

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Regular Meeting – May 4, 2015

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, May 4, 2015 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, Hellquist, Olson, Erickson, Larson Absent: Johnson

Staff Present: City Manager Nate Mathews, City Attorney Alan Felix, Public Works Director/City Engineer Craig Gray, Fire Chief Dave Hoefler, City Clerk Kay Murphy

PROCLAMATION

Mayor Albrecht proclaimed May 19 as Northern Dental Access Center Day in Bemidji.

AMENDMENTS TO AGENDA

Mayor Albrecht called for any amendments to the agenda. The following item was requested by the City Clerk to be added to the Consent Agenda: 1 day temporary consumption and display permit for Paul Bunyan Playhouse.

Motion by Hellquist, seconded by Meehlhause, to approve the agenda as amended. Motion carried by unanimous vote.

MINUTES

The following minutes were presented for approval:

Council Meeting	April 20, 2015
BEDA Meeting	April 20, 2015

Motion by Hellquist, seconded by Larson, to approve the minutes as presented. Motion carried by unanimous vote.

CONSENT AGENDA

The following Consent Agenda items were presented for approval. **Motion by Erickson, seconded by Hellquist, to approve the Consent Agenda items as follows:**

1. Claims submitted by Finance Officer in the amount of \$511,594.63
2. Claims submitted by Venuworks for the Sanford Center in the amount of \$35,440.70
3. General Business Licenses for 2015
4. **RESOLUTION NO. 5944:** Approving the Temporary Off-Premises Liquor Permit for a Block Party – Bemidji Brewing
5. **RESOLUTION NO. 5945:** Accepting Donation from Walmart Foundation in the amount of \$500 for the Parks & Recreation Department's Kids In Motion Camp
6. 1 day temporary consumption & display permit – Paul Bunyan Playhouse on 5/27

Motion carried by unanimous vote.

CITIZENS NOT ON AGENDA

- Eugene Tieglund, Bemidji Sports Center, stated that he has concerns regarding the City's half percent sales tax and the County has a half percent as well. He stated that his business is losing customers and the extra one percent is a hardship because he sells higher priced items. He stated that he will be presenting his concerns to the Beltrami County Board at their meeting on May 5. He noted that titled units are not subject to have the City's half percent sales tax.

Felix responded that the City's sales tax has been going on for over 10 years. He commented that the half percent sales tax implemented by the County never went to the voters. Felix went on to say that it would be a difficult process, if even possible, to adjust the City's half percent sales tax at this point in time.

COMMITTEE REPORTS

Bemidji Youth Advisory Commission – Komron Mardoni, BYA representative, reported on the recent fire detector giveaway program that they assisted the Red Cross and Fire Department with. Upcoming events include listening lunches and June 7 youth event.

PUBLIC HEARING**NPDES Permit - Storm Water Pollution Prevention Program (SWPPP)**

Public Works Director Gray stated that one of the requirements of the City's National Pollutant Discharge Elimination System (NPDES) permit is that an annual meeting must be held to update the council and allow the public to make oral and/or written comments. The permit requires that over the 5-year life of the permit, the city address the following control measures: 1) public education and outreach; 2) public involvement and participation; 3) illicit discharge detection and elimination; 4) construction site storm water controls; 5) post construction storm water management for new development and redevelopment; and 6) pollution prevention/good housekeeping for municipal operations.

Gray reported that in 2014 a total of 57 sites for erosion control inspections were completed. The street department swept 1,240 miles of streets which collected 538 cubic yards of street sweepings. The City held a developers meeting to inform local developers and engineers of the changes coming associated with the updated requirements from the Minnesota Pollution Control Agency.

Pursuant to published notice a public hearing was held regarding input regarding the NPDES Permit - Storm Water Pollution Prevention Program (SWPPP). Mayor Albrecht opened the Public Hearing at 6:24 p.m.

- Rich Siegert, 819 Paul Bunyan Drive S., stated he is not worried about the program but is concerned about the fairness of how storm water fees are levied. He would like to see a committee to review the fees and would like to participate in that process.

Gray responded that the storm water fees have not been reviewed since inception. The City hired a consultant and they developed the fees based on an engineering standard. Discussion continued regarding the fees.

Mayor Albrecht referred the matter to the City Manager and staff to review the storm water fee structure. Meehlhause suggested Mr. Siegert attend the Sustainability Committee meeting regarding incentives.

Hearing no further comments Mayor Albrecht closed the hearing at 6:30 p.m.

NEW BUSINESS**Outdoor Emergency Notification (Siren) System**

Fire Chief Hoefler stated that the City received three (3) proposals and after reviewing all of the proposals recommended awarding the project plus two additions to the Federal Signal Corp who met the minimum bid requirements.

Federal Signal Corp	\$166,550.75
American Signal Corp	\$183,400.00
Frontline Warning	\$161,160.00

Hoefler stated that although Frontline was the lowest bidder, their speaker siren system bid did not meet the minimum bid specifications.

