

CITY COUNCIL

7:00 P.M.

October 1, 2007

Present: Scott M. Johnson
Pat Kelley
Steve Marolt
David Gustafson,
Tom Smith, City Administrator
Pete Morris, Asst. City Attorney

Absent: James P. Kelly, excused

Also attending: Marie Frey; George Pope; Bernie Zupancich; Harold Koepp; Jack Swanson; Caroline Walsh; Dave Mealy; Forrest Johnson, Lake Co. Chronicle; Alan Goodman, Lake Co. Engineer

Mayor Johnson called the meeting to order at 7:00 p.m.

CONSENT AGENDA: D. Gustafson identified a correction to the minutes after the grant writer discussion; the vote listed Mayor Kind as a voter rather than Mayor Johnson. P. Kelley asked T. Smith, City Administrator to address why part of the minutes were verbatim and part not verbatim and why and on whose direction, since this is not how the minutes are usually prepared. T. Smith responded that it was at the direction of Mr. Johnson, City Attorney for the minutes for his use, and legal questions that he was concerned about. P. Morris stated that he had no insight into reasoning and suggested that the question be directed to Mr. Johnson upon his return. S. Marolt asked P. Morris to deliver a message to Mr. Johnson that the City Council would like a response as to why he wanted that portion of the minutes prepared verbatim. No further discussion on the motion.

Motion S. Marolt, second D. Gustafson to approve the Consent Agenda as corrected and discussed. THE MOTION CARRIED

PETITIONS, REQUESTS, & COMMUNICATIONS:

REDESIGNATION AND ALIGNMENT OF STATE AID ROADS: Mr. Goodman, Lake County Engineer, was introduced and given the floor. Historically, Lake County has had a County State Aid System; some roads within that system are within municipalities. The county state aid roads are being reviewed for redesignation based on usage and traffic flow on roads that have a logical beginning and end. In Silver Bay, Outer Drive and Penn Blvd as it proceeds into the country are currently state aid roads. Additional streets beginning at Davis, past the government and emergency management buildings, proceeding the high school with a connecting legs down past the Masonic Temple and the United Protestant Church (connecting and completing a loop with Outer Drive) and proceeding on Horn to the Mary MacDonald Center (connecting with Penn Blvd) is being proposed for inclusion in the state aid system. This would constitute a 1.2-mile increase of new state aid mileage. The County would like favorable consideration on this proposal. The County Board would have to pass a resolution adopting the additional streets as state aid routes and then Silver Bay City Council would have to approve concurrence with the action.

Atty. Morris asked if this would transfer ownership of the road to the county. Mr. Goodman stated that yes, if the County Board approves the resolution, they then would assume ownership of the road and that through state statutes they have the power to adopt roadways with consent. This right of way gives them the authority to maintain or reconstruct the roadway. The history of similar roads in Two Harbors is that under the co-op agreement, the County transfers a small sum of money to the City to perform routine maintenance of the county aid roads within the City. The county board would have final authority as to when and if major roadwork is done within the 5-year

capital plan funds availability. Routine maintenance would remain status quo; the city would perform the maintenance, snow removal and mowing and the county would pay an annual fee.

D. Gustafson questioned whether speed restrictions of 2 high traffic areas during softball tournaments would be an issue. Mr. Goodman said that they could do so with notice to the County under an informal agreement.

Atty. Morris asked if approval would have to be requested of the county board, if the Silver Bay Street Department were to determine that some work needed to be done. Mr. Goodman said that if the County was expected to pay for it, advance request would be required; if not it could be accomplished through the informal agreement. P. Morris and Mr. Goodman agreed that liability on those roads would transfer from Silver Bay to Lake County.

Motion D. Gustafson, second S. Marolt to approve the support to include the route as presented for inclusion into the County State Aid System. THE MOTION CARRIED

Mr. Goodman expressed his appreciation for the offer from Silver Bay to assist with the demolition of the old Two Harbors High School on a reimbursable basis from the school district; this will generate tremendous cost savings for the project. The demolition has been postponed to next year due to asbestos issues.

BUILDING TEAR DOWN GRANT - During recent conversation with Dick Walsh, with IRRRB; they have a \$50K per building tear down grant; if there are any applicable buildings within the city of Silver Bay, applications are being accepted through November.

LAX LAKE ROAD IMPROVEMENTS - Penn Blvd bridge is expected to be completed and open for traffic the week of October 8, after which the next Section of the Lax Lake Rd (Co Rd 4 and 402) will be closed for a few weeks, until freeze up. It will be a "carry-over project"; the culvert sections have arrived but the work can not be initiated until July 1, 2008 per DNR permit due to a trout stream. The first layer of pavement will probably be in Aug. B. Zupancich expressed concern about the location of the culvert sections; Mr. Goodman said that they will be moved back and concrete jersey barriers will probably be placed for traffic safety.

