

## CITY COUNCIL

7:00 P.M.

March 19, 2007

Present: Scott M. Johnson  
David Gustafson  
James P. Kelly  
Pat Kelley  
Steven Marolt

Tom Smith, City Administrator  
Wayne G. Johnson, City Attorney

Also attending: Marie Frey; Dave Mealy; Bernie Zupancich, Mary Smith

Motion J. Kelly, second P. Kelley to approve the minutes of March 5, 2007, Council Meeting. THE MOTION CARRIED

FINANCIAL – Postpone End of Year Treasurer’s Report to next meeting. NEXT AGENDA

PETITIONS, REQUESTS & COMMUNICATIONS – Silver/Beaver Bay Days – July 28-29. B. Zupancich stated that there will be a lot of activity at the Marina with a fish boil, and the boat challenge scheduled; there will not be a parade but there will be a street dance, car show, Bay to Bay Run, and Quilt Club Raffle. People like to return to Silver Bay for events and funds are needed for advertisement and a mailing; it is planned that a similar event would be scheduled for the same time annually. It is requested that Silver Bay fund \$3,000 for this purpose; plans are to request funds in the amount of \$2,000 from the Beaver Bay Council. W. Johnson said that he would like to look into what restrictions are in place for cities to spend for marketing and donations. W. Johnson will have an opinion at the next meeting. Donation line item in the budget was discussed. NEXT AGENDA

B. Arson Training Request – Request permission for 3 Arson Investigators to attend 1 day of continuing education training, funded from the Fire Department Training Budget. Motion J. Kelly; second D. Gustafson to send three Fire Department Members to 1 day training, March 28, 2007. THE MOTION CARRIED

C. St. Luke’s Recognition Letter, March 9, 2007 - Each year St. Luke’s honors EMS responders with an education program and banquet. This year Silver Bay Fire Dept is receiving a plaque and being showcased as a case study in their response to a fall call on August 21, 2006. Eight people were specifically noted; request permission for these people to attend along with a council member. Motion J. Kelly; second P. Kelley to send these people to the St. Luke’s EMS Education Program and Banquet. THE MOTION CARRIED

D. Mayor Johnson would like to acknowledge receipt of a letter from Mr. Mealy and have copied Council and City Attorney on that letter.

## DEPARTMENTS

City Administrator - Nothing

City Attorney -

Joint Powers Agreement – W. Johnson has not heard back from the County Attorney; Silver Bay is in basic agreement with the basic draft after submitted changes are made.

Agreement for Fire Chief & Compensation – W. Johnson has prepared a Contract for Services with John Fredrickson for 10 hours/month at \$25/hour; duties would be separate and distinct from the Fire Department Chief duties. Request has been made for his review and signature. NEXT AGENDA

You have a report on the water line dispute with the highway department. Initially the state took the position that the city would be required to pay 100% of the relocation. We met with them on a number of occasions; our position was that it was the first move, under their rules the city would not be responsible. Now they have agreed that the maximum the city would be required to pay would be 40%. That work saved the city about \$60,000 but we maintain our position that the city should owe nothing. NOTE: They are asking for \$43,000 from the city; total project cost was \$108,000 for relocation and \$4,000 for engineering. They want to use their usual 60/40 formula that they normally use on highway contracts. However, they have a rule for the first relocation of a line, the city is not obligated to pay anything. This line was installed in 1952; the county assumed ownership of Outer Drive some years later, so it is a county road, and has never been relocated. It should qualify for the first move rule. They have asked that payment be made by Nov 07; so this must be resolved before that time.

The city leases space to the Vineyard Church, at Mary MacDonald Mall; there was an amendment to the purchase agreement to the school that provided that the City could not lease or sell to an educational facility that was in competition with the school. It was our interpretation of that agreement that the Vineyard Church was primarily in the business of religious education even though its membership include many families who homeschooled their children but would not be in competition with the school. W. Johnson has talked to the Superintendent and will meet with the school board tomorrow night to resolve this issue.

## OLD BUSINESS

Senior Citizen Center Proposal of Rules - W. Johnson has made the requested changes and forwarded the to the Golden Age Club, but has not heard back yet.

Mr. Mealy's Request for Refund –

Mayor Johnson called on T. Smith to discuss his response. Included in the large packet of information provided to the Council are copies of Mr. Mealy's requests and follow-up; a copy of the opinion from MN Department of Administration; a January 29 letter of return from Mr. W. Johnson, regarding their opinion; and a copy of another data request that came in March.

Mayor Johnson said that he saw the response from Mr. W. Johnson to the Department of Administration but did not see any response from the City Administrator and asked if he had missed it. T. Smith stated that the City Administrator's response was the letter that he signed outlining the reasons why that packet was put together the way it was and why the time was charged the way it was. This would be the Dec 20, 2006 letter to Laurie Kapinski at the Department of Administration. The question was "Did the City of Silver Bay comply with Statute 13 when it charged \$86.91 to retrieve and copy 109 pages of government data?" It goes on to outline why and how the cost was determined.

Mayor Johnson asked for questions or comments from the Council.

