

MEDINA CITY COUNCIL MEETING MINUTES OF NOVEMBER 7, 2012

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

I. ROLL CALL

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

Members absent: None.

Also present: City Attorney Ron Batty, City Engineer Tom Kellogg, Planner Dusty Finke, Public Works Superintendent Steve Scherer, City Administrator Scott Johnson, and Chief of Police Ed Belland.

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

The agenda was accepted as presented.

IV. APPROVAL OF MINUTES

A. Approval of the October 16, 2012 Special City Council Meeting Minutes

Crosby referenced the presentation from WSB and confirmed that the options were simply being presented and no decisions were made.

It was noted under WSB Stormwater, the last sentence of the second paragraph, it should state, "...agree on a standard of calculations for TMDL's and MS4 regulations before a project begins." The following paragraph, it should state, "...for local governments, but difficult to accomplish because they are often on private property."

*Moved by Weir, seconded by Siitari, to approve the October 16, 2012 special City Council meeting minutes as presented. **Motion passed unanimously.***

B. Approval of the October 16, 2012 Regular City Council Meeting Minutes

It was noted on page two, line 16, it should state, "...recused herself from the issue, resulting in a lack of a quorum." On page four, line 41, it should state, "...Hackamore 116..." On page five, line 22, it should state, "...Tree Preservation Ordinance would highly negatively impact..." On page five, line 42, it should state, "...determine where the road connection..." On page eight, line nine, it should state, "...regarding information learned..." On page eight, line 11, it should state, "...neighboring development in Plymouth to ensure..."

*Moved by Weir, seconded by Siitari, to approve the October 16, 2012 regular City Council meeting minutes as amended. **Motion passed unanimously.***

C. Approval of the October 23, 2012 Special City Council Meeting Minutes

Crosby suggested that the name of the motel manager be included in the minutes.

*Moved by Weir, seconded by Siitari, to approve the October 23, 2012 special City Council meeting minutes as amended. **Motion passed unanimously.***

V. CONSENT AGENDA

- A. Approve Embedded Systems Renewal for 2013
- B. ~~Approve Snow Removal Services Agreement with Snow 'n Lawn LLC~~
- C. Approve Master Subscriber Agreement for Minnesota Court Data Services for Governmental Agencies and Master Subscriber Agreement Amendment for MPA My Case
- D. Approve Inspection Services Agreement with Badger State Inspection, LLC
- E. Approve 2013 WSB Rates
- F. Release Letter of Credit for Open Systems International, Inc.
- G. ~~Resolution No. 2012-78 Recognizing Girl Scout Service Unit of Westonka-Orono for their Centennial Day of Service to the City of Medina~~

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

- B. Approve Snow Removal Services Agreement with Snow 'n Lawn LLC
Pederson commented that the proposed increase from the previous provider was only five dollars and believed it was a shame to lose the service from that local provider over such a small amount.

Crosby stated that the main difference in price was in snow amounts of over three inches.

Scherer agreed that there is a difference when the snow accumulates. He noted that the recommended provider also provides grass cutting services to the City.

Moved by Pederson, seconded by Weir, to approve the Snow Removal Services Agreement with Snow 'n Lawn LLC. Motion passed unanimously.

- G. Resolution No. 2012-78 Recognizing Girl Scout Service Unit of Westonka-Orono for their Centennial Day of Service to the City of Medina

Weir reported that for the 100th anniversary of the Girl Scouts, troops volunteered 2.5 hours of service work such as cleaning drains and raking leaves. She stated that a large group of Girl Scouts completed projects and she attended the event to assist as well. She noted that the group did a great job. She read the Resolution aloud and thanked the Girl Scouts for their efforts.

Moved by Weir, seconded by Martinson, to adopt Resolution No. 2012-78 Recognizing Girl Scout Service Unit of Westonka-Orono for their Centennial Day of Service to the City of Medina. Motion passed unanimously.

VI. COMMENTS

- A. Comments from Citizens on Items not on the Agenda

Chris Barry, 1822 Morgan Road, expressed his concerns regarding the Hollydale high voltage line project. He explained that his family had relocated several times because of work over the past ten years and finally settled into Medina this year. He stated that his family spent additional funds renovating the home and finally moved in this summer only to find out a short time later about the Hollydale high voltage project, which is proposed to run through his property, 100 feet from his home. He noted that he has many concerns about the proximity to his home and about the safety of his family, including his

two small children. He stated that if he would have known about the project, he would not have purchased and renovated the home. He asked for the assistance of the Council in obtaining additional information including specific information in respect to power outages associated with businesses along the Highway 55 Hamel area, the number of residents utilizing Xcel power and why this area would have to cover Xcel customers, the cost of burying the lines, and what would be necessary for the City to draft an Ordinance, which specifies that power lines must be buried within 300 to 400 feet of homes.

