

# CITY COUNCIL PROCEEDINGS

## BEMIDJI, MINNESOTA

### Regular Meeting – February 6, 2006

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, February 6, 2006 at 7:00 p.m. in the Council Chambers of City Hall, Mayor Lehmann presiding.

Upon roll call, the following Councilmembers were declared present: Lehmann, Markeson, Hellquist, Johnson, Erickson, Downs, Meuers.

#### AMENDMENTS TO AGENDA

Lehmann called for any amendments to the agenda. The following addition was requested:

- Gambling Permit for Rocky Mountain Elk Foundation to Consent Agenda

Motion by Hellquist, second by Johnson, to approve the agenda as amended. Motion carried by unanimous vote.

#### MINUTES

Minutes of the January 17 regular meeting and January 30, 2006 work session were presented for approval. Motion by Downs, second by Meuers, to approve the minutes as presented. Motion carried by unanimous vote.

#### CONSENT AGENDA

The following Consent Agenda items were presented for approval. Motion by Meuers, second by Markeson, to approve the Consent Agenda items as follows:

1. Approved Claims submitted by the Finance Officer in the total amount of \$693,850.28.
2. Approved miscellaneous business license/permit renewals.
3. Approved the following gambling licenses:
  - a. Raffle – Ruffled Grouse Society – April 6 @ Hampton Inn
  - b. Pull-tabs – Voiture 582 – Feb. 16-19 @ American Legion
  - c. Raffle – Central Labor Body AFL-CIO – Sept. 4 @ Carpenters Hill
  - d. Raffle – Rocky Mountain Elk Foundation – April 1 @ Northern Inn
4. Approved Temporary On-Sale Liquor License for Bemidji Curling Club – March 8-11
5. Approved **RESOLUTION NO. 5296** approving the site for the 2005 Dragon Boat Festival, August 4-5.
6. Approved **RESOLUTION NO. 5297** approving an application for Gambling Premises for the Community Charities of Minnesota (Bemidji Bowl).
7. Approved **RESOLUTION NO. 5298** approving an application for Gambling Premises for Bemidji Youth Hockey (Garden Grill).
8. Approved **RESOLUTION NO. 5299** approving an application for Gambling Premises for Bemidji Youth Hockey (Hardtime Saloon).
9. Approved **RESOLUTION NO. 5300** accepting responsibility as the Sponsoring Agency – Lake Bemidji West Shore Trail project.

10. Approved extension of road agreement with Grant Valley Township - Adams Ave NW
11. Approved extension of Janitorial Services Agreement with Crazy About Cleaning – February 1, 2006 to February 1, 2007.
12. Authorized payment of \$10,000 to Bemidji Community Arena.
13. Authorized payment of \$15,000 pledge to Bemidji Boys & Girls Club.
14. Authorized payment to Paul Bunyan Transit in the amount of \$12,474 for 2005 bus purchases.
15. Appointed the City Manager or designee as the representative to the Northwest Service Cooperative.
16. Approved reapportionment of special assessments – 2003 Division Street.
17. Authorized Council Travel – March 8 – CGMC Legislative Action Day/St. Paul – Johnson.

Motion carried by unanimous vote.

### **COMMITTEE REPORTS**

Bemidji Youth Advisory Commission – Ray Leach reported that BYC will be holding an annual Open Form on February 28 - 5-7 p.m. at City Hall. The forum will provide the Bemidji youth an opportunity to speak their opinions regarding renovation of Diamond Point Park and the Event Center. He stated that Bemidji is headed in a new direction and want to keep the youth involved in the decision-making. He reported that Mayor Lehmann recently attended a Listening Lunch at Bemidji High School. Lehmann stated that the listening lunch was well attended and good questions were asked.

Heritage Preservation Commission – Onen Markeson reported the Commission recently met with Tim Flathers from HRDC. The Commission is defining goals for the community to support. The Commission discussed completing an inventory of historic structures in Bemidji, - defining what is historical, why it is historical and get history on the older buildings in Bemidji, and educate the public.

