

MEDINA CITY COUNCIL MEETING MINUTES OF DECEMBER 18, 2012

The City Council of Medina, Minnesota met in regular session on December 18, 2012 at 7:00 p.m. in the City Hall Chambers. Mayor Crosby presided.

I. ROLL CALL

Members present: Crosby, Martinson, Siitari, and Weir.

Members absent: Pederson.

Also present: City Attorney Ron Batty, City Engineer Tom Kellogg, Planner Dusty Finke, Planning Consultant Nate Sparks, City Administrator Scott Johnson, Chief of Police Ed Belland, and Recording Secretary Amanda Staple.

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

Johnson noted that the Council would need to discuss the next meeting date.

The agenda was accepted as presented.

IV. APPROVAL OF MINUTES

A. Approval of the December 4, 2012 Regular City Council Meeting Minutes

It was noted on page two, line 44, it should state, "...outstanding balance debt..." On page eight, line 47, it should state, "...Planning Commission had to deny acted properly in considering the request..." On page ten, line 13, it should state, "...trash that had been dumped along a City road."

*Moved by Weir, seconded by Siitari, to approve the December 4, 2012 regular City Council meeting minutes as amended. **Motion passed unanimously.***

V. CONSENT AGENDA

A. Approve Raffle Permit to/at Holy Name of Jesus Church on March 9, 2013

B. Approve Temporary On-Sale Liquor License to/at Holy Name of Jesus Church on March 9, 2013

C. ~~Approve Loretto Volunteer Fire Department Contract Extension~~

D. Approve Skid Steer Update

E. Approve Water Resource Professional Services Agreement with Hakanson Anderson Assoc., Inc.

F. Authorize City Administrator to Enroll in Donald Salverda & Associates Leadership Growth Program

G. Amend Purchasing Policy 96.00

H. Adopt Utility Charge Adjustment Policy 71.00

I. Adopt Fleet Card Policy 96.05

J. Resolution No. 2012-89 Granting Extension of Time to Submit Final Plat for 805 Hamel Road Amending Resolution 2012-07

*Moved by Weir, seconded by Martinson, to approve the consent agenda as amended.
Motion passed unanimously.*

VI. COMMENTS

A. Comments from Citizens on Items not on the Agenda

There were none.

B. Park Commission

Martinson reported that the Park Commission had met to continue discussions on the Parks Master Plan.

C. Planning Commission

Planning Commissioner Anderson reported that the Planning Commission met the previous week to review the Moser variance request. He stated that this was the second time the Commission had reviewed the request and he was happy to see the applicant made the suggested changes. He advised that the Commission recommended approval of the request with a vote of four to one. He advised that the Commission also reviewed another matter, which will also be reviewed by the Council.

V. CONSENT AGENDA (Continued)

C. Approve Loretto Volunteer Fire Department Contract Extension

Johnson advised that the Loretto Volunteer Fire Department has requested a contract extension through March 31, 2013. He explained that this additional time will allow the organization to complete negotiations with all member cities, and noted that the contract will continue the 2012 rates.

*Moved by Weir, seconded by Siitari, to approve the Loretto Volunteer Fire Department contract extension. **Motion passed unanimously.***

VII. NEW BUSINESS

A. Moser Variance Request – to Construct a New Home in the Urban Residential (UR) Zoning District along Ardmore Avenue (PID 18-118-23-24-0154) – Public Hearing

Sparks presented the Moser variance request and provided background information, noting that the application has already been reviewed twice by the Planning Commission. He reviewed the setbacks for the property and noted that with all the setbacks in place there would be an area of 400 square feet that would be buildable. He reviewed the proposed plans for the construction of a single family home and compared the proposed setbacks and lot size to the requirements of the zoning district. He reviewed additional requirements including tree replacement, a wetland buffer planting plan and wetland markers. He noted that additional stormwater treatment options, including additional drainage and utility easements, may be appropriate. He explained how a variance is reviewed and acknowledged that the proposed home is in harmony with the general purpose and intent of the Ordinance, it is consistent with the Comprehensive Plan, and also advised of practical difficulties identified for the site. He summarized the review process conducted by the Planning Commission and noted that ultimately the Commission recommended approval with two additional conditions noted in the staff report.

