

CITY OF BAYPORT
BAYPORT CITY COUNCIL MEETING MINUTES
BAYPORT CITY COUNCIL CHAMBERS
January 13, 2003
7 P.M.

CALL TO ORDER

Pursuant to due call and notice thereof, Mayor Rick Schneider called the regular City Council meeting of January 13, 2003, to order at 7:03 p.m. and asked Councilmembers, staff and the audience to join in pledging allegiance to the American Flag.

ROLL CALL

Members present: Mayor Rick Schneider, Councilmembers Jon Nowaczek, Sharon Ridgway, Sheryl Corrigan and Bob Kamps.

Members absent: None.

Others present: Interim Deputy Clerk Wendi Lindquist, City Attorney Jim Lammers, City Engineer Barry Peters, Police Chief John Gannaway, and Mike Darrow of Northwest Associated Consultants (NAC).

OATH OF OFFICE

Interim Deputy Clerk Wendi Lindquist administered the Oath of Office to Mayor Rick Schneider and Councilmembers Sheryl Corrigan and Jon Nowaczek.

PETITIONS/INDIVIDUALS/DELEGATIONS & COMMENDATIONS

None.

OPEN FORUM

None.

CONSENT AGENDA

Councilmember Nowaczek pulled Resolution #03-04 Appointing Short, Elliot & Hendrickson as the City's Consulting Engineer off the Consent Agenda for further discussion. This item is hereby removed and entered into the New Business section of tonight's agenda.

Councilmember Ridgway moved to approve the Consent Agenda as changed.

Councilmember Kamps asked Acting Deputy Clerk Wendi Lindquist if there was a requirement to read a letter from former City Administrator Dan Johanneck that was

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received at the regular City Council Meeting of December 2, 2002. Wendi Lindquist confirmed that she been advised by City Attorney Jim Lammers that it was not necessary as long as it was included in the recording of the December 2002 meeting minutes.

The motion was duly seconded by Councilmember Corrigan, and upon roll call being taken the following voted via voice:

Sheryl Corrigan – aye
Rick Schneider – aye
Jon Nowaczek - aye

Sharon Ridgway – aye
Bob Kamps – aye

PUBLIC HEARINGS

None.

COUNCIL LIAISON REPORTS

Councilmember Ridgway reported the St. Croix Valley Joint Cable Communications Commission cancelled their regular January meeting and will meet again on February 19, 2003 at 7:00 p.m.

CITY CONSULTANT REPORTS

1. City Attorney Report – none.
2. City Engineer Report –

Discuss New Inflow and Infiltration Plan

Barry Peters explained that in tonight's packet there is a revised Implementation Plan for the Inflow and Infiltration ("I & I") Study that was done. The City was required to put together a plan or study to look at problems related to the I & I problems. The initial presentation of this plan was given at the December 2, 2002 Council Meeting and also the Metropolitan Council just following that meeting. At the December 30, 2002 Council meeting, after discussion with Mayor Kosmo, he presented a plan for the City that showed a 10-year Improvement Process on the repairs to the system. Starting in 2003 the City would be looking at more investigation work by televising of existing sewers and metering and talking with some of the property owners who are not metered but do distribute and pump some sewage into the City's system. Then starting in 2004 start a 10-year program to address those infiltrations by lining the sanitary sewers and lining some of the old manhole systems and working with residents to line and repair individuals services. Also discussed with Met Council was something in place to shut the system off in that area if the infiltration does show. The presentation the December 30, 2002 meeting showed some valves installed that would allow the City to shut off the area in question. The pre-estimate for installation of the valves was \$45,000.00 (forty-five thousand dollars) for the City to do that. This would require the City to tell people in that area that they would not be able to put any sewage down into that sewer system. The council on December 30, 2002 decided that this option be included in the implantation plan. At the December 30, 2002 Council

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meeting discussed moving the plan up by one year and start the 10-year plan in 2003. Barry Peters presented a plan to the Council tonight that shows moving the system for repair up to 2003 for the next 10 years, which also shows that if that valve system is needed, working with a supplier and the Met Council to mobilize placing of the valves to isolate the critical areas.

