

CITY OF BAYPORT
BAYPORT CITY COUNCIL MEETING MINUTES
BAYPORT CITY COUNCIL CHAMBERS
JULY 7, 2003
7:00 P.M.

CALL TO ORDER

Pursuant to due call and notice thereof, Mayor Rick Schneider called the regular City Council meeting of July 7, 2003, to order at 7:02 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, Bob Kamps and Dan Johnson.

Members absent: None.

Others present: City Administrator Mike McGuire, Attorney Tim Kelley, City Engineer Barry Peters, Fire Chief Mike Bell and Mike Darrow of Northwest Associated Consultants (NAC).

PETITIONS/INDIVIDUALS/DELEGATIONS & COMMENDATIONS

None.

OPEN FORUM

Mayor Schneider stated he would like to welcome Mike McGuire to City Staff. Mayor Schneider also stated he would like to thank Wendi Lindquist for helping to get the City through the transition period.

CONSENT AGENDA

Mayor Schneider read the list of items on the Consent Agenda.

Bob Kamps stated he would like to move item number five (approve resolution appointing Wendi Lindquist to Administrative Assistant) off of the consent agenda and place it under new business for discussion.

Jon Nowaczek stated that a budget statement was not included in the packet this month and would like to see that included.

Councilmember Johnson introduced the following resolution and moved its adoption with the exception of number five:

Res. 03-49

**RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
RESOLUTION #03-49 APPROVING CONSENT AGENDA ITEMS A, B, C, D, AND E
FROM THE JULY 7, 2003 COUNCIL AGENDA.**

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

Bob Kamps – aye
Dan Johnson – aye
Rick Schneider - aye

Jon Nowaczek – aye
Sharon Ridgway – aye

PUBLIC HEARINGS

Puhalla Osprey Street Vacation. Barry Peters explained that this is the public hearing for the vacation of a portion of an alley located in the St. Croix Bluff Addition, part of the old Block 125 in the original platting of the City, and pointed out the location on a city map. Barry Peters explained the history of the area. Barry Peters stated there was a letter from the Mike Bell, Bayport Fire Chief, stating that the alley is not needed to provide fire services. Barry Peters further explained that since there is no need for the alley from the engineering standpoint for public utilities and road access, he recommends vacation of an alley.

Mayor Schneider opened the public hearing.

Pat Puhalla explained that he wanted to sod and put trees in the area and if he were ever to sell the lot it would be easier to sell a regular shaped lot instead of an irregular shaped lot.

Dan Johnson clarified that the City would have a permanent roadway easement in the cul de sac where there is presently a temporary easement. Pat Puhalla confirmed and stated he would sign the papers to allow the City the easement for the cul de sac.

Dan Johnson inquired to Attorney Tim Kelley regarding whether the City should link the vacation of the alley to Mr. Puhalla signing those papers or vacate and then do the paperwork on the cul de sac later. Attorney Tim Kelley stated the City should do the paperwork on the cul de sac later.

Barry Peters stated that the cul de sac right-of-way issue is going to affect the property owner to the north also.

Discussion regarding the possibility of placing water and sewer utilities on the bluff in the future.

Jon Nowaczek moved, seconded by Sharon Ridgway, to close the public hearing. Motion passed unanimously.

Councilmember Nowaczek introduced the following resolution and moved its adoption:
Res. 03-54

**RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
VACATING A PORTION OF THE ALLEY IN BLOCK 125 OF BAYPORT
(FORMERLY SOUTH STILLWATER), IN THE CITY OF BAYPORT, WASHINGTON
COUNTY, MINNESOTA.**

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

Bob Kamps – aye
Dan Johnson – aye
Rick Schneider - aye

Jon Nowaczek – aye
Sharon Ridgway – aye

COUNCIL LIAISON REPORTS

Sharon Ridgway reported there was a Cable Commission meeting on June 25, 2003 – there was discussion about Basic One Service increase which will be put into effect soon and discussion regarding designation of PEG fees on bills. There are new message boards on Channels 14 and 18; new bylaws have been passed and copies were sent out to the cities of Stillwater, Oak Park Heights and Bayport. The next meeting is August 20, 2003 at 7:00 at River Heights Plaza in the Cable studio.

