

**Minutes of the Public Works Committee  
July 15, 2010**

Chair David Swan called the meeting to order at 8:32 a.m.

**Committee Members Present:** County Board Supervisors David Swan (Chair), Pauline Jaske, Walter Kolb, Pamela Meyer, Kathy Chiaverotti, Peter Gundrum and Tom Schellinger.

**Also Present:** Chief of Staff Mark Mader, Legislative Associate Karen Phillips, Director of Public Works Allison Bussler, Architectural Services Manager Dennis Cerreta, Architectural Engineering Technician Mike Wells, Corporation Counsel Tom Farley, Senior Civil Engineer Mike Grulke, Freeman Reporter Joe Petrie, Clerk of Courts Kathy Madden, Budget Management Specialist Linda Witkowski, Project Manager Charlie Webb of CH2M Hill, Jim Clark, Consultant – Specialty Engineering Group; and Steve Knudson, Kirk Magill, and Brian Mullins representing Magill Construction.

**Approve Minutes of May 25, 2010**

MOTION: Schellinger moved, second by Gundrum, to approve the minutes of May 25, 2010. Motion carried 7-0

**Approve Minutes of June 10, 2010**

MOTION: Gundrum moved, second by Schellinger, to approve the minutes of June 10, 2010. Motion carried 7-0

**Correspondence**

- Letter from Allison Bussler to Jim Dwyer regarding a meeting for local officials on July 13, 2010 about improvements between I-94 and WIS 59.
- Letter from Craig Donze, Department of Public Works, regarding CTH V – Good Hope Road intersection.

**Executive Committee Meeting of June 14, 2010**

As Swan was not in attendance at the June 14<sup>th</sup> Executive Committee meeting, Mader provided a summary of the items not covered at the June County Board meeting.

- Presentation and Discussion of the Department of Health and Human Services Billing and Accounts Receivable Function Audit
- Waukesha County Economic Development Update

**Future Meeting Date**

- August 12, 2010

**Future Agenda Items**

- Medical Examiner Tour

**Ordinance 165-O-028: Laying Out, Relocation And Improvement Of County Trunk Highway VV, Waukesha County Project, Project I.D. 2753-06-70, Marcy Road To Bette Drive, Village Of Menomonee Falls, Waukesha County**

MOTION: Jaske moved, second by Chiaverotti, to approve Ordinance 165-O-028.

Braun discussed the relocation order that will affect about 55 properties with the improvement of County Trunk Highway VV in the Village of Menomonee Falls. The project will expand the width of the highway from two lanes to four lanes, including bike paths or walkways and road improvements with medians. The relocation order gives the power of eminent domain to the County to purchase the properties and build this road project.

To answer Swan's question, Braun stated the paths/walkways will be located away from the traffic, outside of the curb line and the maintenance is the responsibility of the municipality.

Jaske asked who is responsible for the cost of putting in the pathways. Braun replied that normally the cost would be billed back to the municipality; however, the County is receiving an 80% match in federal aid funding for this project so the actual cost to the County is only 20%.

Motion carried 7-0

### **Ordinance 165-O-003: Parking Regulation – CTH EE**

MOTION Schellinger, Kolb to take Ordinance 165-O-003 from the table.

Motion carried 7-0

Grulke brought forth the additional information requested by the Public Works Committee at their meeting of May 13, 2010. The presented items included the following:

- A list of written follow up questions raised by the Committee and answers from the Town of Mukwonago, dated June 4, 2010, submitted by Grulke
- Letter in support of the proposed parking ordinance from Chief Thomas Czarnecki, Town of Mukwonago Police Department, dated June 24, 2010
- Letter from Town Supervisor Leppin dated June 24, 2010, and attached Town of Mukwonago Town Board minutes of December 17, 2008, requesting Waukesha County to create an ordinance to designate "no parking" areas in Lauren Park

Swan questioned the amount of time that had elapsed since the Town of Mukwonago initially submitted their request until the County acted upon it. Grulke stated the Town originally requested the parking ordinance in June 2009, but it had "fallen through the cracks" for a period of time until the ordinance process began a couple of months ago.

MOTION: Schellinger moved, second by Chiaverotti, to approve Ordinance 165-O-003.

