

BEMIDJI CITY COUNCIL

Work Session Agenda

Monday, March 13, 2023

**City Hall
317 4th Street NW
5:30 P.M.**



1. CALL TO ORDER / ROLL CALL

2. PROPOSED WATER AND SEWER CONNECTION WITH NORTHERN TOWNSHIP

3. ADJOURN



MEMORANDUM

TO: City Council, City Manager,
FROM: Katie Nolting, City Attorney and Sam Anderson, City Engineer/DPW
DATE: February 23, 2023
RE: Proposed Water and Sewer Connection with Northern Township

HISTORY

The City of Bemidji has had a long history of collaboration and cooperation with its neighbor to the North, Northern Township. This has been able to happen because the City and Township both understand that while we may be two separate governmental entities, we are all truly one community. We all shop at the same stores, eat at the same restaurants, our children all attend school together. As this one community we jointly celebrate the successes and comfort one another when there are losses. Through it all, the City and Township have always put the best interests of the community as a whole in the forefront. Below are just a few examples of how when we work together for the betterment of all, the whole community, wins:

- *Elliot Road Paving Project.* Elliot Road is a jointly owned and maintained street between the City and Northern Township. For many years it was a gravel street and the residents dealt with issues of dust and wash boarding which made it difficult to maintain. With a joint grant application, grant funding was secured and the street was ultimately paved in 2021 with the remaining local share being funded at a 50/50 split between the City and Township. Shared maintenance of this roadway continues today.
- *The Greater Bemidji Joint Planning Board.* In 2007, the City and Northern Township, along with Bemidji Township, took a step together in cooperation by creating the Greater Bemidji Joint Planning Board (JPB). The JPB came about when the parties were frustrated by the same decisions that we are struggling with today, annexation and the ability to provide services in a way that is in the best interests of the whole community.

Since 2007, the City and Township have worked together to bring consistency in regards to planning and zoning to the community. When Bemidji Township ultimately chose to leave the JPB, the City and Township stayed united through the turmoil of the break up with Bemidji Township and the subsequent lawsuit.

- *The Birchmont Drive Road Construction Project.* While there was litigation surrounding this annexation, the City and Township worked together for the betterment of Lake Bemidji and the community.
- *Joint Orderly Annexation and Planning Agreement in 2006* – As part of the creation of the JPB, an Orderly Annexation Agreement was agreed to by the City and the Township. While this annexation agreement finished the third, and final, phase in 2020, it was another example of how the two government entities were able to work together.
- *Custom Airport Zoning* – The Township has invited to the table with the Airport Authority (which consists of the City and Beltrami County), along with other jurisdictions, as the Airport Authority works towards Custom Airport Zoning.

THE NORTH SHORE OF LAKE BEMIDJI

The City and Township are now facing a new challenge that could have a substantial impact on our community, and the health of Lake Bemidji, specifically the Northern portion. With its shores located in both the City and Township, Lake Bemidji has, and continues to play, and important role for all citizens. From the recreation that it brings with boating, fishing, and swimming, to the ecological impact of creating a habitat for fish, birds, and the occasional beaver and moose, Lake Bemidji is a natural attraction that

As the Council is aware, the health of the northern portion of the Lake has been on the forefront for decades. The major concern to this portion of the Lake is the septic systems, some of which are close to the Lake, and are ultimately polluting the Lake.

There have been many meetings during the last 30 years between the City and Township on this topic. Unfortunately, no solutions that were acceptable to both the City and Township were realized.

While the City and Township continue to try to discuss solutions to protect Lake Bemidji, on May 28, 2021 the City received a letter from Ruttger's Birchmont Lodge (Ruttger's), an historic resort and hotel located on the northern end of Lake Bemidji. Ruttger's asked for a connection to the City's water and sewer systems. This request came after the owners of Ruttger's were informed by the Minnesota Pollution Control Agency (MPCA) that their septic system was failing, and in order to continue to operate, a solution needed to be found.

In July of 2021, the City and Township began meeting to try to find a mutually agreeable resolution to assist Ruttger's, and in turn, protect Lake Bemidji. Unfortunately, several of those meetings led to impasses. The City, following its established policy, would not agree to allow water and sewer connection on the northern part of the Lake without annexation. The Township held firm that it would not agree to any more annexation.

In the spirit of cooperation, on January 11, 2022, the City came to the Township with a list of possible solutions that, the City was willing to explore with the Township. That

memo is attached. There were six (6) options given to the Township, five (5) of which consisted of annexation in some form, and the sixth (6th) option, which indicated that the Township could pay for, build, maintain, and own their own infrastructure for water and sewer, and then be allowed to connect to the City's water and sewer. This proposal also indicated the Township would be the customer, and would be required to handle all billing, metering, etc. that would be required to those that connect to the Township's pipe.

After receiving the attached memo, the Township chose to work towards option six (6), namely no annexation, building their own infrastructure, and connecting to the City's water and sewer system. The information provided to the City was that the Township was going to work towards a Bonding Bill with the Minnesota Legislature during the 2022 Legislative Session. The City wrote letters of support for the Township to receive funding from the Bonding Bill. As the Council may remember, the 2022 Legislative Session ended on May 22, 2022 without a Bonding Bill. As such, no funding was authorized for the Township.

Since the end of the Legislative Session ended in May of 2022, the City, not hearing from the Township that they would want to continue to explore the option of connecting without annexation, the City did no further exploration or assessment on the prospect of allowing connection of water and sewer without annexation.

On September 6, 2022 the City received written notice that the Township was withdrawing from the Greater Bemidji Joint Planning Board. Approximately one month later, the City learned the Township had begun steps to incorporate as a city.

