

MEETING MINUTES
PUBLIC SERVICES COUNCIL COMMITTEE

Monday, December 11th, 2023
City of West Des Moines Training Room

In Attendance:

Council Member – Matthew McKinney
Council Member – Kevin Trevillyan
Assistant City Attorney – Greta Truman
Finance Director – Tim Stiles.
Parks & Recreation Director – Ryan Penning
Park Superintendent – Marco Alvarez

City Engineer – Brian Hemesath
Public Services Director– Gary Rank
Deputy Public Services Director – Joe Cory
Principal Engineer – Jason Schlickbernd
Principal Engineer – Ben McAlister
Principal Engineer – Nick Rentel
Principal Engineer – Eric Petersen

Guests in Attendance:

None

Meeting was called to order at 11:32 AM by City Engineer, Brian Hemesath.

1. Barnes Heights Sanitary Sewer – 880 63rd St (BJM)

Issue Summary:

Larry Kischer at 880 63rd St has a failing septic system and has inquired about the possibility of connecting to the existing public sanitary sewer manhole on the opposite side of 63rd St constructed by the newer subdivision to the south. This area has been previously identified for a future sanitary sewer connection fee district to extend public sewer throughout the subdivision, but no fee district is currently established. Mr. Kischer opposed establishing the fee district in 2015 and each property served by existing sewers prior to creating the fee district will increase costs for other properties in the district. Mr. Kischer has expressed concerns over the cost of the fee district as well as the cost for physical connection to the public sewer.

This property is located in Barnes Heights, originally developed in the early 1970s while in unincorporated Dallas County. The City annexed the area in the 1990s and extension of public sanitary sewer to the subdivision was analyzed on multiple occasions. Multiple public meetings were held and the residents were surveyed in 2014-2015. The residents were split on the issue of creating a fee district and the general consensus at that time was to install a low pressure system in the right-of-way. Staff initiated the process for creating the fee district and the first reading of the ordinance was deferred on May 4, 2015 following comments received at the public hearing. The issue was brought back to subcommittee on May 26, 2015 with both subcommittee members supportive of establishing the district but deferring construction until there was sufficient demand. The Subcommittee also concurred that all properties within the district should be charged the connection fee whether they were served by the proposed low pressure system or by connection to the existing gravity sewers. On June 1, 2015 the City Council voted 5-0 against establishing the fee district after receiving a petition signed by 13 of 18 properties in opposition of the district. The Mayor stated in the meeting the City did not plan to reconsider the fee district unless it was desired by the majority of the property owners.

Two properties within Barnes Heights (6225 Brookview Dr and 6250 Brookview Dr) have been allowed to connect to the existing sanitary sewer with Subcommittee or City Council approval. In each case the sanitary sewer directly abutted the property. Subcommittee direction on August 17, 2015 was any future requests where a resident has to go across private property to hook into an existing sanitary sewer line they will be asked to seek approval from the Subcommittee. If the property is adjacent to an existing line staff will advise them to apply for a plumbing permit for connection. The property at 880 63rd St does not abut the existing sanitary sewer and will be required to cross 63rd St, excavate within the right-of-way, and possibly into neighboring private property due to depth. Because there is no fee district currently established, and these properties are already connected to public sewer, connection fees will not be able to be collected from them increasing costs for the remaining properties in the future district.

According to Mr. Kischner the distribution box, and possibly the lateral field, need to be replaced. Iowa Administrative Code 567-69.1(3) states “No private sewage disposal system shall be installed, repaired, or rehabilitated where a publicly owned treatment works (POTW) is available.” The IAC considers POTW available if facilities are located less than 200 feet from the building or the property abuts the facility. Dallas County Environmental Health follows the requirements of Chapter 69 of the Iowa Administrative Code and defers to the City of West Des Moines relative to the distance requirements for connection to the sanitary sewer system. The City’s requirement is more restrictive than the Iowa Administrative Code requirements, therefore, Dallas County will require connection if sanitary sewer is located within 400 feet of the property line. The Kischer home is approximately 100 feet from the nearest public sewer. The City could waive the 400-foot requirement, but that may not be in the best long-term interest of the City and Dallas County Environmental Health may not permit major maintenance if the property does not comply with the Iowa Administrative Code requirements. Mr. Kischner has indicated the cost of connecting to public sewer is prohibitive and his preference is to repair and/or replace the septic system.

