

STOUGHTON UTILITIES COMMITTEE REGULAR MEETING MINUTES

Monday, August 19, 2024 – 5:30 p.m.

Stoughton, WI

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Location: Edmund T. Malinowski Board Room, Stoughton Utilities Administration Office
600 South Fourth Street, Stoughton, Wisconsin
Optional Virtual Participation: GoToMeeting ID 347-295-421

Members Present: Citizen Member Carl Chenoweth, Citizen Member David Erdman (Chair), Alderperson Regina Hirsch, Alderperson Daniel Payton, Mayor Tim Swadley, Citizen Member Dustin Thoren (Vice-Chair)

Excused: Alderperson Greg Jensen

Absent: None

Others Present: Stoughton Utilities Assistant Director Brian Hoops, Stoughton Utilities Finance Manager Shannon Statz, Stoughton Utilities Director Jill Weiss

Call to Order: Chairperson Erdman called the regular Stoughton Utilities Committee Meeting to order at 5:30 p.m. Chenoweth, Erdman, Hirsch, Payton, Swadley, and Thoren were present in person. No members attended virtually.

Verification of Quorum: The chair verified that a quorum of the committee membership was present.

Certification of Compliance with Open Meetings Law: Weiss certified that the meeting had been properly noticed in compliance with open meetings law.

Public Comments: Chenoweth discussed a recent notification that residents on W. South St. received the prior week regarding a scheduled water interruption to facilitate the ongoing street and utility reconstruction project. Staff acknowledged that complaints have been received from several residents in the neighborhood. Chenoweth requested that future notices of service interruption during such reconstruction projects be served in advance via door-tag, with delivery being coordinated by the utility. Discussion followed.

Utilities Committee Consent Agenda: Stoughton Utilities staff presented and discussed the Stoughton Utilities Committee consent agenda items. Discussion followed.

Motion by Hirsch, the motion seconded by Chenoweth, to approve the following consent agenda items as presented:

- a. Minutes of the June 17, 2024 Regular Utilities Committee Meeting
- b. Stoughton Utilities Payments Due List Report
- c. Stoughton Utilities Quarter 2 2024 Investment Summary
- d. Stoughton Utilities Financial Summaries
- e. Stoughton Utilities Statistical Report
- f. Stoughton Utilities Activities Reports
- g. Communications

The motion carried unanimously 6 to 0.

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Status of the Utilities Committee recommendation(s) to the Stoughton Common Council: Stoughton Utilities staff presented and discussed the following items from the Stoughton Utilities Committee that were recently approved and/or placed on file by the Stoughton Common Council:

Consent Agenda:

1. Minutes of the May 20, 2024 Regular Utilities Committee Meeting
2. Stoughton Utilities Payments Due List Report
3. Stoughton Utilities Financial Summary
4. Stoughton Utilities Statistical Report
5. Stoughton Utilities Activities Report

Business:

1. Stoughton Utilities 2023 Audit Reports and Management Letter
2. Wastewater 2023 Compliance Maintenance Annual Report (CMAR)
3. Authorizing the Partial Release of a Platted Public Utility Easement on Lot 98 of Nordic Ridge (2225 Korgen Dr)
4. Revision #1 to Wisconsin Department of Transportation State/Municipal Financial Agreement
5. Bid Award for Contract No. 5-2024: Mandt Park Improvements – Phase 1A

Discussion followed.

Aqueous Film-Forming Foam (AFFF) Product Liability Litigation (MDL 2873): Stoughton Utilities staff provided history of Stoughton's involvement in an ongoing class-action lawsuit and the resulting settlements, and informed the committee that in Stoughton Utilities has received additional notices of class action settlements regarding Aqueous Film Forming Foams (AFFF) Product Liability Litigation for individual settlements. Staff reminded the committee that at its November 20, 2023 meeting, the Stoughton Utilities Committee voted 5-2 to recommend that the Stoughton City Council take no action and remain a member of the 3M and DuPont settlement classes. At its November 28, 2023 meeting, the Stoughton Common Council voted 10-1 to direct staff to take no action and remain a member of the 3M and DuPont settlement classes.