Motion carried 7-0

### **Request to Accept the Bid Withdrawal of Magill Construction for the Secure Corridor (CIP #200326)**

Farley was present to discuss the request for the withdrawal of the bid from Magill Construction for the Secure Corridor project. He referred to the State statute and a 2005 Supreme Court decision which provide guidelines for analyzing errors in bidding, both before and after the bid opening. In this case, the mistake was discovered after the bid was open and the bidder is not allowed to change the bid. The integrity of the bidding process requires the Public Works Committee to act as a judicial body to determine whether the bid withdrawal ought to be allowed. There should be clear and satisfactory evidence to show that the error was not caused by any careless act or omission on the bidder's part in the exercise of ordinary care in examining the plans and specifications.

Farley further expounded on the provisions specified in the statute. In conformance with the statute, the bidder's notification must be very timely once the error is determined. He advised the committee to examine whether it would be unconscionable or inappropriate to require the contractor to perform under the terms of the contract because of the error; whether the County was prejudiced as a result of the mistake; whether the bidder is free from negligence and whether the mistake ought to be excusable. He reminded that the requirements are designed to expose whether or not the bidder's error is understandable - an honest mistake that could happen inadvertently to a conscientious bidder or whether there is evidence of sloppiness or a lack of adequate preparation, which is not excusable.

Farley then discussed the circumstances that led to the request for the withdrawal of the bid due to an error in the formulation and submission of the bid. Farley further explained that within an hour of the bid opening the County was notified by telephone of the error, and notified in writing later the same day. The bidder, Magill Construction, requested to withdraw the bid because of a calculation error and promptly submitted explanation and detailed documents for review by the County. Farley added that Magill Construction has been very cooperative in this matter. Following his presentation of the legal perspective, Farley deferred to Crosswaite for an overview of the documentation submitted by Magill Construction.

Crosswaite stated that at Farley's request, she and Financial Analyst Bill Duckwitz examined the submitted spreadsheet independently and then together. She noted that the spreadsheet uses complicated formulas for calculating estimates/bids for labor, labor and materials and materials alone. In the process of entering the information on the spreadsheet during a last minute change, a mistake was made by cutting and pasting versus copying and pasting, resulting in an error in the final calculation. Crosswaite said that she and Duckwitz agreed that it was an unfortunate error and there was no indication of anything deceitful or negligible. Farley added that the amount of error was approximately \$250,000 on a \$1.7 million job.

Gundrum left at 9:14 a.m.

Kolb observed that perhaps the bid should have been more thoroughly reviewed by Magill Construction before it was submitted. Farley explained the process of calculating and modifying the bids takes place right up until the last minute. Mullins stated that this is the first time in 60 years that Magill Construction has made such a mistake. The particular Excel spreadsheet has been used for hundreds of bids with no prior problems. Mullins further explained the hectic nature of the bidding process, especially during the last minutes preceding the deadline. He referred to State statute and 2005 Supreme Court decision as previously cited by Farley, which distinguishes between judgmental errors in plans and specification versus clerical errors, in that that clerical errors should be excused. The excuse has two elements: excuse from bid itself and excuse the bid deposit.

Farley clarified that if the Committee finds the error to be excusable, the bid bond would be released. If found inexcusable and the contractor refuses to perform, the bid bond would then be forfeited.

Swan commented that the Committee's role is to make sure the citizens of the County are protected. He noted that the other bids were all within a very close range - Magill's error appears to be excusable. Farley explained the cost of the project, between \$ 1.7 - \$1.8 million, is apparent by the other bids. In response to Swan's comment, Bussler noted that the public wants an honest process and a fair price, and as Magill's bid is extremely lower, the fair and honest price is apparent in the rest of the bids. Jaske agreed that as Magill is a substantial company, it would be reasonable to assume that a mistake was made in the spreadsheet calculations.

At Jaske's request, Cerreta distributed the bid tabulation and consultant's letter for further review by the Committee.

MOTION: Kolb moved, second by Chiaverotti, to accept withdrawal of the bid from Magill Construction, excuse the error and waive forfeiture of the bid bond.  
Motion carried 6-0

**Request to Award the Bid to Ray Stadler Construction for the Secure Corridor (CIP # 200326)**

Bussler stated the Committee is being requested to award the Secure Corridor bid to the next lowest bidder, Ray Stadler Construction, for the base bid amount only. She explained the budget would be a bit shy to fully fund Alternate A; however, there should be a substantial amount left to cover most of the fire resistant glass windows. She stated that all of the concerned partners – the Judiciary, the District Attorney's Office, the County Board Office and the Clerk of Courts – have come to agreement. The Judiciary will be given all of their windows. The other partners have agreed to close off some windows, where drywall will be installed in place of the more costly fire-resistant glass. Madden agreed that she is comfortable with the decision to close up some of the windows in the Jury Assembly Room as long as the windows can be maintained in the courtrooms and chambers. Bussler assured that there would still be some windows and natural light in all of the areas, except perhaps a storage area.