Martinson questioned the length of time the current setbacks have been in place.

Finke provided the timeline for when the setbacks were created ranging from the 1980's through 2008.

Crosby opened the public hearing at 7:24 p.m.

Mark Thieroff addressed the Council on behalf of his clients, Robin Reid and Jim Leviton who have concerns in regard to the proposed project on the parcel. He expressed the concern of his clients in the effect that this project could have on the lake and the amount of fill requested to be used. He advised that in order to construct the home the applicant would require two additional variances, one for the lot size minimum and the other for the 25 percent maximum coverage rule for homes in the lakeshore district. He advised that the burden of proof is the responsibility of the applicant and did not believe that the applicant had provided sufficient information. He did not believe that proper notification had been sent in regard to all the variances that would be required for this application, including notification to the DNR. He discussed the "lot of record" matter and explained the meaning of "lot of record". He stated that the lot in discussion is not a "lot of record" and advised that he has the proof obtained from the County for anyone interested. He advised that the Minnesota State Statute in regard to minimum lot size and setbacks. He noted that all of this information is public record and the applicant should have known this information when he purchased the property. He advised that the property had an assessed value of \$25,000 and was purchased for \$43,000, which is far below the value and selling price of any other buildable lot on that lake. He stated that even though the home appears smaller, the footprint has increased and the home has moved towards the wetland.

Martinson questioned when the property was purchased by the current owner.

Thieroff believed the applicant purchased the lot in 2006.

Crosby questioned if these matters were discussed at the Planning Commission meeting.

Planning Commissioner Anderson stated that none of those matters were brought to the attention of the Planning Commission, nor discussed at the two previous meetings.

Finke stated that the impervious surface requirement was discussed but believed that the parcel would not require a variance for that matter.

Crosby stated that these are highly technical questions and was unsure that the application was ready to come before the Council and whether the Planning Commission should be reviewing this application yet again.

Batty stated that under City Ordinance the lot meets the requirements for minimum lot size in this district but noted that the shoreland requirements would apply and a variance would be necessary for that item. He believed that appropriate notice was provided to neighboring parcels. He explained the process followed by staff and the applicant to determine the variances needed for any project that comes into the City.

Crosby stated that he would not like the Council to take action on a matter that does not have the appropriate base discussions by the Planning Commission.

Batty agreed that the reasons for the decision would need to be articulated fully and that the Council would need to have the full facts in front of them before a decision is made.

Anderson advised that the Planning Commission meetings were well attended by members of the public and attorneys spoke at both meetings.

Batty stated that staff concluded during review that a variance from the minimum lot size of the zoning district would not be required but there would be a variance required from the 20,000 square foot shoreline district requirements.

Crosby stated that he believed that the Council should not make a determination at this time because of the technical matters brought forward.

Finke confirmed that the additional time between this meeting and the next meeting should be sufficient for staff to research the issues brought forward tonight. He advised that a decision would need to be made at the next meeting prior to the 120 day review period and noted that approval from the applicant would be needed to extend that period. He advised that the DNR had also been notified.

Batty addressed the items that he believed were included in the staff report but agreed that additional time for staff to fully research the items brought forward would be beneficial.

Weir stated that the house appears smaller from the street. She expressed concern that the home would be pushed back towards the lake and noted that she would prefer the home to be pushed forward towards the road or made a few feet smaller. She noted that a smaller home could be built and suggested that pervious pavers be used for the proposed patio. She stated that she would also like to see a raingarden constructed to address potential runoff.

Crosby stated that he would prefer to follow the recommendation of the Planning Commission and believed the proposed home would be consistent with the neighborhood.

