bank and get the information and pass it on to them. At this point I don't believe the City is liable for doing the work there.

Kern: The Leary's seem to think the bank is causing the problem. I think we do need to send them a letter on what information we obtain from the bank.

Harenda: I think review it and give them the information we have. I don't know if we want to give an opinion.

Blum: Our responsibility is to look back to see what was approved and find out based on the information available, what was done is consistent with what was approved and if it is not we start an enforcement action. If it is we can

report that back to the Leary's that what appears to have been authorized and approved was built. Unless there is a violation of our current stormwater regulations, there's not a whole lot more we can do at this point.

Moore: I agree, although we do need to be careful. If he has a wetland there we should not use the words regrading because that would be illegal. The historical slope and drainage from the bank to the north through his property was before the time of the bank so even if there is some water that does flow, even through that pipe; it may not be as much as the historical flow. We need to be diligent but careful.

Schwalbach: Staff also had concerns about the wetland would complicate this further.

Harenda: Any action taken by the property owners would have to comply with our current standards and ordinances. If they are looking at regrading they would have to request approvals.

Chiovero: I think one of the complaints the Leary's had was the bank property is higher than them and due to the construction of Waterford Square and looking at the topos from 1964 and 1998 it does look like they raised the grade north of him and did create a bowl for him. Looking at the topos the flow had not changed on his own property from those 2 dates, I can still see some of the same elevations and the water does flow through. Whatever caused the old drainage to close up, whether it silted in, something happened naturally or it was something he did on his property while he was maintaining it, we don't know. We can send a letter to the bank to see if they can research the pipe and send him the information. I don't know if we were to survey the property that it would change because looking at the surveys from 1998, some of the grades are still the same at least on the Leary property from 1964.

Moore: There is a possibility that someone in the past said we have to maintain historical drainage through that property and with the curb somebody said we need to maintain the pipe to maintain historical drainage otherwise it would get too dry and not have the drainage. There is no way to prove that unless there is something written.

Hopkins: We have to rely on what staff is telling us. I don't think anyone on the Committee can prove one way or another over the years.

Harenda: Staff please send a letter to the bank to collect information and prepare some correspondence to the Leary's on our findings and it is up to them where they want to go with this? In the past we have not been involved in private drainage or survey issues that are not in the city's right-of-way. If we did it would open the door for others that have been denied. We don't have to bring this back to the Committee.

Chiovero: We did research to ensure the as-builts have been certified correct?

Schwalbach: That is correct. We did check on the elevations to the as-builts and they were to the plan.

NEW BUSINESS

SW 06-09 Announcement of Rain Garden Workshop

Schwalbach: The Rain Garden Workshop is part of our public education program that we are funding. The Root-Pike Watershed Initiative is sponsoring 4 in the southeast Wisconsin area and it is open to anyone. New Berlin is hosting one on Saturday March 28th from 9:30-11:30 in the Council Chambers. Pre-registration is required and information is available in the DCD Department, on the website, cable channel and in the library. We hope that in the future we will be doing a hands-on workshop in New Berlin that we will be inviting the public to.

Harenda: Are there any site in the properties that we hold to do one of our own?

Schwalbach: We are looking at some. The Street Department did install a rain garden at the recycling center with a rain barrel. Photos are on the website showing the plantings and the layout and the one we are doing in the training is based on the DNR standards.

Moore: If it wasn't inappropriate, which is, I would love to volunteer my property, but since that is not possible, I would like to participate in the actual creation of one in the future.

Schwalbach: This will be a very detailed training session, but it won't be a hands-on until we get that part of it.

Schwalbach: There is a grant program for anyone living in the Root-River Watershed. The information is available with the workshop information. Anyone who would like to put one in on their property, there is some assistance with plants and you are required to come to one of the workshop and you can fill out an application, available in the DCD department also.

Moore: The area is the far southeastern section of the City.

Schwalbach: Correct. If you are unsure about it, give us a call in the engineering and ask for stormwater.

Harenda: Is there any way to have a contest or do something internally or offer additional funding?

Schwalbach: Any encouragement or input you have as a committee, please let us know. There have been questions for someone not in the Root-River Watershed, would the Utility do something for them since they can't obtain grant funding. We can look at the budget to try to assist people.

Harenda: We discussed this at Council and the Utility and we signed off on the contract to get the biggest bang for the buck, but is there something internally to facilitate a reward or incentives for the best rain garden. There isn't a lot of funding, but there may be something to do to facilitate some of these causes through the city.

Motion to adjourn at 5:29p.m. by Alderman Hopkins. Seconded by Commissioner Kern 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*