The total project budget was reviewed briefly. Jaske asked what other bids related to this project will be brought to this Committee for approval. Cerreta clarified that there would be two future bids – one for security equipment and another for environmental systems. Cerreta advised referring to the capital budget summary for specific cost documentation of the total project.

MOTION: Kolb moved, second by Jaske, to approve the bid from Ray Stadler Construction for the base bid amount of \$1,673,000.  
Motion carried 6-0

**Eliminate WW Masonry Restoration from the following project bid lists:**

- Highway/Fleet Garage Sealant Replacement and Concrete Repair – WC 11556
- UW-Waukesha Masonry Restoration – WC 11557

Keckeisen discussed the reasons for the request to deem WW Masonry Restoration, the low bidder, an unresponsive bidder and removed from the project bid lists. On the *Bidder's Proof of Responsibility* form, WW Masonry Restoration answered "no" to questions which asked whether the bidder has ever failed to complete any work awarded to them or whether they have ever defaulted on a contract. Keckeisen presented a letter from the State of Wisconsin regarding the unsatisfactory job performance of WW Masonry Restoration's subcontractor, who was terminated from the job based on substandard workmanship and lack of supervision. Following WW Masonry Restoration's relocation to Tennessee, they failed to follow through with completion of the project and their contract was terminated. Keckeisen noted this bidder was not truthful on the bid bond report submitted to Waukesha County. Clark said he went over the figures and budget based on the scope of the work and cost history of similar work, and those budget numbers fall in line with the rest of the bidders. WW Masonry Restoration bid extremely low. Keckeisen warned this work cannot be done for that amount of money, especially because prevailing wage must be paid on this job.

MOTION: Kolb moved, second by Chiaverotti, to deem WW Masonry Restoration an unresponsive bidder and removed from the Highway/Fleet Garage Sealant Replacement and Concrete Repair and UW-Waukesha Masonry Restoration projects bid list.

Meyer asked if the letter from the State was solicited. Keckeisen stated it was solicited as a part of the usual evaluation process done for the low bidder. The vetting procedure was further discussed. Keckeisen noted that WW Masonry Restoration did not appear for the walk-through for this project. The contractor was advised of the action taking place today and did not respond.

Motion carried 6-0

**Approval of Bids:**

Highway/Fleet Garage Sealant Replacement and Concrete Repair – WC 11556:

MOTION: Chiaverotti moved, second by Kolb, to approve the bid by CWS Source, Inc., dba Structurewerks, for the base bid amount of \$66, 289.

Jaske asked if this company has been vetted. Keckeisen responded that yes, the vetting procedure was followed for this bidder. Keckeisen added that he is familiar with this company.

UW-Waukesha Masonry Restoration – WC 11557:

MOTION: Jaske moved, second by Kolb, to approve the bid by B&B Quality Restoration for the base bid amount of \$177,000.

Jaske asked if this company has also been vetted; Keckeisen confirmed that yes, it was.

Motion carried 6-0

**Update on the West Waukesha Bypass and the CTH SS Option**

Evans explained that a public information meeting was held last evening; however, due to a mailing issue that resulted in late notification to residents, another meeting will be scheduled during the first week of August. About 200 people attended the public information meeting last evening.

Evans reviewed the purpose of the project, which is to provide a north-south arterial connector on the west side of Waukesha. During the course of the first public information meeting held in May, the possibility of the County SS option was suggested. The feedback from the meeting was used to develop the initial range of alternatives presented at the public hearing. Alignments along County TT, County SS and County T were developed from public input and project team investigations. These options/alternates are being explored as part of the Environmental Impact Statement (EIS) process.

Webb distributed a handout from the public information meeting. He stated a draft EIS is still on schedule for completion early next year. Webb reviewed the characteristics of the three corridors as outlined.