NORTHEAST SERVICE CO-OP BOARD OF DIRECTORS VACANCIES - T. Smith said that information and a nomination/petition form have been received. The city is a member of this organization for their health insurance pool. They are accepting nominations for non-school position openings for their Board of Directors; closing date is November 7, 2007.

OPEN HOUSE - There will be an Open House at the Silver Bay Rukavina Arena from 5:00-6:30 p.m. on Friday, October 5. Come and see the renovations.

HISTORICAL DONATION - The Don Suess family has made a donation of the history of the Silver Bay Police Department to the Silver Bay Historical Society

TRANSPORTATION FORUM - A Forum on Transportation Policy with James Oberstar is being held Monday, October 8 at the Radison Hotel in Minneapolis.

GITCHI GAMI TRAIL – North Shore Mining sent a letter stating that they have worked out the route on the Gitchi Gami Trail. It was getting very close to the date needed to proceed with funding requests for trail construction for next year.

LEAGUE OF MINNESOTA CITIES - Event cancelled in Buhl; Brainard and Cannon Falls are options being considered.

LODGING TAX - A memo was received from EDA Committee recommending the Council adopt the Lodging Tax.

DEPARTMENTS:

OLD BUSINESS:

JOINT GRANT WRITER/CITY PLANNER - Position and job description motion was tabled at the September 17, 2007 City Council meeting; P. Kelly motion, second S. Marolt to remove tabled motion from the table to allow for further discussion of the subject. THE MOTION CARRIED.

P. Kelley stated that he had researched the subject further and determined that the duties of a City Planner include the duties of a grant writer already and to have a job title as City Planner/Grant Writer would be redundant. P. Kelley motion; second S. Marolt to amend the motion to including funding a City Planner and eliminate the current City Administrator position.

Discussion: M. Frey asked who then would perform the duties currently performed by the City Administrator. P. Kelley responded that other he felt other staff members (i.e. deputy clerk and deputy treasurer) who are capable of assuming those duties. M. Frey is concerned about the other staff member's current workload not allowing for additional work responsibilities.

D. Gustafson stated that since he had been absent from meetings for a month and does not feel adequately informed on this subject, he would like to abstain from vote on this issue and would like more information. He stated that over \$3m in grants to the City was a substantial amount of money. P. Kelley said that he would like to see the Capital Grants and Contributions, Operating Grants and Contributions submission broken down as to how many are written out of the city office and how many are written by a contractual consultant or state aid.

S. Marolt said that the job description for City Clerk requires a 4-year college degree and asks if any of the other staff members fulfill this requirement or could that requirement be excluded from position description requirements.

Mayor Johnson said that the City Attorney has pointed out that by statute we are required to have a City Clerk and City Treasurer. He suggested that this be looked into further and in so doing honor D. Gustafson's request. It is assumed that J. Kelly would like more time due to his absence and would like to be a part of the discussion, as well.

Motion S. Marolt, second D. Gustafson to table the motion and look further into the parameters of City Clerk/Treasurer before the October 15, 2007 City Council Meeting. Discussion: Mayor Johnson asked the City Attorney's Office to provide information on the mandates and parameters of the City Clerk/Treasurer statutory requirements. THE MOTION CARRIED.

CONDITIONAL USE PERMIT – City Council was premature in affirming a conditional use permit to Carolyn Walsh without prior recommendation from the Planning and Zoning Commission. The application was heard today and Planning and Zoning Commission recommends submitting the proposal to the City Council for approval. Motion P. Kelley; second S. Marolt to approve a conditional use permit for Carolyn Walsh to operate a business know as Quilts by Grandma, LLC, a quilt and fabric shop, in Mary MacDonald Center. THE MOTION CARRIED.