Deer Management Committee – Erickson reported that on January 23 the Committee met with guests from the DNR, police and Jeff Hohensee from New Ulm. Mr. Hohensee provided information regarding New Ulm's bow hunt. New Ulm holds an annual bow hunt within their city limits. Hunters have to vie for a position via a proficiency test and the top 50 are chosen to hunt. Two hunters work together in a stand, sign in at law enforcement center so it is known who is in the stand, report deer sightings, etc. The hunt is coordinated with the regular Minnesota bow hunt. In addition, New Ulm has had two sharp shoots. The Committee discussed a sharp shoot and the best time is February and decided that there was not enough time to organize one for 2006. The Committee has recommended the City have a bow hunt that would coincide with the regular bow hunt season. Bow hunt dates and proficiency testing should handled by police department. Discussion followed on the requirements for the bow hunt. Minke responded that the DNR sets the ultimate limit but the City can set the limit of deer to be removed within the City. Minke commented that if the goal is population control, the "earn a buck" concept is a good idea.

Motion by Erickson, second by Markeson, for the City to approve a deer bow hunt in designated areas within Ward 5 during the regular season the fall of 2006. Motion carried unanimously.

**UPDATE ON BOYS & GIRLS CLUB** – Dave Hanson, Bemidji Police Officer, unofficial ad hoc to the Boys & Girls Club. The Boys & Girls Club has given the police a unique opportunity to be available to the youth in our community. In addition, Officer Hanson serves as an elementary school liaison officer. Lehmann stated that this effort is a positive community image. During the school year Officer Hanson is at the Boys & Girls Club on Wednesday and Thursday afternoons. He is at the Club all week during the summers.

**NEW BUSINESS**

**RESOLUTION NO. 5301:** Supporting 2006 Legislative Bonding Requests for Acquisition and Improvement of Paul Bunyan State Trail Connection Components in the City of Bemidji was offered by Councilmember Downs, who moved its adoption, and upon due second by Councilmember Johnson was passed unanimous vote.

**Consultant Agreement with Brauer & Associates - Diamond Point Park**

Minke stated that the original proposal with Brauer & Associates had a percentage fee and staff was concerned about the percentage not knowing what the event or projects might be. After discussions with Brauer & Associates, they have come back with a proposal that has an \$18,000 fee for the master plan and just over \$9,000 of survey work.

Felix stated that there is an additional component for topographical survey which is a detailed survey of the site including marking and documenting each and every tree in Diamond Point Park. There is also a component of actually surveying the boundary of the park which is not included in this number. Staff has visited with Brian Grund and recommended that the Council also approve up to \$2,500 for boundary survey of the park. The Consultant is giving the City the ability to renegotiate the percentage to pay them.

Erickson expressed concerns that there will be too many “soft” costs and that Diamond Point only end up with two swings and a slide.

Minke stated that one of the reasons there are “soft” costs in a project like this is the public input process which has been held up by the Parks & Recreation Commission and the Council as something that is important. Therefore, the park consultant is going to spend an extensive amount of time and effort into meeting the various community groups and constituent groups generating ideas for the park and meeting with the Parks Commission to scale the ideas down to what actually will fit or be best for the park.

Felix stated that he wrote Brauer & Associates and emphasizing the Council’s concern with the “soft” cost issue, how much the fees might run and how they impact implementation of the park plan. Discussion continued on payment of bills and collection of sales tax revenue.

Johnson asked if the list of improvements in the Park Plan was current.

Lehmann reminded the Council that some of the items on the list for improvements in the Parks plan have already been completed.

Minke stated that the Parks & Recreation Commission has made Diamond Point Park its’ top park priority and budgeted approximately \$1.5 million to \$2 million. They also identified the top local trail priority using sales tax money is to connect the Middle School trail to the Cross Town trail which will eventually go out to the High School. Once the planning for

Diamond Point is completed, the Parks & Recreation Commission will come back and decide where to proceed next.

Motion by Johnson, second by Meuers, to authorize the City Manager to enter into a Consultant Agreement with Brauer & Associates Ltd. for Diamond Point Park. Motion carried unanimously.

**Review Burn Permit - Pinnacle Outlet Mall**

Minke stated that the City had issued a burn permit in September of 2005 for Pinnacle and based on some issues during the burn the burning permit was revoked. Minke stated he has initiated a general review of the City's burn policy to determine what type of burning and under what conditions the City should allow burning within city limits.

