

**AGENDA**  
**PUBLIC WORK'S COMMITTEE MEETING**  
**Thursday, January 15, 2015**  
**7:00 A.M., Allouez Village Hall**

**NOTICE IS HEREBY GIVEN THAT ACTION BY THE COMMITTEE MAY BE TAKEN ON ANY OF THE ITEMS WHICH ARE DESCRIBED IN THIS AGENDA. ACTION TAKEN WOULD BE TO MAKE RECOMMENDATIONS TO VILLAGE BOARD FOR THEIR APPROVAL**

1. MODIFY/ADOPT AGENDA
2. APPROVE MINUTES from the DECEMBER 11th MEETING.

**OLD BUSINESS:**

No Old Business

**NEW BUSINESS:**

3. DISCUSSION/ACTION: FINAL ACCEPTANCE OF THE HERITAGE HILL STORMWATER TREATMENT SYSTEM PROJECT (DPW Berndt).
  - a. The project is complete and we would like to close out the WDNR loan. To do so the village has to certify the project complete and that the wage requirements have been met. The engineer has provided certification that wage rates have been complied with. Recommend approving project close-out.
4. DISCUSSION/ACTION: CONSIDERATION OF JOINING THE LEAGUE OF MUNICIPALITIES STORMWATER GROUP (DPW Berndt).
  - a. Contributing funds to this group is an option for the village. The funds will be used for legal assistance regarding state stormwater regulations.
5. DISCUSSION/ACTION: SIDEWALK SNOWPLOWING COST (DPW Berndt).
  - a. This memo is to follow-up the question about increasing sidewalk snowplowing and its cost.
6. DISCUSSION/ACTION: CONCEPT PLAN AND SCHEDULE FOR WEBSTER SRTS PROJECT (DPW Berndt).
  - a. This is a plan for the initial path forward for this project.

**DISCUSSION:**

7. DISCUSSION: MILWAUKEE WATER MAIN REPLACEMENT ARTICLE (DPW Berndt).

## 8. ADJOURNMENT

**MINUTES  
PUBLIC WORK'S COMMITTEE MEETING  
Thursday, December 11, 2014  
7:00 A.M., Allouez Village Hall**

PRESENT: Jim Genrich, Lynn Green, Rick King

EXCUSED: Randy Gast, Jim Rafter

ALSO PRESENT: Craig Berndt, Brad Lange

In the absence of Committee Chair, motion by Green/King to nominate Genrich acting Chair. Motion carried.

1. **MODIFY/ADOPT ADGENDA**

**Green/King moved to approve the agenda as presented. Motion carried.**

2. **APPROVE MINUTES from the NOVEMBER 13th MEETING.**

**Green/King moved to approve the minutes dated November 13, 2014. Motion carried.**

**OLD BUSINESS:**

No Old Business

**NEW BUSINESS:**

3. **SDWF PROJECT COST UPDATE**

Berndt gave an updated project cost breakdown and the changes made to the original application. Changes include the need for the rail road permit being removed and a project inspector to be onsite has been added. The total project remains the same, however the construction cost are projected to be lower. The reason for bring this back to the committee is that since changes have been made, a new signature is needed.

**Genrich/King moved to recommend approval and to send to the Village Board. Motion carried.**

**DISCUSSION:**

4. **RIVERSIDE DRIVE LOCAL AUTHORITY DESIGNATION**

Berndt lead discussion on the transfer of jurisdiction authority for the Riverside Drive route thru the village. The discussion to take local control will be held once the road

is reconstructed. The decision will require much discussion and a thorough understanding of what the responsibilities the village will have. The increase in salt and methods of plowing are just one area of consideration the board will need to address since the road would still be considered a State Highway. What do we gain from control? Speed limit changes may still require WDOT approval.

Jim O'Rourke asks that we consider taking control in the future so that we can make sure we have adequate crossings and the road looks like we want it to look. We would need to know the cost to maintain upfront.

