

**CITY OF BAYPORT
CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS
SEPTEMBER 10, 2007
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice, Mayor Nowaczek called the regular City Council meeting of September 10, 2007 to order at 6:00 p.m., and asked Councilmembers, staff and the audience to join in pledging allegiance to the American Flag.

ROLL CALL

Members Present: Mayor Jon Nowaczek, Councilmembers Connie Carlson, Dan Johnson, Torry Kraftson, and Sharon Ridgway

Members Absent: None

Others Present: Administrator Mike McGuire, Police Chief Laura Eastman, Public Works Supervisor Mel Horak, Library Director Kathy MacDonald, Engineer Barry Peters, Assistant Administrator/Planner Sara Taylor, and Attorney Nick Vivian

PROCLAMATIONS/COMMENDATIONS/PETITIONS

1. Mayor Nowaczek read a proclamation in recognition of resident Clara Ahlers who celebrated her 100th birthday on September 1, 2007. He encouraged residents who achieve similar milestones to contact the city, so they may also be recognized by the City Council.
2. Mayor Nowaczek announced that the August recycling award went to Dan Ridgway.

OPEN FORUM

1. Gloria Sell, 10690 Quarry Avenue, Stillwater, Minnesota, stated she is a former city employee and believes the city did not follow its personnel policy procedure when terminating her as the city's Finance Officer. She requested that she be reinstated until such time that a determination can be made of her employment status in a closed session with the City Council, which would allow her to respond to Administrator McGuire's allegations against her. Mayor Nowaczek indicated that Item # 11 on the Consent Agenda, *Authorization to replace Finance Officer position*, be moved to the end of tonight's New Business.
2. Mary Goulette, on behalf of the Bayport Community Action League (BCAL), reminded everyone that Derby Days will be celebrated on September 14th and 15th, and that additional volunteers are needed. Volunteers can sign up via the BCAL website, www.bayportcommunityactionleague.com, or just show up to help.

CONSENT AGENDA

Mayor Nowaczek read items 1-10 on the amended consent agenda, noting that Item #11 was being moved to New Business, Item #5.

Councilmember Carlson introduced the following resolution and moved its adoption:

Resolution 07-20

**RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING
CONSENT AGENDA ITEMS 1-10 FROM THE SEPTEMBER 10, 2007 CITY COUNCIL
AGENDA**

1. August 6, 2007 City Council regular meeting minutes
2. August payables and receipts
3. August building, plumbing and mechanical permits
4. Annual lawful gambling premise permit for American Legion Post 491 located at 263 North 3rd Street, Bayport, MN
5. Purchase of unused gravesites in Hazelwood Cemetery from William Huhnke
6. Renewal of 2:00 a.m. closing liquor license for Captains Corner located at 193 North 3rd Street, Bayport, MN
7. Change order no. 2 for well no. 2 air stripping system
8. Final payment to Natgun Corporation for the ground storage reservoir
9. Change order for Phase I - Lakeside Park Improvement Project
10. Final payment to Magney Construction for the Well #2 Air Stripper Project

The motion for adopting the foregoing resolution was duly seconded by Councilmember Johnson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

PUBLIC HEARINGS

Public Improvement and Assessment Hearing for the 2007 City Sidewalk and Curb Rehabilitation Project and consider resolution adopting assessment roll: Engineer Peters noted that this is the assessment hearing for the above project that was ordered by the City Council at the August 6, 2007 meeting. He reviewed the project area and background of the work to date. Quotes for the project came in less than estimated, and the assessments were reworked based on the low quote. The purpose of the assessment hearing is to consider comments from property owners affected by the project.

Councilmember Carlson inquired whether the city has a master plan for sidewalk replacement. Public Works Supervisor Horak indicated there currently is no master plan; however sidewalks are inspected on a yearly basis. City policy is to preferably replace entire blocks of sidewalk at a time, and it is a continual replacement process, given root and weather issues, as well the quality of today's concrete. He noted the city does require a premium concrete mixture in its specifications for this type of work.

It was moved by Councilmember Carlson and seconded by Councilmember Ridgway to close the public hearing. Motion carried.

Councilmember Ridgway introduced the following resolution and moved its adoption:

Resolution 07-21

A RESOLUTION ADOPTING THE ASSESSMENT ROLL FOR THE 2007 CITY SIDEWALK AND CURB REHABILITATION PROJECT

The motion for adopting the foregoing resolution was duly seconded by Councilmember Kraftson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

UNFINISHED BUSINESS

Consider awarding the 2007 City Sidewalk and Curb Rehabilitation Project: Public Works Supervisor Horak indicated the city received very favorable quotes and recommended the project be awarded to the low quoter, Bailey Construction of Stillwater, Minnesota.

