

**SPECIAL JOINT MEETING
BEMIDJI TOWNSHIP, NORTHERN TOWNSHIP, CITY OF BEMIDJI**

**Tuesday, June 19, 2012
Northern Town Hall
6:00 pm.**

PRESENT:

Bemidji Town Board Members; Jan Heuer, John Rowles, Lowell Vagle, Brian Merschman, and Pete Fredrickson. Northern Town Board Members; Dan Bahr, Ron Gangeness and Mike Kelly. City Council Members; Rita Albrecht, Ron Johnson, Greg Negard, Kevin Waldhausen, and Mayor Dave Larson. Joint Planning Administrator Mayana Rice, Northern Township Clerk Mary Israelson, City Attorney Al Felix, and City Manager John Chattin. See guest book for visitors.

CALL TO ORDER:

Northern Town Board Chairman Mike Kelly called the meeting to order and asked for nominations for moderator. Larson offered a motion to appoint Kelly, with Waldhausen seconding. Upon calling the question, Kelly was elected Moderator.

AGENDA:

Kelly asked for approval of the agenda and Bahr offered a motion for approval, which was then approved unanimously.

PURPOSE:

Felix briefly explained that he has supplied a Resolution supporting the proposed accelerated annexation of the Birchmont Drive area along with a map indicating the area affected by the proposal.

Kelly went on to explain the reasoning behind Northern Township's request to have the City of Bemidji consider annexing the areas that lie east of Bemidji Avenue and south of Lakewood Drive earlier than scheduled. Most of the proposed area was serviced by the sewer/water utility project that was recently bonded and constructed by the City of Bemidji. Northern Township was involved as the assessing authority only, but has taken on added liability and expense due to some of the property owners appealing their assessments. This is more liability for the entire township than the Board wants to take on. The immediate annexation of these areas would turn the re-assessing and any litigation over to the City of Bemidji. Kelly added that this proposal would alter the Orderly Annexation Agreement, which requires approval by all three (3) local government units.

ORDERLY ANNEXATION AGREEMENT AMENDMENT:

John Steffenhagen, attorney representing Bemidji Township, put it straight forward in simple terms – Bemidji Township's answer is 'no'. He went on to explain that when they met with Northern Township and the City of Bemidji on April 25th, they asked that any amendments to be put it on the table at that time. At that time, Northern Township indicated that they were not going to oppose the City going forward with annexation,

and the City indicated that they would proceed even though Bemidji Township was not only against proceeding, but felt that the Orderly Annexation Agreement (OAA) was invalid and not enforceable. The City went forward anyway even though Bemidji Township requested mediation of the dispute. They also tried with the State Office of Administrative Hearings, and the City's answer to the Administrative Judge was that they would not mediate. We have now come full circle in that the City and Northern Township have come up with a proposal that Bemidji Township asked for on April 25th and the only difference is that now Phase I (of the OAA) is now complete. So, the firm decision of Bemidji Township is 'no'.

Kelly asked for a response from the City. Negard asked; he had heard the Bemidji Township Supervisors say that if the City of Bemidji and Northern Township came up with a plan, they would not stand in the way – and wanted to be corrected if wrong. Heuer responded by stating yes, she said that back in December and January, and where were we then? Kelly also recalled the conversation from the meeting and had also indicated that Northern Township would not stand in the way of any agreement that the City of Bemidji and Bemidji Township agreed to. Heuer pointed out that it was prior to the City proceeding with Phase I.

Steffenhagen reiterated that regardless of what was said, Bemidji Township's response tonight is 'no'. They also believe that this is not simply a Northern Township request, but the City's also and he feels that this topic was probably discussed prior to the April 25th meeting. Kelly explained that Northern Township approached the City regarding this request for one purpose only, to alleviate the Township from the litigation and liability associated with the Birchmont utility project, and met with the City last week regarding the topic. He wanted to make it perfectly clear that the City did not approach the Township with this request. The other Northern Township Supervisors agreed with his summation. Bahr felt it was unfair for Bemidji Township to use Northern Township as a 'poker chip' in their disagreement with the City of Bemidji.

The Moderator stated that he felt the group was at an impasse and thanked the City for their time and interest in this issue. Mayor Larson explained that the City took on this issue in the spirit of cooperation to help with the problem, by taking on the liability that Northern Township is not capable of bearing.

Bahr wanted to get a vote and offered a motion to pass the Resolution as presented (amending the OAA entered into by the communities in 2004 as previously amended), with Gangeness seconding. Negard asked for point of discussion that the vote would not mean anything because each LGU would have to take it back to their own meetings to sign off, which was correct. **A roll call vote was taken; Yes – Larson, Albrecht, Negard, Johnson, Waldhausen, Bahr, Gangeness, Kelly. No – Fredrickson, Vagle, Merschman, Rowles, and Heuer. The vote passed, but it was agreed that the vote did not approve the Resolution.**

PHASE 1 ANNEXATION BOUNDARY AMENDMENTS:

Felix explained that the Phase I boundary line inadvertently split into two pieces, two properties in Bemidji Township. The parcels cannot be divided and therefore, it is being proposed that the annexation boundary line be adjusted to allow the parcels to remain in Bemidji Township in their entirety, and to exclude them from Phase I. When asked where this request came from Bemidji Township representatives indicated it wasn't from them, that they had just received the information at 4:32 p.m. yesterday (along with everyone else). Felix apologized that he had been out for almost two weeks and didn't get the information out earlier, but hoped that the practicality of it would speak for itself, and that it was in the best interest of the property owners to have this taken care of. He asked that his short-fall be forgiven.