On January 17, 2023, the City and Township met again to discuss options for protecting Lake Bemidji during an LGU meeting. At that time, the City was informed by the Township that they had received a 5 million dollar grant from the Federal Government for construction of the water and sewer infrastructure around the Northern part of Lake Bemidji. The Township looked to the City to reaffirm the offer to allow the Township to connect to City water and sewer without annexation. The City informed the Township that we needed time with this new information to determine the feasibility of the option of connecting water and sewer without annexation with the Township, and what could possibly be in the future, another municipality.

On January 31, 2023, the City received the proposed MOU from the Township, which is also attached to this memo.

OPTIONS

As discussed at the March 6, 2023 Council meeting, there were five (5) options available to the Council. The discussion that took place was simply used as an overview of the options, with the work session being a time to discuss and look at the details of all of the options presented.

1. Do nothing.

Hearing from the majority of the Council that option 1, or doing nothing, is not an option the Council would agree with, there will be no discussion of that option.

2. Continue to negotiate an MOU and/or contract for water and sewer hookup with Northern Township.

Staff still has concerns about not owning the infrastructure that would be attached to the City's infrastructure. The concerns discussed in the memo from March 6, 2023 have not changed.

As a reminder, some of the engineering concerns are as follows:

- Watermain breaks
- Power outages or catastrophic failure
- Future expansions of the private system
- Lift station inspections by 3rd parties
- Remote tracking system for lift stations
- Products that could be added to the sanitary sewer systems that may kill the bacteria at the WWTP
- Determining the special water usage rate for this size of user

Some of the legal concerns consisted of:

- Deviating from the long-standing policy of not allowing connection to City water and sewer without annexation
- Possibility of residents wanting to detach from the City and pay the premium the Township is requesting
- Limiting the borders with other townships
- Residents of other townships wanting to access City infrastructure without being annexed
- Concerns if another water ban may need to be in place that the City would not have jurisdiction over Township residents

3. Contested Annexation.

The City would have the ability to file for a contested annexation with the Office of the Chief Administrative Law Judge for the State of Minnesota. If the Council desires to seriously consider a contested annexation process, the appropriate step would be to set it on for a closed session.

4. Orderly Annexation.

The City and Township are very familiar with the process of orderly annexation. Having used this type of agreement multiple times, with the last orderly annexation agreement between the City and Township ending in 2020 with the final stage of the agreement.

Orderly Annexation is defined in statute as a binding contract between upon all parties to the agreement and is enforceable in the district court. This agreement could contain that all of the property around the Lake would immediately upon execution enter into the City. Another option, which has been agreed to in the past, is that there could be phased in annexation that is agreed to. This could be annexation based on when each portion of the project is completed, to when homeowners connect to City services, or even that they are phased in over a long period of time.

With an orderly annexation, there is a process where the taxes slowly move into the City, leaving the Township to not lose a percentage of their tax base in one day, but to allow the taxes to be phased in as well.

An orderly annexation would allow the Township to remain a township, or incorporate if they so choose, and lets the City place the infrastructure around Lake Bemidji. The City has the expertise in regards to building and maintaining the type of water and sewer infrastructure that is required. This would save the taxpayers in the Township from having to pay the costs of building and maintaining the water and sewer infrastructure and hiring the personnel that would be required to handle the billing, repair, and maintenance.

5. Merger.

A merger is best described as the City and Township coming together to create one community with the Township coming into the City. Unlike annexation which is bringing parts of the Township into the City piecemeal, a merger would bring together the entire Township and City together.

Residents of the City and Township are already one community. We cheer on the Bemidji Lumberjacks where our children go to school together, we support the BSU Beavers, we attend religious services together, shop at the same stores, and are proud of our beautiful natural resources. A merger would make it "official".

With the Township looking into incorporation as a city, a merger is even more an appropriate compromise between the two entities. A merger would ensure that two cities, literally touching each other, would not be competing against each other for funds, such as grant money, bonding money. A merger would also give the Township the same security and rights that would come from incorporation.

There are certain rights that all residents would be available at the completion of the merger. These rights include equal representation, the ability to join the City's boards and commissions (including the Charter Commission), to be included in street maintenance and infrastructure plans, have the protection of the Bemidji Police Department, the continued protection of the Bemidji Fire Department, the criminal prosecution and civil

services of the Bemidji City Attorney's Office, building enforcement, rental enforcement, and the continued planning and zoning services.

To ensure equal representation, a newly merged city would be required to redistrict in order to include the new residents who joined with the merger. This redistricting would not wait until the next Census, but would take place to ensure that all residents of the newly merged city have the right to vote for council representation. This would most likely lead to a special election for Mayor, At Large, and the Council members from the Wards effected by the redistricting. There is also the possibility the Charter Commission may determine that with the merging of the two government entities, it may be appropriate to add more wards to the City. Township residents with the merger would have the ability to be part of the Charter Commission and have a voice in that decision.

As part of the merger agreement, the City and Township would work together to incorporate the Township's staff into the City, determine how to merge the financials of the two government entities, and what to do with the assets owned by both entities. The combining of the staff and assets with a merger would be a cost savings for all the residents, as there would be no need to have two government entities (whether a township and a city, or two separate cities) duplicating assets and services.

Whether an orderly annexation agreement or merger, each would take some time to discuss and come to an agreement, but is not insurmountable. If the City and Township are willing to agree to work towards either option, steps could be taken so that the water and sewer infrastructure could begin as soon as possible in order to assist Ruttger's and also complete the extension to the Bemidji State Park when Beltrami County begins road construction on Birchmont Beach Road (County Road 21).