

**CITY OF BAYPORT  
CITY COUNCIL MEETING MINUTES  
COUNCIL CHAMBERS  
June 3, 2019  
6:00 P.M.**

**CALL TO ORDER**

Pursuant to due call and notice, Mayor St. Ores called the regular City Council meeting of June 3, 2019, 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 Susan St. Ores, Councilmembers John Buckley, John Dahl, Connie Carlson, and Michele Hanson

Staff Present: City Administrator Adam Bell, Assistant Administrator Planner Sara Taylor, Fire Chief Allen Eisinger, Public Works Director Matt Kline, City Engineer John Parotti, and City Attorney Andy Pratt

**APPROVAL OF AGENDA**

It was moved by Councilmember Hanson and seconded by Councilmember Buckley to approve the June 3, 2019 City Council agenda. Motion carried 5-0.

**PROCLAMATIONS, COMMENDATIONS, PETITIONS, ANNOUNCEMENTS**

1. May recycling award recipient is Paul Harris 346 South 6<sup>th</sup> Street. He will be awarded for his recycling efforts with funding made possible with a grant from Washington County.

**OPEN FORUM**

1. Mike Isensee of Middle St. Croix Watershed Management Organization (MSCWMO) presented results of the 2018 watershed monitoring report. He reported that Perro Creek had abnormally high E.coli readings, particularly when sampling occurred after intense rain events. The MSCWMO is recommending the City Council consider genetic testing of the E.coli samples to determine if the high readings are the result of human origin from old septic system failures or a leak in underground waste water treatment lines. If the E.coli source is not from human origin, the findings could support additional storm water runoff management and mitigation. Public Works Director Kline, citing bacteria count levels used to close area public beaches, was able to reassure City Council that E.coli levels are only elevated after major rain events. Residents should avoid playing in Perro Creek after heavy rain and storms.

2. Mayor St. Ores indicated that City Hall had received numerous complaints about an open burn occurring in Phase 2 of the Inspiration development, informally known as the Landucci property. Administrator Bell explained the burn was occurring under a variance permit from the Department of Natural Resources (DNR) to clear trees and vegetation. The property owner, Nathan Landucci, also obtained an open burn permit from the Bayport Fire Department. This permit restricts open flames and active burning to the hours of 7:00 a.m.-9:00 p.m. Administrator Bell acknowledged the inconvenience the vegetative burning was causing to adjacent properties but explained that revocation and denial of burn permits cannot be done in a subjective or selective manner according to the Fire Department. The city's open burning ordinance would need to be altered to prohibit all open burning activity, including prairie burns for weed control and prairie restoration. Mayor St. Ores opened the floor to public comments.

Heith Heitkamp, 425 Prairie Way South, asked for the open burn permit to be revoked immediately citing flying ash, false fire alarms, and respiratory distress for Inspiration residents.

Tanya Grandas, 431 Prairie Way South, mentioned a petition from area residents, asking for the open burn permit to be revoked or delayed to allow time to research other methods of vegetative clearing.

Lanny Graham, 398 4<sup>th</sup> Street North, complained of poor air quality and the effect on her family’s respiratory health.

Mary Weirtz, 963 Inspiration Parkway, complained of ash covering her property and the poor air quality that is compromising her family’s respiratory health.

Tricia Ochs, 939 Inspiration Parkway South, reported that open flames were visible after the 9:00 p.m. permit limit and the fires were frequently left unattended. She asked how the city enforces the restrictions associated with open burn permits.

Penny Samb, 1138 Pioneer Trail, contrasted the present burn to regular prairie burns. She complained of the multi-day duration of the present burn, poor air quality, and ash covering her property.

Discussion amongst councilmembers focused on how to revoke the permit and ban the open burn in the interest of public safety. Fire Chief Eisinger recommended staff to work with the DNR, as they issued the original variance. He cautioned that legal issues could result if the city arbitrarily revokes a permit that the developer obtained through the proper channels. Attorney Pratt explained the city has an environmental nuisance ordinance that would apply in this situation but cautioned prudence in revoking the permit outright until staff had an opportunity to speak with the developer and the DNR regarding the permit language. Staff was ultimately instructed to meet with the developer at the earliest opportunity to discuss alternate means of clearing the subject property. Concerned residents were instructed to call police and fire if they observed burning past 9:00 p.m. or excessive smoke and ash.

