

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Regular Meeting – Monday, October 17, 2016

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, October 17, 2016 at 6:00 p.m. in the Council Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Johnson, Hellquist, Olson, Erickson, Larson

Staff Present: City Manager Nate Mathews, City Attorney Alan Felix, Public Works Director/City Engineer Craig Gray, Finance Director Ron Eischens, City Clerk Kay Murphy

AMENDMENTS TO AGENDA

Mayor Albrecht called for any amendments to the agenda. **Motion by Olson, seconded by Meehlhause, to approve the agenda as prepared. Motion carried by unanimous vote.**

MINUTES

The following minutes were presented for approval:

Council Meeting	October 3, 2016
BEDA Meeting	October 3, 2016
Work Session	September 26, 2016

Motion by Erickson, seconded by Hellquist, to approve the minutes as prepared. Motion carried by unanimous vote.

CONSENT AGENDA

The following Consent Agenda items were presented for approval. Councilor Erickson requested that the matter regarding the Volunteer Firefighter Pension be removed for discussion. **Motion by Larson, seconded by Olson, to approve the Consent Agenda items as follows:**

1. Claims submitted by the Finance Officer in the total amount of \$520,614.57
2. Claims Submitted by VenuWorks for the Sanford Center in the amount of \$105,108.20
3. Miscellaneous Business Licenses
4. 1 Day Temporary Consumption & Display Permit – Chamber Event (11/15/16)
5. Award Quote for Fire Station No. 1 Fire Sprinkler Project to Breth-Zenzen Fire Protection in the amount of \$19,659
6. Award Quote for Fire Station No. 1 Fire Alarm Project to Northland Fire Protection in the amount of \$6,852
7. **RESOLUTION NO. 6036:** Providing for the Prepayment and Redemption of Certain General Obligation Bonds (Series 2008)
8. **RESOLUTION NO. 6037:** Awarding Sale of \$2,910,000 Lease Revenue Refunding Bond (State of Minnesota Bureau of Criminal Apprehension Project), Series 2016; Fixing the Form and Specifications thereof, Providing for its Execution and Delivery, and Providing for its Payment
9. Approval of Second Amendment to Lease and Purchase Option Agreement with the State of Minnesota (Bureau of Criminal Apprehension)

Motion carried by unanimous vote.

CITIZENS NOT ON AGENDA

No one appeared.

COMMITTEE REPORTS

Bemidji Youth Advisory Commission – Sophie Warrick, BYAC President, introduced the current Commission. It was noted that there were several new members which makes this Commission one of the larger ones in years. Ms. Warrick stated they recently held their retreat and will be revising their by-laws.

BSU Student Senate – Mattie Pelland and Galen Hlausa, Student Senate reps, reported on current activities at BSU. Mr. Hlausa noted that the Student Senate is getting students pre-registered for the November election.

NEW BUSINESS

2016 Street Renewal Project

Gray stated that the City completed the eighth year of its annual street reconstruction program on various streets within the city. The 2016 project consisted of the reconstruction and paving of the following three street segments: 1) Park Avenue NW from 8th Street to 15th Street; 2) 26th Street NE from Bemidji Avenue to Birchmont Drive; and 3) Kay Avenue SE from 3rd Street to 2nd Street.

Gray stated that assessments to benefitting properties are proposed for the work that was completed and therefore the project was undertaken as a Chapter 429 Special Assessment project. The proposed assessments for the 2016 project are according to the City's assessment policy and are as follows:

Street Assessment	\$38/lineal foot
Sanitary Sewer Service Line	\$1,070/each
Water Service Line	\$1,070/each

Gray concluded that, in staff's opinion, each parcel on the assessment roll has benefitted from the project in an amount greater than or equal to the proposed assessment.

Pursuant to published notice a public hearing was held regarding input on proposed assessments for the 2016 Street Renewal Project (City Project #16-01). Mayor Albrecht opened the Public Hearing at 6:16 p.m.

- Don Knudson, 108 26th Street, asked for clarification on how the assessment process worked.

Hearing no further comments, the Mayor closed the Public Hearing at 6:17 p.m.

RESOLUTION NO. 6038: Adopting Assessment Rolls for City Project #16-01 - 2016 Street Renewal Project was offered by Councilmember Johnson, and upon due second by Councilmember Meehlhause was passed by unanimous vote.

Re-Assessments – Birchmont Drive Project

Gray stated that on June 29, 2016 Judge Cahill ordered that the Birchmont Drive project should be re-assessed according to the City's Policy for Public Improvements (PPI), dated May 21, 2007. He reviewed the process used to prepare the re-assessment roll. He stated that the analysis determined that the assessable cost of the project was \$4,008,619 out of the total project cost of \$5,408,619. The assessable cost was determined by deducting the city's share of the project costs (\$1,149,693) from the total project cost. The City costs were for road expansion, storm sewer and utility upsizing. A summation of the assessment numbers are as follows:

Sewer Only:	Unit Cost	=	\$10,448/lot
	Front Foot	=	\$69.56/foot
Sewer & Water:	Unit Cost	=	\$9,649/lot
	Front Foot	=	\$78.74/foot

He noted that the assessment roll includes 42 parcels that are currently within the city limits, 18 of those received city sanitary sewer and 24 of them received both sewer and water. The assessment will be spread over a 15-year period with an interest rate of 4.60% which was the interest rate on the initial assessment roll.

