

**MINUTES
CITY OF ISANTI
CITY COUNCIL
May 4, 2010
Isanti City Hall**

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

The Pledge of Allegiance was recited.

Members Present: Mayor George Wimmer, Councilors Jim Kennedy, Jeffery Kolb, Sue Larson, and Ross Lorinser.

Members Absent: none.

Staff Present: City Administrator Don Lorsung, Assistant City Administrator/City Clerk Irene Bauer, City Attorney Clark Joslin, Finance Director Kristi Smith, Economic Development Director Sean Sullivan, Police Chief Ron Sager, and City Engineer Brad DeWolf.

Motion by Larson, second by Kennedy to approve the agenda as presented. Motion carried unanimously.

E. Proclamations/Commendations/Certificate Awards

Bruce Hildebrandt, Allina Medical Transportation awarded the 'Golden Stork Award' to Police Officers Roderick Barrows and Dusten Noreen for assisting in a medical call on March 25, 2010 in the delivery of a baby.

F. Approve Minutes

Motion by Kennedy, second by Larson to approve the minutes of the April 20, 2010 Work Session, Regular and Closed Session of the City Council as presented. Motion carried unanimously.

G. Citizens Input – There was none.

H. Announcements - Announcements were read.

I. Council Committee Reports

Councilor Larson reported on the following meetings she had attended:

- Arena Board
 - o Utility Maintenance
- Fire District Board
 - o Station 3
- Community Involvement Team
 - o Dog Clinic held on May 1st was well attended and many City Dog Licenses were sold at this function
 - o Take a Kid Fishing Day is scheduled for June 5th
- Downtown Committee
 - o Isanti Family Farmers Market is held every Saturday at Eagle Park and in case of inclement weather at the Arena facility

- ICICLE
 - o IT Technology
 - o County Wide Emergency Management
 - o County Wide Fire District
 - o East Central Cable Commission
 - Potential for Joint Franchise Power Agreement with the City of Cambridge & Isanti
- ECRDC
 - o Workshop – Friday, May 14th
 - Artist get involved grant funds
 - o Transportation Study – Region 7E
 - o ECRDC Annual Meeting scheduled for June 28th
 - Proposed Northern Express Rail
- GPS 45:93
 - o Forum in Fall
 - o Annual Meeting will be held in June

J. Public Hearings. There were none.

K. Business

1. Resolution No. 2010-096, a Resolution Accepting the Donation of Picnic Tables and Resolution No. 2010-097, a Resolution Authorizing the Placement of the Stage on City Property (Eagle Park) for the Isanti Farmers Market

Jaysen Guthmueller, Isanti Area Chamber of Commerce was present. There was clarification of who was donating the picnic tables to the City and Guthmueller stated they are being donated by the Isanti Area Chamber of Commerce. The tables will be stained and a plaque will be installed on the tables stating who donated the tables. Placement of the stage was reviewed.

Motion by Kennedy, second by Kolb to approved Resolution No. 2010-096 and 097 as presented. Motion carried unanimously.

2. Resolution No. 2010-098, a Resolution Approving the Termination Agreement for 2 Enterprise Avenue NE (Larson Property)

Sullivan gave a staff report whereas Larson Plumbing, Inc., located at 2 Enterprise Avenue NE was notified of being in default of the terms of the Property Tax Abatement Agreement on August 26, 2008. A letter was sent to James Larson documenting the default which included the non-payment of property taxes and special assessments. The project did satisfy all business subsidy goals pertaining to job creation and operation at the location for a 5 year period. The property has now been foreclosed and First National Bank of Elk River is now the owner.

The Bank has asked the City to remove the encumbrance of the Abatement Agreement on the Property by entering into a Termination Agreement. The Bank has agreed to pay all outstanding special assessments and to bring the property taxes current through the first half of taxes for 2010. The bank intends to market the buildings for development and to sell some of the real estate to some of the existing users. Execution of the Termination Agreement will help clear title and make the property more marketable from the Bank's perspective.