No action taken

5. WATER UTILITY COMPLIANCE WITH ACT 274 FOR DELINQUENT BILLS

Berndt discussed what ACT 274 means for the Village and how we are addressing the mandates. Berndt handed out a letter that will be sent to all Landlords and Tenets explaining what ACT 274 is and asking if the landlords wish to be placed on the notification list for tenants that are delinquent. If the Village does not notify the landlords, we do not have any means to collect unpaid bills and they could not be placed on the tax roll.

6. ADJOURNMENT

Green/King moved to adjourn at 7:50 am. Motion carried.

Minutes submitted by Brad Lange and Craig Berndt

# VILLAGE OF ALLOUEZ

Allouez Village Hall • 1900 Libal Street • Green Bay, Wisconsin 54301-2453  
Phone No.: (920) 448-2800 • Fax No.: (920) 448-2850

## Department of Public Works

### FINAL ACCEPTANCE OF HERITAGE HILL/TAFT STORMWATER TREATMENT PROJECT

The Allouez Village Board by accepts the Heritage Hill/Taft Street Stormwater Treatment System Project as completed. This project was completed by PTS Contractors and McMahon Associates.

The Village of Allouez accepts the following project:

#### Heritage Hill Stormwater Detention Pond Project

Contractor: PTS Contractors, Inc.  
Engineer: McMahon Associates, Inc.

Motion Made By: \_\_\_\_\_

Seconded By: \_\_\_\_\_

Motion Carries: Yes/No

Dated: \_\_\_\_\_

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## Department of Public Works

### WAGE RATE COMPLIANCE CERTIFICATION

The undersigned officials of the Village of Allouez (the "Municipality") hereby certify that, for all expenditures made for construction of DNR Project No. 4198-08 (the "Project"), the Municipality has met all requirements of the Davis-Bacon Act.

The above certification is determined, after due and diligent investigation, to be true and accurate to the best of my knowledge.

By: \_\_\_\_\_  
Steve VandenAvond, Village President

Dated as of: \_\_\_\_\_

By: \_\_\_\_\_  
Debbie Baenen, Clerk/Treasurer

Dated as of: \_\_\_\_\_

## Craig Berndt

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**From:** Amy Vaclavik <AVACLAVIK@mcmgrp.com>  
**Sent:** Friday, January 02, 2015 11:15 AM  
**To:** Craig Berndt  
**Subject:** Davis-Bacon Compliance

Hi Craig - Please let me know if there are questions or if additional information is needed about the Davis-Bacon compliance. Amy

### Davis-Bacon Review

The Contractor is required to submit payroll reports for their own employees and subcontractors with each Payment Application. Wages and benefits paid are compared with the rates included in the Contract Documents to check that the proper rates are being paid. If there are questions or clarifications needed additional information is requested from the Contractor. Generally the Payment Application is not approved until the payroll reports are reviewed. When the project is complete a copy of all of the payroll reports and correspondence are provided to the Village for your files. The Village is required to keep a copy on file for 3 years from the date of the final acceptance of the project. The DNR (Bob Hannes) reviews the payroll records at the end of the project. McMAHON implemented a process to review the Davis-Bacon payroll reports in 2009. Since then our records have been audited several times by the USEPA and each project has been reviewed by Bob Hannes and no problems have been found.

Amy J. Vaclavik, P.E.  
McMAHON  
920-751-4200  
P.O. Box 1025  
Neenah, WI 54957

[www.mcmgrp.com](http://www.mcmgrp.com)

-----Original Message-----

**From:** Craig Berndt [<mailto:Craig@villageofallouez.com>]  
**Sent:** Friday, January 02, 2015 10:36 AM  
**To:** Amy Vaclavik  
**Subject:** RE: Allouez Heritage Hill Forms

Amy-  
When I take the Davis-Bacon certification to the board I can envision that the board president will ask about compliance and how we know we have complied. Anticipating this question can you send me an email to confirm that the wages paid to the contractor employees comply with the established Davis-Bacon requirements based on your review? I do have the monthly forms that were approved but this might be a way to simply address this possible question. Thanks, Craig