The options for consideration by the Subcommittee include:

1. Waive the City’s 400-foot and allow repair/replacement of the septic system subject to Dallas County Environmental Health approval. Dallas County could deny repair/replacement of the septic system, forcing one of options 2 or 3.
2. Allow connection to the public sanitary sewer on the east side of 63rd St without participation in the Barnes Heights Sanitary Sewer Connection Fee District.
3. Establish the Barnes Heights Sanitary Sewer Connection Fee District and require payment of the connection fee prior to allowing connection to the existing sanitary sewer on the east side of 63rd St.

Principal Engineer Ben McAlister provided committee members with the history of the Barnes Heights development regarding the creation of a sanitary sewer connection fee district. He stated that normally fee districts are put in place to disburse the connection costs over as many properties as possible and bring down the individual costs for each property owner. In this case, property owners were not in favor of a fee district and in 2015 City Council members voted against establishing a sanitary sewer fee district for Barnes Heights.

Mr. McAlister went on to explain the current request from Larry Kischer along with proposed solutions.

Mr. McAlister stated an analysis was done in 2015 with costs ranging from \$7,500 for a low pressure system all the way up to \$27,000 for a gravity system.

Council Member Trevillyan asked about the house at 6225 Brookview Dr, verifying that the home is connected to City sewer, to which Mr. McAlister responded yes. Mr. McAlister stated that property was a different circumstance due to the resident having a private agreement with the developer of the subdivision to the east.

Mr. McAlister stated that Mr. Kischer's preference is to keep his septic system, as he is on a fixed income and does not want the cost of the construction or the fee district. Mr. Kischer was previously against the fee district back in 2015. Mr. McAlister noted that maintaining a septic system may not be an option going forward due to Dallas County's requirements.

Council Member Trevillyan asked if Mr. Kischer needed a new septic system or if repairs could be made to the existing system.

Mr. McAlister stated that to his understanding, Mr. Kischer's distribution box needs to be replaced, which kicks him into the state code requirements. He may also have an issue with his laterals, but that is unclear at this time.

Council Member Trevillyan stated that Mr. Kischer would have incur an expense whether he repairs the existing septic system or connects to the City's sewer.

Mr. McAlister added that Mr. Kischer would incur more expenses connecting to the city sewer than if he were to repair his existing system. He would have an additional cost if the City initiates a fee district.

Council Member Matthew McKinney asked for clarification on the development and why it was not currently a part of a fee district.

Mr. McAlister answered that the area was developed in the 1970s while in Dallas County. At the time of development City sewer was not available. Typically as septic tanks fail the County determines what the requirements are whether repair/replacement or requiring that the property owner connect to a City sewer. Discussions regarding establishing a fee district began in 2015 and the original district was planned to include 18 properties. Two of the 18 properties have connected to the City's sewer system, which then takes it down to 16 properties. He added that every time a lot is removed the connection fee per lot cost increases.

Council Member McKinney asked if Staff had an idea of what costs would be for property owners if a fee district were created.

City Engineer Brian Hemesath recently looked at increases for construction cost in the Engineering News Record. Current construction rates have increased approximately 30% from when the fees were discussed in 2015. Since there has not been a full analysis regarding the design of the sewer system Staff does not have exact costs to provide.

Council Member McKinney asked for clarification on the costs provided previously by Mr. McAlister in regards to the 30% construction costs increase.

Mr. McAlister clarified that the two price points stated previously are dependent on which type of sewer system is used. In 2015 the original plan was to install a gravity sewer, which would provide optimal service from the City and be best for the residents long term. Costs for the gravity sewer are higher, and during public meetings residents asked the City to look at additional alternatives. The other sewer option is a low-pressure system and initial costs are much lower. There can be issues however with a low-pressure system including pump replacements and other emergencies which could incur a higher cost long term.

Council Member McKinny asked why public sewer was not installed with the work done on 60th and Ashworth. 63rd street is new, there are a lot of homes out that way and he asked why it was not required to add any sewer along 60th, Ashworth, or 63rd street.