Crosby explained that action is not taken during this portion of the agenda.

Scherer explained the burying of lines was in regard to lines along Medina Road, which are standard lines, not high voltage.

Crosby stated that the City has gone on record asking that lines be buried when close to homes. He provided additional information on the Council process in regard to the route for the Hollydale high voltage project.

Weir referenced the business tours the Council recently completed and noted that Target has to dump fresh produce when power is lost and advised that situation had occurred on several occasions. She stated that power has been lost several times at the Gramercy retirement home and some residents are afraid to ride in the elevator for fear of being stuck in the elevator when the power goes out. She acknowledged that 300 feet from the power lines is the safe zone to reduce the electromagnetic field.

Mrs. Barry stated that she would like to see a cost analysis done to show the cost for burying the lines when they are closer than 300 feet to homes.

Weir confirmed that Finke could email some additional information to the Barrys on the lines proximity to homes on the existing and alternative routes.

Johnson commented that staff does not have expertise on this matter and State organizations, such as the Public Utilities Commission, manage the process for this issue.

Crosby suggested that this item be placed on a future agenda to allow for further discussion.

Weir advised that the open comment period for this issue continues through November 16th, noting that she would be submitting comments.

Johnson explained that this is the second process, the certificate of need, and the first process, route permit application, has accepted public comment. He noted that the City would have the option to comment on each portion of the project. He confirmed that the City could submit a letter once again stating their suggestions and concerns regarding the project.

Jim Simons, 1862 Morgan Road, congratulated Crosby and the Council on the recent elections. He clarified that there are two power line projects within the City. He questioned if the City would be able to create an Ordinance, which states that power lines must be buried.

Crosby explained the easement issues that could come into play and did not believe that an Ordinance could be created prior to the 16th.

Batty stated that the two projects have different types of power lines and confirmed that an Ordinance would apply to the smaller voltage line and not the high voltage lines.

Judy Mallett, 2492 Willow Drive, also expressed her concerns with the high voltage lines proposed under the Hollydale Project.

B. Park Commission

Scherer noted that the Park Commission continues to do long-term planning and discussed the trail along Willow Drive.

C. Planning Commission

Finke advised that the Commission will meet the following week to hold a public hearing. He confirmed that a special meeting was held on October 24th to discuss a request from the Independence Beach area and noted that the request had been tabled and changes to the applicant's plan were requested.

VII. NEW BUSINESS

A. Lake Minnetonka Cable Commission (LMCC) Update

Johnson provided background information regarding the LMCC and Mediacom. He reported that the LMCC will be in franchise renewal discussions during 2013, as the current Agreement expires in December 2013. He explained that the City does not believe that the current broadband needs are being met by the LMCC and advised of an offer for service from Mediacom. He explained that when the original Agreement with LMCC was put in place the needs of the City were simply cable and advised that the needs of the City now include broadband services. He reviewed the LMCC Mission and noted that while the statement is great, most residents in Medina do not have access to cable television. He provided additional information regarding franchise fees and peg fees and explained the difference between the two types of fees. He reviewed the statistical information for the City of Medina including the miles served by infrastructure, the number of homes utilizing cable or internet services, the number of homes not offered services. He then reviewed the calculations under the Franchise Agreement used to determine if the area meets the required number of homes for service installation and the cost to install broadband infrastructure. He noted that the LMCC is able to collect the franchise fees

Judy Mallett, LMCC representative for the City, stated that most of the City does not have the chance to see a Mediacom billing statement, as the service is not available in their area. She explained that Mediacom is required to collect the franchise fees and disburse those funds to the LMCC. She explained that if a City Franchise is developed, those funds collected by Mediacom could come back to the City for use in the general fund, if directed by the City Council. She advised that Mediacom is the eighth largest cable provider in the country and most of the Franchise Agreements they have are with cities and not Commissions.

Johnson provided additional information on the amount of franchise fees collected on an annual basis.

Mallett explained that if the franchise fees were coming directly into the City for the past 13 years, those funds could have been used to build out 22 of the 29 miles that are currently not serviced by cable or broadband services.

Crosby stated that it is his understanding that if the City did not belong to the LMCC and wanted to have the Council meetings video recorded, the City would have to pay for the services from LMCC.

Mallett stated that the City would not necessarily have to do that option. She advised that most residents of Medina do not have access to the LMCC channels and cannot watch the meetings live. She advised that the City needs a camera and video capture to then project the meetings directly onto the City website and noted that the PEG fees could be used for that purpose.