Craig L. Berndt, P.E.  
Director of Public Works  
Village of Allouez

State of Wisconsin  
 Department of Natural Resources  
 Bureau of Community Financial Assistance  
 101 S. Webster St., P O Box 7921  
 Madison WI 53707-7921  
 Phone (608) 266-7555  
 Fax (608) 267-0496

**Environmental Improvement Fund (EIF)  
 Project Acceptance Certification**

Form 8700-280 (R 1/11)

**Notice:** This form is authorized by ss. 281.58 and 281.61, Wis. Stats. Submittal to the Department of a completed form is mandatory for all recipients of EIF loans. A separate form is required for each prime contractor. Failure to submit a completed form shall result in the denial of final disbursement of loan funds.

Personally identifiable information provided on this form will be used to determine compliance with closeout procedures as outlined in the Financial Assistance Agreement and may be made available upon request under Wisconsin's Open Records laws (ss. 19.32-19.39, Wis. Stats.) and requirements.

**Project Information**

Municipality Name

Village of Allouez

Prime Contractor

PTS Contractors, Incl

Contract Number

A0012-900678

Upon final inspection and approval of all change order(s), all work performed by the awarded contractor(s) and subcontractor(s) (if any) has been constructed according to the plans and specifications approved by the Department of Natural Resources (DNR).

DNR Plan and Specification Approval Number

S-2010-0676

Date Approved

10-19-10

Project Description

Heritage Hill Pond is a wet detention pond. The primary purpose of the project is to reduce urban non-point source pollution prior to discharge to the Fox River. This pond will also assist the Village with NR 216 Municipal Separate Storm Sewer System (MS4) Permit compliance. Specific goals for the pond include a +/- 62% reduction in Total Suspended Solids and a +/- 45% reduction in total Phosphorus.

The Village will own, operate and maintain Heritage Hill Pond. The pond will be located in Heritage Hill State Park with an easement granted to the Village of Allouez. Landscape features including prairie grasses, wildflowers and wetland vegetation, will improve habitat, discourage geese, reduce pond operation costs, and improve public safety.

**Engineer Certification**

On behalf of the engineering consulting firm contracted by the above named municipality, I hereby \_\_\_\_\_ to the best of my knowledge that the above mentioned project has been constructed and inspected to conform to the referenced specifications.

Name of Engineer

Brad D. Werner

Name of Engineering Firm

McMAHON

Signature of Engineer



Date Signed

12-23-14

**Municipal Certification**

The above named municipality has accepted at its regular meeting of officials the above mentioned project from the contractor and engineer.

Name of Authorized Representative

Craig L. Berndt

Title

Director of Public Works

Signature of Authorized Representative



Date Signed

1/2/2015





Professional/Technical Services Contracts	Indicate DBE Type	Type of Product or Service *	Contract Estimate \$	Actual Amount Paid to DBE Firm
Prime: McMahon Engineers	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input checked="" type="checkbox"/> N/A	Planning	\$40,000	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime: McMahon Engineers	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input checked="" type="checkbox"/> N/A	Design	\$60,000	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Prime: McMahon Engineers	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other <input checked="" type="checkbox"/> N/A	Engineering/CM	\$64,500	
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Sub:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> Other			
Total MBE \$ -0-				
Total WBE \$ -0-				
Total Other \$ -0-				

\*Type of Product or Service examples: landscaping, trucking, supplies, equipment, paving, concrete, plumbing, electrical, excavating, testing, design, etc.

PTS  
(\*)

Name of Person Completing This Form <i>Amy Vaclavik</i>	Email Address Petaset@PTSCContractors.net	Phone Number 920-468-5217
Amy Vaclavik avaclavik@mcmgrp.com 920-751-4200		
Certification		
I certify that, to the best of my knowledge and belief, the information provided on this form is complete and correct.		
Name/Title of Municipal Official <i>Chris L. Benson</i>	Signature <i>Chris L. Benson</i>	Date Signed 1-2-2014



131 W. Wilson St., Suite 505  
Madison, Wisconsin 53703

(608) 267-2380  
(800) 991-5502  
FAX: (608) 267-0645

e-mail: [league@lwm-info.org](mailto:league@lwm-info.org)  
[www.lwm-info.org](http://www.lwm-info.org)

