

**CITY OF BAYPORT
CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBER
OCTOBER 5, 2009
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice, Mayor Nowaczek called the regular City Council meeting of October 5, 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 Dan Johnson, Torry Kraftson and Judy Seeberger

Members Absent: Councilmember Connie Carlson

Others Present: Administrator Mike McGuire, Fire Chief Mike Bell, Public Works Supervisor Mel Horak, Engineer Barry Peters, Assistant City Administrator/ Planner Sara Taylor, and Attorney Nick Vivian

PROCLAMATIONS/COMMENDATIONS/PETITIONS

1. The September 2009 recycling award went to Tom Fons.
2. Boy Scout statue dedication ceremony at Village Green Park on October 24, 2009 at 1:00 p.m., including closure of 4th Avenue North between Highway 95 and 4th Street North, between 12 noon and 3:00 p.m.: Mayor Nowaczek encouraged residents to attend the Boy Scout statue dedication.

OPEN FORUM

1. James Doyle, a member of Bayport's Boy Scout Troop 113, explained that he would like to construct a rain garden on city property in order to obtain Eagle Scout status. The 23-by-30 foot rain garden is proposed for the intersection of 2nd Street South and 2nd Avenue South and would be maintained throughout the year by Troop 113. He is requesting financial support of approximately \$717.00, as well as city-supplied wood mulch/chips and soil. Mayor Nowaczek explained that requests for city funding are typically required in advance of the City Council meeting, in order to provide the councilmembers and public an opportunity to comment on the expenditure request. Public Works Director Horak indicated there was funding available in the streets department budget, and Administrator McGuire stated he believes the request could be added to the consent agenda or as a new business item for approval.

It was moved by Councilmember Seeberger and seconded by Councilmember Kraftson to amend the October 5, 2009 consent agenda to include the proposal to grant permission to James Doyle to plant a rain garden, as specified, and to authorize spending of not more than \$717.52 for the plant materials and mulch. Motion carried.

2. Marti Dahlen-Biegler, 343 Lake Street South, recognized the efforts of the Derby Days volunteers for a successful event. She requested the City Council help expedite a request for public information submitted in July relative to the Cates house on Lake Street South. She encouraged councilmembers to direct the new administrator to keep better written documentation on matters concerning the city. Administrator McGuire requested that Attorney Vivian comment on the inaccuracy of Ms. Dahlen-Biegler's statement regarding the public information request. Attorney Vivian discussed a letter the city received from Attorney Dave Magnuson on behalf of the Lake Street residents regarding

preservation of records concerning the potential purchase of the Cates property, indicating there were no specific documentation requests made in the letter.

CONSENT AGENDA

Mayor Nowaczek read items 1-13 on the amended consent agenda.

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 09-24

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING CONSENT AGENDA ITEMS 1-13 FROM THE OCTOBER 5, 2009 CITY COUNCIL AGENDA

1. September 8, 2009 City Council regular meeting minutes
2. September payables and receipts
3. September building, plumbing and mechanical permits
4. Payment request for MSCWMO Perro Creek Outlet Project
5. Authorization to purchase a new copy machine
6. Payment request for Barker’s Alps Park improvements
7. Payment request for Barker’s Alps Park furniture
8. Replacement of fire department grass fire unit
9. Certification of Bayport Water Supply Plan Adoption by Minnesota Department of Natural Resources (DNR)
10. Special event application for Bayport Boy Scout pumpkin sale at Village Green Park on October 10-11, 2009
11. Portable radio grant from Emergency Service Board for Police and Public Works departments
12. Placement of a no parking sign at Maine Street North and 4th Avenue North
13. Permission to Boy Scout James Doyle to construct a rain garden on the city right-of-way at 2nd Street South/2nd Avenue South, for a total of \$717.52

The motion for adopting the foregoing amended 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 |
| Dan Johnson – aye | Judy Seeberger – aye |

PUBLIC HEARINGS – None

COUNCIL LIAISON REPORTS

Councilmember Seeberger reported the Planning Commission met on September 21, 2009, and recommended approval of a variance request to replace and expand the front steps, landing, and covered entryway to the house located at 494 6th Street North.

Councilmember Kraftson reported on the September 17, 2009 meeting of the Middle St. Croix Watershed Management Organization (MSCWMO). He provided background on efforts to improve boat launches in the area and reported the 2010 MSCWMO budget was approved. The next meeting is scheduled for Thursday, October 8, 2009, at 7:00 p.m., at the Valley Ridge Mall.

Councilmember Johnson reported on the September 24, 2009 meeting of the Library Board. He noted there are guidelines the library follows to handle patrons’ concerns regarding materials available at the library. The next meeting is scheduled for Thursday, October 22, 2009, 6:00 p.m., at the library, and the public is invited to attend.