ASSISTED LIVING PROJECT – The Ad Hoc Committee issued a Request for Proposal for a Feasibility Study for an assisted living facility. The firm that was recommended by the committee is ProMatura at a cost of \$9,575 (\$8,375 for the study and \$1,200 for travel and expenses). North

Shore Mining will contribute \$2,000; grant application has been submitted to Duluth Superior Community Foundation for \$3,000. We are optimistic that we could receive funds as early as December. Chris Mattila will attend the county board meeting tomorrow to request \$3,500 in additional funds. There may be a gap of \$7,000 or less for which assistance may be asked from the City of Silver Bay. T. Smith requests mobilization on this effort Dec. 20. Motion D. Gustafson; to proceed with Ad Hoc request to hire ProMatura and pay them the \$9,575 and obligate the City for whatever funding assistance is not received; S. Marolt supports for discussion. Mayor suggested discussion be moved to the end of the meeting and make decision on Silver Bay's level of participation. P. Morris stated that normally grants money is not awarded for reimbursement, but rather unfunded needs; as well it would be prudent to review the contract prior to obligating any funds to it. S. Marolt rescinds second; motion fails for lack of a second. Mayor Johnson tabled until City Council meeting, October 15, 2007; Request that the City Attorney's office review ProMatura's contract; and information from the county board meeting will be available at that time. Motion which was passed Sept 4 should be reviewed, as well.

RECONSIDERATION OF RESOLUTION 2007-#9, BELL CIRCLE LISTING AGREEMENT - P. Kelley noted that the subject property is listed in the local paper for \$225K and City Council approved listing the property for \$208K. The February 20, 2007 City Council minutes included a motion by J. Kelley, second D. Gustafson to list the Bell Circle Apartment Site as a non-exclusive realtor listing for \$208K; Resolution 2007-9 states be it resolved that the City of Silver Bay enter into an exclusive right to sell the contract property with Century 21- Gildeman and Edina Realty Brokers to list the sale of the following description..... This is different than the City Council brought forward in their motion. P. Morris stated that the City Attorney Office will review and get back. T. Smith believes that the difference between \$208K and \$225K is the 7% listing fees; S. Marolt stated that in the minutes the 7% fee was to be included in the \$208K listing price. The agreement comes due Oct 9. The Mayor is looking for an explanation a non-exclusive real estate agreement and discussion for the next City Council meeting.

STATUS ON EVALUATION FOR CITY ADMINISTRATOR - Mayor is working with County Personnel Director.

CITY ATTORNEY ORDINANCE ADOPTION GUIDANCE – Question arose whether a resolution needs to be adopted by a majority of the Council or a majority of those present. P. Morris said that a resolution needs to be adopted by the majority of the Council. The question before the Council at the time was Lodging Tax. Since insufficient Council members were available at the time of vote, the vote is considered ineffective at that time; the issue can be raised at any time. P. Kelly asked that the Lodging tax issue be put back on the table.

LODGING TAX - Except from Cook County newspaper article titled "New Events Visitor Bureau Launched" was read. It said "providing funding to the operation of promotion of events and festivals throughout the year will bolster the entire economy of Cook County; therefore, offering a better quality of life to residents through steady and increased employment and compensation and the enhanced cultural experiences and events and festivals will occur". Cook County has been lobbying at the state level for increased funding; we are just getting started. Cook County has been successful with collecting a sustainable tourism fee with lodging and recreation sales (primarily ski lift tickets) which provides them with an additional \$350K in revenue to promote themselves. Cook County's economy is 80% tourism based. All those people going to Cook County are going right by Silver Bay and it is in our best interest to try to get them to stop in Silver Bay and help our economy also. At the September 17 meeting it was stated that Cook County would administer the lodging tax funds for a 1% fee. B. Zupancich's calculations are that the most that could be collected resulting from the revenue of the two motels is \$33,000; and he is concerned that it is not adequate to hire a seasoned marketing specialist, pay benefits. He stated that AmeriInn does not need help during the summer because they previously established a

recreation fee which funds a management firm which advertises for them; winter is the time when they are not always at full occupancy. Discussion ensued. P. Kelley stated that having a Tourism Association would place the city in a better position to be approved for grants and matching funds to support the cause as well.

P, Kelley reiterated that the state guidelines are very specific on use of lodging tax revenue – they can be used only for advertising and promotion of events. Motion P. Kelley, second S. Marolt motion to adopt **Resolution 2007=29**, a resolution to amend Section 225 of the City Code, Establishing a Lodging Tax 2007-29, effective January 1 for a 3% tax.

In other discussion, Mr. Mealy brought up the issue of the Tourism Association talking to lodging establishments outside of Silver Bay about voluntary participation in the tax. He questioned the legality of these facilities to impose a tax on their guests without prior approval of their tax district. P. Kelley stated that is correct, it would have to be identified as a sustainable lodging fee rather than a tax; furthermore, if a customer refused to pay the fee, the facility would have to remove the fee from the bill. Mr. Mealy stated that the tax collected within Silver Bay would have to be segregated from fees collected from outside the city; donations and taxes can not be co-mingled as taxes are subject to state auditing...separate records would have to be maintained. P. Kelley agreed. Mr. Mealy stated that they need to have a business plan with their intentions spelled out to present to the lodging establishments identifying how the money collected is proposed to be expended (i.e. wages, advertising and promotion, signage, etc).