**To: Local Government Leaders**  
**From: Jerry Deschane, Executive Director, League of Wisconsin Municipalities**  
**Date: December 23, 2014**  
**Re: Re-creation of a Local Government Stormwater Group**

In 2009 the League created a Local Government Stormwater Group and hired water law specialist Paul Kent to lobby DNR on making changes to NR 151 and other stormwater issues. The group has been dormant the last several years, but we believe there is a need to resurrect it at this time. Stormwater management issues are being driven by new regulatory developments such as total maximum daily load (TMDL) requirements as well as by changes in storm intensities.

Stormwater issues that will need to be addressed in the next five years include:

- Advocacy on behalf of municipalities so that stormwater fees remain manageable and proportionate.
- Working with DNR to adopt policies and guidance regarding when on-line ponds and pond treatment options may be an appropriate mechanism to address water quality issues.
- Engaging DNR in a cross-program watershed approach to stormwater projects.
- Developing solutions to stormwater management that can address multiple issues including flooding and infiltration and inflow issues for POTWs.
- Resolving issues associated with stormwater utilities including credits and exemptions associated with permeable areas.
- Developing ways in which stormwater management and associated sediment management might serve as trades for POTWs needing phosphorus reductions.
- Efficiently managing stormwater sediment from ponds under the NR 528 criteria.
- Defending local authority for stormwater management against state preemption efforts.
- The integration of TMDL requirements in new MS4 permits.

Currently there are 254 Municipal Separate Storm Sewer System permits (MS4 permits) issued in Wisconsin. We believe the group of communities involved in stormwater issues could benefit from coordinated advocacy on their behalf. That is why the League is reviving the Local Government Stormwater Group.

We invite you to join with other municipalities and counties in the re-creation of the Local Government Storm Water Group. The purpose of the group is to advocate on stormwater issues before the DNR, the Governor's office and the Wisconsin Legislature. The group will also sponsor educational seminars on stormwater issues. The League will contract with Paul Kent to serve as technical advisor and lead negotiator with DNR on behalf of the group. League staff will provide administrative services to the group, including handling its bookkeeping, organizing meetings, and maintaining a web page.

***STRONG COMMUNITIES MAKE WISCONSIN WORK***

Membership in the Municipal Storm Water Group is open to any MS4 community, including counties and towns. The annual cost varies by population size. The fee is \$600 annually for communities over 20,000 in population; \$400 for communities with populations between 10,000 and 20,000; and \$200 for communities with populations below 10,000.

If you are interested in participating, please complete the following form and submit it and a check for the correct amount to the League of Wisconsin Municipalities.

We hope you will accept our invitation. We look forward to working with you on this issue.

If you have any questions or need additional information, please give me or Curt Witynski a call at 1-800-991-5502.



## Local Government Storm Water Group

### Membership Form

Yes, the \_\_\_\_\_ (*name of municipality/county*) agrees to join the Local Government Storm Water Group.

I've enclosed a check for the following amount covering our community's 2015 membership dues:

- \$600 for municipalities/counties with populations over 20,000.
- \$400 for municipalities with populations between 10,000 and 20,000.
- \$200 for municipalities with populations under 10,000.

The primary contact in our community regarding the Local Government Storm Water Group shall be:

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

Return this form with a check to: League of Wisconsin Municipalities  
131 West Wilson Street, Suite 505  
Madison, WI 53703



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## Department of Public Works

### SIDEWALK SNOWPLOWING

This summary is in regard to the question of increasing sidewalk snowplowing, perhaps returning to the sidewalk snowplowing approach of more than five years ago.

#### Legislative and Legal Responsibility for Sidewalk Clearing

A municipality with sidewalks is legally responsible for ensuring that sidewalks are clear of snow and ice, and bears legal responsibility for personal injury due to slipping on snow and ice. The adjacent property owner is usually required by municipal ordinance to clear their sidewalk but the municipality is still the responsible party for personal injury. To minimize the risk to a municipality, a municipality develops and administers a sidewalk clearing policy to minimize incidents of personal injury.