Councilmember Corrigan noted that at one of the last meetings former Mayor Kosmo brought up an issue of liability when installing valves if homeowners have problems after the valves are shut off. Corrigan asked Barry Peters what the City's liability if we install those valves. Corrigan also suggested considering what is right for Bayport residents by saying that she was not sure if this is where we want to go.

Barry Peters explained that if there are not valves installed in the lines and if residents use the system and cause sewage to back up into their systems by normal use it is considered an "act of God" and there would be no liability. If the City does install a valve and shuts the flow off causing sewage to backup into the residence then the City assumes all liability for damages. Corrigan suggested going back to the Met Council and saying that the City is not interested in taking on liability for damages to 69 houses. Peters stated that if the City shut off the valves they would then need to notify residents that they cannot put any sewage into the system in order to take the burden off the City. The City would then have to provide temporary sewage or they would have to move out over that period of time. Corrigan asked Peters what the Met Council could do if the City does not install the valves. Peters confirmed that the Met Council has no regulatory authority at that point.

Mayor Schneider asked for clarification on the Tier II Comp Plan. Peters stated that the City of Bayport has to show that they are committed to doing a plan and that we are addressing the I & I problem over a period of time. Schneider stated that the valves seem like a band aide that is a lot of money being spent for no reason because we have to put the PVC pipe everywhere anyway. Councilmember Corrigan again suggested pushing back to the Met Council concerning the City's liability issue.

Councilmember Nowaczek asked Barry Peters how quickly these valves could be installed. Peters suggested that it could be done within a couple of days inside a manhole.

Councilmember Nowaczek stated that he is very uncomfortable with the idea of denying residents with a vital service. Nowaczek suggested accelerating the program to take care of the problem sooner rather than later.

Councilmember Nowaczek moved to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment.

Mayor Schneider asked for clarification from City Attorney Lammers. Lammers stated Council should have discussion regarding the effects of the motion.

Seconded by Mayor Schneider to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment.

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Councilmember Kamps asked for clarification on the term “indefinite”. Councilmember Nowaczek suggested that it would be a period of time until the council decides...

Mike Darrow explained that on December 6, 2002, staff made the recommended changes to the document and resubmitted to the Met Council. Within a 10-day period the Met Council sent a letter to the City stating that the Comprehensive Plan amendment was deemed incomplete and required further information. One of which was further information pertaining to the I & I Study and also the City’s approval of an implementation plan.

Councilmember Corrigan suggested that the Council not approve this Implementation Plan as it is written. She suggested taking out the language around the valves and then resubmit it to the Council without the valves.

Councilmember Kamps reminded others on the Council that he believes this causes problems with a timeline the City is under with Contractors Properties Developer Company (“CPDC”).

Councilmember Nowaczek restated the original motion to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment.

Councilmember Ridgway asked for clarification on the liability of just saying forget it. Lammers advised further discussion and to keep in mind that the developer could challenge the actions the Council takes and that those action should be backed up by documented findings or it may not meet the test.

Councilmember Nowaczek withdrew the original motion to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment.

Councilmember Nowaczek stated that the City is in a somewhat awkward situation because of the premature decisions of the prior Council. Now the City is in the situation where a development is moving forward through regulatory processing which does not have the support of the majority of the current Council. Nowaczek suggested to get the project and the process back on track is to bring the course of the current plan to an end and to start the process over again looking at a proposal that the current Council and the community can support.

Councilmember Kamps stated he disagrees with that statement on a couple of points. That when the former City Council voted on it they were still in office and they had the right to vote on anything they wanted. Kamps then asked Lammers to explain whether anything within the process of this development has been done by the book and legally. Lammers confirmed that everything has been done properly.

Councilmember Corrigan stated the community doesn’t agree with the proposal on the table right now and as representatives of the community Councilmembers need to be mindful of this.

