

MEDINA CITY COUNCIL MEETING MINUTES OF NOVEMBER 20, 2012

The City Council of Medina, Minnesota met in regular session on November 20, 2012 at 7:00 p.m. in the City Hall Chambers. Mayor Crosby presided.

I. ROLL CALL

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

Members absent: Siitari.

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

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

The agenda was accepted as presented.

Crosby noted that the comments portion of the agenda will take place prior to the presentations.

IV. APPROVAL OF MINUTES

A. Approval of the November 7, 2012 Regular City Council Meeting Minutes

It was noted on page one, line 50, it should state, "...motel owner manager..." On page four, line 44, it should state, "...Mediacom billing statement..." On page seven, line 32, it should state, "Clarkson Alworth Lindley..." On page seven, line 42, it should state, "...large turbine..." On page eight, line 23, it should state, "...increasing elevating..."

Moved by Weir, seconded by Pederson, to approve the November 7, 2012 regular City Council meeting minutes as amended. Motion passed unanimously.

B. Approval of the November 14, 2012 Special City Council Meeting Minutes

Moved by Weir, seconded by Pederson, to approve the November 14, 2012 special City Council meeting minutes as presented. Motion passed unanimously.

V. CONSENT AGENDA

A. Approve 2013 Rates for Northwest Associated Consultants, Inc. (NAC)

B. Approve Miscellaneous Striping Services Agreement with Paint-A-Lot

C. Approve PATROL Subscription Agreement: Active Law Enforcement Agencies

D. Approve Maintenance and Support Agreement – Amendment 1: Service Hosting and Support with LETG

E. Approve Writing-Off Uncollectible Accounts

F. Ordinance No. 540 Amending Ordinance No. 528 Repealing a Moratorium on the Construction or Expansion of Wind Energy Conversion Systems

G. Resolution No. 2012-81 Authorizing Publication of Ordinance No. 540 Amending Ordinance No. 528

- H. **Resolution No. 2012-82 Accepting Donation from Stephen Pflaum on behalf of the Citizens for Medina Committee**
- I. **Resolution No. 2012-83 Accepting Donation from Twin Cities International Christian Cycling Club**

Moved by Weir, seconded by Martinson, 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

Scherer noted that the Park Commission would be meeting on November 28, 2012.

C. Planning Commission

Planning Commissioner Nolan provided an update on the single case discussed at the recent meeting of the Planning Commission, The Fields of Medina West, noting that the Commission recommended unanimous denial of the request because of the land use and density. He stated that the Commission believes that R-3 would be a better fit for that area in regard to future development because of the commercial property that will neighbor the parcel. He noted that the Commission did not believe that single-family homes should neighbor such a highly commercial area.

Crosby confirmed that the Council had also reviewed the Concept Plan and questioned if the impression given from the Planning Commission is different than that of the Council.

Nolan continued to summarize the discussion points of the Commission. He noted that the applicant advised the Planning Commission that the SAC and WAC fees were out of line and do not make it profitable to build townhomes. He questioned if the Council would like the Commission to review those fees.

Crosby advised that the point has been brought forward in the past but noted that the fees will fund improvements to infrastructure.

VII. PRESENTATION

A. Hennepin County Commissioner Jeff Johnson

Hennepin County Commissioner Jeff Johnson discussed the 2012 budget, which had a total balance of \$1,650,000,000. He noted that the 2013 proposed budget has an increase of seven to eight percent, for a total of \$1,740,000,000, which is mostly due to increased federal funds.

Crosby requested additional information regarding the current levy rates.

Commissioner Johnson noted that the budget amendment meetings will take place the following week and mentioned the proposed traffic intersection improvement.

Crosby thanked the County for the traffic light installed at 116 and Hackamore.

Weir questioned if it would be helpful to have a Medina representative present at the meetings discussing the Highway 55 intersection.

Commissioner Johnson stated that he would alert staff if he believes it would be helpful.

VIII. OLD BUSINESS

A. Mediacom Discussion and Lake Minnetonka Cable Commission (LMCC) Discussion

Johnson advised the Council of the members present to participate in the discussion regarding Mediacom and the LMCC.

Bill Jensen, Vice President Mediacom, thanked the Council for their time tonight in discussing the possibility of franchising directly with Mediacom. He noted that while Mediacom also provides telephone and internet services, Franchise Agreements only apply to video services. He advised that Franchise Agreements are non-exclusive and explained that more than one video provider can be offered in any one area. He highlighted some of the Mediacom video offerings including a basic broadcast television package, family television package, 102+ HDTV channels, pay-per-view, video OnDemand, digital audio and music, and digital video recorders.

