

Councilpersons:
First Ward: Gallenberger, Gibson
Second Ward: Schmidt, Hiers
Third Ward: Meurer, Bricher

Mayor: John Meisch
Clerk-Treas. Susan Schamaun
City Adm: David Schmidt
City Atty: Peter Ekstrand
Date: January 5, 2010

PROCEEDINGS OF THE CITY COUNCIL

The regular meeting of the City Council of the City of Wabasha was held on Tuesday, January 05, 2010 and was called to order by Mayor John Meisch.

Roll call found all members present.

Mr. Bob Deike, City TIF Attorney was present as well as Mr. Don Jacoby, Wabasha Port Authority.

Mayor Meisch called for citizen comments. He stated if there were any comments in reference to the hotel project which is on the agenda, to please hold those comments until that time. Hearing none, he called for the Consent Agenda.

Councilpersons Bricher and Schmidt moved to approve the following consent agenda:
Adopted by the following vote:

Ayes: Gibson, Schmidt, Hiers, Bricher, Meurer, Gallenberger and Mayor Meisch
Nays: None

Approved the December 15, 2009, Regular meeting minutes and December 30, 2009, special meeting minutes.

Set Public Hearing to consider amending Section 505.21 Subd. 3: The Sewer Service Charge System for February 2, 2010.

Set Public Hearing to consider Wellhead Protection Plan, Part 2 for February 2, 2010.

Mayor Meisch brought forward 5.1 Park Board and Police Commission Appointments and stated Mr. Gene Wodele was appointed to the Park Board and he accepted but due to a conflict with the meeting day and time, he declined his appointment leaving a vacancy. He stated Mr. Dan Aitken has indicated he would serve on the Park Board and Ms. Christine Beckmann has indicated she would serve on the Police Commission to replace Mr. Bob Loechler.

After discussion, Councilpersons Meurer and Bricher moved to approve the appointment of Mr. Dan Aitken to the Park Board to serve through 2010 and approve the appointment of Ms. Christine Beckmann to the Police Commission to serve through 2011. The motion was adopted unanimously.

Mayor Meisch brought forward 5.2 Consideration of the Grand Eagles Hotel Contract. He further stated Mr. Bob Deike, the City's TIF attorney, is present and Mr. Don Jacoby is present representing the Port Authority.

Mr. Don Jacoby came forward and stated he is presently serving on the Port Authority Board. He stated over four years ago the City funded a visioning project for the development of the riverfront property. Upon acceptance of the visioning concept, a proposal for development was advertised and Big Jo Limited came forth with a proposal, which was approved by the City Council, and due to many reasons, was terminated prior to the commencement of construction. In June 2009, Mr. Blaine Marcou of Big Jo Limited forwarded a letter stating he would like to reopen discussions pertaining to their desire to develop this riverfront project. At that time, the Port Authority set up a sub-committee consisting of Mayor John Meisch, Jon Lineweaver, himself and Mr. Robert Deike, to see if an agreement acceptable to the City of Wabasha and Big Jo Limited could be worked out in which many meetings and conference calls were held to accomplish this. Also, during this time, Mr. Marcou also met with the City's Planning Commission and Board of Adjustments to assure the project had all the approvals before the Port Authority made its decision on the project. A special Port Authority meeting was held on December 21st with Mr. Bob Deike via conference call to review the agreement worked out with the sub-committee, Mr. Marcou and his attorney Jack Stroble. After the Port Authority and Mr. Bob Deike reviewed the development agreement, it was concluded the agreement protects the City, adheres to the visioning plan and allows the developer, Big Jo Limited, the opportunity to succeed. He concluded stating the Port Authority unanimously recommends the approval of the agreement that was delivered to each Council member for their review on December 23, 2009.

Mr. Bob Deike came forward and stated this is the same concept that was approved by the City Council about a year ago. The assistance that the City is providing to the developer is that the City will be deeding two parcels of property, where the hotel will be built and the Transfer building where the parking will be located. The developer will only have property deeded to them when certain conditions are met that are spelled out in the Development Agreement:

- Plans for construction have to be approved by the City.
- Has to have financing and the City will be able to review and approve that financing to determine that it is sufficient to build and that it is committed. (It is there and it will be there when needed to build the project)

Part of the project also consists of an improvement to a plaza area, which is the area between the hotel and the river. The developer, at his costs, improve that plaza area and then deed back to the City so the City will be the owner of that property. The intent of this agreement is that the City has incurred costs in connection with the acquisition of the land and other costs that will be able to be recovered from the TIF that will be generated by the hotel as well as the TIF that is already being generated by the condos. There are a couple of provisions in the agreement that are intended to protect the City's ability to recover that TIF and reimburse itself:

- 1) The developer has agreed that they will execute an assessment agreement so on a certain date that property, whether there's a hotel fully built or not, will have a market value for tax purposes of 3.25 Million dollars.
- 2) The developer has agreed that if the TIF that is generated from that property is less than \$69,000 in a year, the developer will make up the difference.