J. Kelly stated that in his opinion the hang-up is the 109 documents. The Statute states that if it is less than 100 on any one request, the charge should be 25 cents per document. He understands that it could still be charged at actual labor cost involved by reasonable people at a reasonable level. There is a grey area on whether it is 109 documents because we added 2 requests together; but in my opinion that it is logical to assume that it is part of the all the same request even though there are two individual requests. In my opinion it was reasonable to assume that these requests involved the same issue and should have been combined at 109. Also we have the right, as I understand it, that we can charge the actual labor cost involved, and that's the avenue that we chose. I think, while this is a relatively small amount of money we are talking about, the issue is bigger than that. I think that we have to stand our ground. This bigger issue is how can we adjust policy and how can we address statutes that have that kind of leeway in them. This should be a local control issue and not mandated by the state. We are not trying to take advantage of anyone here, but trying to recover our costs, which are paid for by all the citizens in our community. I think we did it reasonably and if we wind up spending excessive time with this; maybe we need to settle it. This is the first time we have had this type of information request and I don't think we handled it improperly, so I don't think the rebate is there but maybe there are other reasons to do it.

P. Kelly asked if we have a fee schedule set up or are we bound to follow what the state has. W. Johnson stated that the statute provides that if the request is less than 100 pages it is 25 cents a page; if it is more than 100 pages the city can charge their actual cost and that is what the City Administrator did in this case. We took the position that even though there were two letters, it involved the same subject matter, and therefore the city had a right to determine that it was one request totaling 109 pages so the City Administrator charged based on the time of the employees in his office. P. Kelly said that one could argue that it was two requests, as well. W. Johnson stated that the State, in its opinion, did concede that the City could interpret this as one request as well. As Mr. Kelley pointed out, It could be interpreted either way, but in his opinion both requests were of the same subject matter and should be regarded as one. It does not make sense to be spending all this time on this kind of issue.

S. Marolt asked if there was a time limitation where requests of the same subject material would be combined or left separate. W. Johnson responded that there is no court interpretation on this; in his opinion, when communication is on the same subject within 3-4 days it is reasonable to interpret it as one request.

P. Kelly questioned the time spent and how the reported time was utilized. Private vs. public date interpretation for the custodian of the data was discussed.

Mr. Mealy stated that he thinks it is important to detail the facts as they actually happened. There were two requests, 17<sup>th</sup> of November and the 20<sup>th</sup> of December. One was for billing; one for correspondence. They may have dealt with the same person; but they were separate. The first portion was 107 pages and within that 107 pages there was one duplicate; the May billing was duplicated and he has the original with annotations made in red by a staff member. Since the original was included, it was counted, charged for and he has it; there probably is not a copy of it in the City Offices. The total is 107...not 109. The second request included 6 pages of correspondence. There were 101 with the duplicate; totaling 99. The law specifically says 100 or fewer are 25 cents. The opinion from the Commissioner said that perhaps they combined it; but their opinion said that if it was separated, as it should have been, then the amount charged should have been \$26 and some cents. He further states that the law specifically states that one doesn't have the highest paid employee to pull staples and make copies and that you can not charge for examining/separating the documents; as Mr. Johnson agreed to a few minutes earlier. The fact is it is 99 pages for one and 6 pages for the second request. Mr. Mealy stated that he has already paid the \$86 but would like to see a copy of Mr. Johnson's response for today's discussion where he said he did not agree with the government. He said that he is not done with this.

J. Kelly asked how much the actual amount of the rebate is. The response was from P. Kelley was \$60.16. Motion J. Kelly; second D. Gustafson that a refund be given to Mr. Mealy in the amount of \$60.16. THE MOTION CARRIED

Mayor Johnson commented that this matter has taken up a lot of time and questioned W. Johnson about billing. W. Johnson replied that it was included within his retainer fee. Mayor Johnson stated that he believes the City Administrator should have been more up on data practices and did not need to spend that much time with W. Johnson. Suggest that the \$60 come out of the City Administrator's budget not the General Fund. W. Johnson replied that the time the City Administrator spent with him was not charged to Mr. Mealy; the only time he charged for was the internal work he spent in his office.

J. Kelly said that in T. Smith's defense; if in over 50 years this is the first time we have had a similar data request, one would not expect the City Administrator to be aware of all the Statutes and Laws. The Mayor replied by stating that a public request is a function of government.

Mr. Mealy asked the council members if they had read Chapter 13. The reply was that it was issued to all of them.

## NEW BUSINESS

Personnel Committee – Study of Legal Costs. The Committee did not meet as a group to review and make a recommendation. The Council is asked to review; the cities contacted were asked to provide the total amount of their legal budget (not just retainer of hourly costs). J. Kelly stated that there is a wide range of methods for which costs are accounted. Some explanations for deviations from normal were provided for specific

location. After discussion T. Smith stated that Silver Bay is competitive in cost and we receive good legal services. Mayor Johnson restated from the last meeting that this comparison of costs of other cities was not performance related. D Gustafson noted that there are tree towns close in population that are over to what we pay, there are some that pay less; we are in the ball park. Mayor Johnson stated that Mr. Mealy provided a lot of the research; he questioned the validity of the comparison. He does not believe that a total budget figure is valid

Cable TV Committee Report - An informal meeting was held last week with Mr. Morris. It is an advisory committee currently having 6 members; they would like to decrease the number to 5 through attrition. They will keep the Council informed of status. J. Kelly stated that there are impending changes statewide because of Quest application for inclusion of data transmission. M. Frey advised that the franchise will need to be negotiated and signed this year and that P. Morris has been valuable in this process.