#### Current Village Sidewalk Snowplowing Policy

Attached is the current village policy regarding clearing sidewalks of snow and ice.

The Allouez policy is similar to DePere (city plows Webster Avenue during larger storm events) and Green Bay (plow commercial sidewalks downtown when street plows are operating). However, Green Bay will clear a residents snow covered sidewalk with no notice (and charge for it). Allouez allows 48 hours to clear a sidewalk.

The intent of the Allouez policy is as follows:

1. Assist residents on Allouez and Webster Avenue due to excess snow from county snowplowing on these county roads.
2. Improve sidewalk snow and ice removal (sidewalks are shoveled better by residents) by requiring residents to begin clearing sidewalks of snow and ice rather than the village being the sole party clearing sidewalks.
3. Reduce this village operating cost, especially because sidewalk snowplowing was being done on overtime hours same as street plowing. The cost was over \$30,000 per year.

#### Village Plowing of Sidewalks

It is important to understand the sidewalk snowplowing performance if additional plowing is considered.

1. When the Village plows sidewalks about ¾-inch to 1-inch of snow remains and cannot be cleared by our equipment. This residual continues to build-up with more plowing. If residents shovel after village plowing (as required by ordinance) this is usually removed.
2. When the Village plows a snow tire track is compacted and remains. This also accumulates over time and is difficult to remove.
3. Plowing on Webster Avenue cannot clear the sidewalk full width because the snowbanks collapse back onto the plowed walk. This becomes worse with more snow.

In summary, Village sidewalk snowplowing only does a rough job of sidewalk clearing and requires residents to shovel the remaining snow. If the expectation is that more Village plowing will improve snow removal that will probably not be the case.

#### Sidewalk Snowplowing Cost

Back in 2006 and 2007 the sidewalk snowplowing cost was very high—over \$30,000 per year due to the frequency of plowing and the amount of overtime.

For 2013 the amount of sidewalk snowplowing was \$11,000 based on 200 total hours of plowing (about 14 snow events). 2012 was 75 hours of plowing (5 events) which is a \$5,000 cost. A typical winter usually results in 12 sidewalk plowing events.

To add sidewalk plowing for all snow events would likely add 8 to 12 additional events. This is a cost range of \$14,000 to \$22,000 based on 14 hours of sidewalk plowing per event (about \$1,750 per event).

#### Summary

The current policy is intended to both improve sidewalk clearing because residents can do a better job than the Village, and to reduce the Village operating cost.

It is felt that most residents do not clear sidewalks after Village plowing. Many residents do not shovel their sidewalk after a minor snowstorm. This will not improve if the Village increases plowing. It might improve if the current policy remains in force.

The cost to add plowing for all events is likely to add \$14,000 to \$22,000 to the annual snow and ice budget.

# VILLAGE OF ALLOUEZ

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## Department of Public Works

### ALLOUEZ SIDEWALK SNOWPLOWING POLICY

September 1, 2012

#### Allouez Sidewalk Snow and Ice Removal Policy

1. *Allouez residents must shovel their sidewalk after all snowstorms, and maintain their sidewalk clear of snow and ice--even if the sidewalk is first plowed by the Village such as after a major snowstorm of 6-inches or more. Residents have 48 hours after a snowstorm to complete sidewalk shoveling and clearing.*
2. *Property owners on Webster Avenue and Allouez Avenue must shovel after light snowfalls (when the weather bureau reports less than a 3-inch snowfall). The Village may plow if there is significant snow buildup due to street plowing, or heavy wet snow, or severe icing.*
3. *Because Brown County frequently plows large amounts of snow onto Webster Avenue and Allouez Avenue sidewalks, the Village will plow these sidewalks when the weather bureau reports a snowfall of 3-inches or more. Allouez sidewalk plowing on Webster and Allouez Avenue will be done after Brown County finishes street plowing--to minimize the need for repeated shoveling by residents.*
4. *The Village will plow all main sidewalks including Libal Street, Webster Avenue, Allouez Avenue, Hoffman Road, Riverside Drive and primary school routes after major snowstorms of 6" snowfall or more. Property owners must shovel after Village sidewalk snowplowing to maintain their sidewalk clear.*

#### Sidewalk Clearing Notice to Property Owners

Property owners will be notified via a letter placed in the rear door of a household if snow shoveling or ice removal does not comply with Village policy. This will be at 48 hours after a storm event, with 48 hours allowed for compliance.

