

**CITY OF BAYPORT
CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBER
JULY 6, 2009
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice, Mayor Nowaczek called the regular City Council meeting of July 6, 2009 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 Judy Seeberger

Members Absent: None

Others Present: Administrator Mike McGuire, Police Chief Laura Eastman, Engineer Barry Peters, Assistant City Administrator/ Planner Sara Taylor, and Attorney Nick Vivian

PROCLAMATIONS/COMMENDATIONS/PETITIONS

1. The June 2009 recycling award went to Debbie and Fred Gramenz.
2. Mayor Nowaczek thanked American Legion Hesley Jensen Post 491, parade chairperson Jim Menard, volunteers and city staff for a successful Memorial Day parade.
3. Mayor Nowaczek stated that Bayport resident Jenny Schneider recently received a leadership award from the "Women in City Government," at the League of Minnesota Cities annual conference. She has been a member of the Bayport Planning Commission for a number of years.

OPEN FORUM

1. Al Schultz, 580 6th Avenue North, expressed concern with funding the improvements at Barker's Alps Park and believes the city should conserve dollars to avoid raising taxes in light of the reduction in state aid. He stated the tax stabilization fund, generated by the Northern States Power (NSP) sale many years ago, cannot be spent without a referendum approved by three-fourths of the Bayport population.
2. Maggie Dickinson, 307 Lake Street South, distributed a letter to councilmembers expressing concern with the city's possible purchase of the property at 297 Lake Street South. She stated there have been no public meetings regarding this matter, nor had neighboring property owners received information from the city. She believes it would be fiscally irresponsible to purchase the property for a boat launch at this time. She questioned whether the city had a purchase agreement for the property. Mayor Nowaczek stated the City Council has discussed the purchase of the property in question at several meetings, but no decision has been made, other than exploring the option as a property investment.
3. Susan St. Ores, 345 Lake Street South, questioned the city's plan for the property at 297 Lake Street South, if it pursues purchase, and what return on investment it would expect from a \$600,000.00 investment. She encouraged councilmembers to consider the concerns of the Lake Street residents and to communicate with them.

AGENDA AMENDMENT

Mayor Nowaczek stated that New Business item #2, *Consider a grant donation for the 2010 Washington County 4-H program*, has been withdrawn from tonight's meeting and will be rescheduled for the August meeting.

CONSENT AGENDA

Mayor Nowaczek read items 1-16 on the consent agenda.

Councilmember Carlson introduced the following resolution and moved its adoption:

Resolution 09-14

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING CONSENT AGENDA ITEMS 1-16 FROM THE JULY 6, 2009 CITY COUNCIL AGENDA

1. June 1, 2009 City Council regular meeting minutes
2. June 1, 2009 administrative staffing workshop meeting minutes
3. June payables and receipts
4. June building, plumbing and mechanical permits
5. Yellow Ribbon Network resolution of support
6. Special event application for BCAL Derby Days
7. Temporary liquor license and road closure for BCAL/Woody's Bar and Grill Street Dance (in conjunction with Derby Days)
8. Fireworks display permit for BCAL/Nightlighter Fireworks (in conjunction with Derby Days)
9. Special event application for the Halloween Tunnel of Terror at Perro Park
10. Acknowledgement of Final Stretch Gopher to Badger 2009 Race
11. Acknowledgement of Anderson Race Management Ragnar Relay Race
12. Annual 2:00 a.m. liquor license renewal for Woody's Bar and Grill, 109 3rd Street North, Bayport, MN 55003
13. Payment request for MSCWMO Perro Creek Outlet Project
14. Accept \$1,000.00 grant from The Saint Paul Foundation for Bayport Fire Department
15. Acceptance of City Administrator letter of resignation
16. Pay application #1 for Barker's Alps Park improvements

Councilmember Seeberger requested clarification on Administrator McGuire's resignation letter (item #15) as to the timing of terminating his contract. Attorney Vivian stated the resignation letter fulfills the City Council's direction regarding termination of the contract with McGuire Management Services and the required termination notification. Mayor Nowaczek indicated he would be closely monitoring the administrator's paid hours to avoid prolonged double coverage during the transition period.

Mayor Nowaczek stated he accepted Administrator McGuire's letter of resignation with regret and thanked him for his service to the city.

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

Jon Nowaczek – aye

Dan Johnson – aye

Judy Seeberger – aye

Connie Carlson – aye

Torry Kraftson – aye

PUBLIC HEARINGS

Assessment Hearing for the 2009 Sidewalk Improvement Project (consider adopting the assessment roll and consider quotes and award contract): Engineer Peters reviewed the project that would remove and replace certain failing sidewalks and concrete curbs and gutters and install truncated dome pedestrian ramps. He noted the public improvement hearing was held June 1, 2009. Based on the low quote from Willow River Construction of \$36,135.00 for the entire project, the sidewalk portion is estimated at \$15,638.48, with benefiting property owners and the city each paying 50% of the improvement costs. The city will bear the cost of installing the handicap pedestrian ramps. The amount to be assessed is \$7,636.20.

