

# CITY COUNCIL PROCEEDINGS

## BEMIDJI, MINNESOTA

### November 17, 2003

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, November 17, 2003, at 7:00 p.m. in the City Hall Council Chambers, Mayor Lehmann presiding.

Upon roll call, the following Council members were declared present: Erickson, Hellquist, Zachman, Meuers, Lehmann, Downs, Johnson.

Mayor Lehmann called for any amendments to the agenda. A resolution authorizing Purchase Agreement with BNSF Railway was added as Item #16A. Motion by Meuers, second by Johnson, to approve the amended agenda. All voted aye. Motion carried.

#### **APPROVAL OF MINUTES**

Minutes of the November 3, 2003 Regular Meeting and August 25, 2003 Shoreland Ordinance Work Session were presented. Motion by Erickson, second by Downs, to approve the minutes as presented. All voted aye. Motion carried.

#### **CONSENT AGENDA**

Mayor Lehmann called for approval of the items on the consent agenda. Motion by Downs, second by Johnson, to approve the consent agenda. All voted aye. Motion carried.

1. *Approved two pages of General Business Licenses*
2. *Approved eleven (11) pages of claims in the total amount of \$917,078.36 as submitted by the Finance Officer.*
3. *Approved **Resolution No. 5099**, Accepting Petition to Annex Certain Property Along Jefferson Avenue SW to the Corporate Limits of the City of Bemidji (LeisureTime Land Co).*
4. *Approved **Resolution No. 5100**, Adopting Assessment Roll for Delinquent Utility Accounts Reflecting Costs for Services Provided During the Year 2003.*
5. *Approved **Resolution No. 5101**, Adopting Assessment Rolls for Water/Sewer Connection Fees (Connections Completed in 2003)*

#### **BEMIDJI YOUTH ADVISORY COMMISSION**

A BYAC representative reported that the Teen Health Awareness Program/Halloween Dance was very successful with approximately 300 youth in attendance. The committee is currently working on a float for the "Night We Light" parade. Several BYAC members will participate in the Youth Forum scheduled for Tuesday, November 18<sup>th</sup>, and the group is planning an open forum for February, 2004 when the community will be invited to discuss issues. Council members were asked to consider the dates of November 30<sup>th</sup>, December 7<sup>th</sup>, or December 14<sup>th</sup> for a joint meeting with BYAC. It was noted that students continue to appreciate the monthly "Listening Lunches" at the High School with a variety of community leaders participating. Councilmembers were provided a copy of the November BYAC Events Calendar.

The date of Sunday, December 14<sup>th</sup>, 6:00 p.m. at City Hall was confirmed as the joint meeting date with City Council.

#### **BSU STUDENT SENATE REPORT**

Jason Swanson reported that the Senate President is currently lobbying in Washington D. C. BSU Student Senate representatives will meet again on Thursday, November 20, to review floor plans, etc. for the construction projects planned for campus residential halls (Maple & Oak sites). He further noted that St. Cloud State (the largest campus within MSUSA) has filed a resolution of withdrawal from MSUSA. The action must be approved by referendum and go before Legislature before being finalized.

Swanson also expressed the desire to meet with the Parking Committee to review parking issues in the vicinity of the campus. Hellquist will advise the date and time for the next meeting.

## **PUBLIC HEARINGS**

### **Hearing on Proposed Assessments for City Project #03-12 A & B (Wee Gwaus Drive SW and Irvingside Lane SW Paving)**

Pursuant to mailed and published notice, a copy of which was placed on file in the City Clerk's Office, a public hearing was held to consider and adopt the proposed assessments for City Project #03-12 A & B, Wee Gwaus Drive SW and Irvingside Lane SW paving. Mayor Lehmann opened the public hearing.

Downs read a letter from Wayne & Sandra Thorson, 1804 So. Lake Irving Drive SW, requesting an exemption from the assessment for paving of Wee Gwaus Drive. Thorson noted that they access their home from South Lake Irving Drive and do not have vehicle access to their property from Wee Gwaus Drive SW. Thorsons requested that the assessment be deferred until such time in the future that an access might be developed from Wee Gwaus into their property.

Also in a letter to the Council, Marjorie Beck/Sue Feeney, 1516 South Lake Irving Drive SW, noted that they do not have vehicle access to Wee Gwaus Drive and suggested that a lesser amount should be assessed to their property.

