

CITY COUNCIL PROCEEDINGS

Bemidji, Minnesota

December 20, 2004

Pursuant to due call and notice, a regular meeting of the City Council of the City of Bemidji, Beltrami County Minnesota, was held on Monday, December 20, 2004, at 7:00 p.m. in the Council Chambers of the City Hall, Mayor Lehmann presiding.

Upon roll call the following Council members were declared present: Downs, Erickson, Zachman, Lehmann, Meuers, Hellquist, Johnson. Absent: None.

APPROVAL OF AGENDA

City Manager Minke requested an addition to Item #22 - A resolution accepting the Paul Bunyan State Trail Committee recommendation and authorizing related actions. Motion by Hellquist, second by Johnson, to approve the amended agenda. Motion carried by unanimous vote.

MINUTES

Minutes of the December 6, 2004 Truth in Taxation Meeting, December 6, 2004 Regular Council Meeting, December 10, 2004 Work Session with Legislators, and December 13, 2004 Work Session with BSU were presented for approval. The spelling of Senator Ruud's name was corrected on the December 10th minutes. Motion by Hellquist, second by Meuers, to approve the minutes as corrected. Motion carried by unanimous vote.

CONSENT AGENDA

Erickson noted some typographical errors on the Local 49'ers Labor Contract. Staff will make the corrections as suggested. Motion by Erickson, second by Downs, to approve the Consent Agenda items as follows:

1. Approved thirteen (13) pages of Claims in the total amount of \$523,977.61
2. Approved Transient License Application - TAP Enterprises (Armory - 1/21-22, 2005)
3. Approved Application for Gambling Permits for:
 - Headwaters Gobblers (Raffle/Eagles - 2/24/05)
 - BSU Foundation (Raffle/Hampton Inn - 2/8/05)
4. Approved Miscellaneous Business License Renewals
5. Approved final reading of On/Off Sale Beer Licenses - Renewals
6. Approved Liquor License for U-Bar
7. Approved purchase of 3 police vehicles
8. Approved Local 49'ers Labor Contract (2005-2006)
9. Authorized New Opening Date for Brigids Cross Irish Pub, 319 Beltrami Ave NW

Motion carried by unanimous vote.

COMMITTEE REPORTS

Bemidji Youth Advisory Commission (BYAC)

No report.

BSU Student Senate

Jake Overgaard reported that the Bill to ban smoking in residence halls on campus did not pass with the first effort. It will be introduced again on the Spring 2005 ballot. Wednesday (December 22) is the last day of finals and Christmas break begins December 23 through January 10.

Oak Hills Student Senate

Nancy Beer reported that students at Oak Hills are required to do a project that is an outreach to the community. Three male students started a skate industry as their outreach project. More information will follow on that project. Wednesday is the last day of finals and then Christmas break until January 10th.

Deer Committee:

Erickson reported on the December 14th meeting, noting that the committee finalized the introduction to the Plan. DNR Wildlife Manager Jim Breyen estimated the deer population on the East Side to be 40-50 deer per square mile compared to the optimum of 15-20 deer per square mile. The next step of the Plan is to consider various options for deer population reduction/management and monitoring procedures.

Public Works Committee

Hellquist reported that the Curling Club Maintenance Agreement was discussed. The Committee wanted to get a better scope of what is covered under the maintenance agreement and discussed using the annual \$10,000 City contribution to establish a building contingency fund. The Public Works Committee will meet with members of the Curling Club to discuss the issue further.

PUBLIC HEARING - WELLHEAD PROTECTION PLAN

City Manager Minke explained that the City of Bemidji is in the process of developing a wellhead protection plan for its drinking-water wells. Part 2 of the Plan has been completed and submitted for comment, and Wellhead Protection Rule (part 4720.5350, subpart 4) requires a public hearing.

Pursuant to published notice a copy of which is on file in the City Clerk's Office, a public hearing was held to receive comments on Part 2 of the Plan. City Engineer Freeberg noted that the City of Bemidji does not have any urgent Wellhead Protection issues.

Councilmember Erickson asked if the Engineer is aware that the vehicle testing company located at the airport is proposing to install three 1,000-gallon tanks of leaded gasoline to be used in testing European vehicles. Freeberg was aware of the issue and noted that the proposed fuel storage and containment exceeds all Pollution Control Agency requirements. Based on that information, he expressed no concerns.

Mayor Lehmann opened the public hearing and invited those present to address the issue. No one appeared. It was noted that the City did not receive any written communication relating to this public hearing. There being no comment, the public hearing was closed.