3. Tara Johnson and Eric Johnson, 620 Oakwood Street South, commended staff on their responsiveness in addressing a long term nuisance issue in their neighborhood.

4. Lucas Hytinen of River Dogs LLC, gave a brief overview of his business plan to further support his request for a special event application. He is requesting permission to vend food at Lakeside Park this summer.

## **CONSENT AGENDA**

Mayor St. Ores read items 1-8 on the consent agenda.

Councilmember Carlson introduced the following resolution and moved its adoption:

### **Resolution 19-15**

### **RESOLUTION APPROVING CONSENT AGENDA ITEMS 1-8 FROM THE JUNE 3, 2019 CITY COUNCIL AGENDA**

Consider a resolution adopting items 1 through 8

1. May 6, 2019 City Council regular meeting minutes
2. May 20, 2019 City Council special meeting minutes
3. May payables and receipts (check numbers 11054 -11159)
4. May building, plumbing and mechanical permits report
5. Special event application from Bayport American Legion for Flag Day at Perro Park June 14, 2019
6. Donation of toys from Sally Dahlin to Police Department
7. Weapons Range Agreement with St. Paul Park Police Department
8. Special event application from Lucas Hytinen of River Dogs LLC to operate a transient food cart at Lakeside Park June 19 through September 21, 2019

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

Susan St. Ores- aye  
John Buckley – aye

Connie Carlson – aye  
John Dahl – aye

Michele Hanson – aye

## **PUBLIC HEARINGS**

## **UNFINISHED BUSINESS**

Consider a resolution ordering improvement for city infrastructure upgrades associated with the MnDOT 2020 Highway Improvement Project: Public Works Director Kline explained that a public improvement hearing for city infrastructure upgrades was completed on May 6, 2019 in conjunction with the MnDOT 2020 Highway Improvement Project. The public hearing was required under the State Statute 429 process for implementing assessments. The public was given an opportunity to comment on the project and proposed assessments. A total of two individuals objected to the assessment cost of the project. The next step in the assessment process is to adopt a resolution ordering the improvement. This resolution does not bind the City Council to a set assessment amount, but does confirm that the project is necessary, cost-effective, and feasible, as detailed in the feasibility report. Staff recommends the City Council adopt a resolution ordering the improvement for city infrastructure upgrades associated with the MnDOT 2020 Highway Improvement Project. Public Works Director Kline assured councilmembers that all affected property owners had received advanced notice of proposed assessments. Councilmember Hanson asked that the inclusion/exclusion of street light related assessments be discussed by the City Council at an upcoming public workshop prior to final assessments being decided.

Councilmember Buckley introduced the following resolution and moved its adoption:

### **Resolution 19-16**

#### **A RESOLUTION ORDERING IMPROVEMENTS FOR CITY INFRASTRUCTURE WORK AS PART OF MNDOT'S 2020 HIGHWAY 95 IMPROVEMENT PROJECT**

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

Susan St. Ores- aye  
John Buckley – aye

Connie Carlson – aye  
John Dahl – aye

Michele Hanson – aye

## **NEW BUSINESS**

Consider an application submitted by Gordy and Suzanne Tellinghuisen, Bayport Transmission and Auto Care for an amendment to an existing conditional use permit to allow an increase in the number of parking stalls to be used for overnight, outdoor storage of customer vehicles during non-business hours at 120 3<sup>rd</sup> Street South:

Assistant Administrator/Planner Taylor explained that the parcel currently operates Bayport Transmission and Auto Care and contains a commercial garage/office building and accessory parking lot. The property is surrounded by a mixture of land uses, including commercial uses to the north and south and residential to the east and west. It is presently guided for commercial use by the Comprehensive Plan and zoned B-2 Central Business.