It was noted that the Council has always used the policy of "the highest and best use of the property" as the basis for improvement assessments.

Ellsworth Underwood, 1912 South Lake Irving Drive, suggested that the elevations of the newly paved Irvingside Drive and South Lake Irving Drive have caused flooding of his driveway, resulting in safety and maintenance problems. He requested a deferment of assessments until the problem is resolved. Engineer Freeberg noted that the project requires some finishing work to be done in the spring. This information has been conveyed to Mr. Underwood but he wants some assurance in writing that the project will be completed in the spring. It was noted that City Manager Minke and City Engineer Freeberg are schedule to meet with Mr. Underwood later this week to discuss the issue.

Downs asked whether Freeberg had an opportunity to review the Thorson issue. It was noted that this lot as well as the Beck/Feeney lot could potentially be divided and the new parcel could be accessed from Wee Gwaus Drive. In response to a question about enhanced property values, Freeberg noted that City policy for special assessments is generally based on the highest and best use of the property.

There being no further comments, the public hearing was closed.

**RESOLUTION NO. 5102:** A RESOLUTION ADOPTING ASSESSMENT ROLLS FOR CITY PROJECT #03-12 A & B (Street Paving on Wee Gwaus Drive SW & Irvingside Lane SW) was offered by Councilmember Downs, who moved its adoption, and upon due second by Councilmember Zachman, was passed by the following vote: Ayes: Hellquist, Meuers, Lehmann, Johnson, Downs, Erickson, Zachman. Nays: None. Absent: None.

### **Hearing on Annexation of Lillemo Property**

Pursuant to mailed and published notice, a copy of which was placed on file in the City Clerk's office, a public hearing was held to consider annexation of a 55.82 parcel of land located along Hwy. 71 South in Bemidji Township.

Mayor Lehmann noted, as requested by Bemidji Township, that a number of the Bemidji Township Board of Supervisors was in attendance at tonight's meeting. They were not present as decision-makers, but to attend the hearing.

Councilmembers received a copy of "Bemidji Township's Objection to the Proposed Annexation" copy of which was hand-delivered to City Hall on Friday afternoon, November 14, 2003, and the original received by regular mail on November 17th.

The public hearing was opened.

Harry Takhar, prospective purchaser of the property proposed for annexation, appeared in support of the annexation and presented a petition with 567 signatures of Bemidji area

residents in support of the annexation. Takhar also addressed several issues brought forth in the objection filed by the township including the size of the parcel requested for annexation. Takhar questioned the timeliness of the objection, noting that the objection was prepared November 8<sup>th</sup> but was not received in city offices until the afternoon of November 14<sup>th</sup>. He also noted that the Purchase Agreement dated approximately one year ago defined the same 55.82 acres which was presented in the Petition for Annexation. The original 70+ acre parcel no longer exists in that 10-acres was sold earlier this year to another party who held an option for purchase for a number of years, and Ms. Lillemo will keep approximately 5-acres of the parcel for a residential structure.

Other issues such as traffic safety, and rezoning deal with future development of the parcel, and Ms. Lillemo and Mr. Takhar were fully apprised of the fact that, if annexed into the city, future rezoning and development of the parcel will require approval by the City Planning Commission and City Council.

Ken Howe – Bemidji Township Board Chairperson – noted that the November 8<sup>th</sup> letter of objection addressed to City Attorney Felix and Christine Scotillo of the Office of Minnesota Planning were submitted at the same time by the Township Attorney Rebecca Anderson. City Clerk Sherman confirmed that a copy of the communication was hand-delivered to the City Attorney's office on Friday, November 14<sup>th</sup>, and the original was received by regular mail on Monday, November 17<sup>th</sup>.

Attorney Bob Wallner, representing property-owner Shirley Lillemo, acknowledged he received a copy of the letter of objection at 3:00 p.m. today. Wallner addressed the allegation that Ms. Lillemo intended to manipulate the statute. He explained that Ms. Lillemo sold a portion of this parcel in 1995 and gave that buyer an option to purchase another 10-acres. The buyer exercised his option and purchased that 10-acres earlier this year. Wallner commented on the rezoning issue noting that a large percentage of the surrounding properties are commercially developed and it's only a matter of time before this parcel is commercially zoned. He noted that Ms. Lillemo has followed the law in this Petition for Annexation and requested approval so that Ms. Lillemo could continue to proceed with the highest and best use of the parcel.