Jon Nowaczek reported that he attended a Bayport Public Library Board meeting on June 26, 2003 and mentioned that those meetings are open to the public and people are welcome to attend and contribute. The next meeting is scheduled for July 31st at 6:00 p.m. at the Bayport Public Library.

Dan Johnson stated he is a delegate to the Lower St. Croix Partnership Team which is a public input organization which advises the Lower St. Croix Management Commission which is comprised of the DNR's of Wisconsin, Minnesota and the National Park Service. Dan Johnson stated he obtained information regarding the no-wake rules over the past weekend. Dan Johnson explained what occurred with the no-wake rule over the 4th of July weekend.

Bob Kamps reported that there will be an Andersen Advisory Committee meeting on July 31st – they are not being held monthly anymore because the permitting process takes time. Bob Kamps stated there was a Watershed Committee meeting with standard approvals, with mention made that the Storm Sewer Project was to start up on June 30th.

CITY CONSULTANT REPORTS

1. City Attorney Report – Attorney Tim Kelley stated he spoke to Police Chief John Gannaway and City Administrator Mike McGuire concerning the change in the closing time for bars and restaurants. The City Ordinance 6-69 states that the days and hours of operation for on-sale liquor establishments is governed by State Statute 340A.503. Bars and restaurants still need to go to the State to get a special

Bayport City Council Meeting Minutes
July 7, 2003

permit. Tim Kelley stated that under statute local governments have the ability to limit the hours of operation. To avoid ambiguity in how the ordinance is currently written the ordinance should either be amended to reflect the 2 a.m. closing time or the 1 a.m. closing time. Tim Kelley suggested that the Council schedule a workshop to discuss the pros and cons of having bars open until 2 a.m.

Jon Nowaczek inquired to Tim Kelley about the State Statute.

Mayor Schneider stated he was surprised that the City has not been petitioned by any of the bar owners to make a move on the 2 a.m. closing.

Mike McGuire stated he received one call regarding the 2 a.m. closing, and he told the bar owner that if there was any interest the bar owners should get together as a group and approach the City Council and the Council would consider it at that time. Mike McGuire further stated that because of the way the ordinance is written, the City may want to inform the current liquor license holders that it will be up for discussion if they wanted to come in and talk about it.

Further discussion regarding the ordinances and 2 a.m. closing. Tim Kelley recommended that if the Council wanted to change the time to 2 a.m. they should require the license holder to file the State permit with the City clerk. If they would consider allowing sales until 2 a.m. on Monday the new statute requires a public hearing for that issue.

Mayor Schneider stated the local liquor establishments should be contacted to find out what they would want to do. Mike McGuire stated he would report back with the results.

2. City Engineer Report – Barry Peters stated there is a minor subdivision being considered on 4th Avenue North between Maine Street and Second Street North; when the surveyor was looking at the information they found that Council action was taken in 1923 to vacate ten feet of right-of-way on either side of 4th Avenue but was never recorded so in the City Attorney's opinion it was never completed. Barry Peters further stated it if the present Council wishes to complete the action, the City Attorney's opinion would be to set a date for a public hearing for the next Council meeting on August 4th. The utilities have always been under the assumption that the vacation did occur so there is nothing to hinder the vacation if the Council proceeds. Barry Peters recommends setting a public hearing for August 4th at 7:00.

Mayor Schneider asked Tim Kelley what the advantages or disadvantages would be to vacate the property. Tim Kelley stated that because the process was not completed as required by law, it needs to be started over – publish the notice for two weeks prior to the meeting and Council can make determination to vacate it.

Dan Johnson moved adding this 4th Avenue North issue to the New Business agenda and make an appropriate motion at that time. Sharon Ridgway seconded the motion. Motion passed unanimously.

3. City Planner Report – Mike Darrow stated he has nothing new to report, but has items listed under Unfinished Business and New Business on the agenda.

UNFINISHED BUSINESS

Award of Bid for Lake Street Utility & Street Improvements. Barry Peters stated that on May 2, 2003 there were bids taken on the project for Lake Street and did include alternate bids for Lakeside Drive. The Council did adopt the assessments in June 2003 meeting.

Barry Peters further stated that the low bid was from Arcon Construction and are capable of doing a project of this size. Howard R. Green recommended awarding the contract at the meeting tonight to get the project going. The bids are good only for 90 days. Barry Peters stated he would concur with Howard R. Green's recommendation to award the contract to Arcon Construction in the amount of \$736,588.