Siitari also agreed with the recommendation of the Planning Commission. He asked for additional information in regard to variance criteria and minimum requirements.

Batty provided additional clarification in regard to the issuance of variances and the definition of practical difficulties, undue hardship, and reasonable use. He stated that ultimately it would be the decision of the Council to determine whether this action would be sufficient to overcome the practical difficulties identified for the parcel to provide a reasonable use. He noted that the property owner has changed the design of the home from the first review by the Planning Commission, from two stories to one story, to better accommodate the suggestions made and better fit the lot; although the new footprint of the proposed home is slightly larger than originally proposed.

Martinson stated that while she is sensitive to the quality of the lakes in Medina, she would also want to ensure that fairness is provided to the applicant. She stated that her

decision would depend upon how much the applicant knew about the lot and regulations and when the applicant learned that information.

Finke provided additional information regarding “lot of record” and advised that the applicant is already asking for the variance required which would make that matter a non-issue.

Dave Raskob expressed support for the applicant and noted that he is the builder for the project. He stated that he and the applicant have worked diligently with staff on this matter and compared the lot to other lots along the lake. He stated that this is the third design proposed and did not believe that the home would need to be made smaller. He asked that the Council go with the recommendation of staff and the Planning Commission.

Weir noted that while the lot may be the same distance from the lake as other lots, those lots do not have wetlands between the home and the lakeshore.

*Moved by Weir, seconded by Siitari, to close the public hearing at 8:02 p.m. **Motion passed unanimously.***

*Moved by Weir, seconded by Siitari, to table the application seeking additional review by staff. **Motion passed unanimously.***

C. Resolution No. 2012-91 Recognizing Mike Siitari for Four Years of Service to the City of Medina

Crosby recognized Siitari for his four years of service to the City of Medina. He advised that Siitari’s four year term is expiring and he has chosen not to seek re-election. He read the Resolution aloud and thanked Siitari for his service on the City Council.

*Moved by Weir, seconded by Martinson, to approve Resolution No. 2012-91 recognizing Mike Siitari for Four Years of Service to the City of Medina. **Motion passed unanimously.***

D. Park Name Proposal – “The Park at Fields of Medina”

Crosby noted that several proposed names for the park identified within the Field of Medina development and advised that the Park Commission has recommended “The Park at Fields of Medina”.

*Moved by Weir, seconded by Martinson, to name the new park “The Park at Fields of Medina”. **Motion passed unanimously.***

VIII. OLD BUSINESS

A. Mediacom Discussion Update

Johnson reported that he and Judy Mallett met to continue discussions with Mediacom. Mediacom has drafted a Letter of Intent.

Crosby clarified that he views this matter more as a proposal from Mediacom.

Johnson reviewed the terms of the Letter of Intent which enables high speed broadband access to 100 percent of its residents and businesses within three years of the

commencement of the franchise; extends to Medina the benefits, rights and privileges of any terms which Mediacom agrees to the LMCC during 2013-2014 franchise renewal negotiations; and non-exclusive ten year agreement with an automatic renewal of five years upon the agreement of both parties.

Crosby provided background information on the LMCC and the discussions with Mediacom. He explained that there are member cities of the LMCC, which are currently severely underserved, while the other cities belonging to the LMCC are focusing on programming and HD services.

Johnson continued to review the terms of the Letter of Intent. He reviewed the action requested tonight, to approve the Letter of Intent with Mediacom and noted that staff would also like to retain the services of a communications attorney to represent the City on cable franchise matters on an as needed basis.

Crosby stated that he would like to see Johnson continue on in the negotiations with Mediacom but was unsure that a Letter of Intent would be necessary.

Martinson stated that she reviewed the Letter of Intent prior to inclusion in the Council packet and therefore already provided her comments, which were incorporated into the version included in the packet. She stated that in general the terms included in the Letter of Intent are good and commented that she believes it is important for all Medina residents to have access to high speed internet.