Crosby questioned the most popular video package selected by residents in the western suburbs.

Jensen noted that a large section of customers choose the basic broadcast package while another large section selects the family television package. He advised that many customers also choose to bundle their services together and in addition to video services they also select either telephone or internet services. He stated that there has been a shift to internet video services versus traditional cable television services; he noted that Mediacom has more high-speed internet customers in Medina than cable subscribers. He reviewed the current Mediacom high-speed internet offerings, ranging from three megabits per second (Mbps) to 105 Mbps. He also reviewed the current phone offerings offered by Mediacom including free nationwide calling, 100+ countries calling plan, call waiting, call forwarding, and 3-way calling. He advised that Franchise Agreements are tailored to the needs of a community, not necessarily a group of communities who may not have the same goals. He stated that Mediacom currently has Video Franchise Agreements in 175+ communities throughout the state of Minnesota. He stated that the Franchise Agreement with the LMCC is unique and is the only one of its kind in the state. He advised that Mediacom currently has direct Franchise Agreements with the cities of Chanhassen, Wayzata, Waconia, and Howard Lake. He reviewed the benefits of franchising directly with Mediacom noting that there will be no middleman, the City would receive the PEG and Franchise fees directly, and accelerated CATV plant extensions. He reviewed the franchise incentives for Medina including a five-mile build-out in 2013, an additional five mile build-out in 2014, build-out incentives thru the next ten years, and extension of 1.46 miles of CATV plant to City of Medina City Hall in 2013. He noted that he has already slated the five-mile build-out for Medina in 2013 and advised that if the direct franchise option is not chosen he would simply remove that item from the list because of the low density.

Weir questioned the cost beyond the first 250 feet of driveway for installing service, as many homes in Medina have long driveways.

Jensen confirmed that there is a cost per foot above 250 feet and noted that there are options for above and below ground installation. He confirmed that for gravel driveways

the cost above 250 feet would be approximately \$3 to \$5 per foot. He reviewed other benefits for customers including night and weekend appointments, always-faster internet, boundary free television, 90-day money back guarantee, and lower cost phone.

Crosby stated that the Mayor of Independence is also present in the audience for this matter and invited him to ask any questions. He noted that currently there are 1,742 residential homes in Medina and referenced the number of homes not served.

Johnson noted that there are approximately 500 residential homes that do not have access to Mediacom services.

Judy Mallett confirmed that there are 506 residences in Medina that do not have access.

Finke noted that Bridgewater development has 85 lots and advised that neighborhood will soon be connected as it has met the density.

Weir questioned why these areas of the City have not been built out.

Jensen explained that the revenue model has changed because of the additional services that are offered, including telephone and internet services. He noted that the density requirement for video only services is 30 homes per mile. He stated that in discussions with the City of Medina Mediacom is willing to come out of the gate with good offers for the first few communities to direct franchise with Mediacom.

Crosby questioned the number of homes that do not have access to high-speed internet, as Century Link is offered.

Mallett noted that the speed offered by Century Link in that area is 1.5 Mbps and advised that Mediacom starts at twice that speed for their lowest service.

Weir noted that currently there is local programming, such as the televising of City Council meetings and candidates statements and debates, and questioned how those services could be duplicated.

Jensen confirmed that Mediacom does not offer those services. He stated that the City could choose to produce the footage themselves and broadcast the stream onto the City website. He advised that the City of Mound currently provides their PEG access fees to the LMCC and the LMCC then provides that service for the City. He advised that another option would be for the City to install their own cameras and for Mediacom to broadcast the footage onto a cable channel.

Pederson questioned if the new Public Works building would also be connected via CATV plant.

Jensen was unsure where the exact location for that building is but agreed that could be discussed in negotiations.

Pederson asked for additional information in regard to obtaining service to the business corridor.

Jensen stated that it is dependent on the business model.

Mallett advised that the City would work with Mediacom to identify priority areas for build-outs.

Crosby questioned what would happen to the base in the future if Mediacom were to lose the franchise.

Jensen stated that if a cable company goes out of business, the asset could be sold to another company, and residents would not lose service.