Mayor Nowaczek opened the assessment hearing for the 2009 Sidewalk Improvement Project, and no public comment was heard. Attorney Vivian clarified that any objections must be submitted in writing by the conclusion of the public hearing.

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

Councilmember Kraftson introduced the following resolution and moved its adoption:

Resolution 09-15

**RESOLUTION ADOPTING ASSESSMENT
FOR 2009 SIDEWALK IMPROVEMENT PROJECT**

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

Jon Nowaczek – aye	Dan Johnson – aye	Judy Seeberger – aye
Connie Carlson – aye	Torry Kraftson – aye	

Three quotes were received for the project, ranging from \$36,135.00 to \$42,537.75. Staff recommends awarding the project to the low bidder, Willow River Construction, LLC, Hudson, Wisconsin, in the amount of \$36,135.00.

Councilmember Carlson introduced the following resolution and moved its adoption:

Resolution 09-16

**RESOLUTION RECEIVING QUOTATIONS AND AWARDED
CONTRACT ON THE 2009 SIDEWALK IMPROVEMENT 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:

Jon Nowaczek – aye	Dan Johnson – aye	Judy Seeberger – aye
Connie Carlson – aye	Torry Kraftson – aye	

Consider vacating that part of 5th Avenue South on the plat of Bayport Marina, lying adjacent to Outlot D, Bayport Marina and being formerly described as Lot 4, Block 108: Engineer Peters reviewed a request submitted by the Bayport Marina Association to vacate the majority of 5th Avenue South between St. Croix Trail (TH95) and the railroad tracks. There are no city utilities within the segment and it is unlikely there are any private utilities in the area, due to the significant sloping topography. He stated that from an engineering standpoint the requested vacation would not impact city maintenance needs and recommended approval. Attorney Vivian clarified that the street vacation request does not pertain to the privately owned sign located within the requested vacation area and relates only to the underlying real estate. The City of Bayport, Bayport Marina Association and Group 41 are currently in litigation regarding the ownership rights associated with the sign.

Mayor Nowaczek opened the public hearing.

Dick Nowlin, representing Bayport Marina Association, explained that the marina requested the street vacation to clarify and simplify ownership of the underlying real estate on which the marina's two signs are located.

Bob Griffith, representing Group 41, Ltd., owner of the restaurant property, stated it is important that the City of Bayport control the right-of-way on which the sign is located, until the litigation is settled by the courts.

Al Schultz, 580 6th Avenue North, stated he was not in favor of the street vacation.

Mike Scanlon, owner of The Refuge, stated his restaurant patrons have difficulty finding the restaurant without proper signage. He recommended denying the street vacation at this time and allowing Group 41 an opportunity to apply for the vacation.

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

Discussion followed on the future use and regulation of the sign located on the city right-of-way, the underlying conditional use permit, and whether the vacation is within the best interest of the public, given that the city most likely has a fee interest in the property. Councilmembers were in favor of continuing the city's conservative approach to street vacation requests and stated it was in the city's best interest not to approve the vacation at this time.

It was moved by Councilmember Seeberger and seconded by Councilmember Carlson to deny the request to vacate that part of 5th Avenue South on the plat of Bayport Marina, lying adjacent to Outlot D, Bayport Marina and being formerly described as Lot 4, Block 108, with findings that the vacation is not in the public's best interest, matters regarding use and ownership of the property are in litigation and unresolved, the city favors a conservative approach with vacations, and the applicant has not made a strong case for approval of the application, i.e., showing a unique circumstance, such as a hardship; and to direct the city attorney to draft a resolution denying the application. Motion carried.

COUNCIL LIAISON REPORTS

Councilmember Seeberger reported the Planning Commission met June 15, 2009, and recommended approval of variances to build a new single-family home on the property located at 387 5th Street North, as replacement of the previous home that was destroyed by fire.

Councilmember Kraftson reported on the June 11, 2009 meeting of the Middle St. Croix Watershed Management Organization (MSCWMO). The Barker's Alps Park improvement plan was approved with the condition that MSCWMO staff work with the city engineer and park consultant regarding the alignment of the trail. Engineer Peters reported that the planned trail location and design was determined to be the least intrusive and was approved by the MSCWMO, with conditions. The next MSCWMO meeting is scheduled for Thursday, July 9, 2009, 7:00 p.m., at the Valley Ridge Mall.

Councilmember Johnson reported the Cable Commission did not meet in June, and the next meeting will be held on Wednesday, August 19, 2009, 7:00 p.m., at the Valley Ridge Mall, and is open to the public.

Councilmember Johnson reported on the June 25, 2009 meeting of the Library Board. The 2010 preliminary budget of \$272,000.00 was approved, and a grant request was submitted to the Fred C. and Katherine B. Andersen Foundation. The next meeting is scheduled for Thursday, July 23, 2009, 6:00 p.m., at the library, and the public is invited to attend.