Jason Kuboushek, Iverson Reuvers, stated that the attorney representing the property owners argued that the PPI should determine the assessment amount. In their motion papers they asked for summary judgement pursuant to the Policies for Public Improvement. The property owners argued to the court and the court agreed in both its January 15, 2015 order to follow the PPI and once again in June 2016 order. The Court found that certain provisions applied and the City is obligated to follow that Order. He noted that Judge Cahill still has jurisdiction over this matter and if it goes back for another appeal and the City will be following his orders.

Pursuant to published notice a public hearing was held regarding input on Re-Assessments for the Birchmont Drive Project (City Project #06-02). Mayor Albrecht opened the Public Hearing at 6:27 p.m.

Zenas Baer, Zenas Baer & Associates, stated he is an attorney representing of a group of property owners, who object to the assessments. He stated that a written objection to the

proposed fourth assessment on the 2008 Birchmont Drive City Project #06-02 was filed and the City Clerk confirmed that it was received on Friday, October 14, 2016. He provided background on the project stating that the petition was considered and adopted in 2004 for the extension of water and sewer which was referred to the City Engineer. The preliminary plan and spec came back with a \$3.27 million project. He stated that time went on and no new petition was filed. In 2008 the project resurrected itself as a \$5.4 million project. He stated that it was a “bait and switch” with an increase in cost or 40% higher than the original amount. He argued that Mr. Gray did not do an “objective” application of the PPI. He stated that it seems as though that public entities are intent in getting back into its coffers the \$1.4 million that was left on the table as a result of the initial assessment appeals. Mr. Baer stated that the PPI is not being followed as the Court ordered. The resolution adopting the PPI states that it is a guide as to how the benefits are measured and how the costs are to be apportioned. The PPI stated that if the project is designed for service beyond Birchmont Drive, then those costs must be considered system costs that the City has to bear. He stated that if you install oversize piping and believes that Mr. Gray is intentionally misleading the Council on what the policy says. The policy says that if the installation of oversized pipe or a heavier road built, those costs are not considered but only consider what is necessary to serve the individuals that are using that system. He contended that \$5.4 million should be reduced by the \$1.4 million from County for road costs and then remove other system costs, oversizing of pipe and project costs. Mr. Baer continued to note other areas he felt where the PIP was misapplied by the City Engineer. In particular, the size of the water pipe. Mr. Baer stated that the objections filed by the property owners are largely the same today and basically the amount of the assessment exceeds the increase in value of the properties. He asked the Council to decline to adopt the assessment roll and order us into mediation because it is obviously not working through the courts.

Dennis Brovold, 4524 Birchmont Drive NE, stated that he contacted the Attorney General who conveyed via letter how the special assessment works. The AG stated that the special assessment must be supported by and proportional to special benefits in terms of increased value. He quoted the League of Mn Cities definition of special benefit test. He had his home appraised prior to the project and asked the appraiser if the special assessment would be \$20,000 more. His appraiser told him that the benefit would not increase or lower the market value.

Hearing no further comments, Mayor Albrecht closed the Public Hearing at 7:00 p.m.

Gray stated that he objected to Mr. Baer’s comments that he misled the Council. He stated that the bid tab for the project had 116 bid items and he spent over a week going through them sorting out what they were related to. He stated he reduced the cost of the watermain from a 14” to 10”. Gray stated that if a 6” water main was installed to the end of Birchmont Drive, there would not be enough water to put out a fire. The size of the pipe was based on the distance that the water flows and installing a 6” water main would have jeopardized most of the properties along Birchmont.

Mr. Kuboushek stated that throughout this matter the City and Township have been consistent in that as we have been looking at the benefits to the properties. In fact, the first time we went through this we weren’t going to apply the PPI because we wanted to look at benefits from a different angle. Furthermore, it isn’t because the PPI doesn’t take into consideration but we wanted to look at it broadly. What was presented to the court by Attorney Baer was that “the contract in this case is clear and unambiguous. The Joint Resolution for Orderly Annexation specifically refers to sewer and water extensions being subject to the written manual of Policies for Public Improvements adopted by the Bemidji City Council on April 6, 1998 and as revised March 2001. There is no ambiguity in the Joint Resolution. The Court should as a matter of law order Northern Township and the City of Bemidji to calculate assessments according to the PPI.” He stated that Judge Cahill took that directive and remanded it back to the City and Northern Township for the purpose of reassessing the project outlined in the Joint Resolution of Orderly Annexation, Section 8, which is the provision that indicates that the PPI shall be applied. He stated we are now following the Court Order. He stated that we have looked at assessments with and without the PPI. He stated that Mr. Gray has looked at it objectively and explained how he took out oversizing and residential streets. Staff is recommended adoption of the reassessment roll.

Mayor Albrecht noted that there is a written objection from the property owners.