Councilmember Johnson, alternate liaison for the Andersen Community Advisory Committee (CAC), reported on the September 16, 2009 meeting of the CAC. Andersen staff reported the plant was at an all-time low emissions level, due in part to the business climate, but also Project XL's efforts to reduce emissions. He explained that CAC meetings (held approximately once per quarter) are required as part of Andersen's XL Permit, regulated by the Minnesota Pollution Control Agency. He reported there is an opening on the CAC for a Bayport resident and requested that anyone interested in the position contact City Hall for further information. The next meeting date of the CAC has not yet been determined.

Councilmember Johnson reported the Cable Commission's next meeting is scheduled for Wednesday, October 20, 2009, 7:00 p.m., at the Valley Ridge Mall. There is also a meeting of the commission's budget committee scheduled for Wednesday, October 7, 2009, 5:00 p.m., at the Valley Ridge Mall.

UNFINISHED BUSINESS

Consider change order for Barker's Alps improvements: Landscape architect Larry Wacker reviewed a change order request for the Miller Excavating Company contract in the amount of \$48,045.46, indicating the figure reflects several deductions and additions to the contract. If approved, the Miller contract total for the project would be \$553,925.36. With the change order, total funds of \$629,803.52 would be committed to the project, approximately \$2,000.00 under the project budget of \$631,675.00, with no further expenses planned. He indicated the project is 95% complete.

It was moved by Councilmember Johnson and seconded by Councilmember Seeberger to approve a change order in the amount of \$48,045.46 for the Miller Excavating Company contract for the Barker's Alps improvement project. Motion carried.

Mayor Nowaczek stated the city is planning a grand opening event for next spring, and Councilmember Kraftson encouraged residents to hike the new trail. Mr. Wacker reported that city crews would be installing picnic tables and benches by the playground at the upper portion of the park, as weather permits.

Consider quotes for city sewer line inspection and cleaning: Engineer Peters reviewed a handout that recapped obtaining quotes for a cleaning and television inspection of approximately one-half of the city's sanitary sewer system. A quote package was sent to four firms, with one quote submitted by the deadline. A quote of \$38,437.81 was received from Infratech of Rogers, Minnesota. The engineer's estimate was \$40,230.65. Staff has worked with Infratech previously and recommends awarding the project to Infratech in the amount of \$38,438.81. The final report, with inspection logs and videotapes, is due December 1, 2009. He stated this work would satisfy the city's inflow/infiltration surcharge imposed by the Metropolitan Council Environmental Service (MCES).

It was moved by Councilmember Kraftson and seconded by Councilmember Seeberger to approve a contract with Infratech of Rogers, Minnesota, in the amount of \$38,437.81, for the cleaning and television inspection of all sanitary sewer mainlines north of 5th Avenue North and east of and including Trunk Highway 95. Motion carried.

Legal opinion on city's authority to contribute funds to community organizations: Attorney Vivian reviewed the guidelines the City Council needs to consider when considering contributions to community organizations. Discussion followed on the current funding requests and budget constraints. Organizations requesting funding will be invited to present at the November City Council meeting.

NEW BUSINESS

Consider a request for variances to replace and expand the front steps, landing, and covered entryway to the house located at 494 6th Street North: Assistant Administrator/Planner Taylor reviewed a variance application that would allow repairs and modifications to the existing front entryway of the home at 494 6th Street North. The variance would allow the new entry side yard setback to remain at 9’ and the front yard setback at 13’ 5”, both of which require a variance from the 20’ setback for a corner lot. The new entryway would expand the entry by approximately 32”, allowing for safer ingress and egress and eliminate potential safety concerns, such as ice buildup. The Planning Commission recommended approval of the application at the public hearing held on September 21, 2009. Staff believes the variance meets the criteria of a hardship and recommended approval.

Councilmember Kraftson introduced the following resolution and moved its adoption:

Resolution 09-25

RESOLUTION APPROVING VARIANCES TO REPLACE AND EXPAND THE FRONT STEPS, LANDING, AND COVERED ENTRYWAY TO THE HOUSE LOCATED AT 494 6TH STREET NORTH, LEGALLY DESCRIBED AS BUTLER SECREST BRONSON ETAL ADDITION, LOT 1, BLOCK 4, BAYPORT, WASHINGTON COUNTY, MINNESOTA

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

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| Jon Nowaczek – aye | Torry Kraftson – aye |
| Dan Johnson – aye | Judy Seeberger – aye |

Consider adopting an ordinance related to the regulation of public rights-of-way: Attorney Vivian reviewed a new ordinance regulating requests for use of the city’s rights-of-way. The city received a request for a major fiber optics project earlier this year, which revealed the need for regulations for use of the rights-of-way. He stated the proposed ordinance is comprehensive and similar to the one in place for the City of Oak Heights. Staff strongly recommended approval of the ordinance. Attorney Vivian indicated there is no grandfather clause in the ordinance, and going forward utility companies would need to obtain a permit for work in the rights-of-way, although active franchise agreements may preclude payment of a fee for the permit. Councilmember Kraftson commented that overseeing this type of permitting can be time intensive and questioned who would handle the requests. Attorney Vivian indicated typically the zoning administrator would coordinate, with input by the city engineer, as needed.