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Councilmember Nowaczek suggested by holding a workshop Council could get together to get the findings of fact in order and agree that they are appropriate to withstand scrutiny whereby at a following meeting, February 3, 2003, Council would then take action to repeal the contingent rezoning that was passed at the December 30, 2002 Council Meeting.

Councilmember Nowaczek moved to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment.

Councilmember Ridgway pointed out that discussion is still on the first agenda discussion item.

Councilmember Corrigan moved to ask the City Engineer to prepare the I & I Implementation Plan without the references to the valves and to direct the City Engineer to re-negotiate with the Met Council regarding that item on the basis that we are accelerating our plan.

The motion was seconded by Councilmember Ridgway.

Councilmember Nowaczek voiced concerns that by moving ahead with the motion it may re-awaken the Comprehensive Plan amendment.

Councilmember Corrigan withdrew the original motion to instruct the City Engineer to resubmit the implementation plan to the Met Council without the valve language.

Councilmember Ridgway asked if we could progress on this without submitting it to the Met Council to begin the repair process. Barry Peters explained that the City could take the project on themselves without the Met Council's blessing.

Councilmember Ridgway moved to submit the I & I Implementation plan excluding the shut off valves.

The motion was duly seconded by Councilmember Kamps and upon roll call being taken, the following voted via voice:

Sheryl Corrigan – nay
Rick Schneider – nay
Jon Nowaczek - nay

Sharon Ridgway – aye
Bob Kamps – aye

The motion failed.

Councilmember Corrigan moved to forward on the I & I Implementation Plan outside of the Met Council process and striking the language for the valves.

The motion was duly seconded by Councilmember Nowaczek and upon roll call being taken, the following voted via voice:

Sheryl Corrigan – aye
Rick Schneider – aye

Sharon Ridgway – nay
Bob Kamps – nay

Jon Nowaczek - aye

Discuss possible date for Bayport West development workshop meeting.

Councilmember Nowaczek reaffirmed that the purpose of having the meeting is to establish the facts of findings.

Councilmember Nowaczek moved to indefinitely postpone the resubmission of the amended Comprehensive Plan amendment to the Met Council.

The motion was duly seconded by Councilmember Schneider and passed unanimously.

City Attorney, Jim Lammers, laid the following framework for the City Council with regards to denying the Bayport West Development applications:

“The 120-day clock that was extended by the extension of time agreement from CPDC requires that all four applications require further actions be taken.”

“The agreement signed on December 30, 2002 by and between the City of Bayport and CPDC extended the time for the Comprehensive Plan amendment and the rezoning amendment until 30 days after the Met Council has approved the proposed changes or 120 days of review period by the Met Council. The Council has to take final action on those two issues within 30 days after the Met Council has taken their action if it resubmitted...and then regarding the PUD Application and the Preliminary Plat Application that’s been extended by agreement to 30 days until after the EIS is completed which is another wrinkle in the process. The Planning Commission held a public hearing and on November 19, 2002, the Planning Commission recommended approval of that amendment to the City Council with conditions. Then on December 2, 2002, the City Council gave their preliminary approval and submitted the amendment to the Met Council and the council made, at that time, findings in support of that action and if the present council desires to re-review the issue I think your focus should be reviewing the prior Councils’ findings and reacting to those and making findings of your own regarding whatever decisions you might make as far as the Comprehensive Plan is concerned. Right now that plan is in your hands. You don’t have to resubmit it. You have to keep in mind that if you do nothing and the clock keeps running it could be ultimately deemed to be approved. So the motion tonight was to move to postpone it indefinitely and my comments then and now is it’s really important to have findings to back up that motion and that decision if that’s going to be your decision. It should be articulated at the time you make the motion. If you were to refer it, the Met Council has 120 days to react to it. Then it comes back to you for final approval. When it’s referred back you have the option to deny the application based upon the findings you might make at that time. So you’ve got several steps to take along the way to make your decision. It will ultimately require a 4/5 vote in order to make an amendment to the Comprehensive Plan.”

