

MEDINA CITY COUNCIL MEETING MINUTES OF FEBRUARY 3, 2009

The City Council of Medina, Minnesota met in regular session on February 3, 2009 at 7:00 p.m. in the City Hall Chambers. Mayor Crosby presided.

I. ROLL CALL

Members present: Crosby, Johnson, Siitari, Smith, and Weir.

Members absent: None.

Also present: City Attorney Ron Batty, Associate Planner Dusty Finke, Public Works Superintendent Steve Scherer, City Administrator Chad Adams and Recording Secretary Robyn Sauer.

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

The agenda was accepted as presented.

IV. APPROVAL OF MINUTES

A. Approval of the January 20, 2009 Special City Council Meeting Minutes

*Moved by Weir, seconded by Smith, to approve the January 20, 2009 special City Council meeting minutes as presented. **Motion passed unanimously.***

B. Approval of the January 20, 2009 Regular City Council Meeting Minutes

It was noted on page 5, line 22, it should state: "However, if a church starts small but is located on a large parcel, how could the City limit the potential for growth?"

*Moved by Weir, seconded by Siitari, to approve the January 20, 2009 regular City Council meeting minutes as amended. **Motion passed unanimously.***

II. CONSENT AGENDA

A. Approve Raffle Permit to/at Holy Name of Jesus Church on March 14, 2009

B. Approve Temporary On-Site Liquor License to/at Holy Name of Jesus Christ Church on March 14, 2009

C. Resolution Approving Premises Permit for Gambling at 45 Hamel Road

*Moved by Smith, seconded by Weir, to approve the consent agenda. **Motion passed unanimously.***

VI. COMMENTS

A. Comments from Citizens on Items not on the Agenda

There were none.

B. Park Commission

Smith stated the Field House Task Force was moving along well, but suggested that there be more information on the website.

Scherer stated they will talk about Rain Water Park at a future meeting.

Adams stated the Commission recommended changes to the Park ordinance, which is on the Council's agenda and also established goals for 2009.

C. Planning Commission

Robin Reid, Planning Commissioner, reported they had nominated and selected both a new chair and vice chair and had a work session/training with legal counsel that was brief and effective.

Adams noted the February meeting may be cancelled due to lack of items.

VII. NEW BUSINESS

A. Interim Ordinance Regarding Religious Institutions and Facilities; Establishing a Moratorium; and Directing a Study of Official Controls Related Thereto

Crosby reviewed that the Council had directed staff, at its January 20, 2009 meeting, to prepare an ordinance to implement a one-year moratorium regarding religious institutions and facilities.

Crosby stated the Council wanted to focus on the issue, not the merits of the proposal and commented this was not a like/dislike situation. He indicated this was a narrow issue as to whether the City Council should adopt a moratorium to regulate the construction or modification of public buildings. Crosby reminded the Council that the proposal at the last meeting was for a one-year moratorium but noted the moratorium could be ended sooner. Crosby reiterated there was to be no merit focus at this time.

Batty indicated the moratorium would only pertain to religious institutions.

Crosby commented it was his understanding that to the extent they regulate churches, they would also regulate other public facilities. Batty replied that was a highly likely scenario, and noted that the courts look at whether churches are treated similarly to other institutions.

Batty stated they had chosen not to expand the moratorium beyond religious institutions because there had been no discussion by Council to do so.

Johnson asked why there was such urgency to implement the moratorium at this time. Smith replied that once a moratorium is issued, when there is an application pending, it is prudent to address issues quickly.

Smith noted it was similar to when the moratorium was implemented for High Point Ridge because of the pending application.

Crosby stated Woodridge submitted an application to the Planning Commission and the application was deferred to a later meeting. He commented that because the issue of

churches was a frequent topic, it needed to be brought up before the Council could pass on the Woodridge application. Crosby noted it would affect all four churches in the community and commented that issues had come up when the church on Willow was constructed. Crosby indicated that the ordinances hadn't been looked at in many years.

Johnson asked the last time this was looked at. Finke replied that the CUP standards were looked at in 1996.