Johnson provided additional information on the option of a direct City Franchise Agreement, explained that the City would have control over the approximately \$44,000 per year in franchise fees and PEG fees from Mediacom subscribers to address the cable infrastructure needs of the City. He stated that there would be immediate cable capital infrastructure investment in Medina with 100 percent build-out within three to five years. He explained that this could provide an ability to attract competitor communications providers who had been discouraged by the geographical and legal complexities of the 17 city consortium. He highlighted additional aspects of the direct city Franchise Agreement and aspects of the LMCC Agreement that currently do not match the needs of the City.

Mallett provided insight, noting that the LMCC has not met with representatives from Mediacom in the past two years and has still not met with Mediacom even though the existing Agreement expires in December 2013.

Johnson continued to review the concerns with the LMCC Franchise Agreement noting that Medina continues to be underserved and the goals of the LMCC do not match with the desires of the City. He advised that Medina can continue to be a member of the LMCC or the City can meet with Mediacom in an attempt to develop a direct Franchise Agreement with the City. He noted that the build out of infrastructure could be much slower than desired if the City stays with the LMCC and summarized the other considerations that factor into the discussion. He reviewed a possible timetable and advised that the Vice President of Mediacom has requested to come to the November 20th Council meeting to further discuss the matter. He advised that broadband is an essential service that is vital to future development and explained that 100 percent access is needed for business and residents. He questioned whether the Council would simply like to stay with LMCC or pursue discussions with Mediacom.

Crosby questioned if Mediacom would have a conflict of interest in pursuing the City with a direct Franchise Agreement.

Mallett stated that the City reached out to Mediacom and explained that any city underserved by the LMCC would have a desire to reach out and explore the option for building out infrastructure more quickly than the LMCC.

Johnson agreed that the City reached out to Mediacom in attempt to further expand the infrastructure and noted that the meeting with Mediacom morphed into much more than

expected. He displayed a map of the City, which identified the areas currently serviced by cable and broadband service as well as the areas not served.

Crosby commented that it appears the new subdivisions that are being built are obtaining service.

Johnson agreed that those developments meet the density requirements and therefore the infrastructure is being built, noting that the existing residents are being left out.

Crosby stated that he believed staff and Mallett would be the best people to discuss this option. He believed that perhaps the LMCC and Mediacom should both have the opportunity to speak to the City.

Mallett stated that the huge incentive to the direct Franchise Agreement is that Mediacom would build out the City within three years with no expense to the City and advised that there is no way the LMCC could do that. She asked the Council to focus on those incentives that the LMCC cannot meet. She stated that the City has been with the LMCC for 13 years and has given the organization over \$700,000 and that organization has never spent a penny on the build out of member city infrastructure. She explained that the LMCC has a budget of \$700,000, which is funded on the backs of the cable subscribers and uses those funds for their equipment and programming. She stated that while other members in the LMCC desire HD cameras for their City Halls and on demand programming, Medina is simply asking for service. She stated that while Medina has an average share of subscribers, the City has no power at the LMCC table.

Crosby questioned if other cities are seeking this independent route.

Mallett was unsure. She advised that there are five underserved communities in the LMCC that gathered earlier this year to discuss providing service. She stated that when she was appointed as a representative to the LMCC she would have never imagined that this would be the path she would be leading but advised that the incentives from Mediacom are huge and the build out of infrastructure is a great benefit to Medina. She stated that there are hundreds of cities that have direct Agreements with Mediacom and advised that the organization specializes in smaller cities.

Crosby asked that other direct Franchise Agreements be reviewed to ensure that the promised build outs occurred in those cities. He confirmed that staff could continue discussions with Mediacom regarding a direct Franchise Agreement. He asked if the City has a contractual obligation to the LMCC.

Mallett confirmed that the City does have an obligation to the LMCC but believed that an exit strategy could be easily agreed upon by both parties. She stated that legal counsel for the LMCC advised against refusing to let member cities withdraw during the renegotiation process.

Crosby stated that this issue has gotten back to the LMCC as he received a call from the Chair of the LMCC the previous day.

Johnson confirmed the direction for staff to move forward in the discussion with Mediacom regarding the possibility of a direct Franchise Agreement.

Mallett provided additional information regarding the makeup of the LMCC and its Board.

Crosby confirmed that the gentleman video recording the meeting tonight is an independent contractor and does not work directly for the LMCC.

VIII. OLD BUSINESS

A. Ordinance No. 539 Regarding Regulations of Wind Energy Conversion Systems, Solar Equipment, and Geothermal Systems; Amending Chapter 8 of the City Code

Finke provided background information noting that the presentation tonight is a culmination of several discussions by the Council regarding this subject. He noted that the suggestions and recommendations made by the Council during the previous review of the issue had been incorporated into the proposed Ordinance. He highlighted some of those changes and noted that the suggested changes to solar were also completed.

Crosby questioned if other communities require both a 300 foot setback and a limit to a 50 foot height requirement in rural residential and agriculture. He also questioned if other communities have banned turbines from residential areas.