In 2009, the city issued a conditional use permit (CUP) to allow five designated parking stalls to be used for overnight, outdoor storage of customer vehicles during non-business hours at the premises. Property owners are requesting consideration to amend this CUP to allow for an additional eight stalls. Parcels in the vicinity of the subject property are zoned and used for both commercial and residential purposes, which have been compatible with the overall neighborhood. However, any outdoor storage requires a CUP that specifies conditions under which the outdoor use is permitted. The existing parking lot is capable of accommodating the additional outdoor parking storage, as requested, while maintaining adequate customer and employee parking, as indicated on the site plan. Staff recommends approval of the application provided that all customer and employee stalls be striped and signed. All sod and landscaped areas previously impacted by non-compliant parking will be required to be restored. Planner Taylor assured the City Council that all property owners within 350 feet of the subject property had been notified of the proposed changes to the CUP and were given an opportunity to voice their concerns at the May 20, 2019 Planning Commission meeting. She further explained that the proposed amendment included an additional fence requirement along the north side of the property if the city deemed it necessary in future.

Councilmember Buckley introduced the following resolution and moved its adoption:

**A RESOLUTION APPROVING AN AMENDMENT TO AN EXISTING CONDITIONAL USE PERMIT TO ALLOW UP TO 13 STALLS TO BE USED FOR OVERNIGHT, OUTDOOR STORAGE OF CUSTOMER VEHICLES DURING NON-BUSINESS HOURS AT 120 3<sup>RD</sup> STREET SOUTH, LEGALLY DESCRIBED AS THE EAST ONE-HALF OF LOTS 10-12, BLOCK 71, BAYPORT, WASHINGTON COUNTY, MINNESOTA**

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

Susan St. Ores- aye                      Connie Carlson – aye                      Michele Hanson – aye  
John Buckley – aye                      John Dahl – aye

Consider acceptance of a donation and authorizing the purchase of a fire rescue boat for the Fire Department: Fire Chief Eisinger explained that the Fire Department covers five miles of the St. Croix River, from mile 22 just north of the St. Croix Crossing bridge, to mile 17 just south of the railroad swing bridge. During river emergencies, the Fire Department must rely on marina work boats for response and rescue. These are not equipped for rescue and have caused a delay in response time. The department received a donated airboat in 2016, which started an effort to raise funds to support equipment and training for boat operations. Cash donations totaled \$30,000 in 2016. Unfortunately, the airboat was not able to operate safely on the open water or equipped for operation on the ice/snow. It was sold in 2017 for \$10,025. Recently, the department has been trying a 22’ Lake Assault Rigid Hull Inflatable Boat (RHIB). It has been put in use 5 times and 14 members have been trained in its operation. Fitted with a 350 gallon per minute fire pump, it is a valuable tool to respond to fire and medical emergencies on the St. Croix River safely and efficiently. The boat is anticipated to be in the water from Memorial Day through Labor Day weekends. The department has been seeking additional donations and recently received \$5,000 from the Bayport American Legion and \$25,000 from the Fire Department Relief Association. The Bayport Marina also donated a slip with electric/water connection. The boat purchase will be funded by these donations, as well as the department’s equipment fund. Delivery is expected in late June or early July. Staff recommends the City Council adopt a motion authorizing the purchase of the RHIB as trialed, for the Fire Department at a cost of \$67,774 plus shipping. Councilmember Hanson confirmed the outstanding cost to the city would be approximately \$2,750 after all donations and would be funded from the department’s equipment fund. Councilmember Dahl confirmed that the boat would capable of search and rescue operations after addition of sonar equipment.