Mark Paulson – Bemidji Township Supervisor – noted that the Beltrami County Records office does not reflect the 10-acre sale of land earlier this year. Paulson was opposed to the City's approval of the annexation even though the property owner filed the Petition, noting that the City and Township are trying to work together for the betterment of the entire area. He felt it sabotaged that effort.

Lehmann read the following written communications:

Steve & Tracy Grove, 3587 Kayman Court SE, expressed opposition to the annexation of their neighborhood, which he feels is for the purpose of increasing the city's tax base. He expressed safety concerns regarding development of the Lillemo property.

Andra Vaughn, 1111 Mississippi, opposed the annexation due to the opposition of some of the surrounding property owners and the burden it would place on the city to maintain the area.

Marly Winans, 1211 Oak Hills Road SE, developer of Meadowmont Heights, a subdivision which borders the east line of the proposed annexation parcel, noted he was originally opposed to the annexation, but has a better understanding of the proposed development and now believes that it would be good for Bemidji and surrounding communities.

Dan Rogers, lives approximately 12 miles south of the city, addressed the Council and asked if the city has a vision for the future, has the city established what is important, does the city have a long range plan? He acknowledged the recent growth in the city and asked if the city has a plan to preserve the natural beauty. He suggested that the proposed annexation would be a signature landmark of what the city will be like in the future. He further suggested that a three-story mall with fountains and such would help to revitalize the downtown area and attract shoppers.

Councilmember Downs responded that the City has a long-range plan and the Planning Commission is currently working on a green-space plan. He further noted that growth outside the city is currently unregulated, and orderly growth is one of the City's concerns.

Takhar noted that his proposed development includes a 7-acre park.

Joe Vene, Planning Commission Chairperson – asked if there is any precedent in the history of the City where a petition for annexation by a property owner was denied. City Attorney responded that a property owner on the East Side of the lake petitioned to be annexed and was denied due to the inability to provide adequate public access to the parcel he wanted to annex. Vene suggested that it is premature to anticipate what kind of development will be going into that or any other property before the fact, as all development is reviewed by the Planning Commission before going to the City Council.

Wanda Brown, Northern Township resident, took issue with Wallner's statement that the parcel would eventually be developed commercial. She asked the Council to consider the issue of urban sprawl and suggested that retail development be encouraged in vacant spaces in the mall and downtown. She encouraged the Council to think about preservation of the natural beauty.

Marilyn Heltzer, 806 Grant Hills Road, Grant Valley Township – owns property in Bemidji Township, urged the council to deny the annexation, suggesting that it will mark the turning point of urban sprawl and questioned whether that is truly what the Council wants for Bemidji. She felt that it would be unfair to the people of Bemidji Township who have chosen to live in a rural township and whose planning and zoning regulations dictate that it should remain rural. Heltzer also felt that annexation and commercial zoning would be unfair to other merchants of Bemidji, particularly downtown businesses. She questioned who would pay for extension of water and sewer to this area if it were annexed and who will benefit from the annexation. She also raised questions about use of Tax Increment Financing and expressed concerns about traffic and safety and questioned whether minimum wage jobs can be called good economic development.

Mayor Lehmann suggested that comments be limited to the annexation issue. He noted that all annexed properties come into the city as R-1 (residential) and must be rezoned once it is in the city. The only thing being discussed at this time is the annexation of a parcel of land that has been discussed as a potential development area.

Wallner sustained the Mayor's comments noting that Ms. Lillemo would like to complete the annexation whether the Takhar development takes place or not.

Steve Johnson, Bemidji Township resident – asked whether Ms. Lillemo petitioned for annexation prior to the pending sale of the property, or whether it was due to the proposed redevelopment. He also inquired about extension of utilities to the parcel.

Attorney Wallner responded that Ms. Lillemo has a purchase agreement with Mr. Takhar, but the annexation request is not tied to that sale or any particular development.

Minke noted that when a proposed development receives approval, the developer will typically petition the city for extension of water & sewer. He noted that the area proposed for annexation could be served by water and sewer, depending upon the development.

Mark Dickinson, Bemidji City resident - real estate broker representing Ms. Lillemo in the sale of the property, noted that the property has been on the market for approximately two years and there has been no interest in it as a residential property. Due its proximity to the highways, surrounding commercial use, and openness of the land, it is not the type of property that anyone would look at as a single-family rural residential type use. He concluded that it would be beneficial to Ms. Lillemo and to the City to annex the property for future development.