Lehmann stated that according to Captain Sathers' memo all the piles were set on fire at the same time and he expressed his concern about that. Lehmann commented that on the back side of the permit it states "I agree not to burn if there is a practical alternative method for disposal of the materials as chipping or composting." He stated that within a short distance from this site is the disposal site and wondered why this method was not utilized.

Harry Takhar, Pinnacle Outlet Mall, commented that a lot of the issues have been worked out and they are trying very hard to complete the final plat. Mr. Takhar stated that the site has to be cleared. Mr. Takhar stated that he has received four bids and it will cost approximately \$80,000 to move the trees to the site. Mr. Takhar then reviewed the method used for the burning of the piles and felt that they did everything they could to minimize smoke. He feels that this project is "dead in the water" and unable to continue. He further commented that Pinnacle is dealing with every item on the Developer's Agreement one item at a time.

Jerry Stensing, forester for the Soil & Water Conservation District, stated he is under contract to manage numerous forested areas. In particular, the Bemidji Regional Airport where they recently sold over 800 cords of timber and pine sales was based on piling and burning. Mr. Stensing stated that any action by this Council that prohibits open burning increases costs by requiring offsite slash disposal. Mr. Stensing suggested that a burn plan for special permits be implemented by the City.

Howard Rosten, Attorney for Pinnacle, stated that this project is stuck and needs direction from the Council. The two attorneys have spent a lot of time negotiating the developer's agreement. Clearly, the Council does not appreciate the issue. He stated that Mr. Takhar went to great lengths to figure out the optimal time to burn these piles. They will be asking to do some mass grading on the site before the final plat is completed. The MPCA has issued a permit and they would like the Council to consider giving permission to grade.

Lehmann responded that the Council is only responding on the burn permit not the mass grading permit and is not prepared to discuss grading.

Steve Fisher, 4430 Sherman Drive and works at the Pinnacle Site, reviewed a chronology of the burning. He stated that they applied for a burn permit when a window of opportunity presented itself. Phone calls had been made to the neighbors and Mr. Takhar offered the residents a stay at Hampton Inn during the burn. He stated that Takhar and Davidson did

everything possible to have a good burn. At dawn for an hour or two hours a temperature inversion occurred which caused the smoke and ultimate revocation of the burn permit.

Lehmann asked how many piles are left to be burn. Fisher responded that there are five piles, roughly 2,000 yards each.

Richard Sathers, acting Fire Captain, commented that he is understanding and sympathetic to Mr. Takhars' situation but he has to be and is more sympathetic to the citizens in that area that complained about the burning. He stated that perhaps something can be worked out. If it is a large venue burn he suggested tearing the pile apart and burn a smaller pile and add to it. That way if there are complaints, then the fire can be put out quicker. Mr. Sathers stated he is willing to explore other ideas.

Downs asked if the City uses burn plan for commercial properties currently. Sathers replied that the City does not have one but it is something that could be used. Sathers stated that he is working with the City Attorney's office to rewrite the City's burn regulations.

Erickson stated that she has spoken to a number of people regarding resolving this situation and hoped that the Council could come to a win-win for all involved. It would be a serious situation for the City if we did something like a burning ban as the Airport has lots of debris from a recent cut.

Lehmann suggested that the Council direct city staff to work with the developer to get a burning permit that will satisfy the concerns. He suggested that a number of things could be done, i.e., monitor the weather, smaller piles, and limit the number of piles burned each day.

Motion by Downs, second by Erickson, recommending that the burn plan for commercial property be included in developer's agreements in the future and directed city staff to come up with a burn plan for the Pinnacle site. Motion carried unanimously.

#### **Pre-Legislative Session Update**

Representative Frank Moe, District 4A, provided a pre-legislative session update stating that his number one issue is the Bemidji regional event center. The event center has the Governor's support and will be working on house and senate. His next priority is the land acquisition on the SE Lake Bemidji for completion of Paul Bunyan Trail, which has yet to get approval of the house, senate and governor. Parks & Trails Council has the trail as their number one priority. In addition, BSU and Tech College are requesting \$700,000 for planning and design of Sattgast Hall, the Center for Excellence is requesting over \$5 million and \$2 million for land acquisition for Bemidji High School. The State of Minnesota is out of compliance with federal government Clean Water Legacy Act and he will be watching this closely as it has direct interest for the City.