Motion by Kennedy, second by Lorinser to approve Resolution No. 2010-098 as presented. Motion carried unanimously.

3. Residential Soil Requirements

DeWolf gave a staff report whereas the current standards established meet MnDOT requirements, however this is the minimum standard and the soil is not very good. To require premium topsoil would cost an additional \$2000 for a typical residential lot.

The Planning Commission made recommendations on two separate items with regards to the residential soil discussion that includes an education piece for builders/residents regarding topsoil requirements and an ordinance amendment to require 6" of topsoil to meet MnDOT specifications. It was noted that there is no definition for topsoil within the Zoning Ordinance.

There was discussion on cost for better topsoil, how the city would ensure that this was used, would the soil have to be tested for use at each site, should there be specific locations and/or stockpiles that are preapproved for use.

There was comment made to support a higher grade of topsoil whereas it provides for a better sustainable yard and requires less watering. There was comment that through time that any type of topsoil that is used filters down into the sand and does not stay.

There was discussion on certifying specific vendors, locations and/or stockpiles that meet the City standard that developers and residents can use for topsoil. The City Engineer would approve topsoil sources by vendor.

Motion by Lorinser, second by Kennedy to direct staff to develop a topsoil educational piece for builders and residents and to amend the ordinance with the provision that four inches of premium topsoil that meets MnDOT requirements must be used from City certified stockpile locations. Motion carried 4-1 (Larson opposed).

4. Resolution No. 2010-099, a Resolution Approving Main Street / BNSF Railroad Crossing Surface Improvements

DeWolf gave a staff report whereas over the last year there have been a number of complaints on the condition of the railroad crossing surface at Main Street being very rough. In August of 2009 the City Engineer asked BNSF to review the mainline and siding track surfaces and to complete any repairs they could to improve the condition. DeWolf stated that the BNSF crews did some bituminous patching in August, 2009, around the siding track to remove the pot holes and improve the surface condition. That the mainline track has a concrete crossing surface and requires a more extensive project to correct the rough condition. DeWolf stated that their firm has spoken to Mike Morefield, the BNSF Railmaster, about the options for improving the surface. Morefield said the BNSF would be willing to remove and restore the concrete panels to eliminate the bump if the City would pay for the traffic control and bituminous paving adjacent to the new concrete crossing surface. The work would be done in late June to early July that would coincide with other planned BNSF work in the area. The crossing is predicted to be closed for approximately three days for the work and DeWolf stated that the repairs would not interfere with Jubilee Days.

DeWolf stated that the estimated costs are \$1800 for the bituminous patching, \$1,200 for traffic control, and \$1,000 for engineering costs with an overall project cost of a not to exceed cost of \$4,000. Mayor Wimmer requested that the City Engineer norigy downtown business of the project dates.

It was noted that funding for the project would come from the Street Maintenance line.

Motion by Lorinser, second by Kennedy to approve Resolution No. 2010-099 as presented. Motion carried unanimously.

5. Resolution No. 2010-100, a Resolution Adopting the Isanti Water Supply Plan

DeWolf gave a staff report whereas in review of the Water Appropriation Permit it was noticed the allowable rate at which the City was allowed to pump water from the wells had not increased from the allocated rate before Well #3 was put into service. The allowable pumping rate prior to drilling Well #3 was 1,400 gallons per minute. That with the addition of Well #3, the new rate that could be pumped out of all three existing wells, if they were all running at one time is 2,400 gallons per minutes. Staff has been working with the DNR to amend the Water Appropriations Permit to 2,400 gallons per minute rate.

Motion by Kennedy, second by Larson to approve Resolution No. 2010-100 as presented. Motion carried unanimously.

6. Resolution No. 2010-101, a Resolution Approving Quote for Electrical Work at the Police Department

Sager gave a staff report whereas there are some electrical concerns and needs at the Police Department that involves using correct wiring for the use of electronic equipment. Committees have reviewed this matter and the Finance Committee has recommended that funding for the work comes from the City Technology Improvement Fund. Three quotes were obtained for the required work and Rite-Way Electric provided the low quote in the amount of \$995.00.