Becky Livermore – Bemidji Township Supervisor – questioned whether this is the time to be making major decisions with respect to annexation, and expressed concerns about the impact the decision will have on the ability of the Joint City/Township task force to work together.

Steve Fisher, 4430 Sherman Drive, appeared in support of the annexation. He noted that he helped to circulate the petition, which received 567 signatures in support of the proposed annexation. He spoke in support of growth and development to enhance what is already here and to attract manufacturing and higher paying jobs.

Ken Howe – Bemidji Township Supervisor – expressed the need for the City and township to work together noting that timeliness is essential.

There being no further comments, the public hearing was closed.

Motion by Zachman, second by Meuers to move the final reading of the ordinance up on the agenda from item #20 to be considered at this point on the agenda. Motion carried by unanimous vote.

**ORDINANCE NO. 353, 2<sup>ND</sup> SERIES:** AN ORDINANCE ANNEXING PROPERTY ALONG HIGHWAY 71 SOUTH TO THE CORPORATE LIMITS OF THE CITY OF BEMIDJI (Shirley Lillemo Property) was given a third reading and approved by the following 4-3 vote: Ayes: Hellquist, Downs, Johnson, Erickson. Nays: Meuers, Zachman, Lehmann. Absent: None.

**PLANNING CASE #2003-26:** Filed by Ron & Pam Bostic requesting to rezone three parcels from R-3 (Single Family Residential) to B-2 (Shopping Center/Highway). The property is situated at 2404 Bemidji Avenue North (Taber's Bait) and includes the parcel to the south, on the northeast corner of Bemidji Avenue North and 24<sup>th</sup> Street NE. Planning Commission recommended approval of the rezoning as requested. Motion by Zachman, second by Hellquist to accept the recommendation of the Planning Commission to approve the rezoning as requested. Motion carried by unanimous vote.

**PLANNING CASE #2003-27:** Filed by Duane & Sylvia Hadrava requesting to rezone one parcel totaling .83 acres, situated at 1808 Division Street NW, from R-1 (Single Family Residential – unsewered) to B-2 (Shopping Center/Highway). This property was recently annexed into the City of Bemidji. Planning Commission recommended approval of the rezoning. Motion by Downs, second by Zachman, to approve the rezoning as requested. Motion carried by unanimous vote.

**PLANNING CASE #2003-28:** Filed by Warren Brauer requesting to realign an existing lot line, which is proposed to create a zero lot line between an existing building (Movie Gallery) to the east and a future commercial building proposed to be connected to the west (located at 1500 Paul Bunyan Drive NW). The required side yard setback in the B-2 zone is 10 feet, therefore, a 10-foot side yard setback variance is being requested for each of the two proposed parcels. Planning Commission recommended approval of both 10-foot interior side yard setback variances. Motion by Erickson, second by Hellquist, to approve the variances as requested. Motion carried by unanimous vote.

### **COUNCIL RETREAT**

Minke provided an update on the Council Retreat scheduled for January 26, 2004. He outlined the purpose of the retreat as follows:

- Identifying the City Council's values
- Improve the communication of the City Council members among themselves and clarify expectations, roles, and responsibilities
- Improve communication between the City Council, City Manager and staff
- Strengthen the Council/Manager form of government
- Develop the decision-making skills of council members
- Develop leadership skills

Minke also discussed facilitators for the retreat including the HRDC and Jim Brimeyer. Brimeyer estimated his costs would be \$2,000 plus expenses.

Motion by Erickson, second by Meuers, to accept the proposal from Jim Brimeyer to facilitate the retreat. Motion carried by unanimous vote.

### **BUDGET LETTER**

At their work session on November 10, 2003, the City Council directed Minke to draft a letter for Council review, which would respond to a letter from Representative Kuisle, appearing in the November 6<sup>th</sup> Rochester Post Bulletin. Minke drafted a letter and presented it for Council review and comment. Lehmann suggested some minor revisions and suggested that the letter include some history of how LGA became available to cities – a portion of sales taxes were to be shifted to assist lower tax-based communities provide basic services. It was also suggested that the entire council sign

the letter. Motion by Meuers, second by Johnson, to approve the letter with the recommended changes. All voted aye. Motion carried.