D. Gustafson stated that he has a problem with imposing a tax on these two facilities without their representation and that they should participate in the discussion as to the disposition of the taxes they collect. P. Kelley stated that he would like to see both facilities represented on the Tourism Board. He further clarified that this is not a tax on the lodging facilities, but rather it is a tax on the guests that are staying at these facilities.

P. Morris said that in conjunction with the lodging tax, statute requires that there be Convention and Visitors Bureau established and the lodging tax money goes to support it. They would have established by-laws identifying the membership, voting status, organizational structure, etc. Normally the lodging establishments would be full voting members of the Convention and Visitors Bureau. Additionally, there could be auxiliary members (other benefiting establishments in town) who would pay an auxiliary membership fee and would have voting rights on other than lodging tax money (i.e. grants, fees, etc.).

B. Zupancich has concerns with the timeline; AmericInn sent a letter in Jan '05; very little was done; and all of a sudden you want it in place by January 1, 2007. There is a problem with this short notice implementation because quotes have already been made for advance reservations and they have expectations that their bill will be consistent with their quote. The issue of tax exempt guests (i.e. school athletic teams) was identified as an additional record keeping challenge.

Roll call vote: Member Gustafson –aye
Member Kelley – aye
Member Marolt – aye
Mayor Johnson – naye

Absent for vote: J. Kelly

THE RESOLUTION WAS ADOPTED

CABLE TV COMMISSION MEMBERSHIP– City Council did not need a resolution to change the membership numbers for the Cable TV Committee since it is an advisory body; resolution needs to be rescinded. Motion, S. Marolt, second P. Kelly to rescind **Resolution 2007-28** . **THE MOTION CARRIED.**

M. Frey stated that there has been difficulty getting a quorum for a meeting; two members have expressed and interest in withdrawing from this committee.

Motion S. Marolt; second P. Kelley to decrease membership of the Cable TV Committee from 7 to 5 with one member on the committee being from Beaver Bay. THE MOTION CARRIED

NEW BUSINESS

PERSONNEL COMMITTEE RECOMMENDATION, re: Utilities Superintendent Position: The Personnel Committee met with one member absent. Two candidates were interviewed; committee recommends hiring Mike Miller with the terms previously offered. Motion D. Gustafson; second S. Marolt to adopt the committee recommendation to hire Mike Miller as Utilities Superintendent effective March 1, 2007. The salary is 95% of existing superintendent's salary; there is also a 6-month probationary period with review by the City Administrator. THE MOTION CARRIED

Motion P. Kelley; second S. Marolt to advertise for the position of Water/Waste Water Operator. THE MOTION CARRIED

MN SMALL CITIES DEVELOPMENT PROGRAM PRE-APPLICATION: Cook and Lake Counties Housing Development Authority and Two Harbors have been working as team to assist meeting criteria and improve our position for funding requests. Request that the Council considers a motion to approve support for a pre-application for housing rehabilitation of 30 owner occupied homes (10 in rural Lake County; 10 in Two Harbors; and 10 in Silver Bay). Lake and Cook County will share the payment of fees for participation. The pre-application is due November 4 for interested participants. Motion D. Gustafson; second S. Marolt that the City support the MN Small Cities Development Program pre-application. THE MOTION CARRIED

The meeting was recessed at 8:30 p.m. A closed session was held to discuss labor negotiations. The meeting returned to open session at 9:30 p.m.

MARY MACDONALD CENTER SALES PROPOSAL – Purchase offer was discussed.

P, Kelley motion, second S. Marolt to turn down the offer by the Vineyard Church to purchase the Mary MacDonald Center at this time. THE MOTION CARRIED

Thanks to the Vineyard Church for the offer to purchase, for their continued support as and good neighbor, and the improvements they have made to the center.

CLAIMS – Motion Marolt, second Kelley to approve payments as presented. THE MOTION CARRIED

LITIGATION LETTER: United States of America vs. Reserve Mining/North Shore Mining Co. Law suit. City Attorney receives copies, but we don't believe we are a named party. W. Johnson has sent letter to Wm. Heffner, The Environmental Law Group, Mpls, for clarification and information.

Motion P. Kelley; second D. S. Marolt to adjourn at 9:35 p.m. THE MOTION CARRIED

Minutes taken by Mabel Tarlton

Scott M. Johnson, Mayor

Tom Smith, City Administrator