PLANNING CASE #2004-30: Filed by Chris Crosby, requesting an after-the-fact variance to retain a new deck he built on the front of his house at 729 Pershing Avenue SE. The existing house is located 14 feet from the front property line. A 30-foot front yard setback is required in this R-3 zone, therefore, a five foot additional encroachment front yard setback variance is being requested for the new deck, which extends five feet from the house, toward the front property line. Planning Commission recommended denial of the after-the-fact variance request to retain the 20 foot by 5 foot deck, and approval of a four foot, additional encroachment, front yard setback variance, for a 4 foot by 5 foot deck, with the following conditions:

1. A building permit is obtained from the Building Office showing the modification.
2. The footings are brought up to code requirements.

Erickson noted that she had viewed the old deck earlier this year and considered it a safety hazard. She felt the new structure was an improvement. Erickson asked whether the footings could be brought up to City Code without removing the deck. City Planner Oakes said he wasn't really qualified to say with any certainty, but he thought it was possible. Motion by Erickson, second by Zachman, to allow the property owner to retain the 20' x 5' deck, bringing the footings up to City Code and obtaining the appropriate building permit.

City Planner Oakes noted that the Planning Commission found that the 20' x 5' deck is inappropriate for the area and believed the encroachment was excessive. The Planning Commission also found that a hardship does exist based on the depth of the lot and the orientation of the structure on the lot.

Motion carried by the following 5-2 vote: Ayes: Lehmann, Zachman, Erickson, Johnson, Downs. Nays: Meuers, Hellquist. Absent: None.

Case #2004-31: Filed by M.R. Development, Inc. (Mark Dickinson), requesting to subdivide (preliminary plat) a 17.44 acre parcel situated on the east side of Lake Bemidji and south of the Mississippi River, into ten (10) single-family residential parcels.

Planning Commission recommended approval of The Pines Subdivision-Preliminary Plat with the following 11 conditions:

1. Up to three water-oriented accessory structures will be permitted with a combined maximum of 1,000 square feet, including one storage building and two gazebos with maximum heights of 12 feet (including the base / piers), the structures must not be designed or used for human habitation and must not contain or be connected to water supply or sewage treatment facilities, and “the structure must be treated to reduce visibility as viewed from public waters and adjacent shoreland by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions” as required in the Shoreland Ordinance (Section 13.1207).
2. No motorized vehicles will be allowed to cross the Paul Bunyan State Trail.
3. The cul-de-sac street will be permitted to be built approximately 570 feet in length, 70 feet greater than the 500 feet permitted by Ordinance.
4. Two flag lots (Lot 4, Block 1 and Lot 4, Block 2) will be allowed, even though they do not fully front onto the public street as required in the Subdivision Ordinance.
5. The applicant will complete and submit erosion control and revegetation plans for the hillside area east of the Paul Bunyan State Trail and complete the revegetation of this area.
6. The applicant will complete a wetland delineation prior to any development in Outlot A.
7. The applicant will apply for and receive wetland permits from the City and the Army Corps of Engineers prior to any development in Outlot A.
8. The applicant will prepare, submit, and receive approval of a comprehensive site plan for Outlot A from the Planning Commission and City Council prior to any development of the outlot.
9. The applicant will work with the Soil and Water Conservation District staff to prepare, submit, and receive approval on his plan for the reduction of the elevation on a portion of the existing ice berm.
10. One multiple-slip dock will be permitted for use by the residents.
11. The applicant will review his plans with the County Engineer for water in the retention pond to overflow to a catch basin on Lake Avenue NE.

Motion by Erickson, second by Downs, to accept the recommendation of the Planning Commission including the 11 conditions stated.

Councilmember Hellquist highlighted condition #2 that restricts motorized vehicles from crossing the Paul Bunyan State Trail. He expressed concern for the safety of trail users.

Mark Dickinson addressed the Council suggesting a point of clarification for condition #2, noting that Mn/DOT has jurisdiction and authority to grant permits to cross the trail. He is exploring some options with Mn/DOT – including the possibility of purchasing a piece of property that has an existing crossing and eliminating that crossing to potentially permit golf carts, lawn mowers, etc. to cross at this location. Dickinson suggested that condition #2 be amended to read “No motorized vehicles will be allowed to cross the Paul Bunyan State Trail, without first obtaining the proper authorization/permit from Mn/DOT.”

Lehmann expressed concerns about the possibility of ATV’s crossing the trail. Dickinson noted that between this property and County Road 20, there are ten township roads that cross the trail without the benefit of stop signs. Dickinson is uncertain whether Mn/DOT will permit the crossing but felt it is reasonable for him to pursue the option. He agreed to provide signage, speed bumps, or other Mn/DOT regulations as a condition for granting a permit. Oakes noted that DNR representative Tony Walzer confirmed the fact that the DNR and Mn/DOT are considering the option proposed by Dickinson.

Erickson suggested that Condition #2 as presented in the recommendation by the Planning Commission does not preclude Dickinson from being able to pursue a crossing with Mn/DOT and DNR.