Mr. Deike gave the following dates in reference to the project:

- The developer is required to get financing by May 1, 2010.
- Submit construction plans within 120 days of the date of this agreement.
- Start construction by July 1, 2010
- Complete construction within 14 months.

Mr. Deike stated the estimate of the TIF guarantee amount was prepared by Ehler's & Associates, the City's TIF consultants, and the \$3.25 M is estimated to generate \$69,000 in TIF. If that value is higher than \$3.25 M, it will generate more. The Assessment Agreement sets the value at a minimum of \$3.25M and it can't be set lower than that amount but it could be set higher.

Mayor Meisch asked if, in Mr. Deike's view, this development agreement meets or exceeds every expectation or requirement necessary to be classified as a Tax Increment Financing Project, in which, Mr. Deike stated yes, it qualifies.

Mayor Meisch asked if the City was protected under this agreement, in which Mr. Deike stated yes.

Councilperson Hiers questioned on Page 9, Section B, that changes had to be approved by the Planning Commission and wondered if that would also come back to the Council. Councilperson Bricher stated only if an appeal was submitted. David Schmidt stated the Planning Commission has jurisdiction to rule on construction changes.

Councilperson Hiers questioned on Page 12, Insurance & Condemnation, that if the developer has to repay the City the assistance they have provided if the project was destroyed by a fire or other situation and she wondered if the developer would have to clean up the mess. It was stated the developer would have builders risk insurance.

Councilperson Hiers questioned on Page 16, the issue of not being able to sell the Transfer Building. Mayor Meisch stated the Transfer Building cannot be sold off as it is proposed as a parking facility for the hotel project. Mr. Deike stated it cannot be restricted forever and before any new use, it would have to come back to the Council.

Councilperson Hiers questioned riparian rights and ownership and control of the bike path through the property. David Schmidt stated riparian rights, as per this contract, revert to the developer. The riparian rights go from the NEC property over the condo property and they would have the ability to build docks. The bike path is an outlot and has a public easement down the center of it and the 60' park will be deeded back to the City after the improvements are completed by the developer as per the Planning Commission approval.

Councilperson Gallenberger stated when the condo project was done, they were given riparian rights also. She stated it has been brought up that maybe the riparian rights could have been handled differently like an easement for them to use it as long as they are there. She stated once you give away rights to the shoreland, it is gone and the City no longer has the shoreland. She wanted to know if there are other options.

Attorney Peter Ekstrand stated an easement is permanent also and maybe a long term lease could be an option.

Councilperson Gallenberger asked in reference to the boat docks, will there be fencing, gating or impediment of public use of that land between the hotel and the river? It was stated that would be addressed at the Planning Commission meeting. Mr. Blaine Marcou stated there are no plans for fencing but there will be an unlocked gate at the docks as it will be a pay-as-you-go dock, it is not a free dock.

Councilperson Hiers stated she agreed with Councilperson Gallenberger that whatever open area there is in front of the hotel, other than what is designated for the amphitheatre and public plaza, it would be beneficial for people of the

town to be able to feel free to walk there.

David Schmidt stated a final landscape plan/final site plan will be approved at the Planning Commission level.

Councilperson Gallenberger questioned page 10 in reference to the 60' wide public area and the statement the NEC could construct an aviary over a footprint not to exceed 25' wide, 60' long, and 48' high. If the amphitheatre would be a great place for the NEC to have their programs and the NEC will have an aviary, why didn't the NEC come to the Council with a proposal for this area. She felt this was suspect with maybe a hidden agenda by the same people on the NEC Board, and also on the fundraising of the NEC Board, and also on the Port Authority Board. She stated there shouldn't be an allowance for an aviary.

Mayor Meisch stated the City Council would have to approve anything that would be built there.

Mr. Marcou stated that the reason the aviary was put in is that it came from the Downtown Visioning plan as an option for the NEC to pursue if they wanted to.

Councilperson Meurer stated the contract doesn't say it will be constructed, it states it may be.

Councilperson Gallenberger stated she would like to see the 60' wide area and not put in an option for this building.

Councilmember Schmidt stated the main thing to remember is the City is in control of that land.

Mr. Jacoby came forward and stated the NEC is an asset to the City and it is bringing 90,000 visitors a year to this City.