Doug Franchot, Chair of the LMCC, thanked the Council for allowing him to speak tonight. He questioned why Mediacom would want 17 cities to deal with rather than one organization, such as the LMCC. He advised that the LMCC provides a dedicated effort to administer the franchise and produce community television. He confirmed that there is an agreement with Mound, but noted that is a unique situation. He advised that Jensen is the Chair of a group that would like to take away local regulation of cable television services, similar to telephone services. He stated that this is a complex issue and urged the City not to rush into a decision. He advised that his purpose in attending the meeting tonight was to simply provide information and hoped that he would have the opportunity to come back and make a more specific presentation. He stated that the function of the LMCC goes well beyond negotiating the franchise agreement but also monitoring and ensuring compliance. He advised that the LMCC also produces award-winning television, noting that the product goes well beyond the size and scope of the organization. He advised that four channels are produced, two for government, one for school, and one for community programming. He noted that one channel is also dedicated to the Wayzata School District. He advised that the LMCC not only broadcasts the local government meetings on those channels but also streams those meetings onto the web. He noted that those services are provided at no cost to the City because the funding comes from the franchise and PEG fees from the member communities. He stated that Medina was a founding member of the LMCC, noting that Tom Anderson and Ann Theis have both Chaired the LMCC. He advised that the LMCC speaks with a louder voice than one community by itself, as the LMCC is one of the biggest customers of Mediacom in the state. He noted that Mediacom provides coverage of other community events as well. He highlighted the five communities (Independence, Victoria, Minnetrista, Orono, and Medina) within the LMCC, which are underserved at this time and stated that the number one topic for the renewal process right now is total build-out. He commented that after 28 years, these communities should have total build-out.

Crosby noted that roughly 25 percent of residents do not have access to service and questioned where Medina is on the scale of underserved community.

Franchot stated that Medina is on the underserved side of that scale.

Mayor of Independence, Marvin Johnson, noted that two-thirds of residences in the City of Independence do not have access to service.

Sally Koenecke advised of the steps that the LMCC took to provide additional service to residents in Independence under the current franchise agreement.

Crosby stated that in the capital budget of the LMCC there is nothing identified to expand coverage for those underserved communities.

Franchot confirmed that is not currently budgeted and noted that the LMCC hopes to address those issues in the negotiations.

Crosby questioned the highest level of access for other cities in the LMCC.

Franchot noted that there are some cities at 100 percent build-out.

Koenecke stated that in the franchise negotiations build-out has been identified as a priority.

Crosby stated that this appears to be a conflict for the LMCC as there are build-out concerns in the five underserviced communities, while the other 12 cities would like the bells and whistles for programming.

Martinson noted that the quality of programming is a moot point if there is no access to that programming.

Crosby noted that none of the Councilmembers have service with Mediacom because it is not an option.

Martinson noted that the Mediacom presentation noted a ten-year build-out schedule and commented that seems like a very long time to leave residents in the dark.

Franchot noted that the franchise agreement negotiation process is going well and should be complete by the end of 2013. He advised that the financial model for the last franchise agreement was completely different. He stated that in the LMCC review, 20 homes per mile is the more accurate density requirements for build-out, compared to the 30 homes per mile in the current agreement.

Crosby asked for additional information regarding the legal terms of an exit of a city from the LMCC.

Johnson noted that there would be a window of opportunity during the negotiation period.

Crosby confirmed that the City could make their decision whether to stay or leave the LMCC after the franchise agreement between the LMCC and Mediacom is proposed.

Franchot noted that once the LMCC negotiates a franchise renewal with Mediacom, the City would have five days to withdraw.

Mallett stated that it is her understanding that the City could withdraw from the LMCC at any time and that is not linked to the renegotiation.

Batty noted that given the lack of a specific termination provision in a long term contract it is probable that the city could exit the agreement. The original franchise agreement was written in 1982 and he read the language regarding withdrawal aloud. He provided additional insight on the language, noting that one of the problems with the language in the joint powers agreement is that if you read the language literally there is no option to withdraw from the agreement once joined. He noted that he did not believe that a judge would uphold that clause because it is bad public policy.

Crosby stated that he would prefer to observe what is happening at the Mediacom/LMCC renegotiations and closely monitor that process. He also believed that the five underserved communities should meet and attempt to clarify the language in the joint powers agreement and discuss options. He questioned where the five-day window comes into play.

Batty did not believe there is a five-day window specified and believed that the only language of that nature was in regard to the original acceptance of the joint powers agreement.

Mallett asked for information regarding the timetable for negotiations with Mediacom.