Finke stated in 1996 they had established criteria with discussion about how it should be regulated. He noted that churches, cemeteries, and schools were allowed in neighborhoods. The Comprehensive Plan advisory panel in the last few years had a lot of discussion and noted that the existing churches and cemeteries were guided into public/semi public. Finke indicated they needed to implement new regulations for the zoning district. He stated there was a limited window of time to bring ordinances into compliance. Finke commented that they had started to act on some and noted that when they prioritized items last year, this issue of churches was at the bottom of the list. But with the application pending, it needed to be moved to the top of the priorities list. Finke indicated from a classification standpoint, there were inconsistencies that needed to be changed for the zoning district. Finke stated they needed to look specifically at the larger scale use of churches and accessory uses that may lead to extended days and hours of operation. Finke commented that the City had changed the standards for a lot of districts since 1996. Churches were a 50 foot setback in 1996 and now all setbacks are 50 feet. Finke asked if the Council were to go forward with the moratorium, what should be the scope of the moratorium. Finke indicated that all land within the City would be included, as well as the establishment, creation, or expansion of religious institutions and facilities, future and pending. Finke noted this was a 12-month moratorium, which was the maximum they were able to enact.

Crosby asked Batty if uses permitted in residential areas typically included churches and schools. Batty replied that they were two common uses and the ordinance indicated that some historically were located in those districts by Conditional Use Permit. Batty noted the uses were not a right, but were usually allowed.

Crosby asked if the moratorium should relate to traditional exceptions. Batty replied that other exceptions were not included and commented that most zoning ordinances come forward without the benefit of a moratorium. Batty stated the statute allowed the use of a moratorium for a bit of an emergency. Typically, a moratorium would come about if someone submitted an application and the City felt they were not well-prepared to deal with that application. He commented that was what was happening currently. Batty indicated he thought schools and government buildings would be brought forward eventually, but they were not included in this moratorium.

Crosby indicated that if the moratorium is enacted, ordinance changes would require public hearings and reiterated that those issues would not be discussed tonight.

Johnson asked if the objective could be accomplished without a moratorium. Crosby replied no, because once the City accepts an application, they go into a state-mandated time frame and there would not be enough time to deal with it adequately. Finke noted the City had 60 days, but could take 60 more, for a total of 120 days. Finke commented that the applicant redid their plan so the City was given an extension to May 22, 2009.

Crosby stated the concern was that the City didn't want to be up against a time barrier.

Smith commented that she thought the City dealt too much with CUP's and needed to make standards consistent.

Johnson stated that from a process prospective, it seemed everything for the church was now in a state of flux and questioned whether the church was being treated fairly.

Crosby noted the issue of wind turbines was on the table before the Hennepin County application came through and commented that the church was in the same position. Crosby stated the issue of churches had been talked about at several meetings.

Batty indicated there was no doubt that a moratorium was a serious step and shouldn't be taken lightly. Batty stated a moratorium is needed when Council decides things are sufficiently deficient.

Weir noted that the cemetery ordinance had been hurried through in order to avoid a moratorium, and as a result it needed to be redone, which would cost a lot of money. Weir commented that the Council needed to take the time to do it properly.

Crosby commented the Council needed to adopt something that was well thought out.

Paul Johnson, Senior Pastor at Woodridge Church, stated they had started working with the City a year ago and were asking for a 16,000 square foot addition that would fill an area in the back of the building. Pastor Johnson noted they would not be expanding the parking or the worship area. He indicated they needed classrooms for adults in a small scope. Pastor Johnson stated that the church owned 27 acres, seven of which are part of a housing site to the west, and wide open space to the north. Pastor Johnson asked the Council to please consider a moratorium after their project is considered and commented that the nature of the project wouldn't expand the scope of the building, parking, or capacities. Pastor Johnson stated he was thankful for the work the City had done, and indicated the church had complied with high quality building standards.

Robert Bjork, Chairman of Woodridge Church, asked what the length of the moratorium would be. Crosby replied that the Council would try to move forward smartly and reiterated that the legal limit for the moratorium was 12 months. Crosby indicated they had a reasonable shot at resolving the issues by the May 22, 2009 date, since there was not much before the Council at this time.

Johnson noted that the last moratorium was no longer than six months.