#### Non-Compliance Penalty

The Village of Allouez Policy for Sidewalk Clearing Charge for Non-Compliance is as follows:

1 <sup>st</sup> Notice	\$50 per lot (up to 100 ft) plus \$10 per each 100 ft
2 <sup>nd</sup> Notice	Two times the 1 <sup>st</sup> Non-Compliance Charge
3 <sup>rd</sup> Notice	Three times the 1 <sup>st</sup> Non-Compliance Charge plus Citation for Violation of Sidewalk Clearing Ordinance 3.21



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## Department of Public Works

### WEBSTER SCHOOL SRTS PROJECT CONCEPTUAL DESIGN

This is a conceptual plan and path forward for the SRTS project. The reason for this concept plan is to finalize the project conceptual design before beginning the actual project topographic survey and design.

#### Project Plan and Steps Forward

The keys steps include:

1. The Public Works Committee and Village Board review the project concepts in January and February before proceeding with public input.
2. Conduct a public information meeting in March to obtain resident input on the project and options.
3. Review the public input with the village board and select recommended plan in April.
4. Conduct an informational meeting with residents in May on the recommended plan.
5. Proceed with topographic survey and design beginning in June, and complete design by late summer.

#### SRTS Plan and Options

The following are design options for consideration for the SRTS project.

#### Base Case Design Concept

The base project includes the following:

1. Sidewalk on south side of St. Joseph Street from Libal to the bank at Webster Avenue with possible option for crossing bump-out at Libal Street.
2. Sidewalk on Libal Street to connect to Beaupre Street with pedestrian crossing on Libal and Beaupre Street with landing.
3. Sidewalk on west side of Woodrow Way from Brookridge Street to Mission Road.
4. Sidewalk on Brookridge Street from Woodrow to Libal Street with crossing bump-out on Libal Street.
5. Sidewalk on north Woodrow Way from Webster School to St. Joseph Street.

#### Design Options for Project

The following are options to be considered for implementation:

1. Brookridge Street sidewalk location.



- a. North side location—impacts about a dozen large silver maple trees requiring removal.
  - b. South side location—reduced impact but requires a crossing at Woodrow Way corner.
2. North Woodrow Way Sidewalk location.
- a. West side location—connects direct to school sidewalk without a crossing at the school driveway/circle.
  - b. East side location—requires a crossing at the school driveway/circle.
  - c. Optional crossing at St. Joseph Street on either west or east side of Woodrow. West side is best because of no left turn off Woodrow at peak hour.
3. Pedestrian crossing with bump-out option at Libal Street and St. Joseph Street. Since this south side of St. Joseph is now to be a prime route to school and a sidewalk extension east of Libal is also probable, the south side of the Libal intersection is the best location.

#### Additional Options at Added Cost

The following are options that may be able to be added but at additional cost.

1. South Woodrow Way sidewalk option for school child drop-off and pick-up at corner near Brookridge Street. This is not included in the SRTS submittal but is a good added feature. Requires a crossing to be provided at the corner to the school. Could be a bidding option.

Volume 20, Issue 6, November 2014

## IN THIS ISSUE

- *Public Service Commission Tells Milwaukee to Accelerate Water Main Replacement*
- *Contractual "Fee in Lieu of Room Tax" Struck Down*
- *Public Records Law Not Applicable to Wisconsin Counties Association*
- *DNR Must Require CAFO to Monitor Groundwater Where Area Is Susceptible to Contamination*

## Public Service Commission Tells Milwaukee to Accelerate Water Main Replacement

The Public Service Commission (PSC) approved Milwaukee's request for a water rate increase on October 30, 2014 (PSC Docket No. 3720-WR-108). Several noteworthy requirements regarding Milwaukee's water main replacement program were included in the decision.