**RESOLUTION NO. 5103:** A RESOLUTION AUTHORIZING PURCHASE AGREEMENT WITH BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY FOR A PORTION OF ABANDONED SOO LINE RIGHT-OF-WAY AND AUTHORITY TO CLOSE ON ACQUISITION OF ABANDONED SOO LINE RIGHT-OF-WAY PROPERTY was offered by Councilmember Downs, who moved its adoption, and upon due second by Councilmember Erickson, was passed by the following vote: Ayes: Meuers, Hellquist, Johnson, Downs, Erickson, Zachman, Lehmann. Nays: None. Absent: None.

**CONSIDERATION OF LINCOLN SCHOOL NEIGHBORHOOD REHAB APPLICATION #438-010**

Rehab Loan Application No. 438-010 in the amount of \$25,490.00 was presented for Council consideration. It was noted that the applicant is income eligible for 100% funding for the Small Cities loan. Motion by Downs, second by Erickson, to approve the application. Motion carried by unanimous vote.

**REVIEW OF BOUNDARY EXTENSION OF THE LINCOLN SCHOOL NEIGHBORHOOD PROJECT**

HRDC proposed an extension of the project boundaries to include 22 housing units just northeast of the current neighborhood, which are similar in character to the existing project neighborhood. Motion by Erickson, second by Downs, to approve the recommendation to extend the project boundaries to fully utilize available rehabilitation funds. Motion carried by unanimous vote.

**LAND EXCHANGE AND REAPPORTIONMENT OF SPECIAL ASSESSMENTS**

City Engineer Freeberg provided a request to do an exchange of land between the City and Scott Bruns. The request also included a lot division and assignment of Special Assessments. Motion by Zachman, second by Johnson, to authorize the proposed land exchange between the City and Bruns, approve the lot divisions/combinations, and assignment of special assessments. Motion carried by unanimous vote.

**ORDINANCES**

AN ORDINANCE AMENDING SECTION 14.17 OF THE BEMIDJI CITY CODE (Pertaining to Lodging Tax) was given a second reading.

AN ORDINANCE ANNEXING PROPERTY ALONG JEFFERSON AVENUE SE TO THE CORPORATE LIMITS OF THE CITY OF BEMIDJI (LeisureTime Land Co) was given a first reading.

AN ORDINANCE AMENDING THE ZONING MAP ADOPTED IN CHAPTER 13, SECTION 13.08 OF THE BEMIDJI CITY CODE (Pertaining to Planning Case #2003-26, 2404 Bemidji Avenue N) was given a first reading.

AN ORDINANCE AMENDING THE ZONING MAP ADOPTED IN CHAPTER 13, SECTION 13.08 OF THE BEMIDJI CITY CODE (Pertaining to Planning Case #2003-27, 1808 Division Street N) was given a first reading.

AN ORDINANCE AMENDING AN UNCODED SECTION OF THE BEMIDJI CITY CODE (Authorizing Conveyance and Exchange of Real Property) was given a first reading.

AN ORDINANCE AMENDING THE BEMIDJI CITY CODE FEE SCHEDULE PERTAINING TO SEWER RATES – Effective January 1, 2004, was given a first reading.

**CITIZENS WITH BUSINESS BEFORE THIS COUNCIL – NOT ON AGENDA**

Richard Chernugal appeared on behalf of the Race Relations Council Human Rights Committee to address issues regarding the newly adopted Ordinance No. 351,2<sup>nd</sup> Series relating to fees and penalties for law enforcement response to repeat nuisance service

calls. Chernugal expressed concerns about racial-bias and the possibility for harassment by police officers.

Councilmembers responded to Mr. Chernugal's concerns, noting that there was no racial-bias intended. The ordinance was intended to address the increasing numbers of repeat calls to residences for nuisance events or activities that generate extraordinary costs to the City. The repeat nuisance service call fee is intended to cover that cost over and above the cost of providing normal law or code enforcement services and police protection City wide.

Alan J. Weber, 608 14<sup>th</sup> Street NW, asked if there has been any resolution to the problem of geese at the waterfront. Lehmann responded that the issue is still under review.

**NOTICE OF UPCOMING MEETINGS**

November 18, 2003 – 6:30 p.m. – Charter Commission  
November 24, 2003 – 5:30 p.m. – Council Work Session

**ADJOURN**

There being no further business presented for discussion, motion by Downs, second by Johnson to adjourn the meeting. All voted aye. Motion carried. Meeting adjourned 9:53 p.m.

Respectfully submitted

Shirley Sherman, City Clerk