Crosby stated that the moratorium could be ended earlier. Batty replied he was leery about taking a small time frame on the moratorium, then needing to increase it. Batty suggested the City take the entire year, but noted that the City had a good history of ending moratoriums earlier more often than not.

Crosby stated that churches had received residential permission for being residential vehicles. He commented that the church on Willow moved a congregation into Medina, and was not serving Medina residents.

Bjork asked to see research pertaining to the work that had been done adopting City governments to church uses. Crosby replied that all research would be public record.

Bjork noted that he would like to provide input into the research and commented that he valued the relationship with the City but was disappointed that there had not been better communication from the City.

Smith asked if the church had added on once before. Bjork replied yes, they had.

Smith recalled that the church had already added on to make the church larger and this was alarming to her because it ceases to be residentially appropriate in the rural area and becomes more commercial. Smith commented that the size and activity with the church bothered her and she doesn't want to see mega churches in Medina.

Pastor Johnson stated they have added office and classroom space, haven't requested additional parking, have agreed on height and hours of light restrictions and he feels they haven't expanded into a mega church. Pastor Johnson recognized that the nature of Medina shouldn't be a mega church and noted that they would be adding space for a junior/senior high bible study area and also a fellowship area where they could prepare meals for the congregation.

Architect Nicole Thompson, with Station 19 Architects, displayed boards to show what they would be doing. Thompson stated the church would be adding approximately 14,000 square feet and the church was currently 28,000 square feet.

Crosby asked about the seven acre housing project to the west. Thompson replied that was a separate legal parcel. Thompson noted that there was 16% hard surface coverage, with only 2% of that being the building. Thompson stated the setbacks were 141 feet in the front and 170 feet on the side. They would be updating the septic and have sprinklers throughout the entire building, which would meet or exceed code. Thompson commented that the church would not be adding meeting times, it was just a growing and healthy church that needed classroom space. Thompson suggested there could be harm caused by a delay, including timing the construction start and the potential for pledges being pulled. Thompson added that the church had incurred substantial fees for design to get to this point and they would like to move forward with the application.

Johnson asked if the plans complied with wetland setback buffers. Thompson replied yes.

Finke noted he hadn't reviewed the wetland ordinance pertaining to this yet, but there would be room for buffers if they didn't meet the setbacks.

Weir asked where the new septic would be located. Thompson replied that the septic would be located in the northwest corner of the lot.

Weir commented that buildings of this size don't belong on septic systems.

Crosby stated those types of questions were more appropriate for the Planning Commission.

Johnson commented that he didn't see anything not in compliance with the City's wish list. Smith replied one of the problems was that the City would not be able to screen activity at the church.

Smith noted there were some issues that couldn't be addressed, which were brought up last time they expanded.

Crosby stated going forward with the moratorium would be a good exercise that would convey to the church what they can become in the future. Crosby indicated that the church was not adding parking, but was actually decreasing parking spaces by five, while adding 50% to the building. Crosby commented that it was not as easy of an issue as it seemed to be.

Thompson asked how the moratorium would affect the 60-day review period. Batty replied the moratorium does not stop the running of the 60-day clock.

Crosby invited public comment.

Noel Martinson, 1815 Medina Road, stated his property was not adjacent to the church property, but many of his neighbors were adjacent to church property. Martinson stated he and neighbors have concerns with the church expansion because he desires to preserve the rural character and natural resources in his neighborhood. He stated his concerns with the negative impact of: the traffic on the environment and wildlife, parking lot lights and vehicle lights on the night sky and neighboring houses, and noise levels to surrounding properties. Martinson advised that the church and neighbors should begin working now together to be good neighbors. He stated his support for the moratorium.

Crosby asked for questions and comments from the Council.

Weir stated the moratorium might be helpful to the church, because if the City was going to set a ceiling regarding size, the church could adjust their plans accordingly and it might help them understand there may not be an opportunity for future enlargement.

It was noted that the moratorium would run for one year starting this Friday.

Johnson indicated he appreciated Martinson's concerns and was still challenged given the process that has gone on, that the church had worked with City staff for a year, which has cost the church a lot of money, and then City staff didn't inform them this would be coming. Johnson commented that the City was not being a good neighbor to the church. He was troubled with the idea of the moratorium and would like to think that in recognition of some damage caused by failure to inform, in good faith, there was accountability on the City's part. Johnson made it clear that the Council should make the moratorium as short as possible and work hard to get it done soon.