Siitari thanked Mallett for her work on this matter and believed this is the right time for negotiations.

Crosby stated that he would like to see the detail for build outs prior to the Letter of Intent being signed. He also questioned if the City could complete the build out sooner, even if that means the City internally funds the improvements, with future franchise fees used to repay those improvements. He stated that he would also like to ensure that the services provided, such as the video recording services provided for Council meetings, would continue in some manner. He stated that the question should be posed to the LMCC why the City should stay with the LMCC if the City can have a complete build out in a shorter period of time with the direct agreement with Mediacom, as complete build out has not occurred in the 20+ years that Medina has been with the LMCC.

Weir also expressed the desire to retain video coverage of Council meetings and other events, like the League of Women Voters Forum.

Crosby stated that there would be a conflict in this matter as the firm Batty belongs to also represents the LMCC. He also questioned the formal relationship with the LMCC under the 25 year old contract and how a member city would opt out of the LMCC.

Batty agreed that the option to opt out of the LMCC would primarily be a contract issue.

Crosby believed that the City should hire someone to provide additional insight and was unsure if the information would be provided prior to the end of the year. He stated that while the Council seems ready to take the next step, he believes that the negotiations should be complete.

Judy Mallett provided insight and agreed that the JPA for the LMCC would be a contract issue.

Crosby questioned the process that would be followed if the Mediacom agreement were signed today.

Mallett explained that the agreement would not become active when the Letter of Intent is signed.

Crosby questioned when the build out would ultimately begin.

Bill Jenson, Mediacom, stated that once the Ordinance is approved and the Franchise Agreement is signed, he believed that the build out could begin within 90 days. He explained that this time would allow for product to be obtained and the route to be specified. He believed that the agreement proposed is a creative option for the City of Medina and explained that current negotiations with the LMCC would not allow build out until 2015. He stated that even if this agreement is signed, the services provided by the LMCC would not immediately cease.

Crosby confirmed that if Medina moves forward with Mediacom, there will be results quickly following, within 90 days.

Mallett advised that the services provided by the LMCC, including taping and airing of Council meeting and candidate forums, can be purchased from other organizations or from the LMCC as well.

Weir confirmed that internet service could be purchased separately from cable television services.

Mallett advised that Mediacom provides cable television, high speed internet, and telephone services as well as business packages.

Weir stated that currently the LMCC handles the complaint calls and was interested in the level of staff time that will be needed to address those matters.

Johnson stated that staff is working with Mediacom on a process to route those calls directly to Mediacom.

Crosby stated that this issue is not solely about Mediacom but for providing cable and high speed internet services to residents. He stated that each of the Council members can provide their input on the Letter of Intent to Johnson for incorporation. He believed that a communications attorney should be retained to represent the City on cable franchise matters. He did not believe that this matter would need to be resolved prior to January 1, 2013 and believed that the franchise fees could be prorated if the City chooses to leave the LMCC.

Batty stated that he did not read the information in the packet, in order to avoid a conflict of interest, but urged the Council to retain an attorney that could provide those services to the City.

Crosby agreed but did not think that would occur prior to the end of the year.

It was the consensus of the Council for Johnson to continue discussions and negotiations with Mediacom and to seek possibilities for an attorney. He commended Johnson for his work on this matter.

Johnson noted that he could not take credit for the work and thanked Mallett for her work on this matter.

B. Fields of Medina West

Sparks reported that this matter had been discussed at the previous Council meeting and the Council was generally supportive of the plan contingent upon the applicant incorporating the suggestions made at the last meeting. He provided background information noting that the 23 parcel is located on Meander Road and the proposed plat contains 64 single family homes. He advised that the applicant has moved the proposed entrance to the west, as suggested by the Council at the previous meeting. He noted that the lot from the northwest corner was also removed and a retaining wall will be constructed to protect the trees in that area. He provided specifics for the proposed berm.