Franchot stated that the law states that either party can ask for renegotiations and that process must then be complete within 36 months; he advised that Mediacom raised their hand in January of 2011. He advised that the LMCC immediately responded and has consultants reviewing the information. He hoped that the negotiations would continue into the spring and be complete well before the end of the contract.

Crosby confirmed that the 36-month review period would end in December 2013.

Franchot confirmed that the LMCC would continue to meet with the five underserviced communities. He stated that he is open to discussion of what the joint powers agreement should look like now compared to 1982. He stated that the LMCC is 30 years into the agreement and believed the area should be completely built-out.

Crosby asked that Johnson continue to meet with Mallett and the parties involved to develop a recommendation. He stated that one of the main efforts of the LMCC currently is programming, which is great when you are getting the service, but does not matter when your residents are not getting service.

Koenecke stated that in the renegotiation process it was determined that Medina could be built-out with the ratio of 15 homes per mile density and advised that item will be pushed during negotiations.

Crosby noted that aside from the expansion of services issue, there are probably several more issues that need to be renegotiated during this process between the LMCC and Mediacom.

Batty clarified that the JPA began in 1982 and the franchise agreement is currently in the third renewal.

Crosby thanked everyone who attended the meeting for their participation.

Martinson asked for some type of build-out deadline in the renegotiation process between the LMCC and Mediacom.

Crosby briefly recessed the meeting at 8:47 p.m.

Crosby reconvened the meeting at 8:53 p.m.

B. Hollydale Transmission Line Update

Johnson introduced Michael Kaluzniak, Minnesota Public Utilities Commission, who is present to update the Council and residents regarding the Hollydale Transmission Line.

Michael Kaluzniak, Minnesota Public Utilities Commission, reviewed the tasks his area works with including high transmission lines. He stated that Xcel and Great River Energy are working to remove some existing transmission lines in order to update and improve the lines and service to provide more reliable services. He provided additional information regarding the levels carried and the mathematical calculations. He noted that many of the questions asked by the Council would be answered in the environmental impact study. He explained that the certification of need is the first step in the permit process, with the next step being the route determination process. He noted that a certificate of need was not originally required for this project as the route originally proposed was less than ten miles in length. He noted that during the public process an alternative route was identified that is more than ten miles in length and therefore triggered a certificate of need process. He provided an update on recent meetings and hearings, which have occurred and reviewed the members who attended to develop a schedule for the proceeding. He advised that the certificate of need and routing proceedings were kept separate, with dates ranging from the third quarter in 2013 through the second quarter of 2015. He noted that two separate environmental reviews will be done, one for the certificate of need and another for the routing. He provided additional insight on the public comment process and the general process followed by the Commission.

Johnson stated that there were some timelines identified for the certificate of need process.

Kaluzniak confirmed that there were schedules set, identifying deadline dates for public comments to be received for each stage of the process. He advised that the Department of Commerce actually has two hats within this process and further explained.

Crosby explained that when this process began there was only one route through Medina and now there have been three or four routes identified. He questioned how alternative routes could be identified for inclusion in the report.

Kaluzniak confirmed that during the public comment period those alternative routes were identified and the Commission then determines whether to include those routes in the environmental study process. He confirmed that the routes proposed were obtained through the public comment process and the Commission does suggest routes on their own.

Judy Mallett confirmed that the dates listed are a matter of public records.

Kaluzniak noted that he would leave his list with Johnson to distribute to residents. He also noted that the procedure dates can be found on the Commission website.

Mallett confirmed that the City of Medina could be a direct party in the proceedings.

Crosby noted that while the City could become a direct party in the proceedings, the option would be to either state that the City will allow the comments made by residents or the City could endorse one route out of the three to four possible routes.

Mary Shimshack stated that she believed Plymouth has become a direct party in the proceedings and has recommended a route for their city.

Kaluzniak identified the direct parties involved and noted that to his knowledge Plymouth has not become an active party.

Shimshack noted that Plymouth did take a stance and endorse one route for their city.

Kaluzniak stated that it is not unusual for a city or township to endorse a certain route through statement or even Ordinance.

Johnson stated that the city of Medina did submit three letters into the record.

Crosby questioned Ms. Shimshack if the City should take an opinion on the route and if so, what route.

Shimshack stated that she was unsure what stance the City should take, and noted that if that were an easy decision the City would have most likely decided already.

Weir questioned if a lesser voltage has ever been recommended, that would lie between the current voltage and proposed voltage.