Motion by Kennedy, second by Lorinser to approve Resolution No. 2010-101 to Rite-Way Electric for the amount of \$995.00 for the electrical work. Motion carried unanimously.

7. Resolution No. 2010-102, a Resolution Authorizing to Submit Grant to the Bureau of Justice Assistance for Safety Vests

Sager gave a staff report whereas the Police Department desires to apply for a grant through the Bureau of Justice Assistance for the purchase of vests. That this has been approved as a part of the 2010 budget process.

Motion by Kennedy, second by Larson to approve Resolution No. 2010-102 as presented. Motion carried unanimously.

8. Resolution No. 2010-103, a Resolution Authorizing Legal Action on Escrow Account

Smith gave a staff report whereas the Finance Committee is requesting authorization for legal counsel to proceed with collection for 505-20839, Northland 66 Premium Stores for an outstanding amount of \$12,245.06 that is owed to the City.

Motion by Kennedy, second by Lorinser to approve Resolution No. 2010-103 as presented. Motion carried unanimously.

9. Wayne Calander Land Rent Update

Smith gave a staff report whereas Calendar has made all land rent payments through April. The final 2009 payment due per the payment arrangement is May 20, 2010. The first half 2010 payment of \$3,655.25 payment is scheduled to be received on June 1, 2010 and the second half payment of \$3,655.25 on December 31, 2010.

Because Calander has not been timely in making the 2009 land rent payments there was discussion on placing a lien on the 2010 planted crop to ensure the City receives the 2010 land rent payments. City Attorney Joslin advised that a lien can be placed on the crop within 30 days of which the crop has been planted.

There was discussion on costs incurred when trying to collect on the lien and Joslin advised that this cost is recoverable.

There was comment that a policy should be developed for rentals to ensure that funds are received prior to the actual rent of the property taking place.

Lorinser made a motion to place a lien on the planted crop as soon as the City can and to not rent to Mr. Calander again.

After brief discussion of renting to Calander or other interested parties, Lorinser retracted his initial motion and motioned to place a lien on the planted 2010 crop within thirty days of the crop being planted. Kennedy seconded the motion. Motion carried unanimously.

10. Ordinance No. 484, an Ordinance Repealing Current Gambling Code and Replacing with New Code Language

Lorsung gave a staff report whereas the Finance Committee met with organizations involved in gambling permits and addressed their areas of concern. There was agreement to establish the amount of funds that must be expended in the City's trade area at 80 percent or not to exceed \$1,000, whichever is greater.

Motion by Kennedy, second by Lorinser to adopt Ordinance No. 484 as presented. Motion carried unanimously.

11. Regulation of Solicitors

Lorsung gave a staff report whereas the City has received a number of complaints regarding solicitors that were harassing citizens and trespassing on property to contact potential clients. This group of solicitors did initially register with the City as required. Solicitors under our current City code only have to register with the City and are not subject to the same process as Peddlers that require a background check and licensing procedures. Staff has reviewed this situation, consulting both the City Attorney and LMC Attorneys regarding our regulations and steps that could be taken to protect our residents from unwanted soliciting. The City has been advised by the LMC that the current code is consistent with case law and their recommended regulations. Staff was also made aware of a city that had more stringent requirements, basically classing for-profit solicitors with peddlers as a regulated activity.

It was stated that if the City Council decides to continue with the current code, as a minimum, staff recommends that the following items be considered for addition to City Code regarding regulation of solicitors: 1) Change in hours of operation that are set at 8 a.m. to 9 p.m. Staff would recommend compressing the hours to 10 a.m. to 7:00 p.m.; 2) Directing how a solicitor / peddler accesses a residential house, basically only the front door, front yard (if present) or open garage (if present); and 3) Further defining solicitor identification, conduct, and accuracy of statements.