Hellquist stated that the Council received an e-mail from Frontline and asked for clarification regarding the viewing of their product at the pre-bid meeting. Hoefler stated there was a pre-bid meeting to answer questions but it was not meant as an opportunity for bidders to show their equipment. The pre-bid meeting was to allow potential bidders to see the existing system and locations.

Adam Green, President of Frontline Warning Systems, stated that they submitted the low bid that was deemed unresponsive because the siren manufacturer that they represent use sirens that produce sound electronically with amplifier instead of mechanical motors to "chop air". He stated that the City's siren consultant that designed the sirens is a large distributor of Federal Signal. He then explained how their sirens worked and its sound output.

Hoefler stated that the original bid specification was prepared using the consultant's findings, and was prepared by himself with the assistance of the County Emergency Manager and PSAP Director. He stated that the bid spec preparation process was "sound, reasonable and fair and that he stands by his recommendation".

Felix stated that the consultant was hired as an independent expert to look at the current system and to provide an objective study. Further, the consultant would not be allowed to

bid the project that resulted. The City is not aware of any conflict of interest or any connection between the consultant and Federal such that there would be any undue influence by the consultant. Felix further stated that the process had the involvement not only of the Fire Department but other local entities that helped in the preparation of the specs and visited other cities to gauge what system would best serve Bemidji. Felix shared with Mr. Green that to send the Council e-mail directly in this situation is “frowned upon” as the City Council is a quasi-judicial body in this instance, charged with making a specific contract award impacting his business. Contacts should come through City staff, in particularly, the City Clerk. Felix believed that staff’s recommendation to award to Federal was appropriate.

Meehlhause noted that the Council also received an e-mail from the Beltrami County Director Chris Mueller who is in support of Chief Hoefler’s recommendation.

Motion by Hellquist, seconded by Olson, to award the Outdoor Notification Warning (siren) System to Federal Signal Corporation in the amount of \$166,550.75 which includes the following: \$131,172.85 to replace the current outdoor sirens and upgrade activation system and the addition of two (2) sirens at \$17,688.95 each. All voted aye. Motion carried unanimously.

2015 Reconstruction of Irvine Avenue & 30th Street (Project 15-02)

Public Works Director Gray stated that the City has been awarded approximately \$737,000 of federal aid transportation highway money for the reconstruction of Irvine Avenue from Paul Bunyan Drive to 30th Street. The total cost of the project (including design and inspection) was estimated at \$2,070,000. A bid opening was held on April 21, 2015 and the following three bids were received:

Reierson Construction	\$1,927,425.85
Wagner Construction	\$2,177,869.14
Douglas Kerr Underground	\$2,376,455.49
Engineer’s Estimate	\$1,850,000.00

Gray stated that because state and federal funds are involved this project must meet all of the requirements of those agencies. After the bid opening, it was determined that the bid documents submitted by Reierson Construction and Douglas Kerr Underground were incomplete because they did not meet the requirements for submission of the documents. The front page of the document states that the bid must include the entire project proposal. The remaining bid was submitted by Wagner Construction which was \$320,000 over budget. Staff is therefore recommending rejection of all the bids and to re-bid the project.

Gray has contacted MnDOT and informed them of the need to re-bid the project and received their approval. However, due to the timeframes involved the City will need to revise the project specifications to extend the completion date to July 1, 2016. The Irvine Avenue portion would be completed in 2015 but the contractor would have the option to complete the 30th Street work in 2016.

City Attorney Felix pointed out that there are representatives from Reierson Construction at the meeting and he recommended that the Council allow them an opportunity to be heard.

Gregory Singleton, Eckland & Blando LLC, stated that he has been hired to represent Reierson Construction in this matter. He pointed out that his clients, Lois Reierson and Travis Reierson, were present at the meeting. Mr. Singleton stated that the motions before the Council to reject the bids and to re-solicit the project have no legally supportable basis. He stated that following the City Engineer’s recommendation will cost the City money and have no added value to the City. He explained that the solicitation for bids contained over 400 pages of contract boiler plate pages, scope and definition, things that were not negotiable. Based on their history of working on projects with the City, Reierson did not submit the non-negotiable provisions, as those things that were not material to performing the project. Reierson included in their solicitation all necessary material to enable the determination that they could do the project. He went on to say that by signing the proposal Reierson Construction was bound by all the things in the non-negotiable provisions. Mr. Singleton stated that the requirement to include the complete proposal as indicated by the City Engineer has been looked at by courts who have taken the position that the entire volume of non-material provisions do not need to be included. He stated that if Reierson Construction were determined to be responsive on the project, their bid was just 4% over the engineer’s estimate or \$72,000, which would be less than the cost of the delay and any possible litigation that may arise from the rejection of the bids.