Crosby asked Finke what the process would entail. Finke replied that the work plan, start to finish, taking into account two months of time for each ordinance individually, would be an aggressive schedule. Finke discussed the work to be done and thought it would take two months minimum, depending on prioritizing.

Smith indicated the Council needed to take time to review everything properly, rather than pushing it into a timeline. Smith noted that the Council shouldn't shorten the legal time on the moratorium, but should request this as a high priority.

Weir asked if six months would be a sufficient time line. Finke replied he thought that would be reasonable. Finke noted the last moratorium was six months in length and that was cutting it close, considering public hearings, etc.

Batty stated he was not sure of the scope of amendment(s), and there might be a lot of pieces to the amendments, some which they might not finalize until the Comprehensive Plan is approved.

Batty suggested the Council could repeal the moratorium incrementally by paring back as they get to resolution of an issue. Batty gave the example that it would be possible that the City could lift the moratorium on churches regulated by a CUP in rural areas. Batty commented that it was unlikely everything would be done in six months, but it was likely that some of it would be done.

Smith commented that the planning department was down one person and they have other things to do besides take permits.

Crosby concurred with Johnson about being uncomfortable with the element of surprise, but stated the moratorium was the way to go and needed to be done smartly.

Johnson asked when this would need to be done to fit into the Comprehensive Plan. Batty replied that they could adopt the text of the ordinances, but couldn't map the ordinances until the Comprehensive Plan was done. Batty noted that bits and pieces of the regulatory scheme couldn't be put in place until the Comprehensive Plan was approved. Batty commented this would be a multi-part evaluation, and reiterated the Council could peel away parts of the moratorium and was not an all or nothing situation.

Siitari suggested a comprehensive ordinance review and indicated it would take time to see where City wanted to be. Siitari commented he supported the longer time span of the moratorium and felt it was important enough to trump the needs of the church.

Johnson stated 20% of the addition would fall outside of the church's current footprint.

Smith indicated she was concerned with adding 50% of the size of the building and doesn't care what it would look like. Smith noted that once a wall is up, it could become something a whole lot different than the intended use. Smith commented that walls could be knocked down, and the Council needed to stop and look at it. Smith stated she didn't know that the church had worked with staff for a year already and she would have said something if she had known.

Weir stated she would like it done in six months, but wanted the option of a year.

Crosby added that the Council would try to do it in a fast and responsive way.

Pastor Johnson thanked the Council. Crosby replied it had not been an easy decision for the Council.

Moved by Smith, seconded by Weir, to adopt the Interim Ordinance Regarding Religious Institutions and Facilities; Establishing a Moratorium; and Directing a Study of Official Controls Related Thereto. **4 ayes-(Crosby, Weir, Smith, Siitari), 1-nay (Johnson).**
Motion passed.

1. Resolution to Publish by Title and Summary

Moved by Smith, seconded by Weir, to approve the Resolution Authorizing Publication of Ordinance by Title and Summary. **4 ayes-(Crosby, Weir, Smith, Siitari), 1-nay (Johnson).** **Motion passed.**

B. Ordinance Amending Section 515 of City Code Regarding Parks and Recreational Facilities

It was noted on page 5, Subd. 8. (d), should state “can’t bring uncaged animals into a park”. Page 7, Subd. 14. (e), “Remove any wild animal...” page 7, Subd. 16. (a), remove “his or her own”, so that it reads “Intentionally expose genitals”. Page 8, Subd. 20. (d), remove “at any park or a beach area”, so that it reads “Park a bicycle except at a bicycle rack...” page 9, Subd. 24. (a), define “vehicle”.

Adams advised that the Park Commission has reviewed the Park and Recreational Facilities Ordinance and unanimously recommend adoption of the revisions.

The Council agreed to make some grammatical changes along with adding a definition for motor vehicle, clarifying language related to bringing pets into a park, referencing a “wild” animal, and revising language reflecting parking of bicycles at bike racks only.