Johnson commented that the Clean Water Legacy Act would impact communities that are not the primary cause of the problem. Representative Moe responded that was why it did not pass last year.

Discussion continued on other items that are of interest to the City.

#### **PLANNING CASE**

Planning Case #2006-02 – Mayor Lehmann reviewed the Planning Case stating that Theodore & Elizabeth Kuryla have requested a special use permit to address shoreline erosion by placing approximately 35 cubic yards of natural rock riprap, including associated grading of the shoreline and placement of geotextile material, at 2122 Birchmont Drive NE. The movement of more than ten cubic yards of material within the shore impact zone requires a special use permit.

Motion by Downs, second by Erickson, approving the Special Use Permit at property located at 2122 Birchmont Drive NE with the condition that Kuryla's meet with the Beltrami Soil & Water Conservation staff by spring 2006 to determine a course of action on re-vegetation. Motion carried unanimously.

## **ORDINANCES**

### **Beltrami Electric Cooperative**

Markeson stated he is against the franchise fees in general and urged the Council to find the fairest way to generate revenue to operate the community. He noted that fees are going up every year. He would rather property raise taxes instead of establishing new fees or increasing existing fees.

Erickson stated that 47% of the City is non-taxable and when the City sets a fee it helps alleviate the burden on those properties that are taxable -- a balance of property tax and fees.

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance Granting to Beltrami Electric Cooperative, Inc. permission to construct, operate, repair and maintain in the City of Bemidji, MN, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds. Mayor Lehmann opened the Public Hearing at 9:18 p.m., hearing no comments the public hearing was closed.

- AN ORDINANCE Granting to Beltrami Electric Cooperative, Inc. permission to construct, operate, repair and maintain in the City of Bemidji, MN, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance Implementing an Electric Franchise Fee on Beltrami Electric Cooperative, Inc., for Providing Electric Service. Mayor Lehmann opened the Public Hearing at 9:19 p.m., hearing no comment the public hearing was closed.

- AN ORDINANCE Implementing an Electric Franchise Fee on Beltrami Electric Cooperative, Inc., for Providing Electric Service was given a second reading.

### **Otter Tail Power Company**

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance Granting to Otter Tail Power Company permission to construct, operate, repair and maintain in the City of Bemidji, MN, an electric distribution system and

transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds of the City. Mayor Lehmann opened the Public Hearing at 9:20 p.m., hearing no comment the public hearing was closed.

- AN ORDINANCE Granting to Otter Tail Power Company permission to construct, operate, repair and maintain in the City of Bemidji, MN, an electric distribution system and transmission lines, including necessary poles, lines, fixtures and appurtenances, for the furnishing of electric energy to the City, its inhabitants, and others, and to use the public ways and public grounds of the City was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance an Electric Franchise Fee on Otter Tail Power Company for Providing Electric Service within the City of Bemidji. Mayor Lehmann opened the Public Hearing at 9:21 p.m., hearing no comment the public hearing was closed.

- AN ORDINANCE Implementing an Electric Franchise Fee on Otter Tail Power Company for Providing Electric Service within the City of Bemidji was given a second reading.

**Aquila, Inc.**

Felix stated that he has received an objection from Aquila regarding the passage of the new franchise ordinance. They currently have a franchise agreement through its predecessor People's Natural Gas. The assets in Minnesota are being looked at for purchase from another utility agency and Aquila has expressed the preference for an addendum to the existing franchise for the fee. Felix stated that between now and final reading the details will be worked out and the Council will either move the new franchise agreement or staff will propose an amending the existing franchise agreement.

Erickson asked if the current franchise is different from the existing franchise.

Felix stated that Aquila has expressed concerns about the franchise but not the fee.

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance Granting to Aquila, Inc. permission to construct, operate, repair and maintain in the City of Bemidji, MN, a gas distribution system including necessary gas pipes, mains and appurtenances, for the transmission or distribution of gas to the City, its inhabitants, and other, and transmitting gas into and through the City, and to use the public ways and public grounds of the City. Mayor Lehmann opened the Public Hearing at 9:28 p.m.