It was moved by Councilmember Carlson and seconded by Councilmember Buckley to accept the donation and authorize the purchase of 22’ Lake Assault Rigid Hull Inflatable Boat for the Fire Department at a cost of \$67,774 plus shipping. Upon roll call being taken, the following voted via voice:

Susan St. Ores- aye                      Connie Carlson – aye                      Michele Hanson – aye  
John Buckley – aye                      John Dahl – aye

Consider accepting the highest sealed bid and sale of 1992 Ford L8000 plow truck from the Public Works Department: The 1992 Ford L8000 plow truck was replaced this spring with a new Mack plow truck, due to age and condition. A single bid of \$1,200 was received from Schmig’s Land Maintenance. City staff noted that the bid was less than anticipated and therefore recommended this bid be rejected and the vehicle sold at state auction.

It was moved by Councilmember Dahl and seconded by Councilmember Buckley to reject the bid for the sale of the 1992 Ford L8000 plow truck from the Public Works Department. Upon roll call being taken, the following voted via voice:

Susan St. Ores- aye                      Connie Carlson – aye                      Michele Hanson – aye  
John Buckley – aye                      John Dahl – aye

Consider a donation to support the Greater Stillwater Chamber of Commerce in lieu of membership:

Administrator Bell explained that the city has paid dues to be a member of the Greater Stillwater Chamber of Commerce for several years. It was recently learned that the State Auditor and Minnesota Attorney General have both recently provided guidance that prohibits cities from being members and paying dues to chambers of commerce but may make donations to promote activities in the city. Staff and the City Council believe there is value in continuing that relationship but recognizes the restriction on paying dues. Chamber dues for 2019 are \$775. Staff recommends that the city make a donation for an amount less than the full member dues amount, and is proposing \$500 for the purpose of supporting promotional activities in Bayport. Administrator Bell provided an overview of the proposed resolution that authorizes a contribution in 2019 and retroactively indicates the city's previous payments as a contribution to the chamber. Administrator Bell has been told by chamber director that the city's participation is still wanted regardless of member status.

Councilmember Hanson introduced the following resolution and moved its adoption:

**Resolution 19-18**

**A RESOLUTION CHARACTERIZING PAYMENT TO GREATER STILLWATER CHAMBER OF COMMERCE AS A CONTRIBUTION**

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

Susan St. Ores- aye  
John Buckley – aye

Connie Carlson – aye  
John Dahl – aye

Michele Hanson – aye

**CITY COUNCIL LIAISON REPORTS**

Councilmember Buckley announced that the Planning Commission met May 20 and heard the CUP amendment for Bayport Transmission at 120 3<sup>rd</sup> Street South. He also attended the Andersen Corporation Citizens Advisory Committee meeting on May 8 and learned about their environmental initiatives and EPA compliance.

Councilmember Carlson provided an overview of the library's summer events, including the Summer Reading Kickoff and Summer Thursday Movies. Discussions amongst the Library Board continue on some landscaping and continued improvements to the building exterior.

Councilmember Hanson attended the Andersen Corporation Citizens Advisory. The Cable Commission is scheduled to meet June 17.

Mayor St. Ores participated in the Greater Stillwater Chamber of Commerce Toast and Topics meeting and the Women's Business Bridge Annual Conference, a gathering of local women from the St Croix Valley area.

**STAFF/CITY ADMINISTRATOR REPORTS**

Fire Chief Eisinger reported that May's month-to-date call volume is 102 and the 2019 year to date is 478. Monthly drills consisted of ladder, hydrant, and boat operations. The department received the new heavy rescue truck. Members have received training on the demo fire rescue boat. Chief Eisinger also met with the City of Oak Park Heights to address radio issues in buildings.

Police Chief Eastman's report was delivered by Administrator Bell. The chief suggests those not having Bluetooth capabilities in their vehicles purchase a wireless car FM transmitter receiver hands-free adapter. As a reminder, starting August 1, drivers will no longer be able to hold their cell phones in their hands. They will be able to use their phones only by voice commands or single touch activation.