Discussion regarding pros and cons of completing the portion of Lakeside Drive with the rest of the project.

Dan Johnson moved, seconded by Jon Nowaczek, to accept the bid from Arcon Construction for \$736,588 for the Lake Street Utility and Street Improvements project.

Upon roll call being taken, the following voted via voice:

Rick Schneider – aye
Sharon Ridgway – aye
Jon Nowaczek – aye

Dan Johnson - aye
Bob Kamps - aye

Discussion regarding a section of paved road that is in bad shape – what would it cost to have that redone at the same time.

Update on Fire Bell/Whistle Installation. Fire Chief Mike Bell stated he talked with a couple vendors and came up with a light and bell combination which would be the most effective for the immediate area – the light could operate off of the existing siren system. It would be a pre-warning operated off of pagers to let people know there will be people coming to the fire hall. The bell would be manual, set off by the first person arriving at the fire station to alert the public that there will be trucks coming out of the station. Mike Bell stated he couldn't imagine the bell going off for more than 30 seconds; would be mounted on the northeast corner of the building facing the highway; cost not to exceed \$1,000.

Bob Kamps commented that maybe the bell should be turned on with the beepers. Mike Bell stated the idea for the bell is to give people in the immediate area some warning that the trucks will be coming out – the pedestrians will have that warning not to cross the street at that time.

Jon Nowaczek inquired if it wouldn't be possible to wire the bell to the current relays for the siren.

Bayport City Council Meeting Minutes
July 7, 2003

Mike Bell stated that the reason he wanted it manually is because in the event it was a non-emergency run or they were cancelled before they got to the station, the bell wouldn't be going off for no reason.

Dan Johnson stated that it was a thoughtful and responsible way to deal with this issue.

Paul Vogel asked whether this new system would be used only when the school kids are in the crossings in the morning and afternoon, or between the hours of 7 a.m. to 9 p.m.

Mike Bell stated their concern is the whole intersection in general and is set up for the hours of 7 a.m. to 9 p.m. Mike Bell further stated that they just want to get it set up and listen to what it sounds like and go from there.

Paul Vogel stated he is just concerned with replacing one noise with another noise. Mike Bell stated that the bell will be placed on the highway side of the building so the majority of the noise will be directed in that direction.

Sharon Ridgway asked how big the light will be, will it be visual enough to be effective. Mike Bell stated they could mount it high enough on the building where it will be effective, once people know what it is for and they know it is there, it will become more effective.

Bob Kamps inquired to Mike Bell how the City could get the fire signs back – they were removed when Highway 95 was done. Mike McGuire stated he would check into how to get those signs back; and also check on a flashing light to place at the corner when there is a fire call.

Jon Nowaczek moved, seconded by Bob Kamps, to approve Fire Chief Mike Bell's proposal to spend no more than \$1,000 for the installation of a warning light and bell. Motion passed unanimously.

Final Authorization of Mutual Aid Fire Protection Agreements. Fire Chief Mike Bell stated this was started last fall and there were questions regarding verbage in the agreements. Bayport City Attorney Jim Lammers and the Stillwater City Attorney made some changes – in the meantime Mike Bell had obtained an agreement from Hudson, Jim Lammers reviewed and recommended approval of all agreements.

Jon Nowaczek inquired as to the difference between the standard mutual aid agreement and the automatic aid agreement. Mike Bell explained the automatic aid agreement.

Bob Kamps moved, seconded by Jon Nowaczek, to approve the mutual aid agreements as reworded by Chief Bell. Motion passed unanimously.

NEW BUSINESS

Discuss Technical Evaluation Panel Review of Wet-Land Impacts on Montanari Property, 575-595 Lakeside Drive. Jyneen Thatcher from the Wetland Conservation District stated

Bayport City Council Meeting Minutes
July 7, 2003

she was present to answer questions, she had provided a preliminary report from the Technical Evaluation Panel to the Council prior to the meeting. In general, for the record, the Montanari construction site is down along the flood plain of the St. Croix River. Jyneen Thatcher reported some of the history of the property.

Discussion regarding the retaining wall that was constructed near the Montanari property. Jyneen Thatcher described the property in question on a map.

Jyneen Thatcher explained the process of issuing a cease and desist order and possible solutions for correction.

