

**CITY OF BAYPORT
CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS
JANUARY 8, 2007
6:00 P.M.**

CALL TO ORDER

Pursuant to due call and notice, Deputy Mayor Nowaczek called the regular City Council meeting of January 8, 2007 to order at 6:00 p.m., and asked Councilmembers, staff and the audience to join in pledging allegiance to the American Flag.

SWEARING IN OF MAYOR JON NOWACZEK

City Administrator McGuire administered the Oath of Office to Mayor Nowaczek.

SWEARING IN OF CITY COUNCILMEMBERS DAN JOHNSON AND TORRY KRAFTSON

Mayor Nowaczek administered the Oath of Office to Councilmembers Dan Johnson and Torry Kraftson.

ROLL CALL

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

Members Absent: Councilmember Sharon Ridgway

Others Present: Administrator Mike McGuire, Police Chief John Gannaway, Public Works Supervisor Horak, Engineer Barry Peters, Fire Chief Scott Radke, Assistant City Administrator Sara Taylor, and Attorney Nick Vivian

PROCLAMATIONS/COMMENDATIONS/PETITIONS

1. Seven-year old Rebecca Olson was recognized by Police Chief Gannaway with the City of Bayport's first Community Lifesaver Award for her actions in saving her mother's life during a diabetic reaction.
2. Police Chief Gannaway recognized Officer Dave Wynia with a Letter of Commendation for his actions in preventing a theft from a local business.
3. Police Chief Gannaway thanked the community for their generous response to the 2006 Toys for Tots drive.
4. Mayor Nowaczek announced that December 2006 recycling awards were given to Steven Ryland, Roger Sellman, Mike Hiles and Scott Weaver.
5. Mayor Nowaczek thanked the community and family members for their support and acknowledged the duties and responsibilities of the City Council in the coming year.

OPEN FORUM

1. Mayor Nowaczek recognized the passing of long-time Bayport resident Newman Avery who served on the City Council from 1953-1973.
2. Mayor Nowaczek noted there would be a thank you event for retiring Mayor Rick Schneider at the Bayport American Legion on Wednesday, January 24th.

CONSENT AGENDA

Mayor Nowaczek read items 1-11 on the consent agenda.

1. December 4, 2006 City Council regular meeting minutes
2. December payables and receipts
3. December building, plumbing and mechanical permits

4. Non-unionized holidays for 2007
5. Approval of 2007 refuse hauling licenses
6. Annual step increase for Building Official
7. Hiring part-time police officer Jerry Hutchinson
8. City employee medical and dental insurance
9. Change order #2 for new 300,000 gallon water reservoir
10. Final payment to TMI Coatings for reconditioning of existing water reservoir
11. Baytown Township Comprehensive Plan amendment for GV Properties

Councilmember Carlson introduced the following resolution and moved its adoption:

Resolution 07-01

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING CONSENT AGENDA ITEMS 1-11 FROM THE JANUARY 8, 2007 CITY COUNCIL AGENDA

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
Connie Carlson – aye	Torry Kraftson – aye

PUBLIC HEARINGS

Consider a request for variances to build a new single-family home and attached garage on the vacant lot located at the intersection of 1st Avenue North and 5th Street North, described as Lot 1, Block 62, in Bayport: Assistant City Administrator/Planner Taylor noted that the public hearing for this application was continued from the December 18, 2006 Planning Commission meeting. Planner Taylor stated that applicant Mark Ostertag had requested three variances to build a 28 x 39 foot single-family home, with a 26 x 31 foot attached garage, on a vacant corner lot measuring approximately 50 feet x 140 feet. The variance requests were reviewed:

1. Applicant requested a variance of 8.5 feet for the house to allow for an 11.5 foot setback. City code requires a 20 foot setback for a corner lot. Staff feels the variance is appropriate because there are 26 to 28 foot wide homes on other 50 foot lots in the Inspiration development and surrounding communities. Additionally, the house location would not interfere with traffic visibility at the intersection and the boulevard area would allow a green buffer area similar to adjacent lots. Staff believes that the variance for the house meets the criteria of a hardship and recommended approval. Without the variance, staff feels the applicant would be prevented from building a reasonably sized house that is consistent with other new homes being built on similar lots.
2. Applicant requested a variance of 6.5 feet for the proposed 26 x 31 foot attached garage to allow for a 13.5 foot setback. Planner Taylor explained that city code requires a 20 foot setback from the public right-of-way to ensure adequate parking on private property for an average vehicle in front of the garage, without encroaching onto the public property. Staff feels that approval of the variance would set a precedent that the city allows public property to be used for private use.
3. Applicant requested a 2% variance to allow excess impervious coverage for the over-sized two car attached garage. City code allows accessory structures to cover a maximum of 10% of the total lot.