Dickinson asked that language be added to Condition #2 to allow some future flexibility. Erickson suggested that Condition #2 be amended to read: “No motorized vehicles will be allowed to cross the Paul Bunyan State Trail without Mn/DOT approval.”

Zachman questioned what the impact would be if Dickinson could not get this authorization. Dickinson noted that the State Trail separates the residence from the lakeshore and he felt it would greatly affect the normal use of the property.

Oakes noted that Dickinson is proposing ten lots in the development and suggested that Condition #10 be amended to read: One multiple ten-slip dock will be permitted for use by the residents.

Erickson amended the motion to approve The Pines Subdivision-Preliminary Plat including the 11 conditions noted, with an amendment to #2 to add “without Mn/DOT approval” and an amendment to #10, to add “ten” as the number of boat slips. Zachman seconded the motion.

Lehmann requested the record to clearly reflect that if Mn/DOT authorizes a trail crossing at the proposed location, Dickinson has agreed to take all necessary safety precautions and to be responsible for all signage based on the Minnesota Uniform Traffic Control Manual to identify the crossing from both directions.

Tom Anderson identified himself as a user of the trail system and expressed concerns about development in and around the wetland area noting:

- the sensitive flow of the Mississippi River along the shoreline
- fish spawning/nesting/refuge area
- shallow waters – will probably need to dredge for boat access
- need for restroom facilities
- access to bring in construction materials
- need for an Environmental Assessment Worksheet

Lehmann reminded Mr. Anderson that the Planning Commission held the public hearing on this issue on November 29th. He noted that many of the issues are beyond the Council’s jurisdiction and need to be addressed through the permitting process. He encouraged Anderson to direct his comments to agencies such as the DNR or Soil & Water Conservation District.

City Attorney Felix noted that this is a residentially zoned (R-2) area of the city, surrounded by residentially zoned property, and any idea to somehow take advantage of the lakeshore as a commercial use would be unlikely. He noted that the developer has been working with City officials and DNR officials for several months regarding this development and some of the conditions are a result of DNR recommendations. He also noted that the developer will need to continue to work with regulatory officials to ensure that the permitted improvements comply with shoreland requirements and wetland conservation rules.

Lehmann called for a vote on the motion. Motion passed by the following 6-1 vote: Ayes: Meuers, Hellquist, Johnson, Erickson, Zachman, Lehmann. Nays: Downs. Absent: None.

Case #2004-32: Filed by Steven & Patricia Norvold & Ron Davidson (former Shirley Lillemo property), requesting to rezone two parcels totaling 17.5 acres, situated at 781 Oak Hills Road SE, from A/O (Agriculture / Open) to B-2 (Shopping Center / Highway). These two parcels have recently been annexed into the City of Bemidji. Planning Commission recommended approval.

Motion by Downs, second by Hellquist, to accept the recommendation of the Planning Commission. Motion carried by unanimous vote.

FORMER BEMIDJI HIGH SCHOOL SITE REDEVELOPMENT

The Council has had several meetings over the last few years to consider redevelopment of the former high school site. Recently both MetroPlains and Bemidji State University met with the Council and presented proposals for the site.

Mayor Lehmann noted that the Bemidji School District will have the ultimate decision as to how to deal with the property, but the Council may “weigh in” on the decision with a recommendation as to which proposal best meets the needs of our community. Lehmann asked for discussion on whether there should be any expression of support from the Council.

Bill Maki, BSU Vice President for Finance & Administration, noted that earlier this evening, the School Board rescinded a previous motion directing the school district to enter into purchase agreements for part of the old high school property, and made a new motion giving authority to the Superintendent to solicit new proposals for review in 90 days. The School Board proposes to meet during the next few weeks to develop a request for proposals.

Minke suggested that there is nothing the Council can do tonight that will impact the School Board's decision. Inasmuch as redevelopment of the former high school site is important to the Council and to the community, Minke suggested that the Council do some strategic planning during the next two months and, before the 90 days is up, appraise the School Board of those items that the Council feels are important for that site.

Motion by Downs, second by Erickson, to make no recommendation to the School Board at this time and to meet in a work session during January to identify the interests that the Council wants to have considered in the decision by the School Board for the reuse of the former high school site. Motion carried by unanimous vote.

BSU President Quistgard noted his intent to appoint a task force of representatives from the community to discuss redevelopment at the High School site and invited a Council representative to serve on that committee. The Public Affairs Committee was designated to attend those meetings.