It was moved by Councilmember Kraftson and seconded by Councilmember Carlson to accept the quote submitted by Bailey Construction, Stillwater, Minnesota, in the amount of \$24,583.00, for the 2007 Sidewalk and Curb Rehabilitation Project. Motion carried.

COUNCIL LIAISON REPORTS

Councilmember Ridgway stated the next meeting of the Cable Commission is scheduled for September 19, 2007 at 7:00 p.m. at the Valley Ridge Mall.

Councilmember Kraftson reported the Middle St. Croix Watershed Management Organization (MSCWMO) met on August 9, 2007. Discussion continues on new regulations requiring stormwater management techniques for all city projects adding new impervious surfaces. A recommendation is forthcoming that will amend this requirement to larger projects that add at least 500 square feet of impervious surface. The next meeting is scheduled for September 13, 2007.

Councilmember Johnson reported the Bayport Library Foundation Board will be hosting a reception for the Master Gardeners who worked on the new landscaping for the library. It is scheduled for Thursday, September 27, 2007, 6:00 p.m. at the library. The next board meeting will be held immediately following the reception.

Councilmember Carlson reported the Lower St. Croix Partnership did not meet in September.

UNFINISHED BUSINESS (continued)

Update on proposed cremains area in Hazelwood Cemetery and consider authorization to complete a land survey and soil correction analysis: The Cemetery Advisory Commission had recommended creating a cremains only section at Hazelwood Cemetery, and quotes were solicited for professional services to replat a section of the cemetery. The cremains gravesites would measure 30 inches x 30 inches. Staff recommended awarding the replatting services to the low quoter, Landmark Surveying, in the amount of \$2,675.00. The soil condition in the proposed cremains area is very poor and should be corrected in conjunction with the replatting project. Quotes were solicited for this work, and staff recommended that Bell Trucking be awarded the soil correction project, for the low quoted price of \$7,800.00. The quote includes black dirt fill and seeding of the area.

The advisory group also recommended that the south portion (420 lineal feet) of the cemetery fence be repaired. This was added to the city's CIP during 2009-2012; however, staff recommended it be addressed in next year's budget cycle, due to the deteriorated condition of the fence. Staff has investigated a new fencing material that has a 20-year warranty.

It was moved by Councilmember Kraftson and seconded by Councilmember Ridgway to award the cremains replatting project to Landmark Surveying, Scandia, Minnesota, in the amount of \$2,675.00, and award the soil correction project for the cremains area to Bell's Trucking, Stillwater, Minnesota, in the amount of \$7,800.00. Motion carried.

Consider an amendment to the city code related to lawful gambling activity: Attorney Vivian reviewed changes to a draft amendment to the city's charitable gaming ordinance that incorporate the City Council's direction to provide for an exempt permit that would exclude organizations that conduct one event per year. Discussion followed on enforcing this type of exempt permit.

Councilmember Johnson introduced the following ordinance and moved its adoption:

Ordinance #792

AN ORDINANCE AMENDING SECTIONS 10-26 AND 10-33 OF THE CITY OF BAYPORT'S CODE OF ORDINANCES CREATING EXEMPT PERMITS FOR LOCAL CHARITABLE GAMING

The motion for adopting the foregoing ordinance was duly seconded by Councilmember Carlson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

NEW BUSINESS

Consider 2007 city budget: Administrator McGuire reviewed the proposed 2008 budget, including goals, the budgeting process, conditions affecting the budget, projected revenue sources, and departmental expenses. The city is proposing a levy of \$985,470.00, a 5.9% increase from 2007. It was noted that the last five budget years have realized a 0% increase and/or decrease in the city's levy. The proposed 2008 Capital Improvement Projects (CIP) plan was reviewed in detail, and the 2009-2012 CIP plan was reviewed. The city's debt service, bond debt balance, and major fund balances were examined. The water and sewer enterprise funds were reviewed, and it was noted a rate study and possible rate increase will be explored.