Mr. Singleton then referred to a letter from the City Attorney stating that the “city clearly informed all potential bidders that the City reserved the right to reject all bids” and that it is misleading. A decision to reject all bids is held to arbitrary, capricious or unreasonable standard. He expounded on cited findings of the Supreme Court and the Court of Appeals. He stated the opinion that rejection of the bids would be unreasonable. In the present circumstances, he believed that since the bids have been released it has harmed Reierson’s right to competition. Mr. Singleton concluded by requesting that the motions before the Council be denied.

Mayor Albrecht asked the City Attorney what would others say if the Council accepted the apparent low bidder and would this open the city up to additional litigation?

City Attorney Felix responded that the city is, if you will, “damned if you do and damned if you don’t”. He stated that in this federal/state aid project completion is keen between contractors. It was not lost on Wagner Construction that two incomplete bids were submitted. He continued that the cases cited are not all as clear as Mr. Singleton would lead you to believe. Though Felix felt Singleton’s arguments made a lot of good points the facts were that Reierson failed to submit nearly the entire body of the required proposal submission. He stated that in this case there is a reasonable basis to reject the bids. If the bids are not rejected, Felix stated that the city may be subject to challenge by either Reierson or Wagner.

Discussion regarding the re-solicitation of bids was discussed and phasing of the project. Councilor Erickson worried about future bidding and stated she trusted the City Engineer’s recommendation.

RESOLUTION NO. 5946: Rejecting all bids for City Project No. 15-02 was offered by Councilmember Hellquist, who moved its adoption, and upon due second by Councilmember Erickson was passed by the following vote: Ayes: Meehlhause, Hellquist, Erickson, Albrecht, Olson. Nays: Larson.

4th and Minnesota Avenue Intersection Improvements

Public Works Director Gray stated that the existing storm system in the intersection of 4th Street and Minnesota Avenue has deteriorated and needs to be reconstruction. The existing sanitary sewer and watermain also require replacement. The construction will take place this fall. The following bids were received for the project on April 28, 2015:

Reierson Construction	\$92,558.88
M&T Excavating, Inc.	\$100,097.44

Gray stated that the estimated project cost after design and inspection will be approximately \$110,000. He noted that funding for this project will come from the stormwater utility, water utility and sanitary sewer utility funds.

Motion by Olson, seconded by Meehlhause, to award the bid for City Project No. 15-09 (4th and Minnesota Intersection Improvements) to Reierson Construction in the amount of \$92,668.88. Motion carried unanimously.

ORDINANCES

Pursuant to published notice, a Public Hearing was held to receive input regarding Adoption of the Minnesota State Building Code. Mayor Albrecht opened the Public Hearing at 7:12 p.m., hearing no comments the public hearing was closed.

AN ORDINANCE Adopting the Minnesota State Building Code was given a second reading.

Vacation of Hillside Avenue SW

Felix stated that stated that there are folks present that did not hear about the vacation and if the Council is agreeable allow her to speak tonight.

Bert Mayberry, 708 Woodland, stated that she was unaware of the petition to vacate the street and objected to the closing of Hillside as she uses it during the summer months.

Mayor Albrecht asked who was notified about the street vacation. Murphy responded that she notified the abutting property owners of the public hearing. Ms. Mayberry was not notified because her property does not abut Hillside.

Brendon McManus, 203 Park Avenue SW, stated that he appreciated that it is a nice place and in the spring time it is quiet. He commented that on the north end there are safety concerns as well as the cost of maintaining the road.

Felix stated that staff has contacted the Joint Planning Board Planning Administrator who is in agreement with the recommendation to vacate as long as a driveway onto Woodland from Judy David's property is allowed. In addition, the Planning Administrator indicated the lot is non-conforming.

ORDINANCE NO. 115, 3RD SERIES, AN ORDINANCE AMENDING AN UNCODED SECTION OF THE BEMIDJI CITY CODE PERTAINING TO STREET VACATION (Hillside Avenue SW) was given a final reading and passed by the following vote: Ayes: Hellquist, Meehlhause, Larson, Erickson, Olson. Nays: Albrecht.

Motion by Hellquist, seconded by, approving publication of a summary of Ordinance No. 115, 3rd Series. Motion carried unanimously.

UPCOMING COUNCIL MEETINGS

- Tuesday, May 5 5:00 p.m. Board of Review
- Monday, May 11 5:30 p.m. Work Session – 2016 Financial Management Plan
- Monday, May 18 6:00 p.m. Council Meeting
- Tuesday, May 19 5:30 p.m. Joint Planning LGU Meeting – Northern Town Hall

COUNCIL/STAFF REPORT

- Council members provided updates on current events and meetings.

ADJOURN

There being no further business, motion by Meehlhause, seconded by Hellquist, to adjourn the meeting. Motion carried. Meeting adjourned at 7:45 p.m.

Respectfully submitted,



Kay M. Murphy
City Clerk