Jyneen Thatcher stated she would like to get a sense from the Council of whether their preference would be to have full restoration order or a replacement order; whether or not the Council would like to follow along with the Technical Evaluation Panel's recommendation of the maximum replacement if they follow along with replacement rather than restoration.

Discussion whether there are any provisions in the law as to the locale of replacement lands. Jyneen Thatcher stated there are priority lists – no other restrictions beyond the State rule which says either within the County or the major watershed (St. Croix River Valley). General rule is the closer the better. There is a provision that allows for the provision of bank credits.

Mayor Schneider stated it is his feeling that Mr. Montanari knew what he was doing – went right ahead with the project. Mayor Schneider stated he doesn't feel its fair to the neighbors, the river or the town and he would like to have the wall removed.

Jon Nowaczek seconded Mayor Schneider's comments – this developer has adopted after the fact method as his mode of standard operation and he will push ahead on things until someone challenges him, regardless of what everyone else thinks the plan is. Jon Nowaczek further stated that a clear message needs to be this developer and anyone else that the City will not operate that way and it is not acceptable.

Discussion regarding possible penalties and court procedures.

Dan Johnson stated he would share the concern of the Mayor and Councilmember Nowaczek if this was an intentional violation, but he's not sure he has the information to make that decision yet. Dan Johnson stated that if its found that it was an intentional violation the offending wall should be removed, but if there were some confusion in the process, the "cure might be worse than the disease" with the fragile condition of the river. Dan Johnson further stated he did not want to reward intentional violations of the environmental regulations by allowing the person to pay a fine or submit other remedial lands.

Bob Kamps stated that intentional would be hard to prove. Bob Kamps further stated that every agency met at City Hall and gave Mr. Montanari approvals and now stating that it was done wrong. Bob Kamps inquired whether the City is opening itself up for a countersuit.

Bayport City Council Meeting Minutes
July 7, 2003

Jyneen Thatcher stated she was not present at the earlier meeting, there had been some miscommunication as to whether or not this encroachment was within the Core Flood Plain area or within Wetland. Jyneen Thatcher stated she was not brought in in a timely fashion.

Mike Darrow explained that there was a meeting with Mr. Montanari, City Staff, City Consultants, City Attorney, Molly Shodeen from the DNR and Dan Seemon from the Army Corps to discuss the issues regarding the Montanari property. Mike Darrow explained what was discussed at that meeting.

Mike Darrow stated that he agrees things have happened that shouldn't have happened, but he mentioned at the meeting that the City Attorney should comment before the City takes action because there is a stack of information from various agencies that have approved some of these things.

Attorney Tim Kelley stated he has reviewed the Conservation Act but doesn't have the background information concerning the Montanari project. Tim Kelley confirmed with Jyneen Thatcher that the DNR's enforcement authority has issued the cease and desist order.

Tim Kelley stated that Ms. Thatcher's purpose for being here is to gauge the City's feelings on this; regardless of what the City tells her this evening, a restoration order or replacement order will be issued to Mr. Montanari and that will come to the local government unit for approval. Jyneen Thatcher stated that was correct.

Mayor Schneider stated the City has some items to sort out. Mike McGuire stated he sat in on the last meeting and explained what he understands the process to be. Mike McGuire stated that if Mr. Montanari accepts the recommendation of the panel it would not end up in court and the City would not incur any additional costs.

Dan Johnson stated he didn't have enough facts necessary to make a recommendation.

Further discussion regarding the retaining wall on the Montanari property.

Mike Darrow reported that he went down to the Montanari property to take some pictures before the meeting tonight and one of the big issues is that the boulder wall is now submerged. Mr. Montanari is required to put buoys up, but hasn't happened, and asked who would be the enforcing agency. Jyneen Thatcher stated that would either be the DNR or the Corps pertaining to the navigation.

Bob Kamps stated that Dan Seemon was drafting a letter regarding the retaining wall and the boulders being submerged and Mr. Montanari should be aware of it.

Barry Peters stated that Mr. Montanari was made aware of that a while ago – the reason he put the boulder wall there is to keep people from driving where he was planning to do some restoration plantings.

Bayport City Council Meeting Minutes
July 7, 2003

Mayor Schneider recommended tabling this issue and have Mike McGuire look into the issue.