Administrator McGuire explained the levy process, noting that the State currently sets no levy limits, however he anticipates this could change in the near future. Library Director MacDonald explained that 50% of the library's revenue must come from public funds, i.e., the city, to retain its public status, thus the levy increase for library needs. The library is also actively exploring additional revenue sources to meet its operating needs, given the decline in available grant money. Mayor Nowaczek commented on the city's financial status and encouraged residents to contact Councilmembers or city staff with any questions regarding the city's operations and impact on the budget. He noted that even though there is a levy increase, the average property owner may see a slight decrease in city taxes, due to the city's larger tax base. Mayor Nowaczek noted his term ends in 2008, not 2010, as listed in the budget materials.

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-22

RESOLUTION OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, ESTABLISHING THE PRELIMINARY LEVY CERTIFICATION FOR THE CITY'S GENERAL AND DEBT SERVICE FUND AND LIBRARY FUND AT \$985,470.00

The motion for adopting the foregoing resolution was duly seconded by Councilmember Kraftson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-23

**RESOLUTION OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
ADOPTING THE PRELIMINARY CITY BUDGET FOR 2008**

The motion for adopting the foregoing resolution was duly seconded by Councilmember Carlson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-24

**RESOLUTION OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
ADOPTING THE PRELIMINARY CAPITAL IMPROVEMENT PLAN FOR 2008 THROUGH
2012**

The motion for adopting the foregoing resolution was duly seconded by Councilmember Carlson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

Consider a request to rezone 386 Maine Street South from I-Industrial to R2-Single-family Urban to allow construction of a new single-family home: Assistant Administrator/Planner Taylor reviewed Andersen Corporation's request to rezone 386 Maine Street South from industrial to residential to allow for the construction of a single-family home that would be donated to Twin Cities Habitat for Humanity. The property, that once contained a single-family home, is surrounded by a mixture of land uses, with the majority being single-family homes. If approved, the applicant plans to renovate the existing 2-car garage to comply with the Minnesota State Building Code and complement the exterior of the new house. Many of the mature trees on the lot would remain and new landscaping is proposed throughout the lot, particularly along the north side to serve as a buffer to the adjacent industrial facility. Staff believes the proposed house and improvements would complement and improve the neighborhood, and that the property may be best suited for residential use. The Planning Commission recommended approval of the rezoning application at its August 20, 2007 meeting, with the conditions listed in the staff report.

Last week, staff received supplemental information from the applicant requesting an increase to the footprint of the proposed house. According to the revised survey, the new footprint would comply with the setback and impervious coverage limitations set forth by city code. If the City Council approves the revised footprint, staff would make the appropriate changes to the resolution.

Susan Roeder, Manager of Community Affairs for Andersen Corporation, thanked city staff for their assistance with the project and explained their partnership with Habitat for Humanity. She noted this would be the 100th home Andersen Corporation has collaborated on with Habitat for Humanity. The Habitat for Humanity philosophy and home building/ownership process were explained.

Councilmember Kraftson made note of MSCWMO requirements regarding stormwater management and recommended that Andersen Corporation look into incorporating rain gardens into the landscaping to help control runoff. The city's building official will work with Andersen Corporation on the issue.

Councilmember Carlson introduced the following resolution and moved its adoption:

Resolution 07-25

RESOLUTION APPROVING ANDERSEN CORPORATION'S APPLICATION TO REZONE 386 MAINE STREET SOUTH, LEGALLY DESCRIBED AS LOT 15 AND THE NORTHERLY ½ OF LOT 14, BLOCK 89, BAYPORT, WASHINGTON COUNTY, MINNESOTA FROM I-INDUSTRIAL TO R-2 SINGLE-FAMILY URBAN

The motion for adopting the foregoing resolution was duly seconded by Councilmember Johnson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

Consider rezoning 398 Maine Street South from I-Industrial to R2 Single-family Urban: Assistant Administrator/Planner Taylor stated the subject property is directly south of 386 Maine Street South, the property rezoned in the previous agenda item to allow for the Habitat for Humanity home. The property is zoned industrial, but contains a single-family residential home that is considered legally non-conforming. With the rezoning request for the adjacent Habitat for Humanity project, staff evaluated the zoning classifications of surrounding properties and felt this property should be zoned residential to provide consistency with zoning and land use. As such, the city initiated the rezoning request.

Councilmember Ridgway introduced the following resolution and moved its adoption:

Resolution 07-26

RESOLUTION APPROVING THE REZONING OF 398 MAINE STREET SOUTH, LEGALLY DESCRIBED AS LOT 13 AND THE SOUTHERLY ½ OF LOT 14, BLOCK 89, BAYPORT, WASHINGTON COUNTY, MINNESOTA FROM I-INDUSTRIAL TO R-2 SINGLE-FAMILY URBAN

Councilmember Kraftson suggested correcting a road right-of-way easement issue with the property at this time instead of waiting until such time as the property owner applies for a building permit that would require a land survey, as current policy dictates. Administrator McGuire explained that correcting the encroachment issue at this time could set a precedent for other properties throughout the city with similar issues, and the city could potentially incur significant engineering and legal fees.