Airport – Recommendation to Proceed with Engineering Work Order – Recommend that Council approve proceeding with upgrade to fuel system. Concerns about monitoring and the existing tank were discussed. D. Gustafson explained that this year funds were saved but using County brush-hog to clear property (\$90,000) and that the continuing problems with the fuel systems are still present and will eventually have to be dealt with. This requested expenditure is for \$350 for the Engineering study only. The 95/5 split was discussed as well as the need to have the study completed in order to be in a position to move forward should the system deteriorate further. **Resolution 2007-#7, Authorize Approval to Spend Funds for the Engineering Project for Fuel System at the Airport.**

Roll call vote: Member Gustafson – aye  
Member J. Kelly – aye  
Chairman Johnson - aye

Member Marolt - aye  
Member P. Kelly – aye

Public Utilities Recommendation, C. Perfetto, Member - Committee recommends that Council approve C. Perfetto as a member; committee is currently operating with 2 of 3 members. Motion S. Marolt, second P. Kelley to appoint C. Perfetto to the Public Utilities Committee - expiration date - December 31, 2009. THE MOTION CARRIED

Planning and Zoning – Electronic Signage - Motion is recommended to adopt a moratorium on the direction, placement or display of any sign displaying animation or rapidly changing images or messages within the city. This moratorium should remain in effect for 9 months rather than the originally requested 6 months. Legislation is considering a method to handle these types of signs. This would not effect any existing signs. Motion J. Kelly, second D. Gustafson to adopt a moratorium on the direction, placement or display of any sign displaying animation or rapidly changing images or messages within the city. THE MOTION CARRIED J. Kelly stated that some other town have adopted changes where they can only change messages once a day and can only be located at specific locations. If a moratorium is adopted a study must be completed by the city within 9 months. This is why the League of Cities was hoping that the state would issue a moratorium in order that every city adopting one must complete a similar study.

Public Works Committee- Recommend use of City staff and equipment to remove blacktop surface in lieu of parking lot use for Mary MacDonald Mall. J. Kelly stated that in the past

the parking lot has been unavailable for public use and would like to have a written agreement for its usage. M. Frey brought up the issue of the surface in front of the city offices and perhaps it would not be too costly to improve it if the equipment will be already in place. Mayor Johnson said costs for current and impending operating and capital expenditure costs to bring the building up to code should be reviewed. Need to assess weatherizing, lighting, roof, black topping, playground, loading dock, etc. D. Gustafson discussed 50% expansion of Wilderness Family Naturals. NEXT AGENDA

Sidewalks on Reed and Quincy – Request have been received for sidewalks. It would include 1672 feet on West Side of Quincy and 1090 ft on south side of Reed at a total cost of \$80,650. This does not include curbing or handicap accessibility. It could be phased over 3 years. Timing was discussed for execution. The city has difficulty keeping up with the existing sidewalks. There is concern for school children’s safety. Assessment vs. city funding was discussed. There is a desire to complete this before the next school year. Public Works will discuss further and provide more information.

Demolition of old Two Harbors High School – It has been recommended that staff and equipment be used for demolition and hauling. Mr. Larson has indicated that we only want to assist during rounds so that there won’t be dead time. Commissioner Goutermont advised that we could be reimbursed for actual costs (shop rate & labor). It is a two-mile run and will take about a month to complete. P. Kelly reminded that the City took over the Mary MacDonald School, which saved the school district \$300-400K in demolition. Motion S. Marolt to allow Mr. Larson to use city equipment and labor to assist Two Harbors with demolition and hauling of the old Two Harbors High School based on work load. Motion fails for lack of a second J. Kelly said that we are one of the players in the process and all should be treated equitably regarding work and reimbursement. Mr. Larson will keep looking at working with them, and the scope of work and keep Council informed.

W. Johnson would like to give opinion on the Auditor Annual Report; particularly concerning the Hwy 61 water main issue.

A last minute invitation from Congressman Oberstar was extended to the Mayors of Silver Bay, Two Harbors and Grand Marais and Commissioners. There were nine including Congressman Oberstar and his aide. It was a productive meeting.

Egg Hunt is being replaced by a Fish for Eggs event at 3 p.m. Wed at the Reunion Hall for 3<sup>rd</sup> grade and under.

J. Kelly brought up massive code overhaul, which will address building codes and each trade. The League and cities are against it.

Claims – None

Motion S. Marolt; second J. Kelly to adjourn at 8:25 p.m. THE MOTION CARRIED

Minutes taken by Mabel Tarlton

---

Scott M. Johnson, Mayor

---

Tom Smith, City Administrator