Moved by Weir, seconded by Smith, to adopt the Ordinance Amending Section 515 of City Code Regarding Parks and Recreational Facilities, as amended. **Motion passed unanimously.**

1. Resolution to Publish by Title and Summary

Moved by Johnson, seconded by Weir, to approve the Resolution Authorizing Publication of Ordinance by Title and Summary. **Motion passed unanimously.**

VIII. CITY ADMINISTRATOR REPORT

A. Green Acres and Tree Removal

Adams indicated he was looking for input on the memo from Council.

Crosby asked Kohnen if there was any consternation with the new rules. Kohnen replied he was not aware of any.

Smith commented that a lot of people had lost Green Acres on Hamel Road. Batty replied that the County had disqualified some people a few years ago.

Crosby stated the modification was designed for more rural communities.

B. 2009 Fee Schedule: Septic Repair and Window Replacement

The staff report was presented, detailing comparisons of septic repair practices and fees, as well as window permit inspections and fees used by other metro communities.

Finke explained the septic repair fees and indicated that although they occur rarely, they might occur more often. Finke noted that if the rock bed of a septic gets plugged, it can be rebuilt. Finke commented they hadn't issued many of these permits, just one last year, but if they were going to issue more of them, he recommended a \$125 permit fee.

Building Inspector Loren Kohnen noted he does inspection not design.

Crosby asked how these issues come to the City. Finke replied it could be a result of an inspection, but usually people come in because their septic is backing up into the house.

Smith asked if the installer would apply for the permit. Finke replied yes.

With regard to window replacement, Adams stated that Metro West did an inspection and noted that the way other communities do their fee schedule was widely different. Some do value permits, while others do flat rates. At end of last year, the values they had seen were larger and a sliding scale had been suggested, but Council went back to the \$50 fee.

Crosby stated the Council was surprised a permit was needed to replace windows, which was why they removed the sliding scales.

Kohnen noted code required the size of a window opening could not be made smaller.

Crosby asked what Metro West was looking for with inspection. Kohnen replied they needed to make sure the opening was still the same size and that a different permit was needed for making larger windows, because that would be a structural issue.

Weir asked if there was an element of consumer protection by having an inspection. Kohnen replied that they try to make sure windows are insulated properly.

Smith asked how you could tell whether the insulation was done properly once the windows were replaced. Kohnen replied that you couldn't tell, you could only look at flashing and whether or not the window needed to be caulked.

Kohnen suggested homeowners not pay the whole bill until someone comes to inspect it, and also suggested having the contractor pull the permit.

Weir asked what decision had been made on illegal berms and buildings in Medina. Adams replied that the language had been revised and staff wanted to follow a civil route to take legal actions.

Weir commented that the City needed to be practical and needed to follow-up.

Adams stated the City will take deposits or letters of credit in case there was damage.

Smith suggested a fine of \$10,000. Crosby replied that they couldn't impose a fine as a remedy, and the only remedy was to ask the homeowner to remove it.

Crosby noted that the City had required a barn on Willow Dr. to be moved.

Finke suggested adding \$.50 for a surcharge to the window permit fee and noted the State charged \$.50 per thousand dollars, but the minimum was \$.50.

Council agreed to add in the septic repair fee and noted the new window charge would be \$50.50.

Finke indicated he would work on the language with regard to the septic drainage field repair, but would leave it broad enough in case something was to come up.

*Moved by Weir, seconded by Johnson, to direct staff to prepare an Ordinance pertaining to the 2009 fee schedule. **Motion passed unanimously.***

IX. MAYOR & CITY COUNCIL REPORTS

Crosby stated he would be gone on February 17th and would not be at office hours.

X. APPROVAL TO PAY THE BILLS

*Moved by Smith, seconded by Weir, to approve the bills, EFT 000390-000400 for \$30,173.88 and order check numbers 033576-033623 for \$189,332.14 and payroll check 020195 for \$1,478.54 and EFT 501808-501836 for \$42,759.99. **Motion passed unanimously.***

XI. ADJOURN

*Moved by Johnson, seconded by Weir, to adjourn the meeting at 8:56 p.m. **Motion passed unanimously.***

T.M. Crosby, Jr., Mayor

Attest:

Chad M. Adams, City Administrator-Clerk