CITY OF BAYPORT

294 NORTH 3RD STREET
BAYPORT, MN 55003

PLANNING COMMISSION MEETING
City Hall - Council Chambers
September 20, 2010 – 6:00 p.m.

A. CALL TO ORDER

B. APPROVAL OF MINUTES

- August 16, 2010 regular meeting

C. PUBLIC HEARINGS

- Consider an amendment to Appendix C - Lower St. Croix Bluffland and Shoreland Management, Section 2 – Intent and Purpose of the Bayport City Code

D. OLD BUSINESS

E. NEW BUSINESS

F. GENERAL INFORMATION

G. OPEN FORUM

H. ADJOURNMENT

CITY OF BAYPORT
PLANNING COMMISSION MEETING MINUTES
CITY COUNCIL CHAMBERS
AUGUST 16, 2010
6:00 P.M.

CALL TO ORDER

Pursuant to due call and notice thereof, Chairperson Goldston called the regular Bayport Planning Commission meeting of August 16, 2010 to order at 6:00 p.m.

ROLL CALL

Commissioners Present: Dan Goldston, Pam Hoye, David Levy and Jennifer Schneider

Commissioners Absent: Tom Mabie

City Staff Present: City Administrator Mitch Berg, City Council Liaison Torry Kraftson, Assistant City Administrator/Planner Sara Taylor and City Attorney Nick Vivian

APPROVAL OF MINUTES

It was moved by Commissioner Schneider and seconded by Commissioner Levy to approve the July 19, 2010 meeting minutes as presented. Motion carried.

PUBLIC HEARINGS

Application 2010-05: Consider an amendment to Appendix B - Zoning, Section 3 – Definitions, and an amendment to Section 6 – B-1 Limited Business of the Bayport City Code of Ordinances, to allow a limited transit vehicle storage facility and a heavy commercial vehicle repair and maintenance business with a conditional use permit (CUP) at 204 2nd Avenue South: Assistant Administrator/Planner Taylor reviewed the background for the application, noting the applicant withdrew his original application that was recommended for approval by the Planning Commission in May 2010. The current application requests use as a heavy commercial vehicle repair and maintenance business, in addition to a limited transit storage facility. Planner Taylor stated there were multiple complaints issued for the property when it contained a heavy commercial truck repair shop, which led to rezoning of the property to B-1 Limited Business. She stated that none of the site improvements required by staff as part of the initial application have been completed, and the current application indicates several of the improvements will not be initiated until May 2011, or are unacceptable and will not be completed at all. Staff believes the city has been lenient with the required improvements to date and that most of the improvements are needed to bring the property into compliance with city code and to mitigate blight. Staff recommended that normal property maintenance improvements be required and completed, regardless of whether a CUP is issued as part of the current application. Additional improvements would be required as a condition of approval of the application. Staff feels the proposed use of a limited transit vehicle storage facility would be compatible within the zoning district; however, they are not recommending the heavy commercial vehicle repair business, as it would be too intense of a use and is not consistent with the city's comprehensive plan. Notice of tonight's public hearing was published in the Stillwater Gazette and mailed to all property owners within 350 feet of the property.

Attorney Vivian stated he concurs with staff recommendations and reminded the commissioners that any changes to allow the requested uses within the B-1 zoning district, would apply to the entire zoning district. Planner Taylor reviewed current complaints for the property relating to traffic, noise, and parking, and noted the current business is operating without an approved conditional use permit.

Chairperson Goldston opened the public hearing and the following were heard:

Matt Liveringhouse, applicant and CEO of Midwest Paratransit Services, Inc., answered questions related to his business, the property as it meets his future plans, site improvements, and his desire to operate a full commercial vehicle repair facility. Commissioner Levy stated that the applicant's lack of effort in making any site improvements since the May meeting would factor into his decision regarding the current application and questioned follow through on improvements, if the application is approved. Mr. Liveringhouse stated he wants his business to be a good fit for the neighborhood and would be willing to invest in the recommended improvements, if the use included commercial automotive maintenance and repairs.

Mel Horak, 226 3rd Avenue South, stated he believes a viable truck repair facility could be operated on the property, with the right conditions, and enforcement of such conditions. He would like to see the property improved and maintained.

It was moved by Commissioner Levy and seconded by Commissioner Hoye to close the public hearing. Motion carried.