Public Works Director Kline reported that half of Lakeside Park will likely be unusable for the summer, as it is still underwater at this point and will need reseeded when it dries out. Preparation for the annual Memorial Day Parade and cemetery ceremony was extensive, including barricades and signs, pothole patching, street sweeping, hanging flower baskets, mowing the cemetery, and other miscellaneous work to make sure the city was looking

good. Director Kline met with FEMA to discuss potential reimbursement for public infrastructure related to flood damage. Based on feedback from FEMA, the relevant flood damage of 5<sup>th</sup> Avenue South where the culvert is washed out might be the only opportunity for reimbursement. Sandbags for private property, reseeding and replacing dead trees in Lakeside Park, and the majority of staff time do not qualify for the funding. The shelter at Barker's Alps now has a working drinking fountain. Electrical has not been installed yet, but is anticipated to be complete by mid-June. Two seasonal workers will begin in Public Works next week.

Assistant Administrator/Planner Taylor updated councilmembers on the ongoing Land and Water Legacy Project (LWLP). At the special council meeting on May 20, staff was authorized to proceed with a Phase I Environmental Site Assessment (ESA) and an Archeological Survey. The city's engineering firm SEH will complete the Phase I ESA and 10,000 Lakes Archeology Inc. will complete the archeological survey. Both firms anticipate completion of the studies within 4-6 weeks. Updates will be provided to the City Council as more information is available. The Planning Commission will convene a meeting on June 17 to consider a variance application submitted by Paul Zeuli, 393 4<sup>th</sup> Street South, to expand an existing, nonconforming detached garage. This application will include a public hearing and is anticipated to be presented to the City Council at the July 8 meeting. Assistant Administrator/Planner Taylor anticipates the next edition of the city newsletter to be ready for printing within the next two weeks.

Administrator Bell attended the Department of Corrections (DOC) Community Advisory Committee Meeting on May 29. MCF-Stillwater Warden Miles provided an update on the prison status on the one-year anniversary of the death of Corrections Officer Gomm. New security updates have been made and continue to be implemented. He indicated that staff has begun the 2020 budget planning process and will hold the first 2020 budget workshop in July.

#### **CITY COUNCIL ITEMS AND ANNOUNCEMENTS**

- 1 The BCAL Ice Cream Social will be held on June 5 at 6:00 p.m. in Lakeside Park.
- 2 The BCAL Farmers Market will begin on June 17 in Village Green Park.
- 3 Councilmember Carlson acknowledged the generosity of Mabel's Ice Cream who hosted an open house on the last day of school for area children featuring ice cream and games.
- 4 Mayor St. Ores expressed appreciation to the Bayport American Legion for hosting the 2019 Memorial Day Parade.

#### **ADJOURNMENT TO CLOSED SESSION UNDER ATTORNEY CLIENT PRIVILEGE**

City Attorney Andy Pratt indicated that the City Council would now discuss privileged matters pertaining to potential litigation as it related to a zoning enforcement action. Mayor St. Ores asked to adjourn into a closed session pursuant to Minnesota Statutes, Section 13D.05, Subdivision 3(b).

It was moved by Councilmember Hansen and seconded by Councilmember Carlson to adjourn to closed session the meeting at 8:25 p.m. Motion carried 5-0.

#### **RETURN TO OPEN SESSION**

It was moved by Councilmember Dahl and seconded by Councilmember Buckley to return to open session at 9:03 p.m. Motion carried 5-0.

City Attorney Pratt summarized that the city discussed potential litigation that may result from a notice of violation sent on May 30, 2019 that included a cease and desist order for an illegal business operation in a residential district. An appeal of the order was submitted later that same day. An appeal of a zoning enforcement action halts any action the city may take until City Council has an opportunity to discuss the appeal and rule on it. The cease and desist order has a 15 day window for compliance with zoning regulations.

Councilmember Dahl moved to deny the appeal of the notice of violation and cease and desist order for an illegal business operation in a residential district. The motion was seconded by Councilmember Buckley and upon roll call being taken, the following voted via voice:

Susan St. Ores- aye  
John Buckley – aye

Connie Carlson – aye  
John Dahl – aye

Michele Hanson – aye

**ADJOURNMENT**

It was moved by Councilmember Hanson and seconded by Councilmember Buckley to adjourn the meeting at 9:06 pm. Motion carried 5-0.

---

City Administrator/Clerk