There was comments made that solicitors are not registering at City Hall and because of the ongoing issues that have been reported relating to solicitors in the City, there was discussion if the City might want to look at those solicitors that are out to make a profit on their sales to be considered a regulated activity and that they would be regulated in the same process as a peddler.

It was noted that a placard/posting that was developed by staff includes the statement "No solicitors – No Peddlers" is a good idea and that citizens could request a copy for posting at their residence from the Police Department.

City Attorney Joslin stated that the issue of concern is based on state and federal case law where constitutional issues, interstate commerce issues, and first amendment free speech issues have been called into question. Joslin stated the League of Minnesota Cities has told him that the ordinance that the City has adopted is a prototype of what they have recommended and is based on the Leagues template and that they feel that the ordinance is enforceable. They expressed concerns of ordinances that lump solicitors and peddlers together because there are case law decisions that separate those issues out. The concern is that it would be unenforceable and costly in the event someone would challenge the solicitors as a regulated activity.

Joslin stated that there are municipalities that may have adopted this type of ordinance and accept those risks and it is up to the Council if they determine that they want to take the position to defend this type of ordinance if the ordinance was challenged; that the provisions of the ordinance are more aggressive and it could result in challenges. Joslin stated that the citizens can report violations of the current ordinance, particularly the provisions under Section 245.8 of the ordinance, item g. "where any peddler or solicitor or transient merchant to remain on the property of another when requested to leave or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive". Joslin stated that violations of that nature are to be reported to the Police Department and if the Police Department can locate the offender citations can be issued for that conduct. That violation of the current ordinance are a misdemeanor that would result in checking of their identification or if there are any warrants outstanding that the person would be taken into custody.

There was comment that the City registers solicitors that allows them to solicit in the City and if the City could prevent that from happening by treating the 'for profit' solicitors the same as peddlers that this would prevent some of the issues from happening. It was stated that it is good to have a placard to display but there needs to be more to try to prevent these types of incidents from taking place.

There was comment made that a Councilor was not worried about a challenge if solicitors were regulated the same as peddlers if this is what it takes to going to keep our community and children safe.

There was discussion of how do the solicitors or peddlers know they will need a permit and that they should be stopping at City Hall. There was comment on educating the residents of what they should be asking solicitors and how to report an incident that may be in violation of the City code.

Motion by Kolb, second by Kennedy to direct staff to amend the City Code whereas solicitors would be a regulated activity and the same licensing requirements would apply as for a peddler; and to have the 'no soliciting – no peddlers' poster available electronically upon request by a citizen of the City. Motion carried

12. Resolution No. 2010-104, a Resolution Awarding Refuse Services

Lorsung gave a staff report whereas quotes were received for refuse services for a period of two years; from June 1, 2010 through May 31, 2012. Quotes were received from East Central Sanitation and ACE Solid Waste. The low quote was received from East Central Sanitation in the amount of \$325/mo for all services with no charge for park containers, clean-up days, and containers for special events.

Motion by Lorinser, second by Larson to approve Resolution No. 2010-104 awarding the quote for refuse services to East Central Sanitation. Motion carried unanimously.

13. Public Works Positions

Lorsung gave a staff report whereas at the March 2, 2010 meeting, City Council authorized staff to advertise to fill two Maintenance Technician positions. Since that time applications were received and interviews have taken place. At this time staff has one contingent offer of employment to one of the final candidates.

The Personnel Committee met on April 28, 2010 to further consider the filling of the Maintenance Technician positions. The Committee had concerns of filling the positions at this time because of the current status of the Public Works employee's union contract.

The options the Personnel Committee would like the City Council to consider are 1) Fill both Public Works Maintenance Technician positions; 2) Fill one Public Works Maintenance Technician position; or 3) Do not fill the positions at this time and proceed with a contingency plan for the operation of the department that may include outsourcing employee duties.

There was discussion that a contingency plan should be in place in the event that it would ever be needed in the future for emergency reasons. There was discussion on outsourcing certain services and if the summer mowing should be outsourced.