Planner Taylor reviewed several staff options for constructing a reasonably sized garage on the property that would not require a variance. She stated that the variances for the garage do not meet the criteria of a hardship because: 1) The city's zoning code provides options for a reasonable garage that is consistent with the neighborhood; 2) The plight, or dilemma is not due to the lot, because the applicant can build a reasonable attached or detached garage on the property under the provisions of city code. The plight has been created by the applicant because he wants a garage that is above and beyond a reasonably sized

garage; 3) No corner properties in the vicinity of the subject property have large attached garages that are accessed from the avenue, similar to what the applicant is proposing.

Staff recommended denial of the garage variances and approval of one of the staff options, or an alternate designed by the applicant, which meets the provisions of city code. Planner Taylor noted that on December 18, 2006, the Planning Commission recommended approval of all three variances.

Dick Beberg, 237 North 5th Street, stated he is not opposed to the house plans, however voiced concerns with the over-sized garage placement and view from the neighbor's deck to the south. He encouraged the City Council to examine the proposed house placement from the Ritzer's deck.

Mark Ostertag, applicant and property owner, reviewed his proposal to build a split entry home, with an attached garage, on the vacant lot he owns. He stated city staff recommended he apply for variances to build his home instead of requesting a 10-foot street vacation of 1st Avenue North to enlarge his lot. He stated that if the street were vacated 10 feet, he would meet all zoning code requirements. He shared examples of similar homes and garage access driveways in Bayport, stating his proposal is not unique to the community.

Kathy and Joe Ritzer, 171 North 5th Street, own the property to the south of the applicant's lot. The Ritzers are not in favor of the style of house as proposed and believe it would adversely affect property values. However, their primary concern is with the attached garage. They have issue with the plan not conforming to the building style of the immediate, historic neighborhood. They are concerned that an attached garage would replace the view of 1st Avenue North from their deck area, with a 70 foot wall of siding/windows. The Ritzers are also concerned that a 20-foot box trailer, owned by the applicant, would be permanently parked on the property if the attached garage were approved.

Tim MacDonald, 198 North 4th Street, lives directly east of Mr. Ostertag's lot, and is opposed to the applicant's proposal. He agrees with the Ritzers' comments and added that his main concern is a serious drainage problem on 1st Avenue, posing a flood risk for his home. He is concerned that adding a culvert for a driveway onto 1st Avenue will increase the flood risk. He encouraged the City Council to follow the zoning code and prevent further "helter-skelter" planning.

Cynthia Huhnke, 164 North 4th Street, has no opposition to a big home being built on the corner in question and is in favor of allowing an attached garage for safety reasons. As a former owner of the property, she is also in favor of the city vacating 10 feet of the street, noting there is 27 feet of land between the pavement and the lot line.

Mary Ostertag, 173 South 5th Street, stated she likes the variety of homes in Bayport and believes the applicant's proposed home will fit in with the neighborhood. She believes the size of the proposed garage is justified to allow for indoor storage of yard tools, sports equipment, etc.

Barb Ostertag, 13045 – 30th Street South, Afton, Minnesota, stated she is the applicant's stepmother, and spoke to the applicant's character, noting that he has tried to meet the needs of everyone involved during the planning process.

Mark Ostertag, applicant and property owner, responded to concerns regarding the historic nature of the neighborhood, drainage problems, property devaluation, storage trailer, and stated he has attempted to work with the neighbors to address their concerns. He noted he has a petition signed by 47 neighborhood residents in favor of his project.

Tim MacDonald, 198 North 4th Street, stated the applicant did not talk to him about his proposed house during the planning process. He questioned the validity of the applicant's statement regarding approval of the plans by residents and stated any house over 100 years old is considered historic. He believes the size of the house and garage is too big for the lot.