Mr. Jerry Arens came forward and stated the first year of the NEC, there were approximately 18 new businesses. He further stated he doesn't like controversy but felt insinuating that those people raising money for the NEC had a hidden agenda is malicious and uncalled for and was very unfair.

Mr. Richard Fuller called point of order and he was called to order by Mayor Meisch. Mayor Meisch explained point of order could only be called from the table and if he wanted to speak he should come to the microphone.

Councilperson Gallenberger stated there may be new businesses in town but nobody mentions that over half of the new businesses have closed and she named businesses that have closed.

Mr. Fuller came to the podium and stated he has a building and a business that faces the proposed hotel. He stated he turned in two years ago 227 names of people who did not want the hotel project and none of those people were contacted on this project. He felt the Council hasn't done due diligence. He stated Rochester is Wabasha's nearest competitor. He spoke about Rochester and their convention business. Mr. Fuller suggested moving the project down Lawrence Blvd. 300-400 feet. Mr. Fuller's testimony became agitated when he claimed the Mayor could not participate in this as he has his own building 300 yards away and was called to order by Mayor Meisch. Mr. Fuller's concerns were what if the hotel doesn't make it and wondered what the plan was if that happened.

Mayor Meisch asked Mr. Fuller if he had any questions that pertained to the contract in which Mr. Fuller became agitated and stated he didn't think the contract should not even be here. Mayor Meisch called Mr. Fuller to order and stated he would have him removed if he did not come to order. Mr. Fuller finished his testimony.

Mayor Meisch thanked Mr. Fuller for his comments.

Councilmember Schmidt stated it was not the Council's problem if the hotel failed because if it fails, someone will buy it and regardless, the taxes will be paid. He pointed out the 18 hole golf course in Lake City that failed, and someone bought it and it is operating now. In the end, the City will collect those taxes.

Mr. Jeff Worrell, from the National Eagle Center, came forward and stated even though tourism is down due to the economy, the National Eagle Center is up. He further stated last April about 30 businesses wrote a Letter to the Editor thanking the National Eagle Center for keeping them open. He stated the National Eagle Center is working on how to keep tourists here longer. He stated Planners are doing a great deal of thoughtful planning for a mixed use approach to enhance the area. He stated they have done exit interviews and have heard that Wabasha is a quaint city and have also gotten good feedback on a plaza and amphitheatre. He said the National Eagle Center has to think about where could they go if they need to grow.

Councilmember Hiers stated the National Eagle Center is a huge success and it is a big asset in our community. She further stated we would hope at some point they would want to expand, but if they do that, the only space they have to move

into is the space that is supposed to be for the public. She felt we are hemming them in. Then there wouldn't be a public space. She felt the hotel people aren't the only people who would come into our community and spend. There are other people who come in and would enjoy spending time in the open space. She felt there is a conflict with this area.

Mr. Blaine Marcou, Chief Manager of Big Jo Limited/Realtor/Broker, came forward and stated in 2010 Marcou Realty will have served the Wabasha area for 50 years in beautiful downtown Wabasha. He thanked the citizens of Wabasha for participating in the community based design process which was approved by the previous City Council whom he thanked. This design was used as a guideline for the request for proposals for the final development phase of the Big Jo Flour Mill industrial site. He thanked the past Council, past Mayor Peter Klas, Planning Commission, Board of Adjustment, Port Authority, Attorney Jack Strobel, City's Attorney Bob Deike, City Attorney Peter Ekstrand, City Staff, present Council and Mayor Meisch for their support on the hotel project.

Councilmember Gallenberger stated in the RFP, it states a complete list of financing terms should be provided. Mayor Meisch stated he has until May 1st to prove he has all the money necessary escrowed to the project.

Councilmember Gallenberger felt the contract was vague about financing and asked Mr. Deike if he's confident that there's going to be financial support for this project. Mr. Deike stated that is why dates are set so there are deadlines and if deadlines aren't met then the hotel won't be built.

Councilmember Hiers stated she felt Mr. Marcou made a good faith effort to look at what the community wanted and he tried. She further stated she thinks the tax benefit is huge for the City. She stated there is a desire on the part of the community to have access to their own river. They love their town and they love their river.

Councilmember Bricher stated the community has access due to the path and easement.

Mr. Marcou stated there will be plenty of opportunities for both outdoor and indoor experiences.

Councilmember Bricher stated the hotel will have jobs and hotel visitors will still have to eat and will help other businesses by having extra visitors in town.

Mayor Meisch asked if the Council wanted to reconsider the riparian rights and the aviary clause in the contract.

Attorney Peter Ekstrand stated riparian rights is ownership to the water. He stated the boundary to the water in this area will not shift as it has rip rap all along that area. He stated the Council will have to decide what rights does the City want to reserve between the bike path and the waters edge and do you want ownership or not. Right now there is rock there. Also, a permanent easement could be granted or make a lease or use agreement.