Discussion followed on property maintenance issues, utility service, applicant's resistance to the required conditions of approval, current complaints and enforcement, lack of enforcement by the city with the former business, applicant's long-term business plan, and permitted uses in the zoning district.

It was moved by Commissioner Schneider and seconded by Commissioner Levy to recommend to the City Council to approve an amendment to Appendix B-Zoning, Section 3-Definitions of the city code to define a limited transit vehicle storage facility, subject to findings of fact as stated in the staff report. Motion carried.

It was moved by Commissioner Hoye and seconded by Commissioner Schneider to recommend to the City Council to approve an amendment to Appendix B-Zoning, Section 6 – B-1 Limited Business of the city code, to allow a limited transit vehicle storage facility as a conditional use in this zoning district, subject to findings of fact as stated in the staff report. Motion carried.

It was moved by Commissioner Hoye and seconded by Commissioner Goldston to recommend to the City Council to allow a limited transit vehicle storage facility as a conditional use at 204 2nd Avenue South, subject to findings of fact and conditions as stated in the staff report, including mitigation of city code violations related to property maintenance and required site improvements. Motion carried.

Applicant Liveringhouse explained that he would be able to operate his current business with the above-stated recommendations, but denial of the commercial vehicle repair component would pose issues with purchasing the property by not allowing him to maximize use of the building over time.

It was moved by Commissioner Schneider and seconded by Commissioner Levy to recommend to the City Council to deny an amendment to Appendix B-Zoning, Section 6 – B-1 Limited Business of the city code, to allow heavy commercial vehicle repair and maintenance as a conditional use in this zoning district and a conditional use permit to allow the use at 204 2nd Avenue South, subject to findings of fact as stated in the staff report. Motion carried.

<u>Consider an amendment to Appendix B - Zoning, Section 10 – Rezoning Ordinances of the Bayport City Code of Ordinances</u>: Planner Taylor indicated the intent of Section 10 is to provide a list of land parcels in the city that are rezoned over time. She reviewed staff's recommendation to simplify the text of the ordinance by creating an index that would reference the land parcels and date of adoption,

instead of including the legal description within the text of the ordinance. The index would then correspond with amendments to the zoning map. She noted that a full copy of the resolution or ordinance adopting the rezoning, including the legal descriptions, would be kept permanently on file with the city. Notice of tonight's public hearing was published in the Stillwater Gazette.

Chairperson Goldston opened the public hearing. No comments were received from the public.

It was moved by Commissioner Hoye and seconded by Commissioner Goldston to close the public hearing. Motion carried.

It was moved by Commissioner Levy and seconded by Commissioner Hoye to recommend to the City Council to approve an amendment to Appendix B-Zoning, Section 10-Rezoning Ordinances of the city code, calling for the rezoning of land parcels within the city to be referenced by index and reflected by amendment to the city's official zoning map. Motion carried.

OLD BUSINESS – None

NEW BUSINESS – None

GENERAL INFORMATION

Supreme Court ruling regarding variances: Attorney Vivian and Administrator Berg reviewed a recent Minnesota Supreme Court ruling that defines a much stricter standard for reasonable use when determining an undue hardship, as municipalities consider approving variances. Attorney Vivian noted that since the majority of Bayport's lots are nonconforming, most variances to alter a nonconforming use would currently have to be denied. There is pressure on the legislature to draft new legislation that would allow cities more flexibility in deciding if an undue hardship exists. Administrator Berg stated that staff would be reviewing past variances to identify possible changes to the city's zoning code that would allow property owners more flexibility to improve their property without a variance. City Council liaison Torry Kraftson supported these efforts.

OPEN FORUM – None

ADJOURN

It was moved by Commissioner Schneider and seconded by Commissioner Hoye to adjourn the meeting at 7:25 p.m. Motion carried.

M E M O R A N D U M

DATE: **September 13, 2010**

TO: **Planning Commission (September 20th meeting)**
Mitch Berg, City Administrator

FROM: **Sara Taylor, Assistant City Administrator/Planner**

SUBJECT: **Public hearing to consider an amendment to Appendix C – Lower St. Croix Bluffland and Shoreland Management, Section 2 – Intent and Purpose of the Bayport City Code**

A. BACKGROUND

Last year, the Department of Natural Resources (DNR) notified the city that the parcel located at 836 Minnesota Street South was in violation of the Lower St. Croix River Act, as it contained a commercial business in a designated rural district of the St. Croix River. After researching the matter, it appears that this property was once part of Baytown Township, which is considered a "rural" community, and therefore designated as a rural district. However, when this parcel was annexed into the City of Bayport in 1982, which is an "urban" community, there was no mention by the DNR, nor within the resolution approving the annexation, that there was any intent to continue this rural designation, as the parcel was being annexed into an urban district. As such, the city assumed the urban designation zoned the parcel for limited commercial use, which staff understands was consistent with past and anticipated future use of the property.