Martinson confirmed that the plans for the berm would support tree life.

Finke confirmed that the Council would like to use language that would ensure that the easement for the berm includes the root structure of the trees included in the planting bed.

Sparks confirmed that the requested language regarding the berm could be included in the proposed action items.

Weir confirmed that maintenance access would be provided.

Crosby discussed the sport court proposed by the Parks Commission and stated that he was unaware that approval would be included in this approval. He expressed concern about the cost of the sport court.

Finke noted that this language would protect the interests of the City. He noted that language could be added to the sport court condition that states "or equivalent".

The applicant noted that they would work with the Park Commission in regard to the sport court and would also work with staff in regard to the easement and berm.

Crosby stated that the proposed action will go against the recommendation of the Planning Commission. He stated that the Planning Commission noted that the development does not include a variety of housing types and is a mundane development. He noted that discussion occurred at the last meeting regarding the housing products and ultimately consensus that the parcel would not successfully support townhomes. He advised that the Park Commission was also in favor of the proposal in lieu of tree preservation. He believed that the Planning Commission took the appropriate action but explained why the Council will most likely rule against that recommendation.

1. **Ordinance No. 544 Amending the Official Zoning Map to Rezone the Property Being Subdivided as “The Fields of Medina West”**

Moved by Martinson, seconded by Siitari, to adopt Ordinance No. 544 Amending the Official Zoning Map to Rezone the Property Being Subdivided as “The Fields of Medina”.
Motion passed unanimously.

2. **Resolution No. 2012-92 Approving a Preliminary Plat for a Subdivision to be known as “The Fields of Medina West”**

Moved by Siitari, seconded by Martinson, to approve Resolution No. 2012-92 Approving a Preliminary Plat for a Subdivision to be known as “The Fields of Medina” as amended.
Motion passed unanimously.

Crosby briefly recessed the meeting at 9:02 p.m.

Crosby reconvened the meeting at 9:10 p.m.

C. Highway 55/116 Intersection Discussion

Johnson presented an updated Preliminary Plan and Resolution for review. He advised that there is a provision that would allow the City to work with businesses throughout the design phase to improve traffic circulation.

Craig Twinem, Hennepin County, stated that he is present to seek preliminary layout approval. He presented the preliminary layout, which would dramatically reduce the scope of the project while also improving safety aspects. He advised that the design and engineering services will begin once the layout is approved by the City. He stated that grant funds have been obtained for the design services and noted that action would make the project shovel ready for the time in the future when funding is available. He stated that the project is not included in the five year outlook for the County at this time.

Crosby questioned if the medians could be closed prior to the construction of the project.

Twinem confirmed that this action could take place prior to the improvement project to improve safety. He stated that the proposed layout would improve public safety and the Highway 55/116 intersection.

Crosby noted that the major difference in this plan and the original is that this plan does not close any access points off Highway 55.

Weir questioned if the issue of Todd Leyse is going to be addressed.

Twinem noted that Adams Pest Control is outside of the project area and will not be included.

Weir questioned if the City could work with MnDOT in regard to avoiding the median closings.

Peggy Rasmussen, Countryside Café, stated that she is happy to see that there is no longer a proposal to close the driveway along with the access to the back.

Rob Stephanawitz, counsel for Peggy Rasmussen, stated that he had also submitted a letter to the Public Works Director in regard to the private access road in an attempt to

gain additional information. He noted that the drive goes through the McDonald's property. He also questioned who would own the private drive and be responsible for maintenance.

Crosby believed that the cost to acquire the easement was included in the proposed design budget.

Johnson noted that the right-of-way and construction cost would be the responsibility of the City while the maintenance would be the responsibility of the business. He explained that is why language was included to work with the businesses.

Weir questioned again the issue regarding Leyse.

Batty confirmed that the median is not an issue that a business can control.