Finke did not believe other communities have both regulations, as both regulations together severely limit the amount of wind able to be collected. He confirmed that some communities do restrict wind turbines from residential areas. He stated that there are areas of the City, which would allow up to 100 or 200-foot turbines along highways but acknowledged that the possible locations are limited.

Clarkson Lindley, 1580 Homestead Trail, stated that he does not believe that wind turbines should be allowed anywhere within the residential area of Medina to help preserve the rural aesthetic. He was also concerned with possible litigation that could come forward.

Crosby stated that the City has come a long way from the original Ordinance and advised that he is comfortable with the Ordinance as proposed. He commented on the Orono case.

Batty confirmed that the Orono case was a situation in which the resident installed the turbine and the City then told the man that he could not have it. He stated that the case is still being reviewed by the Courts but noted that situation is very unique.

Weir referenced the language regarding color, a color consistent with the surrounding area, such as white or light grey, and asked that the specific colors be removed.

Finke confirmed that the specific colors can be removed so the language simply states a color consistent with the surrounding area.

*Moved by Weir, seconded by Martinson, to adopt Ordinance No. 539 Amending Chapter 8 of the Code of Ordinances Regarding Wind Energy Conversion Systems. **Motion passed unanimously.***

1. Resolution No. 2012-79 Authorizing Publication of Ordinance No. 539 by Title and Summary

*Moved by Weir, seconded by Siitari, to adopt Resolution No. 2012-79 Authorizing Publication of Ordinance No. 539 by Title and Summary. **Motion passed unanimously.***

Batty noted that staff would bring back an action item ending the moratorium for Council approval at the next meeting.

VII. NEW BUSINESS (Continued)

B. Job Description Amendments

Johnson reported that staff has been working to amend the job descriptions of City employees to better reflect the additional responsibilities handled by the employees and highlighted the proposed amendments to the specific job descriptions. He recommended that the Council approve the proposed job description amendments to better reflect the responsibilities handled.

Crosby expressed concern with the possibility that elevating the job title could result in the employee feeling like they are now above certain responsibilities. He stated that the City has maintained a stable staffing level for the past seven years and did not want the employees to feel that additional employees would then be hired.

Scherer stated that this is simply for the job descriptions and does not result in pay increases or less responsibility but to more accurately reflect the job.

Crosby also questioned if changing Scherer from Superintendent to Director would result in the City no longer needing a consultant.

Scherer commented that an engineer will still be needed and that will not change. He also suggested a few grammatical changes were needed for the Water and Sewer Operator description.

*Moved by Weir, seconded by Martinson, to approve the changes to the job descriptions for the Assistant Finance Director, Public Works Director, Public Works Maintenance Worker – Water and Sewer Operator, and Administrative Assistant – Planning and Public Works positions. **Motion passed unanimously.***

IX. CITY ADMINISTRATOR REPORT

Johnson advised of a draft letter for Hennepin County Commissioner Jeff Johnson, as directed, and stated that staff will send the letter if the Council is comfortable with it.

Weir referenced the comment added by Crosby and questioned if that item should be included. She advised that Jeff Johnson will be holding a public meeting in early December that interested parties could attend. She agreed that the letter should be mailed.

Johnson confirmed Council approval for sending the letter. He advised that the City did not receive the Hennepin County sports facility grant recently applied for.

Weir expressed concern that the original grant of \$25,000 could be lost if the City does not move forward.

Scherer noted that he would look into the deadline and possibilities to light just one field at this time with the grant funds already received.

Crosby suggested applying for a smaller amount as he noted that perhaps the grant is being denied because of the large amount.

Johnson provided an update regarding a grant being applied for by the Loretto and Hamel fire departments for a consultant to help implement the feasibility plan.

Crosby confirmed that the City Hall was adequately staffed for voting.

Johnson thanked staff members for their work on the 2012 elections. Weir commended staff for their efforts as her experience with the polling process went smoothly.

X. MAYOR & CITY COUNCIL REPORTS

Weir asked for additional information regarding the turn onto Highway 55 from 116.

Crosby advised of the special meeting that will take place on November 14, 2012 to certify the election results.

*Moved by Weir, seconded by Siitari, to change the time of the special meeting for Wednesday, November 14, 2012 to 6:00 p.m. **Motion passed unanimously.***

XI. APPROVAL TO PAY THE BILLS

*Moved by Weir, seconded by Siitari, to approve the bills, EFT 001834E-001847E for \$47,889.96, and order check numbers 038928-038988 for \$191,839.54, and payroll EFT 504556-504581 for \$44,343.42. **Motion passed unanimously.***

XII. ADJOURN

*Moved by Weir, seconded by Siitari, to adjourn the meeting at 9:03 p.m. **Motion passed unanimously.***

T.M. Crosby, Jr., Mayor

Attest:

Scott Johnson, City Administrator