Because there was no documentation of the parcel being designated with a rural district after it was annexed into the city, and because the current commercial office use was consistent with past use, it was unbeknown to the city that the property was in violation, as stated by the DNR. However, in October of 2009, the city received notice from the DNR stating that parcels designated as rural districts in the St. Croix Riverway may not be changed, regardless of annexation or incorporation into an urban district. Furthermore, although the rural designation may have been inadvertently omitted from the resolution approving the annexation, the designation remains, and therefore the parcel needs to be brought into compliance with approved uses in the rural district (which does not allow commercial use).

In early 2010, the city met with Brian Zeller, the property owner of 836 Minnesota Street South, to explain the DNR's position and address the issue. Following this meeting, Mr. Zeller asked for the city to support his efforts to draft legislation that would exempt his property from complying with the rural district designation and regulations, due to the unique circumstances associated with his parcel.

In May of this year, the city received notice that Governor Pawlenty approved the proposed legislation. The legislation includes an amendment to the Lower St. Croix River Act, which allows certain pre-existing land uses (commercial, nature-oriented, and/or educational uses) in rural districts in the St. Croix Riverway District to continue and be recognized as approved uses, with a conditional use permit. As such, the city needs to amend the Lower St. Croix Bluffland and Shoreland Management Ordinance, to reflect the approved legislation.

B. STAFF COMMENTS

Staff is pleased by the outcome of the approved legislation, as it coincides with the city's position that this parcel is suited for limited commercial use and the existing commercial use would be allowed to continue with a conditional use permit. The legislation is also consistent with the city's zoning and comprehensive land use plan.

Once the amendment to the city's ordinance is approved, the city will begin working with Mr. Zeller on the application process for a conditional use permit, to bring the property into compliance. Staff anticipates this application will be brought forward to the Planning Commission for consideration later this year, or in early 2011.

Notice of the Planning Commission's public hearing was published in the Stillwater Gazette on September 9, 2010. A draft of the proposed ordinance amendment is attached for reference.

C. RECOMMENDATION

Staff recommends the approval of the draft ordinance amending Appendix C – Lower St. Croix Bluffland and Shoreland Management, Section 2 – Intent and Purpose of the Bayport City Code of Ordinances. The proposed amendment will bring the city into compliance with DNR rules and regulations and allow the parcel at 836 Minnesota Street South to continue the existing commercial use, with a conditional use permit. The Planning Commission is asked to make a recommendation on the ordinance amendment to the City Council. The City Council will consider the amendment at the October 4, 2010 meeting.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, AMENDING APPENDIX C – LOWER ST. CROIX SHORELAND AND BLUFFLAND MANAGEMENT, SECTION 2 – INTENT AND PURPOSE OF THE BAYPORT CITY CODE

Section 1. The Bayport City Code is hereby amended as follows:

Section 201. Application.

All lands affected by this ordinance shall be construed as land within the "Urban District" wherever mentioned in this ordinance with the exception of those lands located within Government Lot 4 of Section 14 which shall be construed as land within the "Rural District."

Section 203. Land uses.

Land uses allowed in the respective zoning districts established by Ordinance Number 571 as of May 1, 1974, [as amended by Ordinance Number 621, appendix B] shall be permitted under this ordinance as conditional uses.

Additionally, in rural districts, commercial, nature-oriented, and educational uses may be allowed as conditional uses on properties that were in similar use on May 1, 1974, and on January 1, 2010, if the conditional use:

(1) complies with all dimensional standards, including variance requirements for any changes to the properties made after January 1, 2010; and
(2) is similar in scope to the use that existed on May 1, 1974.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication according to law. Passed by the City Council for the City of Bayport this 4th day of October, 2010.

_____
Jon Nowaczek, Mayor

Attest:

_____
Mitch Berg, City Administrator