- The County TT corridor has been identified in local and regional planning documents since the 1970's. Portions of the corridor have reserved right-of way for expansion of County TT and use of existing right-of-way would be maximized. The geometric deficiencies and capacity problems on County TT are addressed. There would be minimal impacts to natural resources

and a low potential for modifications to the I-94 interchange.

- County T has had no previous plan for expansion, and there is restricted right-of-way for future expansion. There is the potential for large numbers of residential relocations. Numerous access points and reduced speeds would limit efficient travel. The existing geometric problems and congestion on County TT would not be addressed. There is low potential for modifications to the I-94 interchange.
- The County SS corridor has had no previous plan for expansion and would require more right-of-way acquisition compared to other corridors. There are greater wetland and stream impacts than other corridors and primarily affects farmland rather than residential development. The Retzer Nature Center would be impacted. (Webb discussed possible issues, as federal law protects public parks.) The existing geometric problems and congestion on County TT would not be addressed. There is high potential for modifications to the I-94 interchange.

In response to Jaske's question about the project timeline, Webb referred to the project schedule contained in the handout. He stated the EIS is on schedule for completion by late summer of 2011. Webb and Evans addressed Meyer's concern about potential environmental impacts.

Evans encouraged any correspondence concerning thoughts and opinions on the proposed alternates for the West Waukesha Bypass. Correspondence can be sent directly to Webb or to Evans, who would forward it to Webb. He noted the County Board as a whole could make a recommendation if they so desire.

Swan thanked Evans and Webb for the informative presentation.

#### **Approval of Bids:**

##### Dredging of the Pewaukee Lake Access (#20010):

Grimm reviewed the bids as listed on the bid tabulation form for this project. He stated that Petersen Companies, Inc. submitted the low bid of \$31,760.

MOTION: Jaske moved, second by Schellinger, to approve the bid by Petersen Companies, Inc. in the amount of \$31,760.

At Swan's request, Grimm provided a brief explanation of the dredging process. Hydraulic dredging will be done in the north area of the site, blocking off two lake accesses; the two lake accesses on the south side would remain open. Jaske asked when this project would be done and how long it would take. Grimm stated the project would be done during the month of August, as to not interfere with the Muskie fisherman in September. Jaske and Swan both agreed it would be better to delay the project until after school starts in consideration of the number of boaters who utilize the launches during the summer season, especially before Labor Day. Grimm stated he would look into the possibility of delaying the project.

Motion carried 6-0

##### Geothermal Construction - Retzer Nature Center:

Grimm asked the Committee to reject rather than approve the bids. He reviewed the bid summary as follows: Hunzinger Construction Co - \$334,000; Four Bears Construction, Inc. - \$408,000. The estimated budget for this project was \$180,000. Grimm stated this project would be rebid. Meyer asked about why the bids were so much higher than the budgeted amount. Grimm stated the

contractors were unsure about the site restoration costs, so they submitted a larger number to cover themselves. He assured that when put out for rebid; more specifics will be provided. Changes will include not running the heat pumps to the planetarium and learning center at this time, rather only to the old part of the nature center and to the new maintenance building. He assured Kolb that the system installed would have the capacity to handle upgrades on the other buildings as needed in the future.

MOTION: Chiaverotti moved, second by Schellinger, to reject both of the submitted bids.  
Motion carried 6-0

Government Center & Northview Concrete Improvements-2010 (Juvenile Center front entrance, Huber stairway and Administration Center employee entrance):

Grimm reviewed the bids as listed on the bid summary for the following Summer 2010 Concrete Projects:

Juvenile Center: The low bid of \$10,250 was submitted by Zenith Tech. Inc.

MOTION: Jaske moved, second by Chiaverotti, to approve the bid by Zenith Tech. Inc in the amount of \$10,250.

Motion carried 6-0

Northview: The low bid of \$10,800 was submitted by Ray Stadler Construction.

MOTION: Chiaverotti moved, second by Schellinger, to approve the bid by Ray Stadler Construction in the amount of \$10,800.

Motion carried 6-0

Administration Center Curb Replacement: The low bid of \$3,500 was submitted by Marvin Gleason Contractor, Inc.

MOTION: Jaske moved, second by Chiaverotti, to approve the bid by Marvin Gleason Contractor, Inc. in the amount of \$3,500.

Motion carried 6-0

MOTION: Jaske moved, second by Chiaverotti, to adjourn at 10:45 a.m.

Motion carried 6-0

Respectfully submitted,

Pauline Jaske  
Secretary