RESOLUTION NO. 6039: Adopting Re-Assessment Roll for City Project #06-02 – Birchmont Drive Project was offered by Councilmember Erickson, who moved its

adoption, and upon due second by Councilmember Meehlhouse was passed by unanimous vote.

2017-2019 Fire Protection Agreement

City Manager Mathews stated that the current Agreement for Fire Protection between the City and Bemidji Rural Fire Association is scheduled to expire December 31, 2016. This agreement has been in effect since 2006 and has served both entities well. He noted that minor updates were made to the agreement with no significant changes.

Fire Chief Hoefler noted that the Rural Fire Association has already approved and signed the agreement.

Motion by Erickson, seconded by Johnson, to approve the 2017 – 2019 Fire Protection Agreement with the Bemidji Rural Fire Association. Motion carried unanimously.

Bemidji Volunteer Firefighters' Relief Association (FRA) Pension Benefit

Mathews stated that staff along with Councilmember Hellquist have been working toward a resolution of the FRA pension benefit. He recalled that in December 2015, City staff presented a proposal to the Council to increase the benefit 6.7% over a three-year period, equal to the increases provided to union contracts. At that time, the FRA President requested that the Council not approve the proposal and it was not adopted. Council directed staff to develop a package proposal to resolve the matter which included multi-year agreement, pension benefit increase, hourly rates and reducing vesting schedule. After several meetings with members of the Relief Association, the following proposal was presented:

- Pension Benefit Increase:
 - 2016 and 2017 – 4.2% increase, or \$252, for an annual benefit of \$6,252
 - 2018 – 2.5%, or \$156, for an annual benefit of \$6,408
- Paid On Call hourly rate increase of \$2 per hour effective for hours in 2017
- Reduce vesting schedule from 10 years to 7 years

Erickson said she would be voting no to the pension increase that would obligate the taxpayer to the additional pension amount. She commented that the taxpayer doesn't have anyone to make their investments whole. Erickson further stated that she will be supporting a \$2 an hour increase to the volunteer firefighters' hourly wage.

Motion by Meehlhouse, seconded by Olson, to approve the Pioneer Volunteer Fire Department Relief pension benefit increase of 4.2%, or \$252, for an annual benefit of \$6,252 effective January 1, 2017 and reduce the vesting schedule from 10 years to 7 years as well as amendments to their by-laws in this regard. It is the Council's understanding that \$2 increase to hourly wages and a pension benefit increase for 2018 of 2.5%, or 156, for an annual benefit of \$6,408. Motion carried with the following vote: Ayes: Meehlhouse, Hellquist, Albrecht, Larson, Olson, Johnson. Nays: Erickson.

ORDINANCES

AN ORDINANCE Amending Article II, Section 2.09, of the Bemidji City Code Pertaining to Mayor and Council Salaries was given a first reading.

AN ORDINANCE Amending the Fee Schedule for 2017 was given a first reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Marci Maple). Mayor Albrecht opened the Public Hearing at 7:29 p.m.

- Nathan Preuss, 1018 Donald Avenue SE, noted that there potentially are underground utilities in the 20 feet of land to be sold to neighboring property owners. Staff responded that they are checking to see if any utilities easements exist or are in the 20 feet.

Hearing no further comments, the Mayor closed the public hearing at 7:33 p.m.

AN ORDINANCE Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Marci Maple) was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Pamela May). Mayor Albrecht opened the Public Hearing at 7:34 p.m., hearing no comments the public hearing was closed.

AN ORDINANCE Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Pamela May) was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Brady & Anita Jones). Mayor Albrecht opened the Public Hearing at 7:35 p.m., hearing no comments the public hearing was closed.

AN ORDINANCE an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Brady & Anita Jones) was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Kevin & Michelle Storey). Mayor Albrecht opened the Public Hearing at 7:35 p.m., hearing no comments the public hearing was closed.

AN ORDINANCE an Ordinance Amending an Uncoded Section of the Bemidji City Code (Authorizing the Sale of Real Property-Kevin & Michelle Storey) was given a second reading.

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending Chapter 4 of the Bemidji City Code Entitled, "Alcoholic Beverages" By Amending the Provisions Relating to Section 4-95 Sunday Sales. Mayor Albrecht opened the Public Hearing at 7:36 p.m., hearing no comments the public hearing was closed.

AN ORDINANCE Amending Chapter 4 of the Bemidji City Code Entitled, "Alcoholic Beverages" By Amending the Provisions Relating to Section 4-95 Sunday Sales was given a second reading.

UPCOMING COUNCIL MEETINGS

- Monday, Nov. 7 6:00 p.m. Council Meeting
- Tuesday, Nov. 8 Election Day No Meetings
- Monday, Nov. 14 5:30 p.m. Work Session – 2017 Street Renewal Project

COUNCIL/STAFF REPORT

- Council members provided updates on current events and meetings.

ADJOURN

There being no further business, motion by Larson, seconded by Meehlhause, to adjourn the meeting. Motion carried. Meeting adjourned at 7:58 p.m.

Respectfully submitted,


Kay M. Murphy
City Clerk