The PSC raised concerns with aging water infrastructure and the need to spend increasing amounts on main replacements in its decision. Milwaukee initially took the position that it would replace 15 miles of main per year using cash financing. After the hearing was held, but before the PSC's decision, Milwaukee proposed accelerating its main replacement program to replace 15 miles of main in 2015-17, 18 miles in 2018-2019, and 20 miles in 2020. Milwaukee's water superintendent indicated that a revised funding plan had been worked on with the City's Budget Office, which would propose to issue \$92 million in debt by 2020 in order to fund this quantity of main replacements.

The PSC accepted Milwaukee's revised main replacement program as a minimal effort and opined that Milwaukee will likely need to expand its main replacement efforts above proposed levels. The PSC required Milwaukee to hire an independent consultant to do a main replacement study and to submit a copy of the final report prepared by the consultant. In addition, Milwaukee must report to the PSC every six months regarding the condition of its mains and provide a copy of its main break reports.

During the hearing, PSC staff raised concerns about Milwaukee's main replacement program. Milwaukee has a total of 1,961 miles of main. Based on an average useful life of 77 to 100 years, PSC staff calculated that Milwaukee must replace between 20 to 25 miles of main each year to ensure mains do not exceed their useful life. When

considering facts relevant to the condition of Milwaukee's water mains, PSC staff testified that Milwaukee would need to replace even more main each year. Milwaukee has 843 miles of main that were installed between 1880 and 1943 (pre-World War II) that have a remaining life of 54 years. At least 15.6 miles of this main would have to be replaced each year to upgrade it by the end of its remaining life. Milwaukee also has 431 miles of main installed between 1943 and 1963 (post-World War II) which is in worse condition than the pre-World War II main. Milwaukee indicated this main is expected to have a remaining life of 34 years. PSC staff computed that it will require 12.7 miles of main to be replaced each year to upgrade this vintage of main by the end of its remaining life. Using straight line depreciation, PSC staff testified that Milwaukee would need to replace about 28 miles of main per year to upgrade each vintage of main by the end of their respective remaining lives.

Data regarding Milwaukee's actual experience with its main breaks was also presented during the rate case. Milwaukee provided a 70-page list of sections of main that are still in the ground that have experienced one or more main breaks. The PSC also raised concerns that Milwaukee experienced 82 main breaks in six days when the Howard Avenue Treatment Plant was shut down and that the system relied solely on the Linnwood Treatment Plant, which required higher water pressure exiting the Linnwood Plant. This information was presented to demonstrate the concern that deferred maintenance could lead to possible catastrophic failures.

The PSC also discussed Milwaukee's method of funding water main replacements. Milwaukee originally testified that it intended to cash finance all main replacements. As a general proposition, PSC staff testified that

## Contractual “Fee in Lieu of Room Tax” Struck Down

The City of Delavan entered into a development agreement with Delavan Resort Holdings related to the development of the Lodges at Lake Lawn Resort Condominium. Part of the development agreement required the developer to adopt condominium declarations that would require that part of the development be deemed to be rental units. The developer agreed in the development agreement that a fee would be imposed on the owner of a rental unit in the affected area who did not want to rent his or her unit to the public. The agreement required that the fee would be paid to the City “in lieu of the room tax which the City would have otherwise received from the rental of such Unit to the public.”

Certain owners chose to not rent their units to the public and paid the fee. They then sued the City and the condominium association seeking a judgment declaring the fee to be illegal and requesting a refund of fees paid to date. The City argued that the fee was a valid and enforceable contractual term and not a tax. The circuit court sided with the City, and the owners appeal. On appeal, the Court of Appeals reversed and held the “fee in lieu of room tax” to be a tax that the City was not authorized to impose. *Bentivenga v. City of Delavan*, (Ct. App., Dist. II, Decided October 15, 2014)

In its finding that the “fee in lieu of room tax” was a tax, the Court focused on the fact that the revenue collected from the owners who chose not to rent their units was not dedicated to the provision of any service or regulation but was purely for general government revenue. The Court also noted that increases in the fee were linked to increases in the consumer price index or average room tax collections at the resort, not the expense of any specific governmental services.