Motion by Lorinser, second by Larson to not hire a Public Works employee at this time and direct staff to work on a contingency plan and costs for outsourcing employee duties. Motion carried unanimously.

14. Resolution No. 2010-105, a Resolution Authorizing Funds to Clean and Fix Up 236 Broadway Street SE Property

Lorsung gave a staff report whereas to meet rental code and adequately clean the 236 Broadway Street SE property owned by the City, there needs to be allocation of funds for these activities. Staff is requesting funding in the amount not to exceed \$900 (one month's rent) for the repairs and clean up of the property.

Motion by Lorinser, second by Kennedy to approve Resolution No. 2010-105 as presented. Motion carried unanimously.

L. Consent Agenda

1. Consider Accounts Payable in the Amounts of \$178,493.46 and Payroll in the Amount of \$65,474.87
2. **Resolution No. 2010-106**, a Resolution Approving Gambling Premises Permit for Cooties
3. **Resolution No. 2010-107**, a Resolution of Support of Broadband Initiative Program Grant
4. **Resolution No. 2010-108**, a Resolution Approving Neighborhood Stabilization Program Item
5. Approval of February 23, 2010 EDA Minutes
6. Approve Request to Install Planters and Hanging Baskets at the Isanti Municipal Liquor Store

Motion by Larson, second by Kennedy to approve the Consent Agenda items as presented. Motion carried unanimously.

N. Closed Session

At 8:02 p.m. Wimmer announced that the Council would go into recess for five minutes to clear out the Chambers. Wimmer stated that the City Council would then go into Closed Session for a personnel matter and to receive a status report on labor negotiations.

1. Personnel Matter

Council went into closed session at 8:08 p.m.

At 8:15 p.m. Council came out of closed session and Mayor Wimmer requested City Attorney Clark Joslin to provide a summary of the closed session held on the personnel matter.

Joslin stated that present in the Chambers when Council came back into open session and present were all members of the City Council, City Attorney Clark Joslin, City Administrator Don Lorsung, Assistant City Administrator/City Clerk Irene Bauer, and Liquor Store Manager Shari Harker.

Joslin stated that during the course of closed session there was discussion of allegations of misconduct regarding performance of duties by an employee and there was discussion of the procedural alternatives with regard to discussing the matter. The employee had been invited but was unable to attend. Because the employee was unable to attend there was discussion as to whether to continue the matter until a later date at such time as the employee could be present for those discussions. Following that discussion the matter was brought back into open session.

Motion by Larson, second by Lorinser to move this personnel matter to the next City Council meeting scheduled for May 18, 2010; and to suspend pay to the employee for that period of time. Motion carried unanimously.

At 8:19 p.m. Wimmer announced that the Council would go into recess to clear out the Chambers that the City Council would then go into Closed Session for a status report on labor negotiations.

2. Update on Labor Negotiations

At 8:35 p.m. Council came out of closed session and Mayor Wimmer requested City Attorney Clark Joslin provide a summary of the closed session held to receive an update on labor negotiations.

Joslin stated that during the course of Closed Session there was discussion on the status of the labor contract negotiations first with regard to the Public Works employees union Local 49, then in regard to the status of the Law Enforcement employees union LELS. It was reported to the Council that the status remains the same, that there has not been any change in position by either the City or by either of the unions since the prior negotiation session. It was further discussed what the future steps may be.

Wimmer stated that this will be brought back to the next Council meeting to have the final offer presented if there has been no further movement in the mediation process.

Motion by Larson, second by Kennedy to move forward with the mediation process culminating at the next City Council meeting if progress is not made with a potential last and final offer to the Local 49's and to direct staff to secure the services of Frank Madden, Labor Attorney. Motion carried unanimously.

Adjournment

Motion by Lorinser, second by Kennedy to adjourn. Motion passed unanimously. Meeting adjourned at 8:36 p.m.

Respectfully Submitted,

Irene J. Bauer
Assistant City Administrator/City Clerk