Councilmember Johnson introduced the following ordinance and moved its adoption:

Ordinance #808

AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON, COUNTY, MINNESOTA, AMENDING CHAPTER 50, STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES, OF THE BAYPORT CITY CODE, TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS-OF-WAY IN THE PUBLIC INTEREST AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS

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

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| Jon Nowaczek – aye | Torry Kraftson – aye |
| Dan Johnson – aye | Judy Seeberger – aye |

Consider amending the city's fee schedule to include right-of-way permit and inspection fees: Staff believes a \$1,000.00 escrow would be sufficient for the typical right-of-way request in the City of Bayport. Discussion followed on adding a degradation fee as part of the fee structure and placing restrictions on permits. Mayor Nowaczek recommended that staff explore addition of a degradation fee.

Councilmember Johnson introduced the following ordinance and moved its adoption:

Ordinance #809

**AN ORDINANCE OF THE CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
AMENDING APPENDIX D, FEE SCHEDULE, OF THE CITY CODE**

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

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

COUNCIL ITEMS AND ANNOUNCEMENTS

1. Councilmember Seeberger asked if staff had been contacted by Jan Anderson, a property owner adjacent to Barker's Alps Park, who stated she had incurred damage to a fence during the park improvement project. Staff indicated they had not been contacted. Councilmember Seeberger said that she would inform Ms. Anderson to contact city staff if she wished to pursue this.
2. Mayor Nowaczek announced this was Administrator McGuire's last formal City Council meeting, and a farewell party has been scheduled for Wednesday, October 28th, 5:00 p.m., at the Lakeside Park beach house. All residents are invited and encouraged to RSVP to City Hall if they plan on attending.
3. Mayor Nowaczek stated at the November meeting he would be proposing the formation of a special citizen advisory commission to develop a strategy for Bayport's riverfront.
4. Councilmember Kraftson thanked Sue Davis and the entire Bayport Community Action League for their work on the recent Derby Days events.
5. Councilmember Kraftson noted the need to move forward with discussions related to a possible utility rate increase. Administrator McGuire stated this would be part of the final budget discussion.
6. Councilmember Johnson thanked Administrator McGuire for his expertise in handling the city's affairs during his tenure at the City of Bayport.

CITY ADMINISTRATOR STAFF ITEMS AND ANNOUNCEMENTS

New City Administrator update: The contract between the City of Bayport and new City Administrator Mitch Berg has been finalized. Mr. Berg begins employment October 26, 2009, with a two-week training period with the current administrator.

Update on Cates House adjacent to Lakeside Park: The property owners have an offer from another party to purchase the house, and they were informed the city did not have an immediate interest in the property.

Closed session to discuss pending litigation:

It was moved by Councilmember Kraftson and seconded by Councilmember Seeberger to adjourn to closed session at 7:20 p.m.

Mayor Nowaczek resumed the regular meeting at 7:40 p.m. Attorney Vivian reported that the City Council met in closed session to discuss a settlement agreement of a lawsuit with Group 41, the City of Bayport and the Bayport Marina. The agreement resolves litigation between the city and Group 41, and there are no pending claims against the city by the Bayport Marina. The terms of the agreement were summarized and staff recommended the City Council adopt the resolution as outlined. Attorney Vivian

clarified that the settlement term to vacate the right of way upon which the existing sign is located was negotiated to state the city will consider a joint request from Group 41 and the Bayport Marina to vacate the sign right of way, when litigation between the two parties is resolved.

It was moved by Councilmember Seeberger and seconded by Councilmember Kraftson to approve the settlement agreement as outlined by Attorney Vivian. Attorney Vivian stated the settlement agreement is in draft at present and a final agreement will be prepared for execution between the parties. The Mayor and City Administrator will be executing the agreement on behalf of the City of Bayport. Motion carried.

ADJOURNMENT

It was moved by Councilmember Johnson and seconded by Councilmember Kraftson to adjourn the meeting at 7:47 p.m. Motion carried.

City Administrator/Clerk