The motion for adopting the foregoing resolution was duly seconded by Councilmember Carlson and upon roll call being taken, the following voted via voice:

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|----------------------|----------------------|
| Jon Nowaczek – aye | Torry Kraftson – aye |
| Connie Carlson – aye | Sharon Ridgway – aye |
| Dan Johnson – aye | |

Consider a request to refund fees for a right-of-way excavation/grading permit to Warren and Beth Utecht: Administrator McGuire reviewed the Utecht's request to be refunded \$250.00 the city charged for a right-of-way excavation/grading permit fee when the Utecht's hooked up to the city's water and sewer system as part of the South Minnesota Street Utility Project. City staff has reviewed the issue and determined that since the excavation was mainly on private land and the property owners have already

paid substantial assessments for the project, the excavation/grading permit fee of \$250.00 should be refunded. Three or four additional property owners who have hooked up to city utilities as part of the project have paid the same fee, and staff recommended that they also be refunded the \$250.00 fee.

It was moved by Councilmember Carlson and seconded by Councilmember Kraftson to refund a \$250.00 right-of-way excavation/grading fee to Warren and Beth Utecht, 832 Minnesota Street South, Bayport, Minnesota, and all other affected property owners in the South Minnesota Street Project. Motion carried.

Authorization to replace Finance Officer position: Mayor Nowaczek and Attorney Vivian noted that City Council discussion relating to this issue is subject to Minnesota Data Privacy Act statutes and personnel matters. Attorney Vivian provided a general overview of the city's process in terminating Gloria Sell as Finance Officer on August 30, 2007. In accordance with the city's personnel policy, Ms. Sell was informed that she could appeal the decision to the City Council at tonight's meeting by notifying staff by September 4th so it could be placed on the agenda. In addition, her 10-day appeal rights expired September 9th. The city did not receive a written notice of appeal from Ms. Sell; therefore, staff deemed that her appellate rights have waived at this point. He stated that the City Council would be in violation of meeting notification regulations if it discussed this matter in closed session tonight, because the proper notice was not given. Staff recommended that the City Council take action to discontinue Gloria Sell's employment and authorize staff to fill the position. Staff also requested authorization to issue final checks for payroll, accrued vacation, compensatory time and mileage reimbursement.

Councilmember Johnson questioned when Ms. Sell's appeal rights begin – when given the termination notice by the City Administrator or when approved by the City Council. Attorney Vivian indicated it was the administrator's decision and reviewed the city's grievance procedure. Ms. Sell stated that she did not feel the city's personnel policy was followed because there was no input by the City Council, as stated in city code. She requested that she be reinstated and that the matter be continued until a closed session could be held on the issue, to allow her an opportunity to respond to the performance issues that had been raised. She expressed concern with the transition of the finance department duties. Administrator McGuire stated that the city's former Finance Officer, John Nash, is filling in until the finance position is filled, and he has explored options for handling the more advanced duties of the position. He did not feel the matter should be continued and would like the staff's recommendations, as previously outlined, to be approved. Councilmembers indicated their support of Administrator McGuire's decision and recommendations.

It was moved by Councilmember Johnson and seconded by Councilmember Kraftson to discontinue the employment of Gloria Sell, authorize city staff to post and hire for the position, authorize staff to issue a final check for payroll, vacation accrued, up to 40 hours of compensatory time, and mileage reimbursement. Motion carried 5-0.

COUNCIL ITEMS/ANNOUNCEMENTS

1. Councilmember Ridgway reminded everyone to check out the activities planned for Bayport's Derby Days on Friday and Saturday, September 14th and 15th. Councilmember Johnson reiterated the need for volunteers and encouraged people to lend a helping hand.

ADMINISTRATOR/STAFF ITEMS AND ANNOUNCEMENTS

1. As part of its Wellhead Protection Plan process, the City of Bayport is required to hold an informational meeting with local units of government and the public to notify and inform them of the city's intent to prepare a wellhead protection plan. This meeting is scheduled for Monday, November 19, 2007 at 4:00 p.m. at City Hall.

ADJOURNMENT

It was moved by Councilmember Carlson and seconded by Councilmember Johnson to adjourn the meeting at 8:00 p.m. Motion carried.