Karl Blesser, Aquila, stated that they have no problem with franchise fee as they recognize it as a means to get funding for cities. However, Aquila is in a unique situation as they are for sale which subjects everything to more scrutiny. He commented that there should be a solution that can be worked out and suggested an addendum to the existing franchise. Mr. Blesser stated he was optimistic that the new franchise could be accepted before the final reading.

With no further comment the Public Hearing closed at 9:38 p.m.

- AN ORDINANCE Granting to Aquila, Inc. permission to construct, operate, repair and maintain in the City of Bemidji, MN, a gas distribution system including necessary gas pipes, mains and appurtenances, for the transmission or distribution of gas to the City, its inhabitants, and other, and transmitting gas into and through the City, and to use the public ways and public grounds of the City was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding a proposed Ordinance an Implementing a Gas Franchise Fee on Aquila, Inc., D/B/A Aquila Networks, for Providing Gas Service. Mayor Lehmann opened the Public Hearing at 9:39 p.m., hearing no comment the public hearing was closed.

- AN ORDINANCE Implementing a Gas Franchise Fee on Aquila, Inc., D/B/A Aquila Networks, for Providing Gas Service was given a second reading.

### **UPCOMING MEETINGS**

- Feb. 7 – 7:30 a.m. – Public Works Committee
- Feb 8 – 5:30 p.m. – Special Work Session – Bircherm TIF – to be rescheduled
- Feb. 9 – 5:30 p.m. – Special Joint City/County Meeting – Library
- Feb. 13 – 5:30 p.m. – Work Session – Rural Fire Contract

### **COUNCIL/STAFF REPORT**

- Minke reported that on February 8 some of the City staff will be attending a management performance meeting in Moorhead.
- Minke stated that the Library Board and Friends of the Library are having a public meeting on February 7 at 7 p.m. at the First Lutheran Church to discuss the library situation.
- Lehmann stated that he received a letter from the Coalition asking for an additional voluntary payment from members due to cuts. Minke stated that the dues for 2006 are \$26,700. Johnson commented that this was a bargain and very important to belong. Lehmann directed staff to add this item for Council's consideration at the February 21 meeting.
- Lehmann reported that the Lt. Governor and Swiggum visited Bemidji last week and he had an opportunity to visit with them regarding the transportation referendum.
- Downs reported that letters went out to the Paul Bunyan Trail and other enthusiasts to encourage them to go to Bemidji Day at the Capitol in March.
- Meuers asked that the City do a resolution proclaiming Bemidji as Curling Capital of the United States. Lehmann suggested that perhaps ads on billboards be purchased with the pictures of our Olympic Curlers from the community. Public Affairs Committee will discuss this further.
- Johnson recently attended the Grand Rapids conference for city officials. He stated the Public Affairs Committee has been discussing the Council retreat and he felt it was less expensive for the Council to attend League conferences. He suggested focusing the Council retreat on policy issues.
- Johnson reported that he attended a meeting in Sartell regarding annexation issues with Dale Hoosier and Minke and testified before a Committee on annexation issues.

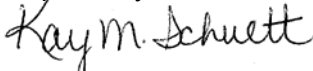


- Erickson congratulated the Bemidji Area Task Force which was honored by Bemidji Leads at a luncheon last week for their work in our community. Erickson stated that the ice rink on Lake Bemidji is busy and thanked staff for their work.
- Erickson would like the Council to consider jump starting the Save Babe Program which according to Lori Paris has only raised a third of the money needed for repairing Babe.
- Markeson commented that Boys & Girls Club was also honored by the Bemidji Leads recently and is a real asset to our community.
- Hellquist reported that the Public Works Committee will meet to review the four negotiation application and will bring a recommendation for the Council to interview. The Public Works Committee will be meeting with the DDA, Mike Smith or Pat Donnay, to discuss the management agreement regarding parking.
- Lehmann stated that a two hour training for Council on February 28 starting at 11:30 a.m. regarding interest based bargaining.

**ADJOURN**

There being no further business, motion by Johnson, second by Markeson, to adjourn the meeting. Motion carried. Meeting adjourned at 10:25 p.m.

Respectfully submitted,



Kay Murphy-Schuett  
City Clerk