Staff informed the committee that in July 2024, Stoughton Utilities received additional notices of class action settlements regarding Aqueous Film Forming Foams Product Liability Litigation against BASF Corporation ("BASF") and Tyco Fire Products LP ("Tyco"). The settlements are fundamentally similar to the 3M and DuPont settlements, but for lower amounts at a collective total of \$1.0625 billion (BASF: \$750 million, Tyco: \$312.5 million) in funding to address the companies' liability for public water systems affected by PFAS contamination in their drinking water. Settlement allocation estimates have not been provided. Under the terms of the settlement, Stoughton Utilities will remain a part of the settlement class unless it chooses to exclude itself.

Staff explained that Stoughton Utilities has previously completed baseline testing for PFAS and this prior testing has indicated that the utility would be a qualifying class member in the settlements, with PFAS detects at Well No. 4, but no detects at Wells No. 5, 6, and 7. Additional baseline testing was conducted in June 2024 for purposes of the settlement claim filing with the same results. Stoughton Utilities staff filed a Phase 1 3M Action Fund Claim and DuPont Action Fund Claim (Combined Claim ID 001078) on July 25, 2024.

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It was further explained that BASF and Tyco have proposed these settlement agreements in order to settle certain claims, remove themselves from this lawsuit, and prevent class members from suing in the future. Under the settlement agreements, every settlement class member who remains in the settlement agreement thereby agrees to “expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever release, waive, compromise, settle, and discharge” these companies from certain claims. This includes any claim related to PFAS in drinking water or the public water system that has arisen or may arise in the future. The release in both agreements is extremely comprehensive.

Stoughton Utilities has the option of opting-out of the settlement class, thereby not releasing any future claims against BASF and Tyco related to the PFAS contamination of Stoughton’s drinking water supply system. If the City does not opt out, the City will have released these companies from liability and, therefore, cannot bring any lawsuit against either BASF or Tyco related to the claims resolved by the settlement agreements. It is staff’s recommendation that Stoughton Utilities remain a member of the settlement class, which requires no action from the utility at this time.

Discussion followed. Hirsch asked if the settlement had a specific definition for the PFAS contaminants or if it used a broad definition. Staff reviewed the full language of the settlement agreement, which defined PFAS as “solely for purposes of this Agreement, any per- or poly-fluoroalkyl substance that contains at least one fully fluorinated methyl or methylene carbon atom (without any hydrogen, chlorine, bromine, or iodine atom attached to it)” with the intent of the definition to “be as broad, expansive, and inclusive as possible.” Discussion continued.

Motion by Payton, the motion seconded by Chenoweth, to approve taking no action and remaining a member of the BASF Corporation and Tyco Fire Products LP settlement classes under Master Docket No. 2:18-MN-2873-RMG of the United States District Court for the District of South Carolina, and recommend the same to the Stoughton Common Council at their August 27, 2023 meeting. The motion carried unanimously 6 to 0.

Stoughton Utilities RoundUP Program: Stoughton Utilities staff presented and discussed the Stoughton Utilities Round-Up Program. A brief description and history of staff’s efforts to recruit new organizations to apply for funding was provided to the committee. This is the first of two donations to be made using 2024 program funding, with an applicant pool of 16 local non-profit organizations. Discussion followed.

Swadley left the meeting at 6:05 p.m.

Motion by Chenoweth, the motion seconded by Erdman, to donate \$500 from the Stoughton Utilities Round-Up Program fund to the Stoughton Aqua Racers - STAR and \$500 to Three Gaits, Inc. The motion carried unanimously 5 to 0.

Utilities Committee Future Agenda Items: Stoughton Utilities staff informed the committee that staff is currently working to finalize the Stoughton Utilities 2025 operating budget and five-year capital improvement plan (CIP) which is planned for presentation to the committee in August, a review of administration building needs and potential budgetary impacts, and a review of the previously budgeted 2024 simplified water rate case filing. Discussion followed.

Adjournment: Being no further business before the committee, motion by Payton, seconded by Chenoweth, to adjourn the meeting at 6:23 p.m. The motion carried unanimously 5 to 0.

Respectfully submitted,

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Brian R. Hoops

Assistant Stoughton Utilities Director