Mr. McAlister responded the installation of sewer was a part of the neighboring subdivisions. The cost of the installation for those sewers was included in the purchase price of the homes. The Barnes Heights properties did not include installation of sanitary sewer with the purchase price of their homes.

Fee districts are setup when there is a rural subdivision abutting a new development. The City always tries to bring sanitary sewer up to their boundary so they have an outlet. They did not have an outlet until that development occurred many years later.

Council Member Trevillyan asked if Mr. Kischer were allowed to connect to sanitary sewer what impact would that have on the property owner to the north.

Mr. McAlister responded the property to the north, at 920 63rd Street is probably within both the 200- and 400-foot requirement placing them in a similar situation as Mr. Kischer. He added that the City's policy is to require connection to City sewer if a private on-site treatment system fails.

Finance Director Tim Stiles asked Mr. McAlister if this was similar to the sewer work completed on the Dixie Acres development a few years ago. In that case the residents were in favor of the sewer connection fee district.

Council Member Trevillyan asked if allowing Mr. Kischer to connect to the manhole would impact the installation of the next sewer line.

Mr. McAlister responded it would not.

Principal Engineer Jason Schlickbernd asked if Mr. Kirscher was looking to sell the house and if this is a time of transfer.

Mr. McAlister stated he did not get that impression from Mr. Kirscher.

Council Member Trevillyan clarified the use of the term 'adjacent to', he stated existing sewer is not on his side of the road but is still considered adjacent to the property, just on the opposite side of the street. directly across the street.

Mr. McAlister agreed adding that is why Staff chose to bring the issue before the committee, Mr. Kischer connecting to the manhole would impact the neighbors on that side of the street not to mention the future implications to the other property owners in the future fee district.

Council Member Trevillyan stated he was in favor of allowing Mr. Kischer to connect to the City's sanitary sewer system without establishing a connection fee district.

Council Member McKinney asked what happens with another resident in the area comes forward with a similar scenario.

Mr. McAlister explained that the public sewer would need to be extended to the residents, either by establishing a sewer connection fee district or by the City funding the project.

Council Member Trevillyan stated that if the property to the north of Mr. Kirscher's septic system failed and Dallas County required they connect to City sewer, they could do so but at their own expense. He then asked if public sewer could be extended one by one.

Mr. McAlister replied yes in theory, but extending the public sewer one by one would be very costly.

Council Member Trevillyan stated that if they do not want a fee district, this would be there only solution.

Council Member Trevillyan reiterated that the City should allow him to connect to the public sewer system and also look at reintroducing the fee district.

Council Member McKinney asked if Staff has had any discussions recently with the residents regarding establishing a fee district as a long-term solution.

Mr. McAlister stated the last conversations with the residents occurred in 2015 and residents felt the fee district wasn't needed at that time.

Council Member Trevillyan explained the fee district process. The City installs the sewer and the residents within the fee district pay at the time of connection.

Mr. Hemesath suggested Staff reach out to the residents again to gauge interest.

Mr. McAlister stated the cost would need to be reevaluated.

Council Member McKinney was in favor of allowing Mr. Kischer to connect to the public sanitary sewer. He asked for clarification if Mr. Kischer would then be required to connect or given the option based on what Dallas County requests. He also asked if Mr. Kischer were allowed to connect to the public sewer would he still participate in the connection fee district.

Mr. McAlister responded that since on-site treatment is within Dallas County's jurisdiction it would be best allow Dallas County to determine if he can repair the existing septic system or connect to City sewer. The City will make the manhole available to him if necessary.

He added that Mr. Kischer would still be a part of the fee district if he were to repair his septic system. If he does connect to public sewer, he would no longer be in the fee district since he would already be connected and the fee district is not established at this time.

Council Member McKinney asked for clarification if Mr. Kischer wanted to add his own laterals but Dallas County did not allow that and required him to connect to the public sewer, would he then be a part of the fee district.

Mr. McAlister answered that he would not because there is no fee district in place today. Mr. Kischer would pay a sewer cap charge and a monthly rate.

Mr. Hemesath commented that some of the property owners who were assessed for Ashworth Road when the street was put in may express their discontent.