“On December 30, 2002, the City Council conditionally approved the rezoning of the Bayport West property from Industrial to R5 and B2. It was conditionally approved because the Council cannot legally adopt any amendment to the zoning ordinance which is not in compliance with the Comprehensive Plan. What you need to do ultimately is take

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action on that application to approve or deny the proposed amendment and again, if you were to approve the rezoning it would be done by the adoption and publication of an ordinance amending the zoning ordinance. That hasn't happened and can't be done until the comp plan is amended."

"The PUD and Preliminary Plat, you cannot take on that until the comp plan, zoning ordinance and EIS have all been completed. You could have a real short time frame to take action because of the 30-day extension that has been granted."

"Your options with the comp plan is to deny the application at this time with findings rather than refer it back to the Met Council; refer it back to the Met Council with no action, let them take their action...comes back to you and you can take final action at that time. I recommend that to be safe it might even be good to schedule a public hearing before you take final action on some of these issues so that this City Council is taking action based upon their findings and it is all a matter of record that they can defend."

Mayor Schneider stated the time and date for the Bayport West Development Workshop would be January 23, 2003 at 7:00 p.m. at Bayport City Hall.

3. City Planner Report –

Approve Resolution #03-12 allowing for construction of parking within an R-4 zoning district.

Planner Mike Darrow invited the landscape architect, Joel MacElany, to give a preview of the proposal. Mr. MacElany explained the process of the request and how it relates to the Lake Street project.

Planner Darrow gave background on the concept issue. Darrow explained the applicant requested a conditional use permit and in looking at the project he realized that the marina was not in compliance with what they were proposing and went the zoning code to determine that additional parking was a requirement, along with additional screening, he realized that there was a need for additional parking in order to bring the marina into compliance.

Councilmember Corrigan introduced the following resolution and moved its adoption:

Res. 03-12

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
RESOLUTION #03-12 APPROVING A CONDITIONAL USE PERMIT TO ALLOW
FOR THE CONSTRUCTION OF A PARKING AREA LOCATED WITHIN THE R-4
DISTRICT AND WITHIN THE SHORELAND BLUFFLAND DISTRICT BE
APPROVED WITH CONDITIONS.

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

Sheryl Corrigan – aye
Rick Schneider – aye
Jon Nowaczek - aye

Sharon Ridgway – aye
Bob Kamps – aye

UNFINISHED BUSINESS

None.

NEW BUSINESS

Approve Resolution #03-03 approving Appointments and Assignment for 2003

Mayor Schneider recommended appointments to various committees and boards.

Councilmember Kamps introduced the following resolution and moved its adoption:

Res. 03-03

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
APPROVE RESOLUTION #03-03 APPROVING APPOINTMENTS AND
ASSIGNMENT FOR 2003.

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

Sheryl Corrigan – aye
Rick Schneider – aye
Jon Nowaczek - aye

Sharon Ridgway – aye
Bob Kamps – aye

Approve Resolution #03-13 establishing winter cremain burial rates

Staff recommended establishing winter burial rates, at Hazelwood Cemetery, for cremain
burials which do not exist and were somehow overlooked with the original fee schedule.

Councilmember Corrigan introduced the following resolution and moved its adoption:

Res. 03-13

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
RESOLUTION #03-13 ESTABLISHING WINTER CREMAIN BURIAL RATES FOR
HAZELWOOD CEMETERY.

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

Sheryl Corrigan – aye
Rick Schneider – aye
Jon Nowaczek - aye

Sharon Ridgway – aye
Bob Kamps – aye

Discuss possible appointment of an advisory representative to the Lower St. Croix Management Commission.

Interim Deputy Clerk Wendi Lindquist explained the importance of appointing a member to represent the City at these meetings.

Following brief discussion Councilmembers recommended appointing Dan Johnson, 3 Point Road, to the Lower St. Croix Management Commission.

The vote passed unanimously.