Jon Nowaczek moved, seconded by Dan Johnson, to table the discussion to the next meeting and direct Mike McGuire to obtain some more information. Motion passed unanimously.

Fire Hydrant Obstructions. Fire Chief Mike Bell stated Wendi Lindquist had raised a question to him regarding fire hydrant clearance. Mike Bell stated he provided Wendi with the information regarding the fire hydrant clearance which states that there needs to be a three-foot clearance around the circumference of the hydrant. Mike Bell added that if plantings are done around the hydrant they should not be higher than mown grass so the hydrant can be seen clearly.

Further discussion regarding plantings by fire hydrants.

Approve Resolution Appointing Wendi Lindquist to Administrative Assistant. Bob Kamps stated he had some people approach him regarding the proposed salary. Mike McGuire discussed the salary information he looked at provided from the Association of Metropolitan Municipalities and feels the proposed salary is a reasonable figure.

Mayor Schneider stated that Wendi has accrued a vast amount of knowledge in the last six months and the City will be demanding that she keep up the good work and the City will receive a benefit.

Bob Kamps stated that he agrees with the Mayor's statements and just wanted it clarified for the people who inquired about it.

Jon Nowaczek stated that the salary range is tied to the responsibilities of a position, not the person.

Bob Kamps stated that the position was created under the former City Council. Sharon Ridgway stated that the position was created because of the work load that has been coming through the City office. Ken Hartung covered a lot of hours and did work that other people now will do. Sharon Ridgway stated that another position was created because they can't expect anyone to put in 80-hour weeks.

Councilmember Nowaczek introduced the following resolution and moved its adoption:
Res. 03-53

RESOLUTION, CITY OF BAYPORT, WASHINGTON COUNTY, MINNESOTA,
RESOLUTION #03-53 APPOINTING WENDI LINDQUIST TO THE POSITION OF
ADMINISTRATIVE ASSISTANT.

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

Bayport City Council Meeting Minutes
July 7, 2003

Rick Schneider – aye
Sharon Ridgway – aye
Dan Johnson - aye

Jon Nowaczek – aye
Bob Kamps - aye

4th Avenue North Vacation (cont.). Mayor Schneider stated he couldn't see any advantage or disadvantage to the City for vacating that piece of street. Mike McGuire stated it was more of a housekeeping item, just to clear the record. Mayor Schneider clarified that this was of no cost to the City.

Dan Johnson moved, seconded by Jon Nowaczek, that the City Council set August 4, 2003, 7:00 p.m. as the date and time for the public hearing concerning the vacation of ten feet each side of 4th Avenue North between Maine Street North and 3rd Street North.

Upon roll call being taken, the following voted via voice:

Rick Schneider – aye
Sharon Ridgway – aye
Dan Johnson - aye

Jon Nowaczek – aye
Bob Kamps - aye

COMMUNICATIONS/REQUESTS

COUNCIL REQUEST ITEMS

Bob Kamps discussed some complaints regarding a house that was moved into town on 5th Street and was not finished. Bob Kamps inquired as to whether the City Council could direct Planning and Zoning to come up with some ordinances on moving homes into town.

Mike Darrow read Section 509.02 regarding moving permits.

Further discussion regarding building permits and moving structures. Mike McGuire stated the Planning Commission could look into it and make a recommendation to the Council.

STAFF REPORTS

Mike McGuire recommended the Council having a workshop regarding the Survey, the 2 a.m. bar closing issue and establishing a Council goal-setting session for sometime later in the year. Mike McGuire stated that a lot of times the Councils try to do them around 5:00 or 6:00 so they don't interfere too much on the evening hours.

Bob Kamps inquired to Tim Kelley if anything was established on the handgun law. Tim Kelley stated that Hennepin and Ramsey Counties have taken action to ban guns on county property. It is very clear that the City has no authority to ban guns in City Hall, the law is abundantly clear.

Jon Nowaczek moved, seconded by Sharon Ridgway to set Monday, July 21, 2003 at 5:00 p.m. for a City Council Workshop meeting. Motion passed unanimously.

Bayport City Council Meeting Minutes
July 7, 2003

ADJOURN

Councilmember Kamps moved, seconded by Councilmember Ridgway, to adjourn the meeting. Motion passed unanimously.

Respectfully submitted,

Mike McGuire
City Administrator