Kathy MacDonald, 198 North 4th Street, encouraged the City Council to be equitable in their decisions and treat the requests of longtime and new residents with the same consideration.

Dick Beberg, 237 North 5th Street, stated he was not approached by the applicant. He requested that the statistics presented be checked out, and wants to see give and take on both sides.

Joe Ritzer, 171 North 5th Street, encouraged the City Council to look at everything presented and not make a hasty decision. He is discouraged that this has become a character issue.

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

As a former Planning Commission member, Councilmember Kraftson reviewed the Planning Commission's recommendations of December 18th. Of the 3 variances approved by the Planning Commission, allowing 12% impervious coverage was the most debatable. He questioned whether the 10% impervious coverage for accessory structures applies to an attached garage. Planner Taylor interpreted the 10% requirement to be cumulative, for attached or detached accessory structures, to prevent them from overshadowing the size of the house. She stated the applicant could build a 700 square foot garage and still meet the 10% requirement.

Councilmember Carlson stated she did not believe the city should be able to dictate the type of home a resident can build, if zoning requirements are met. She stated the majority of homes on 1st Avenue have driveways onto the avenue, not the alley, and is in favor of allowing this access. She believes staff option number 6 has potential for the city and the applicant.

Councilmember Johnson questioned whether the city has a heritage ordinance or requirements for garage placements. Planner Taylor indicated there is no heritage ordinance and a garage can be built in any location as long as it meets the setback and impervious coverage requirements. He stated he is in favor of the house (living space) setback variance, but sees no reason to grant the garage setback variance, whether attached or detached, or the impervious coverage variance request.

Mayor Nowaczek clarified that the City Council applies laws and ordinances uniformly and equitably to all residents. He believes strongly in property owners' rights, within the rules and regulations of the city, and does not wish to dictate the style of the home. He stated the findings of fact support granting the house setback variance; however he does not believe there are findings of fact to support a hardship for the garage variance requests.

Discussion followed on reasonable use of garage space and garage size. Administrator McGuire stated a typical garage in Bayport on small lots is 22 feet square, and it is unlikely that there are many 3-car garages on 50-foot lots in the city. He further stated the applicant has multiple options for a detached garage, and the city should not dictate the style of the garage. Councilmember Kraftson stated the variances being requested would not be necessary if the street had been vacated 10 feet, which he felt was reasonable, given the width of 1st Avenue. Discussion followed on previous requests to vacate the street. It was noted action is required tonight on the variance application to meet the 60-day response requirement. Attorney Vivian noted the City Council could extend the city's response another 60 days,

during which time the applicant would have an opportunity to revise the plans and address the City Council's concerns.

Councilmember Ridgway's written comments regarding the variance requests were read into the record. She is in favor of the house variance; however she has concerns with the garage variances and believes a detached garage, with alley access, would fit in with the neighborhood.

Applicant Ostertag questioned whether he could reduce the size of the garage to meet the 10% impervious coverage requirement, as a condition of approval, for the garage variance request. Mayor Nowaczek stated that revisions to the variance requests would need to be addressed with city staff outside the City Council meeting.

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-02

RESOLUTION APPROVING MARK OSTERTAG'S SETBACK VARIANCE APPLICATION TO CONSTRUCT A NEW 28 x 39 FOOT HOUSE ON THE VACANT LOT LOCATED AT THE INTERSECTION OF 1ST AVENUE NORTH AND 5TH STREET NORTH, LEGALLY DESCRIBED AS LOT 1 OF BLOCK 62, BAYPORT, WASHINGTON COUNTY, MINNESOTA

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

Jon Nowaczek - aye	Connie Carlson - aye
Dan Johnson - aye	Torry Kraftson - aye

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-03

RESOLUTION DENYING MARK OSTERTAG'S IMPERVIOUS COVERAGE VARIANCE APPLICATION TO CONSTRUCT A NEW 26 X 31 FOOT ATTACHED GARAGE ON THE VACANT LOT LOCATED AT THE INTERSECTION OF 1ST AVENUE NORTH AND 5TH STREET NORTH, LEGALLY DESCRIBED AS LOT 1 OF BLOCK 62, BAYPORT, WASHINGTON COUNTY, MINNESOTA