Councilmember Johnson reported he attended the Department of Natural Resources boat tour on the St. Croix River on June 15, 2009. Topics discussed included water quality and land use issues along the lower St. Croix River.

Councilmember Carlson reported the Lower St. Croix Partnership met as part of the June 15th boat tour, reported on by Councilmember Johnson.

UNFINISHED BUSINESS – None

NEW BUSINESS

Consider a request for variances to build a new single-family home on the property located at 387 5th Street North: Assistant Administrator/Planner Taylor reviewed an application for variances to allow construction of a new single-family home to replace the previous home that was destroyed by fire. The property owner initially proposed using a portion of the existing foundation for the new home, however after demolition, it was determined to be inadequate to support a new house. The property owner would like to replace the foundation in the same location in which it previously existed. This will require variances for the north side yard setback of 11 feet and 6.9 feet for the south side yard setback. The Planning Commission recommended approval of the variances at their June 15, 2009 meeting. Staff recommended approval of the variance application, with the conditions of approval listed in the staff report.

Commissioner Kraftson questioned the lack of windows on the south side of the house. Planner Taylor indicated city code does not require windows; however the City Council could require them as a condition of approval. Applicant Duane Johnson stated the stairways are stacked on the south side of the house, but he would be willing to add windows, if needed.

Councilmember Carlson introduced the following resolution, adding the condition of approval that two windows be added to the south elevation of the home, and moved its adoption:

Resolution 09-17

RESOLUTION APPROVING VARIANCES FOR CONSTRUCTION OF A NEW HOUSE AT 387 5TH STREET NORTH, LEGALLY DESCRIBED AS LOT 1, BLOCK 47 OF BAYPORT, WASHINGTON COUNTY, MINNESOTA

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

Jon Nowaczek – aye
Connie Carlson – aye

Dan Johnson – aye
Torry Kraftson – aye

Judy Seeberger – aye

COUNCIL ITEMS AND ANNOUNCEMENTS

1. Councilmember Kraftson indicated he would be unavailable to attend the August City Council meeting, but would be working with Councilmember Seeberger and city staff in July to review the applications for the City Administrator position. Mayor Nowaczek requested that Councilmember Kraftson provide written recommendations on the candidates, for consideration by the other councilmembers.

CITY ADMINISTRATOR STAFF ITEMS AND ANNOUNCEMENTS

Update on City Administrator search: Over 50 applications, many from out-of-state, have been received and more are expected by the deadline of July 9th. The selection subcommittee will meet the week of July 20th, and the City Council will consider finalists at a workshop on August 3, 2009 at 5:00 p.m.

Update on Barker's Alps Park: Costs for remedial efforts in the rubble area are approximately \$5,000.00 below budget; however, there is an unexpected \$20,000.00 cost to remove peat in the area of the ball field and replace it with better soil. Additionally, the elevations used for the project design at

the upper portion of the park were incorrect. The financial impact of this issue is unknown at this time. Administrator McGuire solicited councilmembers input on handling the change orders for these two issues, noting a \$20,000.00 contingency was built into the project. Councilmember Kraftson believes BDM should bear some financial responsibility if it is proven that they provided inaccurate information on the survey. Administrator McGuire stated he was pursuing this and would report back at a future meeting. Councilmembers agreed that the project should move forward and Administrator McGuire will coordinate the change orders.

Lakeside Park: Administrator McGuire clarified that the striped, straight-in parking on the south side of 2nd Avenue South, across from the park and adjacent to the River Park Marina, is public parking. Discussion followed on the need for signage, identifying the spaces for public use.

Staff and councilmembers also noted the increased usage of the beach and park in general, with many positive comments received regarding the beach house and improved sand blanket. The average daily beach attendance is 50 during the afternoon. An ongoing issue with goose excrement is being addressed by staff.

Restricted Funds: Councilmember Carlson requested clarification on spending the money generated by the Northern States Power real estate sale many years ago, specifically as to whether three-fourths of the population must approve expenditures. Administrator McGuire stated the city received a legal opinion from the city attorney two to three years ago indicating the city can use the money in the restricted fund for investment purposes. Attorney Vivian stated staff will review the file and report back at the next meeting.

Purchase of property at 297 Lake Street South: Administrator McGuire stated the city does not have a purchase agreement on the property; however he has negotiated a tentative price. There are some final issues to resolve before the matter is brought back to the City Council for discussion. Mayor Nowaczek indicated there are no hidden agendas regarding purchase of the property and encouraged resident participation. It is an opportunity for the city to purchase riverfront property utilizing funds from a restricted real estate fund, to increase the return on the fund as an investment and/or for future park expansion.

ADJOURNMENT

It was moved by Councilmember Carlson and seconded by Councilmember Johnson to adjourn the meeting at 7:52 p.m. Motion carried.

City Administrator/Clerk