Direction: Committee members were in favor of allowing Mr. Kischer to connect to public sanitary sewer on the east side of 63rd St without participation in the Barnes Heights Sanitary Sewer Connection Fee District.

Committee Members directed Staff to obtain pricing on establishing a Sanitary Sewer Fee District and reach out to the property owners within the Barnes Heights development to gain interest in participating in the Sanitary Sewer Fee District.

2. 995 South Kingswood Court Non-Consent for WRA Sugar Creek Bank Stabilization Phase 2 Projects – Information Only (JMS)

Issue Summary:

This information is being shared for informational purposes only. The Wastewater Reclamation Authority (WRA) has been actively working on design of the Sugar Creek Bank Stabilization Phase 2 project from Mills Civic Parkway to Stagecoach Drive. Phase 2 will be constructed similarly to Phase 1 completed along Sugar Creek from Stagecoach Drive to Booneville Road a couple years ago. Phase 2 is slated for construction in 20224-2025. As with Phase 1, Phase 2 will be fully-funded by WRA as part of a grant received to provide channel stabilization and promote water quality initiatives, all the while protecting the WRA trunk sewer that parallels Sugar Creek. City Staff have been involved in the design process and property owner notifications in collaborative efforts with the WRA to ensure the project meets the needs of our WDM residents.

Throughout the design process, it was determined that permanent and temporary construction easements would be necessary to construct the project. The WRA has worked closely with Snyder & Associates (WRA's engineering consultant) in acquiring the necessary easements, with all of the easements being dedicated with some minor requested accommodations. The WRA has been successful in acquiring all easements necessary for the project, EXCEPT the easements needed from the property owners at 995 South Kingswood Court (David and Megan Moritz). The Moritz's are the original owners of the property and have owned the property since 2020. The property would greatly benefit from the project as the east embankment would be stabilized at no cost to the property owners. Without their consent, no improvements can be made on the property. The Moritz's do not agree with the easement language, have some concerns with the easement being passed along to future property owners, and have some lender concerns. Condemnation of the easements by WRA is not an option as it would jeopardize their grant funding.

City Staff wanted Public Services Council Committee members to be aware of this situation and wanted to document that these discussions were held, so that in the future should the property owners approach the City about possible damages sustained to their property from flood events that the City and the WRA both attempted to work with the property owners to include them with the project, but were unable to agree on terms. The WRA has recently extended one final letter to the Moritz's saying they have exhausted all negotiations and will be moving forward with the project and no work will be completed on their property.

Principal Engineer Jason Schlickbernd reiterated that the item was brought before the committee for informational purposes only.

Council Member Kevin Trevillyan commented that within the summary he noticed the Moritz's were stating they did not want to pass on the construction easements to future property owners. He asked Staff to confirm if the easement would be for construction purposes or a permanent easement that is going to prevent them for using the property.

Mr. Schlickbernd answered there will be both a permanent sanitary sewer easement and a temporary construction easement. The temporary easement would expire after construction is complete. The permanent sanitary sewer easement would be located in the outlot platted on their property.

Council Member Trevillyan confirmed that the discussion today was about the permanent sanitary sewer easement.

Mr. Schlickbernd stated that this was correct. He noted that technically, they are not allowed to put anything in the outlot anyway. He added the Moritz's built a playground outside of the outlot and are aware of the restriction.

Assistant City Attorney Greta Truman commented that if the WRA proceeds with the project and makes improvements to the north and south of the property it is possible that if there is heavy rainfall or flood event, it could erode the Moritz's property. If they can convince a court that it is due to the WRA's improvements, they could make the claim for inverse condemnation. Ms. Truman noted that it is unlikely the Moritz's would have the grounds to do that and added the City's Engineering Staff doesn't think the WRA improvements are going to cause any flooding to that property other than what's going to happen naturally.

Mr. Schlickbernd stated the outside bank to the west just north of the Stagecoach Drive bridge will be heavily reinforced to try to protect the trail with the channel being aligned so the water flow goes underneath the bridge. Currently on portions of the eastern banks there is some riprap that was placed by the previous Majestic Oaks developer. He added that the WRA will not be able to do any improvements on the Moritz's property without the necessary easements and it is unknown what may happen during a flooding event at this time.