Discuss open City Administrator position

Discussion began on the open position of City Administrator with reference to the League of Minnesota Cities recommended requirements for fulfilling the position. Councilmember Kamps expressed concerns that years ago the City was nearly in a bankrupt status. He further recommended following the Leagues recommendations for finding the right candidate for the job.

Councilmembers agreed to accept application for the open position and at the same time recommended appointing Wendi Lindquist as Acting City Administrator.

Moved by Councilmember Schneider to appoint Wendi Lindquist to Acting City Administrator.

The motion was duly seconded by Councilmember Corrigan and upon roll call being taken, the following voted via voice:

Sheryl Corrigan – aye
Rick Schneider – aye
Jon Nowaczek - aye

Sharon Ridgway – aye
Bob Kamps – aye

Moved by Councilmember Schneider to actively open and pursue a search for a new City Administrator.

The motion was duly seconded by Councilmember Ridgway and upon roll call being taken, the following voted via voice:

Sheryl Corrigan – aye

Rick Schneider – aye

Jon Nowaczek – aye

Sharon Ridgway – aye

Bob Kamps – aye

Discuss approval of Resolution 03-04 appointing Short, Elliott & Hendrickson as the City's consulting Engineer and reserving the right for City Council to hire other engineering firms if the City Council determines it is in the best interest of the City.

Councilmember Nowaczek asked for the Council's feedback on the concept that for future years it might be beneficial if they rewarded this contract by competitive bid process.

Councilmember Kamps commented that in his honest opinion this was done on a competitive bid also and would like to see Barry Peters remain as City Engineer for a continuous flow.

Barry Peters stated that the last time the City has gone out for competitive bids was 1993.

Councilmember Ridgway added that when the City has big projects they have retained the ability to go out and look for outside bids.

Member Nowaczek moved to approve Resolution #03-04 appointing Short, Elliott & Hendrickson as the City's consulting engineer and reserving the right for City Council to hire other engineering firms if the City Council determines it is in the best interest of the City.

Councilmember Nowaczek introduced the following resolution and moved its adoption:

Res. 03-04

**RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
RESOLUTION #03-04 APPOINTING SHORT, ELLIOTT & HENDRICKSON AS THE
CITY'S CONSULTING ENGINEER AND RESERVING THE RIGHT FOR CITY
COUNCIL TO HIRE OTHER ENGINEERING FIRMS IF THE CITY COUNCIL
DETERMINES IT IS IN THE BEST INTEREST OF THE CITY.**

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

Sheryl Corrigan – aye

Sharon Ridgway – aye

Rick Schneider – aye
Jon Nowaczek - aye

Bob Kamps – aye

COMMUNICATIONS/REQUESTS

Mayor Schneider told the public and those in attendance there would be a Washington County Tax Workshop on Wednesday, January 29, 2003 at 5:30 p.m. at the Washington County Government Center.

Acting Administrator Lindquist updated Councilmembers on the progress of the duct cleaning and repairs being done by Springborn Heating & Plumbing. The project is complete as far as options #3,4 and 5 which were approved by the prior Council at the December 2, 2002 meeting.

Mayor Schneider reminded residents that tickets are available (for donations) for the Bayport Fire Department Fundraiser on Saturday, February 8th at the Bayport American Legion from 8:00 p.m. – 12:00 a.m.

Mayor Schneider asked for an update on the Ordinances for the PUD and Subdivision. Mayor Schneider asked that Planning Commission members attend these meetings.

Planner Mike Darrow briefly explained the next meeting on the subdivision ordinance will be next Wednesday, January 21st at 7:00 p.m. City Hall. Darrow reminded interested citizens to attend the meetings. Darrow stated a Public Hearing will be held at the next Planning Commission meeting on February 10, 2003.

Councilmember Nowaczek stated that many folks were disappointed about the manner in which Dan Johanneck left his employment with the City and the questions that it raised in terms of a potential conflict of interest.