The motion for adoption of the foregoing resolution was duly seconded by Mayor Nowaczek and upon roll call being taken thereon, the following voted via voice:

Jon Nowaczek - aye	Connie Carlson - nay
Dan Johnson - aye	Torry Kraftson - nay

Due to the outcome of this motion, a second motion was made by Councilmember Kraftson and seconded by Councilmember Carlson to adopt an alternate resolution approving the variance and upon roll call being taken thereon, the following voted via voice:

Jon Nowaczek - nay	Connie Carlson - aye
Dan Johnson - nay	Torry Kraftson - aye

Because a majority vote is required to approve the variance, the variance is denied.

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-04

RESOLUTION DENYING MARK OSTERTAG’S SETBACK VARIANCE APPLICATION TO CONSTRUCT A NEW 26 X 31 FOOT ATTACHED GARAGE ON THE VACANT LOT LOCATED AT THE INTERSECTION OF 1ST AVENUE NORTH AND 5TH STREET NORTH, LEGALLY DESCRIBED AS LOT 1 OF BLOCK 62, BAYPORT, WASHINGTON COUNTY, MINNESOTA

The motion for adoption of the foregoing resolution was duly seconded by Mayor Nowaczek and upon roll call being taken thereon, the following voted via voice:

Jon Nowaczek - aye	Connie Carlson - nay
Dan Johnson - aye	Torry Kraftson – nay

Due to the outcome of this motion, a second motion was made by Councilmember Kraftson and seconded by Councilmember Carlson to adopt an alternate resolution approving the variance and upon roll call being taken thereon, the following voted via voice:

Jon Nowaczek - nay	Connie Carlson - aye
Dan Johnson - nay	Torry Kraftson – aye

Because a majority vote is required to approve the variance, the variance is denied.

Consider the final layout and project report related to the St. Croix River Crossing Project: Nick Thompson, Minnesota Department of Transportation (Mn/DOT), explained the municipal consent being requested from the City of Bayport. The City of Stillwater has given municipal approval, and approval will also be requested from the City of Oak Park Heights.

Todd Clarkowski, Mn/DOT, reviewed the final layout for the project, including improvements to Highway 95 in Bayport, two stormwater ponds, and a loop trail system connecting the existing trail along Highway 95 to the realigned Pickett Avenue. The posted speed limit for Highway 95 southbound traffic will be lowered as it approaches the city limits.

Walter Eshenaur, SRF Consulting, reviewed the designs for the drainage ponds that will be constructed in Bayport in conjunction with the project. The project’s utility cost impacts were reviewed. With Federal and Mn/DOT funding, there will be no cost to the City of Bayport.

Administrator McGuire inquired about the long-term maintenance costs for the stormwater ponds. Per the Memorandum of Understanding (MOU), Mn/DOT would construct the ponds and perform the routine maintenance; however, major maintenance would be handled through a cost sharing based on contributions to the ponds. Mn/DOT was unable to identify a reliable number for major maintenance costs to the city, but it is anticipated this type of work would not be needed for 20-25 years. Public Works Supervisor Horak indicated no concerns with the non-routine maintenance of the ponds.

Finally, Mr. Clarkowski reviewed the MOU, which was negotiated with city staff, and requested the City Council approve a resolution for final layout of the project, as well as approval of the MOU.

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

Councilmember Kraftson introduced the following resolution and moved its adoption:

Resolution 07-05

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BAYPORT AND THE STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION RELATING TO THE ST. CROIX RIVER CROSSING 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
Connie Carlson – aye Torry Kraftson – aye

Councilmember Kraftson introduced the following resolution and moved its adoption:

Resolution 07-06

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING THE ST. CROIX RIVER CROSSING PROJECT’S FINAL LAYOUT

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
Connie Carlson – aye Torry Kraftson – aye

COUNCIL LIAISON REPORTS – Postponed until February meeting.