Council Member Trevillyan asked for clarification regarding possible erosion and responsibility.

Ms. Truman stated that there will be a 28E Agreement between the City and the WRA. The 28E Agreement has been reviewed but has not been signed, so Staff will check the language to ensure the City is protected.

Council Member Matthew McKinney asked Staff to reach out to the property owner's with a notice similar to what the WRA has sent stating they acknowledge that by not agreeing to grant the necessary easements that any potential benefits are foregone and as a result they could see issues down the road.

Mr. Schlickbernd stated that Dave Sadler, the previous Parks Superintendent with the City of West Des Moines, was the lead staff member on this project and met with the property owner David Moritz a few times on site. Jason accompanied Mr. Sadler at least one time and they provided the Moritz's a detailed explanation of the pros and cons of this project and explained the detriment of the decision not to participate.

Council Member Trevillyan asked if the Moritz's had any comments or feedback at that time.

Mr. Schlickbernd responded the Moritz's did not have any issues at that time. Since the initial meeting the WRA has been working with Megan Moritz who has not been in favor of the easements.

Ms. Truman also responded and stated that a letter could be drafted. The letter would need to be drafted carefully indicating that the City anticipates there will be erosion in the area without the Moritz's agreeing to allow the easements to complete the work on their property and if the Moritz's choose not to participate, which is fully their right, they will most likely experience some of that erosion and the consequences of that. She added that the work being done by the WRA will not contribute in any way to any increased erosion that would otherwise have happened.

Mr. Schlickbernd stated the WRA has already written their letter to the Moritz's and Staff can use wordage from that letter to reinforce the City's view on the matter.

Council Member Trevillyan stated his suggestion would be to restate what WRA stated in their letter leaving nothing to be misconstrued.

City Engineer Brian Hemesath added that this issue along with the Majestic Oaks subdivision was brought before Development & Planning Subcommittee in 2015. The City Council was in support of

Staff's recommendation that they needed to have a stream buffer that the City owned and maintained. Minutes from the meeting reflect plans for this but it did not occur, so the issues arising now can be seen as a result of not getting the stream buffer at that time. He stated that going forward this situation will be used as an example of the potential ramifications of not requiring a stream buffer.

Direction: Even though this item was for information only, committee members would like Staff to draft a letter to the homeowner reiterating the statement made by the WRA to ensure the City is protected.

3. Digital Enterprise Partial Performance Bond Release/Supplemental (BJM)

Issue Summary:

Kramer Service Group is currently under contract with the City for 10 Digital Enterprise projects totaling over \$30,000,000. The work is substantially complete except for final locate system testing and outstanding restoration. Six of the projects have been accepted by the initial provider and are in use. Three others are currently in acceptance testing protocol and expected to be accepted this calendar year. Kramer has indicated that carrying the performance bonds for these projects is impacting their ability to bid additional work in 2024 and has requested the City consider methods to reduce the performance bond obligation.

Iowa Code 573.27 allows the contracting authority to make full payment for the completed work and enter into a supplemental contract when 95% of the contract has been completed and due to conditions beyond the contractors control the remaining work cannot be completed for more than 60 days with the consent of the contractor's surety and terms of the original bond remain in effect. In this case well over 95% of the work is complete and paid for and the outstanding restoration cannot be completed until spring. The City has successfully used supplemental contracts in the past. However, due to the sensitivity of restoration related to this project Staff felt it appropriate to discuss with the Subcommittee before bringing an agreement before the full Council. If the Subcommittee agrees, Staff would propose a supplemental agreement with a defined timeline for completion as well as a reasonable surety amount to guarantee performance.

Council Member Kevin Trevillyan asked what would happen if Kramer Service Group's performance bonds were reduced but they did not complete restoration as required.

Principal Engineer Ben McAlister stated that would be covered in the supplemental contract, he would work with Assistant City Attorney Greta Truman to draft the terms of the supplemental contract.

Council Member Trevillyan was in agreement with Staff's proposal.

Council Member Matthew McKinney asked if this would compromise the City's ability to have the restoration completed.

Mr. McAlister responded the way the Iowa code is written; the terms and conditions of the existing bonds would remain in effect. The City would only be reducing the amount of the bond and hold enough to cover the costs of restoration.