Dione Philippi addressed the Council suggesting some possible websites that Councilmembers could reference that outline what other cities currently use to determine where city employees can work and live as well as other suggestions for Councilmembers at the beginning of their administration.

Police Chief John Gannaway told the Council that if either he or City Attorney Lammers were to investigate the matter it would be a conflict of interest. Gannaway stated that he contacted the Washington County Sheriff's office and they would be the investigating body.

Lammers told Councilmembers that he was unaware of the letter until after the meeting when Wendi Lindquist advised him that it was passed out in a sealed envelope and not read into the minutes of the meeting or opened up for discussion at the December 30, 2002 regular Council Meeting.

Mayor Schneider directed Acting Administrator Lindquist to give him a copy.

Councilmember Nowaczek suggested just taking this as a lesson and improve the process for the future by reviewing current policies.

Councilmember Corrigan agreed to take this as a lesson and consider it in their next appointment of City Administrator.

COUNCIL REQUEST ITEMS

Discuss winter on-street parking concerns

Councilmember Kamps expressed his concerns on parking altogether. He spoke with Mel Horak, John Gannaway and Mike Bell about looking at adopting Oak Park Heights ordinances and rules which are April 1st through November 1st you can park on the street during the day but not at night. During the winter from November 1st to April 1st there is no parking on residential streets at all. Mel Horak had mentioned to Kamps that he would like to see the City enforce current parking ordinances. Kamps suggested directing Lindquist to look at other communities ordinances such as Oak Park Heights.

Discuss possible "Town Hall Meeting" in March or April of 2003

Councilmember Kamps suggested holding an upcoming meeting for the community to clarify misinformation, half-truths and rumors related to Bayport West property. Kamps read a prepared statement.

Mayor Schneider stated that voters spoke in the election. Schneider stated that he never saw Kamps at any other meetings prior to his agenda discussion item tonight.

Jim Connors addressed the Council suggesting that he agreed with giving the public more information on these issues. He would support Kamps suggestion.

Councilmember Corrigan suggested bringing this issue up at a February Council Workshop.

Dick Beberg pointed out that he served on the land use committee and the vote came out 12/1 against the development. He suggested that we listen to the voters.

Councilmember Nowaczek stated he appreciated every viewpoint. Nowaczek stated that in the last election many voters support the view of the Councilmembers that were against this project and suggested finding out what the residents do want by performing a survey whereby in a controlled fashion get answers that could be made sense of.

Ron VanZee briefly mentioned the Citizens Advisory Committee and how much effort went in to presenting their recommendation on the project. VanZee suggested that Kamps read the recommendation/document.

Debbie Gregory addressed Councilmembers with her concerns of no off-street parking. Her family has many cars and does not support Kamps suggestions for adopting no

on-street parking. Gregory further states that many of the rumors flying around have been the result of Kamps going to the school and slamming newly elected Councilmembers.

STAFF REPORTS

Discuss possibility of joining Washington County Special Response Team

Police Gannaway referred to Council packets with information to help the council make a decision for approval.

Moved by Member Ridgway, seconded by Member Nowaczek to approve joining the Washington County Response Team.

The motion passed unanimously.

Discuss correction of Nuisance Properties in Bayport

Police Gannaway explained that instead of issuing abatement notices to those property owners in violation the City will issue citations as the next step for dealing with violations so as to avoid potential litigation matters.

Approve submitting a grant application to the Andersen Corporation for funds to help pay for the purchase of a new squad car for the Police Department.

Police Gannaway asked for approval to submit a grant application to assist in the purchase of a new squad car.

Moved by Member Corrigan, seconded by Member Ridgway to authorize Chief Gannaway to apply for funds to pay for a new squad car.

The motion passed unanimously.

A complete recording of this meeting is available for further review or questions at City Hall.

ADJOURN

Councilmember Nowaczek moved, seconded by Councilmember Corrigan, to adjourn at 9:39 p.m. Motion passed unanimously.

Respectfully submitted,

Wendi Lindquist
Acting Administrator