The Court rejected the City’s argument that the fee was not a tax, but a “contractual penalty” that the City could bargain for in its proprietary capacity. The City, relying on *Baylake Bank v. Fairway Properties of Wisconsin, LLC*, No. 2010AP2632, unpublished slip op. (WI App Sept. 15, 2011), argued that it was authorized to impose such a penalty via the development agreement as a back-up mechanism to receive room taxes lost by the owners’ decision to not rent their units to the public. The Court stated that the City’s reliance on *Baylake Bank*, which dealt with a liquidated damages penalty provision in a development agreement, was misplaced. The provision at issue in *Baylake Bank* allowed the city to recoup the expenses it incurred for its part of the agreement if the developer did not develop property as promised to generate revenue to cover the City’s costs. The “fee in lieu of room tax” at issue in this case did not help the City recoup its investment in the resort development, but rather was the City’s way of collecting revenue that it had hoped to receive through taxation. The Court noted that the revenue at issue here was not designated for any development-related purpose but was to go into the City’s general fund.

The fact that the “fee in lieu of room tax” was imposed by contract did not give the City the authority to impose the tax. According to the Court, the “fee in lieu of room tax” is a revenue generator for the City that is imposed on a certain class of residents without legislative permission and is therefore illegal.

— Lawrie Kobza

## Public Records Law Not Applicable to Wisconsin Counties Association

The Wisconsin Court of Appeals has decided that the Wisconsin Counties Association is not subject to the public records law. *Wisconsin Professional Police Association, Inc. v. Wisconsin Counties Association*, 2014AP249 (Ct. App. Dist. IV, decided September 18, 2014).

The Wisconsin Police Association submitted a public records request to the Wisconsin Counties Association. The Counties Association is an unincorporated not-for-profit association. The Counties Association responded that the public records law “does not apply to the Wisconsin Counties Association” and the Police Association sued to enforce the public records law against the Counties Association. The circuit court found that the public records law did not apply to the Counties Association, and the Police Association appealed.

The Police Association argued that the Counties Association is an “authority” under the public records law. The term “authority,” is defined in Wis. Stat. § 19.32(1). The Police Association argued that the Counties Association specifically fit within the statutory category of a “quasi-governmental corporation.” The Counties Association argued that it did not fall within the category of a “quasi-governmental corporation” because it is an unincorporated association – not a corporation. The Court of Appeals agreed that in order to be

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## PSC Tells Milwaukee To Accelerate Water Main Replacement

*Continued from front page*

for small water systems that are primarily constructed over a few years, it is not reasonable to finance construction through current rates because current ratepayers would be paying for improvements that would primarily benefit future users, thereby creating intergenerational inequities. While it may be possible for a large water utility to finance main replacements from current rates if those mains were originally installed over an extended period of time, and are not failing or reaching the end of useful life simultaneously, Milwaukee has not steadily replaced its water mains. According to the PSC, Milwaukee has replaced less than 1% of its mains since at least 1972 and needs to catch up due to deferred main replacements. PSC staff computed that using cash financing only, with a 5.38% rate of return, Milwaukee would only have funds to replace about 17 miles of main a year – much less than the 28 miles of main per year that PSC staff felt needed to be replaced. PSC staff testified that Milwaukee could issue \$100 million in debt and that its total debt would still be below 28% of its total capital structure.

The PSC’s decision noted that, while water utilities have a great deal of latitude in selecting their financing methods, the PSC has an interest in ensuring intergenerational equity when it comes to financing infrastructure. The PSC put Milwaukee on notice that, given Milwaukee’s funding needs and its ample future bonding capacity, Milwaukee may need to issue more debt than the amount proposed in its revised financing plan in order to meet its future infrastructure replacement needs.

— Lawrie Kobza