Mr. Bob Deike stated he envisioned problems with the lending institution because they would wonder if the project fails and they would own it, they would question losing their use of the river.

Councilperson Meurer wanted to know who takes care of the grassy area between the bike path and the rip rap. David Schmidt stated it can be maintained by the hotel or the City. It allows us to cut the grass and maintain the pavement. Either party can do the maintenance but it allows us the right to do it.

Councilmember Meurer further stated his concern is when areas get washed out along the path, etc, whose responsibility is it to fix. David Schmidt stated the City has the right to go in and fix or maintain it.

Councilmember Schmidt stated the rip rap along the area doesn't make it conducive to swimming or fishing.

Attorney Peter Ekstrand stated there can be liability for this area if someone gets hurt and whoever is the owner of that property will be responsible for that liability.

Mr. Paul Busch, 600 Lawrence Blvd, came forward and stated he moved to this area in 1948 and a gentleman is willing to put out \$3.2 M which is very important to the City. He stated a year ago Council was worried about who was paying for the City Administrator's dues and now you are worried about \$3.2 M that is going to generate millions down the line. He stated in reference to riparian rights, you can't even walk on it and you can't really fish off of it. He felt he thought the City would want to get rid of the liability. He stated he owns 110' in front of his home because it came with the property and he could care less if he has it. He has to pay for liability insurance on that piece and he also spent \$500 four years ago due to a water project. He felt it is a no brainer to get rid of it on a liability standpoint.

Mayor Meisch asked what Council wanted to do:

- Vote for proposed contract as presented
- Move to pass it and if fails due to the riparian rights and aviary options, Council could move to amend the contract

Mayor Meisch read a letter in support of the project from Mr. Rollin Hall and stated he also received two other letters of support.

Councilpersons Bricher and Schmidt moved to approve the proposed Grand Eagles Hotel contract for Riverfront property by Big Jo Limited, LLC, and direct the Mayor to sign any and all necessary documents. The motion was adopted by the following vote:

Ayes: Schmidt, Bricher, Meurer, Mayor Meisch

Nays: Hiers, Gallenberger, Gibson

Councilperson Schmidt stated in his 10 years of serving as a Councilperson, he has seen the City add many services to the community and all these services are tax liabilities and if the City is going to keep adding services, you have to keep adding tax payers which this project intends to do.

Mayor Meisch thanked Mr. Deike for his time and services.

Mayor Meisch asked Attorney Peter Ekstrand and David Schmidt to speak to the Council on the letter that is to go to Road Constructors in reference to payment for the 2008 Paving Project. Attorney Peter Ekstrand stated at the last Council meeting he was authorized to write a letter to Road Constructors outlining what the final payment certificate stated with the final amount due of \$13,798. It was also discussed there was a problem with the curb and he didn't know how he should address the curb issue and further stated he didn't feel he should address the curb in his letter if the City's Engineer doesn't have it in his letter.

After discussion, Councilpersons Hiers and Schmidt moved to authorize Attorney Peter Ekstrand to send out his letter to Road Constructors addressing workmanship but without modifying to address the curb issue. The motion was adopted unanimously.

Mayor Meisch updated Council that the Food for Poverty portion of the Governor's unallotment was contested and the judge ruled it could not be unallotted. He further stated the deficit will become bigger and the speculation is that cities could be hit again in the second biennium.

Mayor Meisch thanked the street crews for their plowing over the holidays and thanked citizens who shoveled out their fire hydrants.

Councilperson Bricher stated the Wellhead Protection Plan will have to be a line item in budgets in the future.

Councilperson Schmidt asked if the City gets the money for tickets during snow removal. David Schmidt said the City keeps the ticket money but not the tow money. Councilperson Schmidt stated it seems companies don't want to tow vehicles because they are worried about tearing out transmissions on front wheel and all wheel drive vehicles from diagonal parking spaces. He wondered if the City would consider leaving those vehicles in place and increasing the ticket price.

David Vosen, Utilities Superintendent, stated when snow plowing, it would not affect one space but would affect 3-5 spaces. If the vehicle doesn't move for a day, it means 3-5 spaces are not open.

It was determined to forward to the Street Commission and Tony Johnson, Street Superintendent.

Councilperson Meurer stated the League of MN Cities had an article about Facebook and Twitter and the pros and cons and felt the City should look into it. David Schmidt stated he has spoken to other cities that have pulled it off their websites but the City would continue to be look at it.

Councilpersons Hiers and Schmidt moved to adjourn at 9:09 pm. Motion adopted unanimously.

Susan Schamaun, City Clerk/Treasurer