Steffenhagen wanted to advise his clients to not take a position tonight, and his legal advice is that the OAA is not enforceable and by agreeing to an amendment would not make sense.

This is really a bookkeeping/line error that is trying to be corrected. If it is not decided tonight, it is unclear how the Office of Administrative Hearings will deal with it. Beltrami County has made it clear that the parcel cannot be split.

Albrecht offered a motion to approve Exhibit A Legal Descriptions For Parcels 03.000459.00 and 03.00458.00 Line Adjustment For Taxing Authority, with Waldhausen seconding. **A roll call vote was taken; Yes – Larson, Albrecht, Negard, Johnson, Waldhausen, Bahr, Gangeness, Kelly. No - Fredrickson, Vagle, Merschman, Rowles, and Heuer. The vote passed with it noted that it would not be affective unless each LGU agreed to the amendment.**

DETACHMENT PROCESS:

There are four (4) parcels that are a part of the OAA that are scheduled for detachment from the City of Bemidji as part of Phase I – they are essentially islands of City parcels in Bemidji Township. The detachment process indicates that, in addition to the City Resolution, if the property owners of those parcels sign a petition indicating that they are in favor of the detachment, a public hearing is not required at the Office of Administrative Hearings. Letters have been sent to the property owners, and the City has not received responses from all of them.

There are no actions needed by this group tonight, just an update of the detachment process. The process will go forward, even if all the property owners do not sign the petition eliminating the need for a hearing.

Steffenhagen wanted to go on record stating that since Bemidji Township does not believe the OAA is enforceable, it takes no position.

FINAL COMMENTS:

Kelly asked for each elected official to make a statement. He feels that it is very unfortunate that we are at this point and thought this was not the scope of what orderly annexation was supposed to be about.

Vagle asked Kelly how the situation with Northern Township and the Birchmont utility project financial bind came about. Kelly explained that a majority of the property owners along Birchmont Drive petitioned the City to extend sewer/water services along Birchmont Drive. The City of Bemidji engineered, constructed, and bonded for the project, but since the properties were not in the City, Northern Township was required to handle the assessments as the assessing authority. Approximately two-thirds of the property owners agreed with and paid, or have made arrangements to pay, their assessments. The other one-third (\$1.4 million) did not agree with the assessments/process and appealed. The Court agreed that everything was done appropriately in the assessment process, except that there was no documentation showing the amount of benefit to each property, and ordered re-assessment. The re-assessing was done and again, those same property owners appealed their assessment. The last year has been spent gathering information, and spending approximately \$100,000, preparing for the 2nd appeal procedure when it was discovered that the data being used did not meet the test needed to take it to court. This happened just prior to May this year and the assessments were set aside until everything could be put together appropriately. That is when the Township approached the City asking if they would consider taking over this area and the liability associated with this lawsuit. The utility project agreement states that Northern Township would be responsible for any shortfall and the taxpayers of Northern Township will have to pay that bill, and those properties being assessed will soon be in the City of Bemidji. This proposed accelerated annexation would relieve the Township of that financial responsibility and burden.

Albrecht thanked Kelly for moderating the meeting and thanked the residents for coming tonight. She went on to state that she was in the dark about what Bemidji Township's end-game was – what is in the future, do you want to continue with the agreement? Heuer responded by stating that it isn't a 'game' and then she deferred to their attorney. Steffenhagen indicated that Bemidji Township's position could not be more clear – they do not believe the agreement is enforceable. The fact-of-the-matter is that it will have to be addressed at some point.

Johnson stated that the OAA was designed because the City was growing and an orderly process for annexation was desired along with planning. There are areas in the townships that probably would have been annexed long ago without it.

Waldhausen indicated that he was confused, if the OAA is invalid, did we need Bemidji Township's input to change it for Northern Township? He is not surprised at tonight's result and is getting hints that Bemidji Township has something out for the City of Bemidji. Tonight's action does not harm the City of Bemidji at all, but greatly harms Northern Township.

Bahr stated that back in 2003 and 2004, there was a lot of time and effort put into creating the agreement and organization. The one thing that has changed greatly is the makeup of the Bemidji Township Board and hopes that we can move forward. Tonight's issue came directly from Northern Township due to its financial burden and feels it is unfortunate that it didn't get resolved.

Gangeness felt that the OAA was a peaceful way to provide order to annexation and it is unfortunate that this group can't get together more and talk about the future.

Kelly reported that about 6 months ago when the last LGU meeting was held, it was Bemidji Township who enabled opening discussions about re-aligning annexation boundaries and stood by Northern Township when they weren't afforded the same opportunity. The purpose of the discussions was not to eliminate annexation, but to possibly re-align some of the boundaries to make it more palatable with some of the changes that have happened in the past 8-9 years. Since then, things have changed dramatically whereas Bemidji Township was urged by residents to fight the agreement. Northern Township has not disputed orderly annexation and are very appreciative to be given the opportunity to maybe retain some of the property that was in the original agreement, and more recently, to potentially relieve a financial burden. He doesn't know where we'll go from here and is afraid this is going to go to further litigation that is going to cost all the residents time and money, and in the end someone else will make the decisions for us. He thanked Mayana's office for putting together the meeting, the City for being open to cooperating (with Northern Township), and Felix for his time. Northern Township will now very quickly have to start the re-assessment process for Birchmont Drive.

SET NEXT MEETING DATE/LOCATION:

It was agreed to tentatively plan for a meeting in the fall, with no date being set.

ADJOURNMENT:

A motion was offered by Gangeness, and seconded by Negard to adjourn the meeting.

Respectfully submitted: Mary Israelson, Northern Township Clerk