Crosby explained that if access is taken from a business that must be replaced but noted that a business does not have control over medians. He stated that Pederson had expressed the thought that he would not like to see the medians installed along Highway 55 at this time. He stated that he is unsure that these improvements will be beneficial to the developments in that area as this could bring in additional transient traffic to the area.

Weir noted that those additional Medina developments merit these safety improvements.

1. Resolution No. 2012-93 Approving the Preliminary Concept Layout for the Reconstruction of the TH 55 at CR 116/CSAH 115 Intersection

*Moved by Weir, seconded by Martinson, to approve Resolution No. 2012-93 Approving the Preliminary Concept Layout for the Reconstruction of the TH 55 at CR 116/CSAH 115 Intersection. **Motion passed unanimously.***

The Council directed staff to submit a letter and to work with MnDOT regarding the issue of medians along Highway 55.

VII. NEW BUSINESS (Continued)

B. Ordinance No. 543 Amending the City Subdivision Ordinance Amending Chapter 8 of the Code of Ordinances

Finke presented the Ordinance related to procedures regarding subdivisions. He advised that the original language was crafted in 1980 and noted that subdivisions have changed quite a bit since that time. He briefly highlighted some of the proposed amendments, that private streets are located within outlots, and discussed the language regarding premature subdivisions.

Crosby asked for further clarification on a few items.

Finke provided clarification.

Batty advised that these provisions would apply to streets and explained the difference between private streets and shared driveways.

Crosby asked for additional information regarding townhome streets.

Finke provided additional information, noting that the range for the road width would go lower because utilities are not needed along the roadway. He advised that townhome streets would allow additional flexibility.

*Moved by Weir, seconded by Siitari, to adopt Ordinance No. 543 Amending the City Subdivision Ordinance Amending Chapter 8 of the Code of Ordinances. **Motion passed unanimously.***

1. **Resolution No. 2012-90 Authorizing Publication of Ordinance No. 543 by Title and Summary**

*Moved by Weir, seconded by Siitari, to approve Resolution No. 2012-90 Authorizing Publication of Ordinance No. 543 by Title and Summary. **Motion passed unanimously.***

IX. CITY ADMINISTRATOR REPORT

A. Discuss the Date for the Next City Council Meeting

Johnson advised that the January 1, 2013 Council meeting would need to be rescheduled due to the New Year's Day holiday. He noted that there has been a scheduling conflict on January 2nd and proposed January 3rd.

Crosby noted that he has travel plans that would conflict with a January 2nd meeting and asked that the meeting be scheduled for January 3rd.

*Moved by Weir, seconded by Martinson, to reschedule the next meeting of the City Council to January 3, 2013. **Motion passed unanimously.***

B. Other

Johnson noted that staff received a letter from the Hamel Fire Department that grant funds have been obtained for a consultant to assist in the process to implement goals outlined in the 2011 Feasibility Report to help combine the Hamel and Loretto Fire Departments.

X. MAYOR & CITY COUNCIL REPORTS

Weir provided an update of the Elm Creek Watershed District noting that a reclassification of Lake Medina to a wetland could occur, which would decrease the load reduction requirements. She advised of a scheduling conflict she has with the August 20, 2013 meeting date.

Siitari stated that it has been a privilege to serve on the City Council and he has gained much from the experience. He thanked the Council, staff and the residents for this opportunity.

Crosby stated that he would not be available from December 26th through January 2nd.

XI. APPROVAL TO PAY THE BILLS

*Moved by Weir, seconded by Siitari, to approve the bills, EFT 001892E-001907E for \$43,040.77, and order check numbers 039105-039173 for \$194,076.84, and payroll EFT 504637-504666 for \$47,379.71. **Motion passed unanimously.***

XII. ADJOURN

*Moved by Siitari, seconded by Weir, to adjourn the meeting at 9:53 p.m. **Motion passed unanimously.***

T.M. Crosby, Jr., Mayor

Attest:

Scott Johnson, City Administrator