RESOLUTION NO. 5196: A RESOLUTION ACCEPTING PAUL BUNYAN STATE TRAIL COMMITTEE RECOMMENDATION OF SPLIT TRAIL CORRIDOR ALTERNATIVE, AUTHORIZING 2005 LEGISLATIVE BONDING REQUEST TO ACQUIRE AND CONSTRUCT PAUL BUNYAN STATE TRAIL CONNECTIONS IN THE CITY OF BEMIDJI, AND AUTHORIZING NEGOTIATIONS FOR ACQUISITION AND DEVELOPMENT OF SPLIT TRAIL CORRIDOR PROPERTY INTERESTS was offered by Councilmember Downs, who moved its adoption, and upon due second by Councilmember Johnson, was passed by unanimous vote.

RESOLUTION NO. 5197: A RESOLUTION IN SUPPORT OF LEGISLATIVE AUTHORIZATION OF A LOCAL SALES TAX, AND COMMITMENT TO OPERATION AND MAINTENANCE OF PARK AND TRAIL CAPITAL IMPROVEMENTS FUNDED BY LOCAL SALES TAX was offered by Councilmember Downs, who moved its adoption, and upon due second by Councilmember Johnson, was passed by unanimous vote.

AMENDMENTS TO CGMC BYLAWS

At the Coalition of Greater Minnesota Cities Fall Conference, the general membership approved some changes to the bylaws. A copy of the proposed changes was submitted for Council review. Motion by Meuers, second by Johnson, to approve the changes. Motion carried by unanimous vote.

CHAT-A-BOUT PROGRAM TOPIC FOR JANUARY 3, 2005

Council agreed that City Manager Minke and Mayor Lehmann would appear for Chat-A-Bout on Monday, January 3, 2005, to discuss the city's 2005 legislative agenda.

JOINT CITY-COUNTY LAW ENFORCEMENT SOFTWARE/MIS SERVICE CONTRACT

Motion by Hellquist, second by Johnson, to authorize entering into a Joint Agreement for Software/MIS services at the new Law Enforcement Center. Motion carried by unanimous vote.

RESOLUTION NO. 5198: A RESOLUTION ACCEPTING PETITION AND ORDERING PREPARATION OF A FEASIBILITY REPORT FOR SEWER EXTENSION TO SUPREME ESTATES DEVELOPMENT was offered by Councilmember Meuers, who moved its adoption, and upon due second by Councilmember Downs, was passed by unanimous vote.

RESOLUTION NO. 5199: A RESOLUTION ADOPTING FINAL 2005 BUDGET was offered by Councilmember Erickson, who moved its adoption, and on due second by Councilmember Meuers, was passed by unanimous vote.

RESOLUTION NO. 5200: A RESOLUTION APPROVING FINAL 2004 TAX LEVY COLLECTIBLE IN 2005 was offered by Councilmember Meuers, who moved its adoption, and on due second by Councilmember Downs, was passed by the following 6-1 vote: Ayes: Hellquist, Downs, Johnson, Meuers, Zachman, Lehmann. Nays: Erickson. Absent: None.

RESOLUTION NO. 5201: A RESOLUTION ESTABLISHING NON-UNION CAFETERIA BENEFITS FOR 2005 was offered by Councilmember Hellquist, who moved its

adoption, and on due second by Councilmember Meuers, was passed by unanimous vote.

ORDINANCES

2nd Reading of An Ordinance Amending Chapter 10 Of The Bemidji City Code Entitled, "Public Protection, Crimes And Offenses", By Adding Section 10.46 Relating To Noise, Providing For The Elimination And Prevention Of Prohibited Noise And Imposing Penalties For Violation; By Repealing Section 10.12, Subd. 1(F) And 1(G), Relating To Disorderly Conduct Due To Noise; And By Repealing Section 8.10, Entitled "Honking Horns"

Minke noted that there is no additional information available for this meeting and recommended continuing the second reading to the January 18, 2005 Council meeting. Motion by Downs, second by Hellquist, to continue the second reading of this ordinance to the January 18th meeting. Motion carried by unanimous vote.

CITIZENS WITH BUSINESS BEFORE THIS COUNCIL – NOT ON AGENDA

James George appeared before the Council to request a variance to add a 2nd story deck on to his recently renovated home on North Lake Irving. He noted that the original plans had included a deck but following revisions to the plan, they neglected to show the deck on the drawings. The renovation required a variance, which was approved by the Planning Commission. An additional variance is necessary for the deck because the deck extension would encroach into the setback. Mr. George was directed to go through the Planning Commission to request another variance.

COUNCIL/STAFF REPORTS

Councilmembers expressed gratitude to Ralph Zachman for 20 years of service. Zachman's term on the Council expires on December 31. Zachman will be honored at a cake/coffee gathering on Tuesday, January 04, 2005, prior to the Council meeting.

ADJOURN

There being no further business presented for discussion, motion by Zachman, second by Downs, to adjourn the meeting. Motion carried by unanimous vote. Meeting adjourned 9:50 p.m.

Respectfully submitted,

Shirley Sherman, City Clerk