UNFINISHED BUSINESS

Review and discuss proposed bathhouse design and overall master park plan for Lakeside Park and consider authorization for Sanders, Wacker, Bergly, Inc., in association with Mark Lenz Architects to prepare construction documents, assistance during bidding, and construction observation for all of Phase I improvements at Lakeside Park: Larry Wacker and Mark Lenz reviewed the revised plans for Phase I at Lakeside Park, indicating the plans were now at a detailed design development level. The DNR is opposed to a bathhouse deck projecting to the river; therefore, the new design includes decking/patios on both sides of the bathhouse. If the City Council approves the plan, the plans will be presented to the DNR and other regulatory agencies for comments. The handicapped accessible path to the beach has been developed further, enhanced by landscaping. It was recommended to monitor the swimming beach activity and water quality before pursuing the beach curtain further. The bathhouse design was reviewed in detail, including exterior materials to be used. Vandalism concerns were discussed. Councilmember Kraftson stated he would like to see expanded changing areas.

It was moved by Councilmember Johnson and seconded by Councilmember Carlson to approve the concept plans for the bathhouse and Phase I Lakeside Park plans as presented. Motion carried.

NEW BUSINESS

Set City Council meeting dates for 2007: The 2007 meeting dates, and options for February and September, were discussed.

It was moved by Councilmember Carlson and seconded by Councilmember Kraftson to approve the 2007 City Council meeting dates as presented, setting February 12, 2007 and September 10, 2007 as regular meeting dates. Motion carried.

Consider appointments, designations, and assignments for 2007: A revised handout, developed by Mayor Nowaczek based on individual discussions with councilmembers, was discussed. In addition, Dave Levy was appointed the citizen representative to the Cable Commission. Administrator McGuire recommended that the city pay a flat fee of \$2,000.00 per month for prosecutions, as opposed to an hourly rate. Mayor Nowaczek noted that the consultants providing attorney, auditor, and engineering services are re-bid on a rotating, periodic basis.

Councilmember Johnson introduced the following resolution and moved its adoption:

Resolution 07-07

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA, APPROVING APPOINTMENTS, DESIGNATIONS, AND ASSIGNMENTS FOR 2007

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
Connie Carlson – aye	Torry Kraftson – aye

It was moved by Councilmember Johnson and seconded by Councilmember Kraftson to accept the proposal from Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP, to provide prosecution services for the flat fee of \$2,000.00 per month in 2007. Motion carried.

Consider appointments to the Library Board and Planning Commission: Administrator McGuire recommended that Beth Hogberg be reappointed to the Library Board and Judith Seeberger be appointed to the Planning Commission for 3-year terms.

It was moved by Councilmember Carlson and seconded by Councilmember Kraftson to appoint Beth Hogberg to the Library Board for a 3-year term and Judith Seeberger to the Planning Commission for a 3-year term. Motion carried.

Consider authorization to solicit bids for a new fire truck: Fire Chief Radke estimated the cost of a new rescue pumper at approximately \$500,000.00, which has been part of the city's capital improvement program since 2005. In addition to the truck replacement fund, \$200,000.00 has been received from the Fred C. and Katherine B. Andersen Foundation for the fire truck, and additional grants are being pursued.

It was moved by Councilmember Kraftson and seconded by Councilmember Carlson to authorize the Bayport Fire Department to solicit bids for a new rescue pumper truck. Motion carried.

COUNCIL ITEMS/ANNOUNCEMENTS

1. On behalf of the city, Mayor Nowaczek thanked the Andersen Corporate Foundation for their ongoing support and \$50,000.00 grant for Bayport Public Library operating expenses in 2007.

ADMINISTRATOR/STAFF ITEMS AND ANNOUNCEMENTS

Water Update: The air stripper treatment plant for well #2 is progressing and anticipated to be online at the beginning of March.

Closed session: It was moved by Councilmember Carlson and seconded by Councilmember Johnson to adjourn to closed session at 10:05 p.m. to discuss pending litigation. Motion carried.

It was moved by Councilmember Carlson and seconded by Councilmember Johnson to resume the open session at 10:10 p.m. Motion carried.

It as moved by Councilmember Johnson and seconded by Councilmember Carlson to approve the Settlement Agreement and Release between the City of Bayport and Monica Gilbert/Bruce Bremer. Motion carried.

ADJOURNMENT

It was moved by Councilmember Carlson and seconded by Councilmember Johnson to adjourn the meeting at 10:12 p.m. Motion carried.