Kaluzniak explained that the voltage determination is very mathematical and does not believe that lower voltage would be recommended. He explained that there are different factors involved in regard to voltage and he has not seen many instances, which utilize lower voltage.

Weir questioned if a 115 kW line would ever be upgraded to a higher transmission line.

Kaluzniak stated that he has seen many projects in the metro area upgrading from the native voltage to 115 kW. He stated that he would not count out the possibility of upgrading further.

Shimshack stated that she would like to see the line buried, wherever it goes. She stated that she would like the line to remain in the existing space, as those residents moved in to those homes knowing that the lines were there and those residents tax rate factors in those lines.

Norma Fredricks, 2860 Willow Drive, asked whether lines could be buried and what the above ground lines would look like.

Kaluzniak noted that there are 13 criteria that are reviewed to determine whether the lines could be underground. He stated that while that option is not off the table, it does not occur very often except in certain instances such as near the airport or downtown where sighting cannot properly occur. He described the type of pole that would be used for above ground transmission, noting single poles constructed of steel at a height of 110 to 165 feet.

Fredricks noted that the size of the poles would most likely require a larger easement and asked for additional information on that item.

Kaluzniak referred the resident to a question and answer portion that can be found online that would address those measures.

Mallett asked that the City reserve their spot in the proceedings prior to the January deadline to ensure a spot at the table.

Crosby asked Johnson and Batty to follow up on the option for the City to hold a place at the table for the proceedings and also directed staff to continue to follow up on the matter and filter that information down to the residents.

Amy Barry, Morgan Road, asked whether anyone will actually come out to the properties to determine the impact on homes.

Kaluzniak provided contact information for that resident.

Barry stated that her concern is that there are less people in Medina that will be affected by this project, than those in Plymouth, so the voices are not heard as loudly coming from Medina.

IX. CITY ADMINISTRATOR REPORT

A. Litigation Update

Johnson noted that a litigation status update was included in the packet for Council review.

Crosby stated that his interest is to pick two dates during the year to bring the Council up to date on litigation issues.

Johnson provided an update on the following cases including Woodridge Church, Karl Hanson, and Darrell Johnson. He identified the current standings of each case including the cost for litigation, both to the City and the insurer.

B. Newsletter Feature

Weir stated that she met a young woman who specializes in design work. She noted that the woman is interested in providing examples of layouts for the City newsletter and advised that the woman could provide some examples with cost estimates.

Crosby stated that he would not commit to pay anything but agreed to review the samples. He stated that on occasion there is a two-sided insert included, such as those focusing on taxes or the Clam Corp building, and believed that there are other topics that could be included on similar inserts.

C. Other

Weir stated that she was approached by a resident in regard to the large cost and the consequent disagreement regarding private road reconstruction. She noted that a resident is interested in a policy allowing reconstruction of private roads with the residents paying 100 percent of the assessment, but still paid through city bonding, which would allow payments over seven years.

Batty explained that the road would still be maintained as a private road and noted that this would be an illegal use of tax exempt bonding as public municipal bonds cannot be used for private roads.

Johnson noted that City offices will be closed on Monday, December 24th.

X. MAYOR & CITY COUNCIL REPORTS

Crosby referenced a letter received from a resident in regard to the changes proposed for the boundaries for the Wayzata School District. He stated that in his experience the City should stay out of issues involving the School District.

He stated that he received an email regarding taxes.

Johnson stated that he and Finke each received one phone call since the proposed tax rate information was sent out.

Crosby referenced other information he has come across and confirmed that staff will be responding to those items. He confirmed that the City will continue membership with the Northwest League of Municipalities. He confirmed that there will be one vacant position on the Planning Commission, with two seats that are up for possible reappointment. He also mentioned the consolidation of the Hamel and Loretto Fire Departments, noting that both Fire Departments are applying jointly for state grant funds to hire a consultant to move this process along.

XI. APPROVAL TO PAY THE BILLS

Moved by Pederson, seconded by Weir, to approve the bills, EFT 001848E – 001872E for \$41,994.69 and order check numbers 038989 – 039049 for \$131,572.01, and payroll EFT 504582 – 504611 for \$47,179.40. Motion passed unanimously.

XII. ADJOURN

Moved by Pederson, seconded by Weir, to adjourn the meeting at 10:13 p.m. Motion passed unanimously.

T.M. Crosby, Jr., Mayor

Attest:

Scott Johnson, City Administrator