Council Member McKinney verified that Staff would retain sufficient security to ensure all restoration costs are covered.

Mr. McAlister stated yes, as that is the statutory requirement. He continued stating that Kramer Service Group has been one of the most responsive contractors on the conduit project. They frequently pulled people off production to take care of the residents complaints.

Assistant City Attorney Greta Truman commented that the supplemental contract include the same terms as the original contract and will require Kramer Service Group to maintain their bond to cover the cost of all remaining restoration.

Direction: Committee members were in favor of releasing the maintenance bonds for Kramer Service Group. Staff will work with the City's Legal Department to create a supplemental agreement that will include full cost of restoration.

4. **Review of Items for Council Meeting (December 18th, 2023)**

ENGINEERING COUNCIL AGENDA ITEMS:

CONSENT AGENDA

Resolution – Ordering Construction *Eng Est: \$200,045.00 Bids: 1/3/24*

- **Riverview Drive Erosion Control and Stabilization**
(0510-044-2023) McClure Engineering Company 500.000.000.5250.490 *performance bond proceeds*

Resolution – Approving Amendment No. 1 to Professional Services Agreement *\$25,300.00*

- **2023 Parking Lot Repair Program**
(0510-010-2023) I+S Group, Inc. 500.000.000.5250.495 *General Obligation Bonds - Additional work at 318 5th Street to be tracked separately*

Resolution – Approving Amendment No. 1 to Master Conduit License Agreement

- **Iowa Network Services, Inc. dba Aureon Network Services**

Resolution – Accepting Work *\$1,794,345.81*

- **Raccoon River Drive Bridge over Relocated Johnson Creek**
(0510-051-2015) United Contractors, Inc. 500.000.000.5250.490 *Grand Prairie Parkway Urban Renewal Area TIF*

Resolution – Accepting Work *\$752,230.00*

- **2022 Sewer Rehabilitation Program**
(0510-007-2022) Visu-Sewer, Inc. 640.000.000.5250.490 *Sanitary Sewer Fee Revenue*

PUBLIC HEARINGS

Resolution – Approving Conduit Network License Agreement

- **Unite Private Networks**

Resolution – Awarding Contract *\$1,293,000.00*

- **SE Fire Training Facility**
(0510-026-2021) Elder Corporation 500.000.000.5250.490 *Tax Increment Financing revenue collected from within the Microsoft Alluvion Urban Renewal Area TIF*

Resolution – Awarding Contract *\$232,000.00*

- **RecPlex Operational Improvements, Electrical/Mechanical**
(0510-048-2022) Edge Commercial 692.400.700.5250.490 *Local Option Sales & Service Tax (LOSST)*

NEW BUSINESS

Approving Traffic Code Amendments – 1st Reading

- **Delete Special Yield Required, Add Special Stops Required**
Office Plaza Drive North & Office Plaza Drive South

5. Staff Updates:

Parks & Recreation Director Ryan Penning stated the Public Arts at Railroad Park was revealed on Thursday December 7, 2023 and was a huge success. Council Member Kevin Trevillyan stated his wife attended the event and it turned out very nice.

6. Other Matters:

- Council Member Kevin Trevillyan asked if the public restrooms at Railroad Park would be available throughout the winter months.

Parks & Recreation Director Ryan Penning stated they will be open until Thursday December 21, 2023, which is the last day of the Jingle in the Junction.

Council Member Trevillyan asked if that was due to no heat in the restrooms.

Public Services Director Gary Rank responded heating capacity is an issue.

Finance Director Tim Stiles added that if there were an event in Valley Junction the bathrooms would be made available.

Council Member Trevillyan stated this goes beyond Valley Junction Foundation. The restrooms were not put in just for that. It is for the public that goes down there.

Mr. Penning noted that the Valley Junction Activity Center is open to the public and does have restrooms. He added the Activity Center is typically open for public use from 8am to 9pm.

Council Member Trevillyan asked if Staff could place signage on the restrooms directing the public to the Valley Junction Activity Center.

The meeting adjourned at 12:36 pm. The next Public Services Council Committee meeting is scheduled for December 27^h, 2023.

A recording was made. Respectfully submitted by Alyssa Luvaas, Administrative Assistant.